



YOUR GOALS. OUR MISSION.

WTBZ-R0050

November 1, 2019

Barbara Coleman, Secretary
Township of Washington Zoning Board of Adjustment
350 Hudson Avenue
Township of Washington, NJ 07676

**Re: Second Planning Review
Major Subdivision, Site Plan, and Use Variance
Golden Orchards Associates, LLP (The Reserve at Arden Place)
Block 2101 Lots 3 and 7; Pascack Road
Class AA (Residential) Zone**

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TOWNSHIP OF WASHINGTON
ZONING BOARD OF ADJUSTMENT

Dear Ms. Coleman:

We have reviewed the following materials as part of the above-referenced application:

- Township of Washington Zoning Board of Adjustment Application form and supplemental attachments;
- Major Subdivision and Site Plan, prepared by Alex Zeponi, PE, of the firm Engineering and Technical Resources, Inc., consisting of ten (10) sheets, dated February 4, 2019, **revised September 19, 2019;**
- Architectural drawings entitled The Reserve at Arden Place prepared by James Riviello, NJ RA, the Martin Architectural Group, consisting of seven (7) sheets and dated May 13, 2019;
- Boundary and Topographic Survey, prepared by Jeffrey Kleine, LS, of the firm Lapatka Associates, Inc, consisting of one (1) sheet, dated October 3, 2017; **and,**
- **Letter from James Riviello, AIA, to Barbara Coleman, Secretary, Township of Washington Board of Adjustment, 2 pages, dated September 16, 2019.**

This is our second review of this application. This letter supplements our first review, dated August 27, 2019, in **bolded, italicized text, where relevant.** To avoid confusion, we also have noted where text relates to a **prior comment.** We have reviewed the revised plans for the above-referenced application for use and bulk variances, major subdivision approvals, and we offer the following comments:

A. Property Description

The subject parcel is a vacant partially wooded tract of land comprised of Block 2101, Lots 3 and 7 located at the intersection of Pascack Road and Eli Road, with frontage on each of these roadways. The tract is in both the Township of Washington and Hillsdale Borough, and the access to the proposed development is from Hillsdale Borough. The surrounding area includes a mix of single family and multi-family residential development near the subject site as well as Lincoln Park. The multi-family development is Northgate, which adjoins the tract on the south side.

The subject parcel is located in the Class AA (Residential) zone district. The Class B (Residential) zone district is located directly across Pascack Road. The northern boundary of the subject site abuts the PRTD Planned Residential Townhouse Development zone district.



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B. Project Description

The applicant is requesting use variance and major subdivision and site plan approvals to subdivide Lot 3 into two new lots, and to construct six detached, age-restricted residential units located partially or fully within the Township of Washington (five of which are located on proposed Lot 3.02, and one of which is located on Lot 7). In addition, the applicant proposes to construct a single family detached residence (*non-age-restricted*) fronting on Pascack Road on proposed Lot 3.01, which will not be part of the condominium development. All roadway improvements to service the development are in Hillsdale Borough.

The proposed project is part of a 37-unit active adult community situated in both Hillsdale Borough and the Township of Washington. The applicant has received final approval of the Hillsdale Borough Planning Board for both phases of the project. The units located partially in the Township of Washington are part of Phase Two of the development.

As noted above, the subject site is located in the Class AA (Residential) zone district. Single family dwellings are a permitted use in the AA zone; however, the applicant proposes a condominium development of multiple single family detached residences on one lot, which is not a permitted use in the AA zone. Therefore, the applicant will require a use variance pursuant to N.J.S.A. 40:55D-70(d)(1). In addition, the height of the proposed residential structure *on Pascack Road* exceeds the allowed building height by more than 10%; therefore, a d(6) variance is required.

C. Planning and Zoning

1. Relationship to the Master Plan

The Township of Washington Planning Board adopted the last reexamination of the Master Plan on July 31, 2019, with the prior plan adopted in 2006. The Land Use Plan in the 2006 Township of Washington Master Plan Reexamination Report identifies the subject site in the Residential Class AA zone. This designation is consistent with the current zoning. The site adjoins the Planned Residential Townhouse Development (PRTD) area that was added to the Land Use Plan map in 2006. In the 2019 Master Plan Reexamination report, there were no revisions or recommendations to the master plan that had any relationship to the subject site.

2. Use

The project site is in the Class AA (Residential) Zone, which allows single family detached residences with a minimum lot area of one-half acre. The applicant proposes a planned single-family age-restricted development of which of six (6) single family detached residences (on a single lot) are partially located in the Township of Washington. The proposed development is not a permitted use in the Class AA zone district per §580-32. The only uses permitted in the Class AA zone are single-family dwellings, independent living adult housing, and townhouses per the Planned Single-Family/Townhouse District requirements. Therefore, the application requires a d(1) use variance.



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To be entitled to variance relief for the d(1) use variance, the applicant must demonstrate that the application satisfies both the positive and the negative criteria of the Municipal Land Use Law:

a. Positive Criteria:

There are two prongs to the positive criteria that the applicant must satisfy for a d(1) variance. These are:

- (1) That the site is particularly suited to the use. The recent New Jersey Supreme Court case, 'Himeji', clarified the tests for evaluating suitability. First is that the applicant must establish the facts that distinguish the subject property from surrounding sites and second, that the need for the proposed use is best served at the location of the subject property.
- (2) There are special reasons that allow a departure from the zoning regulations in this case. The applicant must demonstrate that the variance promotes one or more of those purposes stipulated in the Municipal Land Use Law to establish special reasons and that those purposes will be advanced by the proposed development.

b. Negative Criteria:

There are two prongs to the negative criteria that the applicant must satisfy. These are:

- (1) That the variance can be granted without substantial detriment to the public good. This prong requires an evaluation of the impact of the variance on surrounding properties and a determination as to whether the proposed use would cause damage to the character of the neighborhood.
- (2) That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance.

Enhanced Burden of Proof for the d (1) Variance: In *Medici v. BPR Co.*, 107 N.J. 1, 5 (1987), it was made clear that municipalities should make zoning decisions by ordinance rather than variance. Where a master plan does not specifically address the type of use for which a variance is sought, a board has the more difficult task of determining whether the proposed use is inconsistent with the intent and purpose of the zone plan. The enhanced proof must reconcile the proposed use variance with the expressed intent of the zone plan and Township Master Plan for the Class AA land use designation.



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3. **"d(6)" Height Variance**

Additionally, the proposed height of the residence on Lot 3.02, Block 2101 (760 Pascack Road) is greater than 10 percent of the maximum permitted height in the district. Therefore, a d(6) height variance is required.

To be entitled to variance relief for the d(6) height variance, the applicant must demonstrate that the application satisfies both the positive and the negative criteria of the Municipal Land Use Law. The key focus of the proofs for a height variance relate to the potential increased intensity or floor area of the building due to the added height, especially for a use not permitted in the zone. In this case the use is permitted in the zone district. The applicant should provide testimony to confirm that the parcel can accommodate the increased height over the maximum allowed by ordinance.

4. **Bulk Requirements**

a. **Proposed Lot 3.01**

An analysis of the bulk and yard requirements of the AA zone district as they pertain to proposed Lot 3.01 is provided below:

Standard	Code Reference	Required	Proposed
Minimum Lot Area	§580-33	0.50 acre	0.57 acre
Minimum Lot Frontage	§580-33	100 ft.	123.42 ft.
Minimum Lot Depth	§580-83	95 ft.	210 ft.
Maximum Building Coverage	§580-33	20%	9%
Maximum Building Height	§580-34	2 ½ stories or 30 ft.	2 ½ stories, 34.55 ft. (V)
Minimum Front Yard	§580-35	50 ft.	69 ft.
Minimum Rear Yard	§580-36	25 feet plus one additional foot for each foot that a residence exceeds a height of 25 feet (34.55 ft.)	83 ft.
Minimum Side Yard	§580-37	15 feet each side yard plus 0.5 feet for each foot that a residence exceeds a height of 25 feet (19.78 ft.)	22 ft.
Minimum proximity of buildings to rear lot line	§580-38	10 ft.	83 ft.
Minimum Finished Living Floor Area	§580-82	1,500 sq. ft.	3,000 sq. ft.

(V) = d(6) Variance required (see discussion in Section C3 of this letter.



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b. **Proposed Lot 3.02**

Proposed Lot 3.02 will be 1.86 acres in area and will contain five (5) residential units. As noted, a d(1) variance is required as the principal structures do not comply with the AA Zone. As noted in the following table, the applicant also requires bulk variance relief for side yard setback pursuant to NJSA 40:55D-70(c).

Unit/Lot Number	Proposed Height	Min. Side Yard Setback Requirement	Proposed Side Yard Setback (Southern Lot Line)	Proposed Side Yard Setback (Northern Lot Line)
Unit 29-Br	28.04 ft.	16.52 ft.	25 ft.*	0 ft. (V)
Unit 30-Br	28.23 ft.	16.62 ft.	25 ft.*	0 ft. (V)
Unit 31-Br	27.72 ft.	16.36 ft.	25 ft.*	0 ft. (V)
Unit 32-Br	27.56 ft.	16.28 ft.	25 ft.*	1 ft. (V)
Unit 33-Ar	29.60 ft.	17.3 ft.	40 ft.	0 ft. (V)

(V) = Variance required

* 20 feet to the patio.

For consideration of "c" bulk variances, the applicant shall provide testimony to the Board that addresses the positive and negative criteria. The applicant's testimony should focus on the following:

- (1) **Positive Criteria:** The applicant shall provide testimony to the Board regarding the physical conditions of the property and how the strict application of the provisions of the ordinance would result in a hardship that is inconsistent with the purpose and intent of the ordinance. Alternatively, the applicant may testify that the required variance furthers the purposes of the Municipal Land Use Law and that the benefits of granting the variance will substantially outweigh any detriments.
- (2) **Negative Criteria:** The applicant must demonstrate that the variance can be granted without substantial detriment to the public good, and that the granting of the variance will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

The testimony should address why the applicant cannot comply with the required bulk standards for the proposed units or the reasons that the deviation from the requirement advances a planning purpose. However, if the Board approves the d(1) use variance request, the proposed bulk variances and could potentially be subsumed within the grant of the d(1) variance.

c. **Block 2101, Lot 7**

Lot 7 will contain one (1) residential unit. Technically, this is a landlocked lot, though the access road in the Borough of Hillsdale is providing access to this proposed unit. As Lot 7 does not have frontage on a public street, a variance is required under Section 35 of the



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MLUL (NJSA 40:55D-35). The applicant should provide testimony regarding the proofs that are required for the grant of this variance pursuant to the requirements of Section 36 of the MLUL (NJSA 40:55D-36), particularly with reference to the access to the site for emergency vehicles. The applicant should indicate whether these services would be provided by Washington Township or Hillsdale.

In addition, the applicant requires a side yard setback variance as referenced in the following table:

Unit/Lot Number	Proposed Height	Side Yard Setback Requirement	Proposed Side Yard Setback (Southern Lot Line)	Proposed Side Yard Setback (Northern Lot Line)
Unit 20-Ar	29.83 ft.	17.42 ft.	20 ft.(deck) 25 ft. (bldg.)	0 ft. (V)

(V) = Variance required

The proofs for this variance are the same as noted above.

D. Additional Planning Comments

1. Off-street Parking. The applicant shall provide testimony that identifies how each of the proposed dwellings will comply with the off-street parking requirements of the NJ Residential Site Improvement Standards. Otherwise the applicant shall request a de minimus exception.

Continuing comment.

2. Conservation Easement. The applicant proposes a conservation restriction area in the center of the property and the western sector of the tract. The purpose of the easements are related to the stream corridor in the center of the site and a buffer area for an endangered species habitat in the western sector. A copy of the environmental easement and the metes and bounds description of the easement should be reviewed by the Board Attorney and Board Engineer prior to filing the document in the County Clerk’s office.

Continuing comment.

3. Sheet 5 of 10 on the site plans identify a proposed trail connection to link Arden Place to the existing walking trail system throughout Lincoln Park, located to the southwest of the subject site. The proposed trail is shown as passing through a portion of Lot 7 but does not show the trail system on adjacent Lot 2 to the south.

Continuing comment. The plans should be revised to clarify the walkway improvement on the site leading from the park trail that connects to a walkway on Lot 2 Block 2101, east of 31 Arden Place. In addition, the connection of the park walking trail at the west portion of



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the tract should be clarified, as it appears to terminate at a retaining wall, which is proposed along the property line on the west side of 31 Arden Place.

4. Architectural Drawings. The applicant has submitted preliminary architectural elevations and floor plans of the proposed dwellings for the Board's information and review. For the Board's benefit, testimony should be provided regarding same.

Continuing comment.

5. In July 2017 the Township of Washington Planning Board adopted the Housing Element and Fair Share Plan for the Township. The Plan provides a vacant land analysis ("VLA") for the entire Township, which references the site constraints for vacant land throughout the Township. The subject site is referenced in the VLA but is excluded from the analysis's calculation of land contributing to the Township's realistic development potential (i.e., the affordable housing obligation) because of the lack of access to the property for the Township of Washington as well as the Phase I approvals in Hillsdale. Accordingly, the subject site was not included in the Township's Fair Share Plan. We note, however, that any potential approval by the Board would require that the development be subject to the Township's development fee ordinance, requiring a contribution to the Township's affordable housing trust fund.

Continuing comment.

We reserve the right to make additional comment upon the presentation of any additional information to the Board. If you have any questions or require any additional information, please advise.

Very truly yours,

T&M ASSOCIATES

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PLANNING CONSULTANT

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