

APPLICATION ADDENDUM

Capital Seniors Housing (CSH) Pascack, LLC Preliminary and Final Site Plan, Use Variance and Height Variance 620 Pascack Road (CR 502) (Block 2202, Lot 1) Township of Washington, New Jersey (Bergen County) AA District

I. INTRODUCTION

Capital Seniors Housing (CSH) Pascack, LLC of 1275 Pennsylvania Avenue NW, Second Floor, Washington, DC 20004 (hereinafter referred to as “CSH Pascack”) is the contract purchaser of an approximately 5.02-acre tract known as 620 Pascack Road (CR 502), also known in the Township as Block 2202, Lot 1 (the “Property”). The Property, located within the AA Residential District (“AA District”), presently contains an existing tennis and fitness club. The Property is currently owned by Binghamton – Washington Township Corp.

CSH Pascack seeks Preliminary and Final Site Plan Approval with associated use variance and height variance relief for the redevelopment of the property by demolishing the existing structure and constructing a proposed three (3) story assisted living facility / memory care facility which will consist of 85 units (100 beds) with associated amenities. Access to the development will be provided via Pascack Road. There will be a total of fifty-one (51) spaces on site and the proposed plan also contains associated landscaping, loading, lighting, drainage, and other related site improvements (See “Site Plans,” prepared by Dynamic Engineering dated 1/10/20 filed herewith.)

II. RELIEF REQUESTED

The variance relief sought by the present application can be summarized as follows:

- A. Per §580-32 – assisted living facility / memory care facility development not permitted in the AA Residential District (d(1) variance relief required)
- B. Per §580-34 – Maximum height of building where 2.5 stories / 30’ is permitted and 3 stories / 43.7’ is proposed (d(6) variance relief required)

Approval will also be sought for any and all additional variances, waivers, and other incidental relief, including but not limited to approval for soil movement that may be required or deemed necessary during the Board’s review of this Application in conjunction with the requested use and related site improvements. The Applicant reserves its right to amend its Application to seek additional or modified relief during the pendency of the hearing and review of the Application.

II. ZONING

A. Use Variance Relief for Assisted Living Facility / Memory Care Facility Development in the AA District

To obtain a use variance, an applicant must demonstrate that there are “special reasons” for the grant of the variance and that there will not be substantial negative impact if the variance is granted. N.J.S.A. 40-55D-70d. The “special reasons” are often referred to as the “positive criteria” and can be demonstrated if the use carries out a purpose of zoning or the refusal to allow the project would impose an undue hardship upon the applicant. In addition, “special reasons” exist if the proposed site is particularly suited for the proposed use. Medici v. BPR Co., 107 N.J. 1, 4 (1987).

The present application satisfies the positive and negative requirements for the grant of a use variance.

i. **POSITIVE CRITERIA: The general welfare is served because the proposed use inherently beneficial.**

Courts have found that, in general, senior housing is an inherently beneficial use of high priority. See Sunrise, Inc. v. Zoning Board of Adjustment of Madison Township, 1999 NJ Super unpublished. Lexis 5. In Sunrise, the Appellate Division specifically ruled that assisted living facilities (including those operated for profit) are to be treated as inherently beneficial uses.

The Appellate Division in Jayber, Inc. v. Municipal Council, 238 N.J. Super. 165 (App. Div.) cert. den. 122 N.J. 142 (1990), made “clear that the aging of the population and the special housing needs of the elderly, irrespective of their individual financial resources, creates significant social problems which government, as a matter of the general welfare, is obliged to address.” Cox pg. 717-718. The Jayber court found that the proposed use would in fact promote the general welfare as had been determined by the board of adjustment.

ii. **NEGATIVE CRITERIA: The requested variance relief can be granted without substantial detriment to the public good.**

The proposed assisted living facility / memory care facility will in fact serve to enhance the Property and the surrounding neighborhood, as opposed to causing any substantial detriment. The redevelopment of this Property would greatly benefit the Borough and the surrounding area. The testimony will show that the use proposed will not cause a substantial increase in vehicular traffic as compared to the tennis and fitness club use. (See “Traffic Engineering assessment” prepared by Shropshire Associates, LLC dated 1/15/20 filed herewith.) Therefore, based upon the above, and the testimony to be provided, the use variance to redevelop the property from a tennis and fitness club to an assisted living facility / memory care facility can be granted without substantial detriment to the public good.

iii. NEGATIVE CRITERIA: The requested variance will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

As set forth above, the proposed senior housing development use is not permitted within this AA residential district. However, the Property lies with a residential zone and does not violate the overall zone plan.

Therefore, the granting of the requested variance for a proposed assisted living facility / memory care facility will not substantially impair the intent and purpose of the zone plan or zoning ordinance.

B. Height Variance Relief for Assisted Living Facility / Memory Care Facility Development in the AA District

The proposed development is deemed to be contrary to the Township of Washington's Code, specifically §580-34, which restricts the height of a principal building to 2 1/2 stories / thirty feet (30'). The Appellate Court in the case of Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41 (App. Div. 2004) set forth the standard for the grant of a d(6) variance for height. The Court stated:

[A]pplicants for (d)(6) variances based on hardship must show that the property for which the variance is sought cannot reasonably accommodate a structure that conforms to, or slightly exceeds, the height permitted by the ordinance. Stated differently, the applicant for a (d)(6) variance on grounds of hardship must show that the height restriction in effect prohibits utilization of the property for a conforming use.

Id. at 51.

In the current matter, CSH Pascack's height variance can be granted without substantial detriment to the public good as the height will not affect the surrounding properties nor damage the character of the neighborhood. CSH Pascack submits that the proposed assisted living facility / memory care facility would not be out of place with, and fits well within, the surroundings of the site and with the other uses permitted within the zone.

Moreover, it is well settled that when certain features of a use, such as height, are necessary to effectuate the use, such features are incorporated and subsumed in the use itself. This fact, in and of itself, becomes a "special reason" warranting variance relief. *See e.g., New Brunswick Cellular Telephone Co. v. Old Bridge Township Planning Board*, 270 N.J. Super. 122, 127 (Law Div. 1993) (noting that the height of the antenna was integrally related to the effectiveness of the cellular coverage).

III. CONCLUSION

Based upon the above and the testimony to be adduced at the public hearing, CSH Pascack respectfully requests that the Board grant Preliminary and Final Site Plan Approval, as well as, the associated use variance relief and height variance relief.

The Applicant reserves the right to provide additional factual and legal arguments at its hearing.