

TOWNSHIP OF WASHINGTON  
BERGEN COUNTY, NEW JERSEY  
ZONING BOARD OF ADJUSTMENT

RESOLUTION ZBA 21-06

WHEREAS, GOLDEN ORCHARD ASSOCIATES LP (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Washington for Preliminary and Final Major Site Plan, Preliminary Major Subdivision approval and variance relief from the zoning code to grant the Applicant permission to develop the property as part of the second phase of a two-phase project, known as “The Reserve at Arden Place” that consists of an adult community with a total of thirty-seven (37) detached units. Thirty-one (31) of the units are or will be located wholly in the Borough of Hillsdale. Seventeen (17) of the Thirty-One (31) units have been constructed or partially constructed and eleven (11) of which have been sold and are occupied. Six (6) of the adult community dwelling units will be located either partially or fully in the Township of Washington. Each unit located in the adult community is a single-family dwelling and separately owned under the condominium form of ownership. The Applicant also seeks subdivision and site plan approval for a separate lot wholly situated in the Township of Washington for the construction of one (1) non-age restricted, conventional single-family dwelling. The dwelling will have street frontage and driveway access along Pascack Road and will not be part of the condominium development. The Applicant has received final site plan approval for the entire Phase One and Phase Two Development Project from the Borough of Hillsdale and has fully constructed the roadway, stormwater drainage facilities and utilities that service the entire development. The Applicant is the owner of the property designated as Lot Nos. 3 and 7 in Block 2101, on the Tax Assessment Map of the Township of Washington. The subject property is situated in the “Class AA” Residential Zoning District. Lot 3 occupies an area of 106,056 s.f. +/- (2.43 acres) with 161.75 feet of frontage along Pascack Road. Lot 7 is a “landlocked” parcel located on at the southwest corner of the site, adjacent to Lincoln Park and

occupies an area of approximately 77,619 s.f. (1.78 acres). The entire tract encompassing lands located in both the Borough of Hillsdale (Phase 1) and Township of Washington (Phase 2) is transected by the municipal boundary line running in an east west direction across the site from Pascack Road. Both properties are now vacant and generally characterized as a moderately wooded area. The Applicant seeks Preliminary Major Subdivision approval of existing Block 2101, Lot 3 creating two (2) new lots identified as Proposed Lot 3.01 and 3.02. The Applicant also seeks Preliminary and Final Major Site Plan Approval with Bulk Variance relief for the proposed structures situated on Proposed lot 3.02. The Bulk Variances include 0 feet side yard setbacks for unit Nos. 29, 30, 31, 33 and 20 and a one (1) foot side yard setback at unit #32 which are noted to be coincident with the municipal boundary. Unit Nos. 33, 32, 31, 30 and 29 have garage floor areas of either 423 s.f. for “Br” units and 432 s.f. for the “Ar” units which are noted to be less than the required minimum of 500 s.f. as set forth under Section 580-84D of the Township Code. The Applicant initially sought approval for a “D-6” Height Variance for the conventional single-family non-age restricted dwelling located on Proposed Lot 3.01 to allow a height of 34.55 feet where the maximum building height permitted is 30.00 feet, which exceeds the maximum height permitted by more than 10%. This request was later withdrawn. The Applicant also seeks a “D-1” Use Variance to permit the proposed construction of a Planned Single Family Age Restricted Development on Proposed Lot 3.02, which is not a permitted use within the Class “AA” zoning district as set forth in Section 580-13 of the Township Code. The Applicant is represented by Russell Huntington, Esq. and Siobhan Bailey, Esq. from the Law Firm of Huntington Bailey, L.L.P.; and

WHEREAS, the Township of Washington Zoning Board of Adjustment has carefully considered the testimony of the Applicant’s Principals, Stuart Weinberger and Jeff Weinberger, the Applicant’s Professional Engineer, Alex J. Zeponi, P.E., the Applicant’s Architect James Ravello, R.A., the Applicant’s Professional Planner Bridget Bogart, PP, AICP, CGW, the Township Planning

Consultant, Stanley C. Slachetka, P.P., AICP, the Zoning Board’s Engineer, Paul Azzolina, PE, CME and evidence presented by the Applicants and their professionals and Board discussion and comments during the general public hearings held on October 20, 2020, November 17, 2020, December 15, 2020, January 26, 2021 and February 23, 2021 via electronic means and in compliance with the Open Public Meetings Act and related Guidelines for Remote Public Meetings issued by the Division of Local Government Services , prior to which time the Applicant presented proof of notice and publication as required by law, and;

WHEREAS, the Township of Washington Zoning Board of Adjustment has reviewed the following:

**EXHIBITS INTRODUCED**

EXHIBIT	DATE INTRODUCED
A: Engineer Plan Set	10/20/2020
B: Architectural Plans for Age Restricted Units	11/17/2020
C-1: Brochure Adult Community Unit Location Marked	
C-2: Brochure Adult Community	
C-3: Arial View Adult Community Project	
D: Landscape Plan	10/20/2020
D-1: Landscape Plan Rev Through 12 4 20	
D-2: Landscape Plan Rev Through 1 5 21 (attached to R-1B)	1/26/2021
D-3: Landscape Plan Rev Through 2 1 21	2/23/2021
E: Key Map	
F1: Overall Tree Location Map	11/17/2020
F-1A: Overall Tree Location Map Rev Through 2 1 21	2/23/2021

F-2: Existing Tree Removal Map 2	11/17/2020
F-2A: Existing Tree Removal Map 2 Rev Through 2 1 21	2/23/2021
F-3: Existing Tree Removal Map 3	11/17/2020
F-3A: Existing Tree Removal Map Rev Through 2 1 21	2/23/2021
F-4: Existing Tree Removal Map 4	11/17/2020
F-4A: Existing Tree Removal Map 4 Rev Through 2 1 21	2/23/2021
G: Walking Trail Sketch	10/20/2020
H: Conservation Easement	1/26/2021
I: Excerpts of Master Deed	1/26/2021
J: Hillsdale Planning Bd Resolution Final Subdiv Site Pl	
K 1-12: Phase 1 & 2 Plan	11/17/2020
L: Hogrefe Settlement Agreement	11/17/2020
M: Northgate Settlement Agreement	1/26/2021
N: List of Approvals	10/20/2020
O: Resume of Alex J. Zepponi	
P: Resume of James M. Riviello	
Q: Filed Maps	
R-1: Landscape Notes/Plant List; Excerpt of Drawing 6 of 10	11/17/2020
R-1A: Landscape Notes/Plant List; Excerpt of Drawing 6 of 10 Rev through 12 4 20	
R-1B: Landscape Notes/Plant List; Excerpt of Drawing 6 of 10 Rev through 1 5 21	1/26/2021
R-1C: Landscape Notes/Plant List; Excerpt of Drawing 6 of 10 Rev through 2 1 21	2/23/2021
R-2: Landscape Plan Exhibit for Lot 3.01	11/17/2020
R-2A: Landscape Plan Exhibit for Lot 3.01 Rev through 12 4 20	
R-2B: Landscape Plan Exhibit for Lot 3.01 Rev through 1 5 21	1/26/2021

R-2C: Landscape Plan Exhibit for Lot 3.01 Rev through 2 1 21	2/23/2021
R-3: Landscape Plan Exhibit for #29	11/17/2020
R-3A: Landscape Plan Exhibit for #29 Rev through 12 4 20	
R-3B: Landscape Plan Exhibit for #29 Rev through 1 5 21	1/26/2021
R-3C: Landscape Plan Exhibit for #29 Rev through 2 1 21	2/23/2021
R-4: Landscape Plan Exhibit for #30	11/17/2020
R-4A: Landscape Plan Exhibit for #30 Rev through 12 4 20	
R-4B: Landscape Plan Exhibit for #30 Rev through 1 5 21	1/26/2021
R-4C: Landscape Plan Exhibit for #30 Rev through 2 1 21	2/23/2021
R-5: Landscape Plan Exhibit for #31	11/17/2020
R-5A: Landscape Plan Exhibit for #31 Rev through 12 4 20	
R-5B: Landscape Plan Exhibit for #31 Rev through 1 5 21	1/26/2021
R-5C: Landscape Plan Exhibit for #31 Rev through 2 1 21	2/23/2021
R-6: Landscape Plan Exhibit for #32	11/17/2020
R-6A: Landscape Plan Exhibit for #32 Rev through 12 4 20	
R-6B: Landscape Plan Exhibit for #32 Rev through 1 5 21	1/26/2021
R-6C: Landscape Plan Exhibit for #32 Rev through 2 1 21	2/23/2021
R-7: Landscape Plan Exhibit for #33	11/17/2020
R-7A: Landscape Plan Exhibit for #33 Rev through 12 4 20	
R-7B: Landscape Plan Exhibit for #33 Rev through 1 5 21	1/26/2021
R-7C: Landscape Plan Exhibit for #33 Rev through 2 1 21	2/23/2021
R-8: Landscape Plan Exhibit for #20	11/17/2020
R-8A: Landscape Plan Exhibit for #20 Rev through 12 4 20	
R-8B: Landscape Plan Exhibit for #20 Rev through 1 5 21	1/26/2021
R-8C: Landscape Plan Exhibit for #20 Rev through 2 1 21	2/23/2021
R-9: Proposed Plantings Within Northgate Property Rev through 1 5 21	1/26/2021

R-9A: Proposed Plantings Within Northgate Property Rev through 1 25 21	1/26/2021
R-9B: Proposed Plantings Within Northgate Property Rev through 2 1 21	2/23/2021
S 1-106: Photos of Site (103-106 discussed)	11/17/2020
T: Pascack Road Elevation (Riviello) AR Unit 3.01	11/17/2020
U: Unit 3.01 Grade Plan Calculation	11/17/2020
V: Utility and Grading Drawing revised through December 7, 2020	12/15/2020
W: Elevation Drawings Lot 3.01 dated December 7, 2020	12/15/2020
X: Photo Simulation/Photoscape prepared by Applicant's Planner	12/15/2020

WHEREAS, the Township of Washington Zoning Board of Adjustment has made the following findings of fact and conclusions of law:

1. The property is designated as Lot Nos. 3 and 7 in Block 2101 and is presently vacant and can be characterized as a moderately wooded area that is located in the "Class AA" residential zone. The Applicant's proposed use of the property is a not a permitted use in the "Class AA" Zone;

2. At the public hearing held on October 20, 2020 the Applicant's Attorney, Russell Huntington, Esq. described the Application as a unique situation with a lot of unusual circumstances. The Applicant proposes constructing thirty-one (31) single family age restricted dwellings in the adjacent town of Hillsdale and six (6) single family age restricted dwellings in the Township of Washington. The Applicant also proposes constructing one (1) single family dwelling, non-age restricted, that will front on Pascack Road in the Township of Washington. He advised the Board that this is a unique situation as most of the dwellings are located in Hillsdale and many have already been

constructed and sold as the entire project has already been approved by Hillsdale. However, the remaining six (6) age restricted units and one (1) non-age restricted dwelling are partially or wholly located in the Township of Washington and remain under the jurisdiction of Board of Adjustment of the Township of Washington.

3. Alex J. Zeponi, the Applicant's Engineer, was sworn in and accepted by the Board as an expert witness. Mr. Zeponi testified that the property was once an apple orchard and is a currently vacant wooded area with no road access. The property borders the Northgate Condominium Association, Inc. ("Northgate") which is located in the Township of Washington. He testified that some parts of the property have walking trails that were created by farming equipment when it was an orchard. Some parts of the property cannot be developed due to environmental constraints as there is a wetlands preserve and conservation easement that cannot be disturbed. He testified that the proposed drainage system is sufficient and will detain water runoff and discharge water at a controlled rate. He testified that the storm water management system design and water collection has met or exceeded targets and there will not be any negative impact on the neighboring properties. The Applicant has already obtained approvals from the New Jersey Department of Environmental Protection (NJDEP) and Bergen County Soil.

4. After hearing the questions and the concerns from the Board members and members of the public regarding the Applicant's stormwater management system, Siobhan Bailey, Esq., the Applicants Attorney, advised the Board that there have already been many years of hearings and litigation that went all the way to the New Jersey Supreme Court. She advised that the adequacy of the proposed drainage system has been thoroughly reviewed and addressed prior to the project being approved by the Borough of Hillsdale. The main reason for the litigation was due to the Northgate residents' concern about the proposed drainage system and their opposition to the project for fear of how it will impact their property. As a result, there is a settlement agreement between Northgate

Condominium Association, Inc. and Caliber Builders, Inc. that addresses the stormwater management system, which was determined to be more than adequate and was found to comply with all local and NJDEP regulations. The Applicant also used some of the suggestions proposed by the residents of Northgate and their engineer with regard to their stormwater management system as well as landscaping features and common elements. Northgate must also be notified of any substantial changes to the stormwater management system. Ms. Bailey advised that most of the Board Members and Public's concern in the drainage system and its maintenance has already been addressed and agreed to by Northgate and the neighboring property owners. Ms. Bailey also advised that there is also a settlement agreement between Kim Hogrefe and Janice Hogrefe and Caliber Builders, Inc. The Hogrefes reside at 746 Pascack Road which is adjacent to the stand-alone non-age restricted dwelling located on Pascack Road. The settlement agreement covers grading, fencing, additional plantings and noise issue relative to air conditioning units. There are deed restrictions to cover all future owners of this property. The new house must comply with the settlement agreement regarding the Hogrefe dwelling.

5. Mr. Zepponi testified to the need for the height variance for the Pascack Road property is due to the unique condition of the terrain. The Board engineer, Paul Azzolina, advised that the dwelling should be consistent with the existing dwellings on Pascack Road. The Board's professional Planner, Stanley C. Slachetka suggested that the need for the variance should be mitigated by the design of the dwelling and can be discussed with the Architect at the next meeting. Mr. Zepponi testified that there are three (3) protected wetland areas incorporated on the site. He testified that there has been over fifteen (15) years of review of the stormwater management system and extensive measures have been taken to eliminate stormwater runoff. After hearing the Board's questions and concerns regarding tree removal and tree plantings the Applicant agreed to provide a more detailed landscape plan at the next meeting.

6. At the November meeting Mr. Zepponi discussed in more detail the landscape plan and



tree removal plan. The Applicant agreed with the noted conditions in Mr. Azzolina's March 9, 2020 letter and testified there would be a mix of deciduous and evergreen trees along with a mix of shrubs. Ms. Bailey advised the Board that the Settlement Agreement with Northgate states that maximum screening will be provided between the new development and the Northgate property and the maintenance of the trees is the responsibility of the Reserve at Arden Place Condominium Association. After a great deal of discussion regarding replacement of trees the Applicant agreed to meet with Mr. Azzolina and a representative from Northgate to discuss additional plantings on the Northgate property as part of post approval meetings. Mr. Azzolina advised the Board that he believes the run off condition has been adequately addressed by the Applicant. Mr. Zepponi testified that a significant amount of underground infiltrators have and will be installed to capture runoff. He testified that the construction of the dwellings in the Hillsdale portion of the property began more than one (1) year ago and there has not been any impact on the neighboring properties. He testified that repairs to the storm water management system would be covered by a performance bond that is required for eighteen (18) months after completion of the development. After that time period the cost of repairs and maintenance is turned over to the Condominium Association. Mr. Zepponi also testified that Northgate's Engineer, Boswell Engineering, has reviewed the Settlement Agreement and their recommendations have already been incorporated into the stormwater management system and that the systems are functioning as designed. Ms. Bailey advised that there is a displaced stone culvert that will be repaired or replaced by the Applicant and the Settlement Agreement provides recourse if there is any issue with sediment or debris buildup and that the Applicant will respond to any issue that arises.

7. Jim Rivello, R.A., the Applicant's Architect was sworn in and accepted by the Board as an expert witness. He testified that he designed the individual units which are single family homes with the living area, including the master bedroom, bathroom and kitchen located on the first floor. He testified that the size of the garage is less than the 500 square feet that is required by the Township of

Washington Ordinance. He testified that this is an age restricted community and the homes are designed to maximize first floor living so there is less of a need for the owner to walk up a flight of stairs to the second floor, which will become more difficult as the owner gets older. He also testified that there is adequate garage space as the owners are a minimum of 55 years or older and do not have young children with bikes and toys that would need that space. The exterior maintenance for lawncare and snow removal is also the responsibility of the Condominium Association, so there is no need for the additional storage space for a lawnmower, rake, shovel, snowblower, etc. There is more than enough garage space to park two (2) automobiles which is the major purpose of the garage, not storage. He testified while the garage could be designed to comply with the 500 square feet requirement it would require moving the master bedroom upstairs and make the property less desirable to the 55 year and older pool of buyers that the Applicant is trying to attract. He also testified that it could trigger other variances as well. As to the non-age restricted dwelling on Pascack Road he testified that the Applicant is seeking a height variance of 4.5 feet because the house is being built into a hill and there is no visual impact from the street. Some members of the Board felt there was a hardship of design not related to the topography of the property and requested to see Architect Plans with a height that complies with the Township's Zoning ordinance at the next meeting.

8. At the December 15, 2020 hearing Mr. Rivello testified that the Applicant no longer seeks a height variance for the non-age restricted dwelling on Pascack Road. He provided updated architectural plans which show that the dwelling now complies with the Township's Zoning Ordinance with regard to height.

9. Jeffrey Weinberger, President of Arden Place, was sworn in and testified that the Applicant has had many years of hearings in Hillsdale and has won every appeal all the way to the New Jersey Supreme Court. He testified that the drainage system has been challenged for years and has been determined to be more than adequate for this project. He testified that there will not be any

detriment to Northgate's drainage system and the Applicant is legally obligated to maintain the drainage system as per the Settlement Agreement with Northgate. He testified that he has constructed other senior citizen housing in the Township of Washington with no complaints and his intention is to bring more quality senior housing to the Township.

10. The Applicant's professional planner, Brigitte Bogart, PP, AICP, CGW was sworn in and accepted by the Board as an expert witness. Ms. Bogart testified that this project is a unique situation as the proposed project lies in two (2) towns with two (2) different zoning ordinances. It is also unique in that the six (6) age restricted units lie partially or wholly in the Township of Washington but the only road access to these units is through Hillsdale. She testified that the Applicant requires a D-1 Use Variance for the six (6) detached condominium age-restricted dwellings as they are located in the "Class AA" Residential Zoning District and are not permitted in the zone. She testified that phase 1 of the project located in Hillsdale is substantially completed and many units have already been sold. She testified that the purpose of having one lot with a condominium form of ownership for age restricted dwellings instead of just building single family homes with no age-restriction on separate lots is so the owners do not have to maintain their own properties. It will also allow for long term control and maintenance of the stormwater management system, landscaping and buffer areas of the property as it will be the responsibility of the Association and under the Association's control. She testified that there is no substantial detriment to the neighboring properties and the Applicant has mitigated the potential negative impact through a very substantial and robust landscaping plan. She testified that the Applicant is willing to do more tree plantings for shielding, if necessary, and is open to additional plantings on the Northgate property itself. She testified that the variance can be granted without substantial detriment to the public good and the variance will not substantially impair the intent and purpose of the master plan and ordinance. The proposed dwellings are located adjacent to thirty-one (31) other units which are similar in size and design and are located in a municipality where the use is permitted and

where the proposed garage size is permitted. The dwellings will be complimentary and consistent with the already completed dwellings that are part of phase 1 of the project in Hillsdale. She testified that providing more senior housing is a benefit to the community and is a goal of the master plan. The condominium form of ownership is especially suited for age restricted housing so that elderly owners do not have to maintain their own property. She also testified that you cannot build single family non-age restricted dwellings without a setback variance. She testified that the project furthers the goal of routing traffic around and not through residential neighborhoods. She testified that if the Board approves the D-1 use Variance the C-Variations can be subsumed with the grant of the D-(1) variance. Mr. Slachetka advised the Board that he agrees that the C-Variations could be subsumed with the approval of the D-1 Variance. However, he advised the Board that this is not a get out jail free card as the C variations may not be appropriate. He also advised that in order to be entitled to relief for the D-(1) Use Variance, the Board can request as much information and testimony as possible to make a determination that the Applicant has satisfied both the Positive and Negative Criteria of the Municipal Land Use Law.

11. At the January 26, 2021 hearing the President of the Northgate Condominium Association testified that she was happy with the progress that has been made over the last several months. She testified that she has met with Stuart Weinberg at the site on multiple occasions and was happy that Stuart was amenable to adding more trees that what was expected. After hearing more testimony from the public about drainage concerns Ms. Bailey advised the Board that the Hillsdale Planning Board, the NJDEP, and the Bergen County Planning Board have all found the drainage system to be compliant. She also expressed her opinion to the Board that this is really a Hillsdale project even though some dwellings are located in the Township of Washington. All access to the dwellings and all utilities are located in Hillsdale and these dwellings are all serviced by Hillsdale and have been approved at every possible level.

12. Stuart Weinberger, a principal of the Applicant, was sworn in and testified that any brown water currently seen on the property is a normal part of construction and will disappear after the construction is completed. He testified that the repair or replacement of the stone culvert is not contingent upon the Board's approval. He knows that he has to do it and it needs to be done. He testified that he told his engineer to find a way to save as many trees as possible. He testified that he has gone above and beyond as to the fencing, landscaping and tree plantings and has made field visits to the property to meet with residents of Northgate.

13. Mr. Zeponi testified as to the revised plans for the proposed plantings on the Northgate property. Mr. Azzolina advised that the revised plans accurately depict the proposed trees and that a total of thirty-eight (38) trees will be planted on the Northgate property.

14. James Rivello testified that the Township's 500 s.f. minimum garage size is appropriate for the typical family with children and where the homeowner is responsible for maintenance of the property. In that case, additional space would be desirable for storage of bicycles, lawnmowers, rakes, shovels, etc. However, in an Active Adult Community the garage is not the main focus of the homeowner. In the proposed community the focus is on the first floor living and entertaining space as each dwelling has a basement for storage, if needed. The proposed garage space also complies with Hillsdale's zoning ordinance where most of the dwellings are located. Mr. Slachetka advised the Board that if the property is located in two (2) municipalities the Board can consider the zoning ordinances of the other municipality when making its decision. Ms. Bailey advised the Board that being located in two (2) municipalities, with two (2) different zoning ordinances, is part of the special reasons that would permit the Board to approve the Use Variance.

15. Jeffrey Weinberger testified that having a property that is located in two (2) municipalities is a hardship. He testified that this project is not really connected to the Township of

Washington. There will not be any additional children attending school in the Township of Washington and no services will be provided by the Township of Washington. He testified that the project only has one (1) non-age restricted dwelling located on Pascack Road and it fully complies with the Township's zoning ordinance.

16. At the February 23, 2021 meeting Brigitte Bogart addressed the Board's request for more information as to the Applicant's hardship and provided reasons why the hardship is not self-created. Ms. Bogart testified that N.J.S.A 40:55D 70-C gives the Board the power to grant variances. The statute says that C-Variations can be granted by reason of exceptional narrowness, shallowness or shape of the property. She testified that as per the engineer's drawings you can see that there is a uniqueness of shape and narrowness to the property. There is no street frontage in Washington Township except for Pascack Road. The property is uniquely shaped and located in two (2) municipalities with two (2) different zoning ordinances and these extraordinary circumstances create a unique hardship according to the Municipal Land Use Law that was not created by the Applicant. She also testified that the statute says that by reason of exceptional topography conditions or physical features uniquely effecting the specific piece of property a variance can be granted. Upon review she testified that there are only three (3) parcels in Washington Township that are split between two (2) municipalities. She testified that Board could also grant a variance for the uniqueness of the property as a result of exceptional situations that uniquely effect the property. She testified that based upon special circumstances the property is also unique in that it borders another property that is already developed and has received all other required approvals from Bergen County and the Borough of Hillsdale. She testified that for all of those reasons there are existing hardships on this site which are specifically set forth in the Municipal Land Use Law and which apply to the Applicant's proposed use of the property and the existing conditions of the property itself. She believes that the Applicant has satisfied the positive and negative criteria. There is no substantial detriment to the public good as the

Applicant has gone above and beyond to address any potential negative impact with a substantial landscaping plan and drainage system. The Applicant also received county approval with regard to widening of the Pascack Road to address any potential traffic impacts. All units are accessed by roads in Hillsdale, not the Township of Washington. She testified that the Board has the right to grant the D-(1) Use Variance and the C-Variations can be subsumed in the D-(1) Use Variance Approval. She also testified that in her opinion the proposed use is a better planning alternative and more particularly suited to the proposed development as opposed to what its currently zoned for. There is a strong presumption that the proposed use which is a permitted in Hillsdale is the best use of the property and is particularly suited for this use. It squares off the existing development and it furthers the most important purpose of MLUL which is to encourage appropriate use of the land that promotes the public safety, health and welfare which this project does. She believes the most recent updating of Master Plan did not seek to re-zone the property because its a difficult and unique site and hard to identify what it would be re-zoned for not knowing what is happening in Hillsdale and not knowing the street frontage and how it would possibly be developed. Given that Hillsdale has approved it gives the Board an idea as to what the use could be and this is most appropriate use for this particular property. The master plans goal of providing senior housing is also furthered by this project. With regard to C-Variations her opinion is that they can be subsumed by D-(1) Use Variance and the small garages are permitted in Hillsdale and the size of garage allows for the primary feature of these units which is first floor living. The condominium form of ownership where exterior landscaping is taken care by the condominium association eliminates the need for storage space for lawn mowers etc., so there is less of a need for a large garage. She believes that there is more than adequate screening with the improved landscaping plan.

17. Stuart Weinberger testified that there is no need for a shed. The backyards are part of the common elements and there will not be any sheds allowed as far as the condominium association

is concerned. Mr. Weinberger believes the association's bi-laws states that sheds, structures and swing sets are not permitted. He also believes they are expressly prohibited in master deed and if is not that he has no objection that the Board make it a condition of their approval. No matter what type of development there is a hardship and this is most appropriate.

18. Mr. Slachetka advised the Board that there a number of complexities that are obvious to this application. He advised the Board that while there is a lot of discussion about what is going on in Hillsdale, the Board must look at the Application in the context of its effect on the Township of Washington and what is the best and most appropriate use for these properties. He advised that there is an extremely uniquely configured lot and triangular shape which is landlocked with the only road access is coming through Hillsdale except for Lot 3 which fronts on Pascack Road. The property also has environmental constraints and easements that isolate that lot. He advised the Board that the Applicant claims that there isn't a practicable and reasonable way to develop the property in a way for either one of the two (2) parcels to conform with Township of Washington's Zoning Ordinance. He agrees with that the Applicant's position that you will need variances no matter what you do.

19. Ms. Bogart testified that you could sub-divide the property into several lots that will technically conform as a single-family dwelling. However, this will take away the unique and most important concept of the project which is senior housing with no exterior maintenance which is very important to an aging population. She believes the project will advance the goal of providing more housing for senior citizens which it cannot do as detached individual lots. In the latter case the owners may not maintain their properties, they may remove trees and could put sheds and playgrounds on the proposed buffer between the properties.

20. Mr. Slachetka testified that the Board can approve the Application if it believes that the proposed use is a good use of the land and makes sense from the Township of Washington perspective



and advances the goals and objectives of the Township of Washington. The Board can also approve the Application if it believes it advances the intents and purposes of the MLUL and because of the nature of the use it achieves other goals such as the ability to control the long term quality of the buffering and screening over time which would protect and enhance adjoining properties. He testified that this would create the foundation for a positive determination on the application. Ms. Bailey advised that the Applicant could not develop the property with multiple single family home lots due to restrictions from Hillsdale Planning Board and the NJDEP approvals. She advised that this is a very carefully planned development with the most attention given to the stormwater drainage facilities and overall layout.

21. Mr. Slachetka advised the Board to focus on the statutory proofs being made and whether or not the project is beneficial to the Township of Washington. The Board is not locked in because the last re-examination of the Master Plan didn't rezone it. This is a unique property and while there may have been a general awareness of what was happening in Hillsdale at the time of re-examination they most likely were not specifically aware of the details. He advised that this does not hamstring the Board to make a decision as to whether or not the Applicant has met its burden to prove the Statutory criteria. The Board can look at C-Variations on an individual basis and make a determination. If the Board determines that it is in favor of the use, that the Applicant has shown that the use is appropriate and that if you don't grant the C-Variance it will prevent the benefits of the Use from occurring, then you can subsume the variations with the D variance.

22. With regard to questions from the Board regarding the property tax benefit to the Township of Washington Mr. Azzolina confirmed there is an agreement between the two (2) towns. As noted in Mr. Azzolina's initial report of March 9, 2020, four (4) of properties will be taxed wholly by the Township of Washington and the other two (2) properties will be wholly taxed by Hillsdale and Pascack Road property will be wholly taxed by the Township of Washington. Mr. Slachetka advised

the Board that the project makes no impact on the Township of Washington's affordable housing obligation and the Applicant is required under the Township's development fee ordinance to make a contribution towards the Affordable Housing trust fund.

23. The Applicant then discussed the revised landscape plan, dated February 21, 2021 which addressed the discrepancy in the amount and types of trees that will be planted. Mr. Azzolina confirmed that there will be a total of 202 total new plantings on the Applicants property which also includes 35 spruce trees on that are to be planted on the Northgate property. Mr. Azzolina believes that the actual number of trees removed will be approximately 90-92 trees so the number of plantings will be greater than the 2-1 requirement. The Willow trees will be removed from the plans and replaced with different types of oak trees and maple trees that are more likely to thrive in a forested environment. Mr. Zepponi testified that any other discrepancies will be revised as per Mr. Azzolina's recommendation as to the actual quantity of trees. All trees on the Applicant's property around the dwellings which are groomed and maintained by the Condominium Association will have an irrigation system. The trees to be planted on the Northgate property will not have an irrigation system.

24. Jeff Weinberger testified that he has confirmed that there is no provision in the master deed which allows sheds or anything to be built or constructed in the common areas. The only things that may be maintained in the limited common areas (back yard) are a barbecue, hot tub and lawn furniture which must be approved by the condominium association. He testified that this could also be can be a condition of the resolution

25. Ms. Bailey advised in her summary that there are special and unique characteristics present here that falls into a special line of cases led by the New Jersey Supreme Court in Ferraro vs Zoning Board of Adjustment, 191 N.J. 61, (1990). That case has strong language with regard to the special reasons and positive criteria. The Court instructed the Board that the fact that it is dealing with

two (2) separate zoning ordinances establishes a unique characteristic and the two (2) zones militates in favor of granting the variance because the town cannot deprive the owner of a reasonable utilization of the property that is split by the zoning district line. She advised that based upon this case law the Board cannot disregard or ignore the Hillsdale zoning ordinances when the majority of the property, all of the infrastructure, the stormwater management system and the road to access the property are all located in Hillsdale. She advised that the Applicant has also done everything it can to address the Northgate concerns and they have responded positively to project.

WHEREAS, the Zoning Board of Adjustment of the Township of Washington has determined that the Applicant has satisfied the criteria for granting the C(1) Bulk variances for related to side yard setbacks and garage floor space and a D(1) Use Variance and has accepted the testimony of the Applicant and their professionals that that the variances are necessary and the use is inherently beneficial to the community.

WHEREAS, members of the public were invited to ask questions of the Applicant after testimony was given, and all questions offered by members of the public were answered to the satisfaction of the Zoning Board of Adjustment;

WHEREAS, the Zoning Board of Adjustment has determined that the relief requested by the Applicants can be granted without substantial detriment to the public good and without substantially impairing the intent or purpose of the Zoning Ordinance of the Township of Washington. Moreover, the Board finds that the plan represents a better planning alternative with the least impact on the property as a whole, and is not out of character, and is not likely to be a substantial detrimental impact upon any other properties in the neighborhood, and would blend into the surrounding properties;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township

of Washington on this 23<sup>rd</sup> day of March, 2021 that based upon the findings of fact, testimony presented and documents submitted for review as previously set forth, the application of GOLDEN ORCHARD ASSOCIATES LP is hereby granted for Preliminary and Final Major Site Plan, Preliminary Major Subdivision approval to allow construction of six (6) age-restricted single family dwellings on Lot 7 and proposed Lot 3.02, where each dwelling is part of an adult community and separately owned under the condominium form of ownership. The Board also grants the Applicant Subdivision and Site plan approval for a separate lot wholly situated in the Township of Washington on proposed lot 3.01 for the construction of one (1) non-age restricted, conventional single-family dwelling. The dwelling will have street frontage and driveway access along Pascaek Road and will not be part of the condominium development and will be in conformity with the plans submitted to this Board as amended at the hearings. The Board also grants the Applicant's request for a "D-1" Use Variance to permit the proposed construction of a Planned Single Family Age Restricted Development on Proposed Lot 3.02, which is not a permitted use within the Class "AA" zoning district as set forth in Section 580-13 of the Township Code.;

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the following conditions of approval;

1. The Applicant and any subsequent owners of the six (6) age-restricted units cannot install any sheds on either the common areas and the limited common areas.

2. The Applicant is not permitted to construct more than six (6) single family dwellings on lot 7 and proposed lot 3.02.

3. The Applicant must reconcile and revise their landscaping plan to confirm that the number of tree removal and tree plantings comply with the Township's 2-1 ratio and is subject to review and approval by the Board's Engineer.

4. The Applicant is also required to enter into a Builders Agreement with the Township of Washington as prepared by the Township's Attorney and shall also furnish a performance guarantee which guarantees the installation of the landscaping improvements as shown on the plan.

5, The Applicant must also apply to the Planning Board for a major soil moving permit(s) to construct the various sites.

6. The Applicant must maintain or repair the culvert as necessary.

7. The terms and conditions of the Boards Approval and Resolution are subject to the terms and conditions of both the Northgate Settlement Agreement, Exhibit M and the Hoegrefe Settlement Agreement, Exhibit L.

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the stipulations made during the hearing on this Application as set forth herein and on the record before the Board.

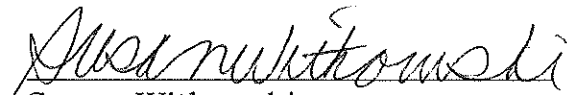
BE IT FURTHER RESOLVED the Applicant's failure to comply with conditions set forth in this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of either a building permit and/or Certificate of Occupancy of the premises, subject to reasonable notice and the opportunity to cure.

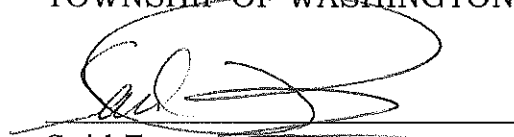
BE IT FURTHER RESOLVED that pursuant to the Code of the Township of Washington, the variances granted will expire within one (1) year from the date of this Resolution if construction is not commenced, however, this Board reserves the right to grant extensions of time from this Resolution if circumstances warrant the same;

BE IT FURTHER RESOLVED, that the Secretary of the Zoning Board of Adjustment of the Township of Washington is hereby directed to mail a copy of this Resolution to applicant; to furnish a copy to the building department; to file a copy of this Resolution with the Township of Washington

Clerk; and to cause a notice of this determination of the Zoning Board of Adjustment to be published in the official newspaper of the Township of Washington within ten (10) days of the date hereof and thereafter published according to law.

APPROVED:  
 ZONING BOARD OF ADJUSTMENT  
 TOWNSHIP OF WASHINGTON

  
 Susan Witkowski  
 Township Clerk

  
 Said Toro  
 Chairman

Dated: March 23, 2021

BOARD	MOTION	SECOND	AYES	NAYES	ABSTAIN	ABSENT	RECUSE
Capasso			X				
Callandrillo			X				
Hanna #1			X				
La Gratta	X		X				
Mahoney			X				
Moore					X		
Roberto #2			X				
Toro			X				
Werfel		X	X				