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Daughters of Israel, Inc.

DAUGHTERS OF ISRAEL, INC.,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ESSEX COUNTY

DOCKET NO.:

v.

Civil Action

ZONING BOARD OF ADJUSTMENT OF
THE TOWNSHIP OF WEST ORANGE,

Defendant.

COMPLAINT
IN LIEU OF PREROGATIVE WRITS

Plaintiff, Daughters of Israel, Inc. (“Plaintiff” or “Daughters”), a New Jersey non-profit corporation located at 1155 Pleasant Valley Way, West Orange, New Jersey, by way of Complaint in Lieu of Prerogative Writs, alleges and says:

GENERAL ALLEGATIONS

Introduction

1. This is an action in lieu of prerogative writs in which Daughters, a non-profit nursing home that has operated in West Orange since 1962, seeks reversal of the West Orange Zoning Board of Adjustment’s (“Defendant” or “Board”) statutory denial of Daughters’ application for certain land use variances and preliminary and final major site plan approval to modernize its existing campus into a state-of-the-art “continuing care retirement community,” or “CCRC,” encompassing independent

living, assisted living and memory care units, and skilled nursing components (described in more detail below, and referred to as the “Project”).

2. After 11 public hearings, the Board voted 4-3 *in favor of* Daughters’ application. Thus, a majority of the Board – including the Chair and Vice Chair – voted to approve the Project and gave impassioned pleas on the record as to why this Project was an inherently beneficial use of the property that was not only necessary for Daughters to remain a viable nursing home and senior care facility, but would also benefit seniors and those in need in the West Orange community for decades to come.

3. A use variance, however, needs a super-majority vote for approval under New Jersey law. Thus, because a minority of three members of the Board voted against the proposed Project – two of whom are new members of the Board who joined in the middle of the public hearings on Daughters’ application – the application was denied. As outlined below, the three Board members who voted “no” did so based on concerns that were not supported in any way by the evidence in the record and, more importantly, were wholly irrelevant to a variance determination as a matter of law.

4. The Board members who voted “no” stated on the record a series of considerations on which their decision was based, considerations which not only were unlawful, but also were both unsupported by and contrary to the evidence in the record. For instance, those improper considerations included:

- A perception that Daughters does not have the money to complete the Project, despite testimony to the contrary;

- A conclusion that because Daughters is a non-profit entity, the Project did not “pass the smell test” since the proposed independent living units would be offered at market rates;
- An erroneous belief that Daughters would not pay any property taxes, which would be “unfair,” even though testimony clearly established that property taxes would be paid on the independent living component of the Project;
- A concern, without evidence, that construction of new buildings would negatively impact the health and mental state of the nursing home residents in the existing building; and
- A belief that the “voters” of West Orange were supposedly against this Project because, in a town of nearly 48,000 people, 10 members of the public testified in opposition to the Project.

5. Such financial, health and political issues may be of interest to the opposing Board members, but they are simply not relevant considerations for a local zoning board in determining whether a use variance should be granted. In any event, the concerns expressed by the “no” members of the Board were not supported by the record – to the contrary, their concerns were specifically addressed and refuted by the testimony and other evidence presented at the hearings. To take just one example, Daughters’ Chief Financial Officer testified at more than one hearing that Daughters, a non-profit, currently pays taxes to the Township of West Orange with respect to a communications facility on the rooftop of the existing building, and that Daughters expected to pay additional property taxes on the proposed market rate

independent living units in an amount to be determined by the Township's tax assessor. The Project would therefore significantly *increase* the tax revenue on the subject property. The testimony on this issue, which was unrefuted, was evidently ignored by the Board members who voted "no" and by the small cadre of "NIMBY" members of the public who asked questions at each hearing.

6. The Board's decision was memorialized by resolution adopted on June 15, 2023 (the "Resolution"). See Exhibit A, a true and correct copy of the Resolution.

7. As outlined below, the decision of the three Board members who voted against the Project should be reversed as a pure matter of law, and the Project should be approved because it easily satisfies the applicable legal criteria. Since 1962, Daughters has been caring for the elderly at the subject property, which is next to a large rehabilitation center and is across from a golf course. The proposed Project will not change the character of the property or the neighborhood in any meaningful way. Nor will it change Daughters' non-profit mission. Rather, it will simply modernize the campus and allow Daughters to provide the type of services that seniors need in the years and decades to come. The Project will therefore allow Daughters to provide *more services to more seniors*, and will allow Daughters to continue its mission of caring for the elderly and remain a viable home for its residents.

8. The proposed Project – with its new skilled nursing building for long-term care residents (many of whom will be Medicaid beneficiaries with limited income and resources), new assisted living and memory care unit, and new independent living building – is undoubtedly an "inherently beneficial use" of the subject property that serves the public good and promotes the general welfare.

Indeed, the compelling proofs in the record, and New Jersey land use law, mandate that the use variances sought by Daughters should have been granted.

9. Daughters' application was reviewed and found to be satisfactory by the Township Planner, the Township Forester and, subject to some minor plan revisions typically addressed as conditions of approval, the Board engineer. The proposed Project also furthers the objectives of West Orange's 2019 Master Plan Reexamination Report, which calls for the Township to support "[s]enior and specialized housing options." And, as explained above, the Project was approved by a majority of the Board.

10. Daughters therefore asks this Court to enter judgment reversing the Board's denial of Daughters' application, declare that the denial was arbitrary, capricious, unreasonable, and in violation of New Jersey land use law, and approve Daughters' application.

The Parties

11. Plaintiff is a New Jersey non-profit corporation having its principal offices at 1155 Pleasant Valley Way, West Orange, New Jersey.

12. Defendant is the duly created zoning board of adjustment for the Township of West Orange ("West Orange" or the "Township"), created pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163 ("MLUL") having its principal place of business at 66 Main Street, West Orange, New Jersey.

BACKGROUND FACTS

Subject Property

13. Daughters is the tenant¹ of an 18-acre parcel of land having a street address of 1155 Pleasant Valley Way, designated as Block 171, Lot 12 on the tax maps of the Township (the “Property”).

14. Since 1962, the Property has been improved with a skilled nursing facility licensed for 303 beds operated by Plaintiff, which offers its residents a variety of services including long-term care, sub-acute rehabilitation, memory care, hospice/palliative care, and respite stays.

15. Although the existing skilled nursing facility is licensed for 303 beds, in recent years, only approximately 130-150 beds have been occupied at any given time and occupancy has been declining for years.

Applicable Zoning

16. The Property is located in the R-2 zoning district (the “R-2 District”).

17. The R-2 District permits one family detached dwellings; water reservoirs; well towers; filter beds; government buildings; golf courses and golf clubhouses; farms nurseries; greenhouse and similar uses; hospitals; and senior citizen housing projects. Land Use Regulations of the Township of West Orange (the “Land Use Regulations”) § 25-7.1, Table of District Regulations, Part A: Permitted Uses Table of District Regulations.

18. Accordingly, both the existing skilled nursing facility and the proposed CCRC are not permitted uses.

¹ As one of many errors, the Resolution inaccurately states that Daughters is the Property owner.

Daughters' Mission

19. Daughters has existed for more than 100 years, and has been located at the Property since 1962, during which time it has continuously provided services to the community.

20. Daughters' mission is to provide health and social-related services to the Jewish elderly and others in need, regardless of their ability to pay.

21. Approximately 70%-75% of the residents at Daughters pay through Medicaid, an extraordinarily high percentage in the industry given that at most other nursing homes, approximately 25%-30% of residents pay through Medicaid.

22. Over time, the census of long-term residents at Daughters has continued to decline because seniors who need assistance as they age now have other options available to them besides skilled nursing, options such as at-home care and other types of senior living facilities, including independent or assisted living facilities.

23. Although some demand remains for skilled nursing facilities, they have become an option of last resort and therefore demand no longer exists for a 303-bed skilled nursing facility.

24. The Project is necessary because the market has changed, and the current size, layout, and functionality of the building no longer matches the needs of the market and the services demanded by seniors.

25. Given the high percentage of Medicaid residents, Daughters has been running an operating loss on an annual basis, a situation that is not sustainable over the long term as the gap in Medicaid losses continues to grow.

26. Although as a non-profit there is no expectation that Daughters will generate a “profit” in the traditional sense, no entity, whether for-profit or non-profit, can sustain operating losses indefinitely and still continue in operation.

27. Rather than awaiting this inevitable result, Daughters proactively undertook an analysis, with the assistance of experts in the senior living industry, and determined through a strategic planning process that transitioning to a facility offering independent living and assisted living, as well as a smaller skilled nursing component, would enable it to continue to fulfill its mission of providing health care and related services to seniors in the community, and to do so in a manner that would be financially sustainable over the long term.

The Project

28. With the passage of time and the evolving preferences for where and how people wish to live as they age, demand has risen for living arrangements which allow residents to age in place and transition from one level of care to another as their needs change, without having to relocate to a different facility.

29. To address its declining occupancy and better meet the current and future needs of the population it serves, Daughters proposed to redevelop the Property into a “continuing life” or continuum of care facility, also known as a “continuing care retirement community” or “CCRC.”

30. The Project would be financed through debt financing, Daughters’ own funds, and through fundraising, including a \$20 million commitment to the Project from a well-known philanthropist as well as financial commitments from other members of the community.

31. The Project will enable Daughters to continue its mission of caring for seniors in the community.

32. The Project allows members of the community to remain in West Orange as they age, consistent with the “age in place” concept espoused in the Township’s 2019 Master Plan Reexamination Report.

33. The Project improves, modernizes and upgrades the use of the Property by replacing an outdated structure with a state-of-the-art facility that will serve seniors in the community for decades to come.

The Application

34. Prior to submitting an application for development to the Board, Daughters invited nearby residents (extending beyond property owners within 200 feet) to a presentation at the Property on August 31, 2021, during which its design professionals described the Project, presented plans, answered questions, and sought to address concerns. Only six of those nearby residents attended the presentation.

35. On or about November 2, 2021, Daughters submitted an application for development to the Board (the “Application”) seeking approval of a continuum of care facility comprised of the following components: (i) an independent living component offering 160 one-bedroom and two-bedroom apartments, ranging in area from 813 square feet (one-bedroom unit) to 1,540 square feet (two-bedroom plus den, larger end unit), (ii) an assisted living component offering 60 beds, some of which would be memory care beds, (iii) a skilled nursing component consisting of 80 beds, and (iv) a community center which would serve the independent living and assisted living

components, consisting of approximately 52,560 square feet at full buildout, and including amenities such as a fitness center with a pool, an auditorium, theater, library/reading lounge, game room, art studio, salon, and meditation center, a full kitchen for meal service to assisted living and skilled nursing residents, a formal dining room, a café, a pub serving alcoholic beverages (subject to obtaining a liquor license), a small store selling sundries to residents, and a variety of health and wellness services together with resident support (for example, physical and occupational therapy, physician visits, and other medical services).

36. As is typical in the CCRC operating model, the independent living units are market rate units, and revenue from the independent living component is used to subsidize the cost of operating the skilled nursing and assisted living components.

37. The Project was largely confined to the existing developed area of the Property, with relatively little disturbance of additional pervious areas, in an effort to minimize tree removal and steep slope disturbance.

38. The Project was designed with the adjoining residential neighbors in mind, by keeping the higher building elements close to Pleasant Valley Way (five stories above an underground parking garage) and the lower elements to the side and rear of the site where it borders the residences along Parsons Drive and Skyline Drive (three stories on grade) — which are at a substantially higher elevation and benefit from a significant wooded buffer that was to remain undisturbed so that it would continue to provide extensive screening as it does today.

39. The Application sought:

a. a “d(1)” use variance pursuant to N.J.S.A. 40:55D-70.d.(1) to permit a continuum of care community offering independent living, assisted living and skilled nursing, together with accessory uses proposed for the community center;²

b. a “d(6)” height variance N.J.S.A. 40:55D-70.d.(6) to permit a building consisting of five stories (ground level parking garage with four stories above) and having a height of 69.22 feet;

c. “c” bulk or dimensional variances pursuant to N.J.S.A. 40:55D-70.c. with respect to maximum lot coverage (an improvement over existing conditions); maximum height of retaining wall; maximum length of a continuous parking row; number of parking spaces (part of this relief was in the form of a request for a de minimis exception, later withdrawn, from the Residential Site Improvement Standards or “RSIS”); number of loading spaces; parking of vehicles with dual rear wheels in a residential zone; parking of vehicles with commercial markings and exceeding certain size and weight limits outdoors rather than in a garage; maximum light pole height; number of signs; illumination of signs; number of signs per lot; area of signs; maximum effective building coverage and maximum effective impervious coverage (an improvement over existing conditions);

² To be conservative, Daughters also sought a “d(1)” use variance from Land Use Regulations § 25-8.12, which allows only one principal use on a lot, to permit three principal uses (to the extent the Board characterized independent living, assisted living and skilled nursing as each being a principal use).

d. a design standard exception to permit utilization of detention systems, rather than green infrastructure as required, due to inadequate permeability for infiltration;

e. a soil removal permit; and

f. a tree removal permit.

40. Daughters applied for approval of the “c” variances as subsumed within the “d(1)” use variance relief, as well as independently.

41. The Application was considered by the West Orange Site Plan Review Advisory Board (“SPRAB”),³ on December 7, 2021.

42. SPRAB issued a report dated December 7, 2021, which summarized the applicant’s proposal and set forth SPRAB’s comments concerning matters such as sustainable design features, steep slope disturbance, tree removal and replacement and building height, noting that the “applicant is proposing 240 new trees and removing 393 existing trees, of which 60 percent are invasive according to the applicant’s architect.”

43. As a result of those comments, together with comments elicited at the neighborhood meeting, the recommendations of SPRAB, and Daughters’ desire to design a facility that meets its operational needs while respecting the concerns of the community, Daughters decided to pause the Project in order to revisit the configuration of the proposed campus redevelopment and undertake a substantial

³ Land Use Regulations § 25-51.15 establishes SPRAB and provides that it shall review and issue recommendations concerning all applications for major site plan approval. SPRAB’s members consist of the Director of Planning, the Township Engineer, a Class IV member of the Planning Board, a member of the Zoning Board of Adjustment, the Zoning Official, the Construction Official, and representatives of the Building Department, Fire Department, Health Department and Police Department.

redesign, resulting in significant modifications and adjustments to the plans and project phasing.

44. Following a period of six months during which Daughters revised the Project in material respects, a revised Application was submitted to the Board on or about June 1, 2022. Among the principal modifications were the following:

a. The building footprint was reduced and the independent living, assisted living and skilled nursing components were redistributed within the building to provide for a more efficient layout.

b. The building height was modified to be a consistent four stories, part of which is above an underground parking garage, whereas previously higher building elements were close to Pleasant Valley Way (five stories above an underground parking garage), resulting in a reduction in building height of approximately 15 feet.

c. The significant wooded buffer would remain undisturbed so that it can continue to provide extensive screening as it does today.

d. The area of disturbance was slightly reduced, allowing a 40% reduction in the number of trees to be removed (236 trees as revised), of which 40 are dead and 43 are minor trees, as compared to the original plan which called for the removal of 393 trees in total.

e. The applicant proposed planting 223 replacement trees.

f. The community center serving the independent living and assisted living components was redesigned and reduced in size by approximately 10,000 square feet.

g. The independent living unit count was increased to 182 units, from 160 units; the assisted living bed count was increased to 64, from 60; and the number of skilled nursing beds remained unchanged at 80.

h. The variances for impervious coverage, and for effective building coverage and effective impervious coverage when steep slopes are taken into account, were all reduced because the reduction in building footprint allowed for less disturbance to steep slopes.

i. Numerous sustainability design standards and procedures were incorporated into the Project, as described in the Sustainability Checklist Form and the Appendix annexed thereto, such as installation of green roofs on approximately 22% of the total roof areas, installation of solar roof panels on approximately 13% of the total roof areas, installation of water efficient landscaping, utilization of lighting controls for building occupants and in shared spaces to enable adjustments to suit individual needs, indoor air monitoring and development of an indoor air quality management plan, recycling or salvage of 75% nonhazardous construction and demolition debris, and development and implementation of a construction waste management plan.

45. Since the Project would be implemented while skilled nursing residents remain in the existing facility, it was necessary to devise a phasing plan whereby the new health center (skilled nursing and assisted living) would be constructed first, the existing residents would be moved into the new facility, and then the independent living component would be built in phases thereafter.

46. To account for the time necessary to stage, undertake and complete construction, to transition existing residents to the new facility, to then plan for the subsequent phase, and to allow the independent living units to be absorbed into the market before commencing the subsequent phase, Applicant initially proposed a ten year buildout and sought protection from changes in the terms and conditions on which approval is granted, including zoning and site plan requirements other than those relating to public health and safety, for a period of ten years as authorized by N.J.S.A. 40:55D-52.e.

47. During the public hearing process, concerns were expressed by the Board and by members of the public about the duration of construction, why a ten year buildout was necessary, and how and whether it could be reduced; about the number of trees to be removed, even after the aforesaid substantial reduction; about the extent of steep slope disturbance; and about various other matters.

48. The Project was substantially modified again, in response to comments from the Board and from the public, to reduce impacts in the following manner:

a. Phase 4, consisting of 19 independent living units, was eliminated, which enabled buildout to be reduced to six years (down from the ten years initially proposed).

b. As a result of eliminating Phase 4, the number of independent living units was reduced by 19 units; the number of assisted living beds remained unchanged at 64, but the number of memory care beds increased to 40, from 20; and the number of skilled nursing beds was increased by 4, to 84.

c. The reduction in independent living unit count reduced parking demand, allowing two parking areas, totaling 34 spaces, to be designated as reserved future parking, which maintains open space and preserves for the time being, and perhaps forever, approximately 30 trees that otherwise would have been removed during the initial buildout.

d. The elimination of 19 independent living units, and the associated reduction in parking demand, brought the Project into compliance with respect to RSIS parking standards for the independent living component and allowed the request for a de minimis exception to be withdrawn (Daughters continued to seek a variance as to parking with respect to the skilled nursing component, to permit 22 fewer parking spaces than would otherwise be required).

e. Additional screen plantings were added between the proposed building and Pleasant Valley Way. Foundation plantings were also added to address the Board engineer's comments.

f. Tree removal was further reduced, to 110 major trees and 39 minor trees (including approximately 30 within the reserved future parking areas, which will not be removed unless that parking is eventually built), a savings of 244 trees in total compared to the initial submission in October 2021.

g. Full emergency electric was added for the health center residents by adding a second generator in the area where Phase 4 had been proposed. Both generators would be appropriately screened and in compliance with the State Noise Code and any other applicable ordinance or regulation.

h. Steep slope disturbance was minimized, allowing for a further reduction in the magnitude of variances requested for maximum effective building coverage and maximum impervious coverage.

49. Because Daughters will register and formally operate the Project as a CCRC, it would constitute a “non-residential development” as defined in the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.,⁴ and would be subject to payment of a 2.5% development fee into the Township’s Affordable Housing Trust Fund.

50. Nonetheless, following completion of the Project, Daughters expects to continue to provide a substantial portion of the skilled nursing beds for Medicaid residents, a group that qualifies as very low income.

51. Following amendment of the Application during the public hearing process, the Project ultimately proposed (i) 163 independent living units (76 one-bedroom units and 87 two-bedroom units, some of both unit types offering a den, ranging in area from 813 square feet for a one-bedroom unit to 1,540 square feet for a two-bedroom with den larger end unit), (ii) 64 assisted living beds (40 of which would be memory care beds), (iii) 84 skilled nursing beds, and (iv) accessory uses and amenities including a community center which would serve the independent living and assisted living components, consisting of approximately 43,296 square feet at full buildout, of which approximately 25% or 11,352 square feet would be for the kitchen

⁴ The Statewide Non-Residential Development Fee Act defines “non-residential development” to include “the entirety of all continuing care facilities within a continuing care retirement community which is subject to the ‘Continuing Care Retirement Community Regulation and Financial Disclosure Act,’ P.L. 1986, c.103 (C.52:27D-330 et seq.).” N.J.S.A. 40:55D-8.3.

for meal service to residents and for other support functions, with the remaining 75% or approximately 31,648 square feet would be dedicated to amenities such as a fitness center with a pool, an auditorium, library/reading lounge, game room, art studio, salon, meditation center, a formal dining room, a café, a pub serving alcoholic beverages (subject to obtaining a “club” liquor license), a small store selling sundries to residents, and a variety of health and wellness services together with resident support (for example, physical and occupational therapy, physician visits, and other medical services).

The Public Hearing

52. The Board conducted a public hearing via the Zoom platform which encompassed 11 regular or special meetings extending over a period of 8 months, on the following dates: September 15, 2022; October 6, 2022; December 15, 2022; January 12, 2023; January 19, 2023; February 9, 2023; February 16, 2023; March 16, 2023; March 23, 2023; April 20, 2023; and May 11, 2023.

53. In the middle of the public hearing process, two new regular members (William Barbee and Brent Draper Scott), and two new alternate members (Peter Scalora and Michael Dannemiller), came onto the Board, each of whom qualified to vote on the Application.

54. Daughters proffered the testimony of six witnesses, some of whom testified on more than one occasion:

a. Jason Halper, an attorney and the volunteer President of Daughters' Board of Governors, who testified as a fact witness;

- b. J. Michael Petry, P.E., principal of Petry Engineering, a licensed professional engineer who was accepted as an expert in civil engineering;
- c. David Fowles, R.A., AIA, principal of KDA Architects, a registered architect who was accepted as an expert in architecture;
- d. Connor Hughes, P.E., of Dynamic Engineering, a licensed professional engineer who was accepted as an expert in traffic engineering;
- e. David Stafford, Chief Financial Officer of Daughters, who testified as a fact witness; and
- f. Francis J. Banisch III,⁵ P.P., AICP, principal of Banisch Associates, a licensed professional planner who was accepted as an expert in professional planning.

55. Loren Svetvilas, a resident of the Township who is not a “party immediately concerned” pursuant to the MLUL, objected to the Application through counsel and presented one witness, Barbara Allen Woolley-Dillon, P.P., AICP, a licensed professional planner who was accepted as an expert in professional planning.

56. No other expert testimony was presented.

57. The Public Advocate, as well as just over a dozen members of the public, asked questions or gave testimony although most did not live or own property within 200 feet of the Property and therefore were not a “party immediately concerned” pursuant to the MLUL.

⁵ Mr. Banisch is inaccurately referred to in the Resolution as “Frank Bannister.”

58. The Board elicited testimony from the Township Planning Director, Paul Grygiel, P.P., AICP, a licensed professional planner and principal of Phillips Preiss Grygiel Leheny Hughes LLC; and from its engineer, John J. Hess, P.E., a licensed professional engineer, of CME Associates.

59. The Board did not present any other expert testimony, and neither Mr. Grygiel nor Mr. Hess refuted or otherwise challenged the proofs submitted by Daughters and presented by its witnesses during the hearing.

60. All comments or other items raised by Planning Director Grygiel and Board Engineer Hess, and by the Township Forester, whether in their reports or orally at the public hearing, were addressed in full by Daughters during the public hearing such that Planning Director Grygiel and the Township Forester were both satisfied with the Application, and Board Engineer Hess was as well subject to several minor plan revisions of a nature which would typically be addressed as conditions of approval.

Plaintiff's Testimony at the Public Hearing

61. Daughters presented substantial, detailed, and uncontroverted expert testimony from its civil engineer (Petry), its traffic engineer (Hughes), and its architect (Fowles), each of whom testified on more than one occasion, and described the Project and the plan revisions in detail and answered many questions from the Board and from the public.

62. Daughters also presented significant operational testimony through its architect (Fowles) whose practice is exclusively focused on senior living projects, and

its Chief Financial Officer (Stafford) who has held a variety of positions in the senior housing and healthcare sectors since 1993.

63. The Project, including the independent living component, will provide housing and support services for elderly persons who are no longer able, by reason of age and associated disability, to live entirely independently but who are also not sufficiently ill, disabled or dependent to require nursing home or assisted living placement.

64. Each independent living unit will have a full bathroom, one or more bedrooms, and a kitchen with a sink, a stove and a refrigerator.

65. Independent living units will be single occupancy by persons a minimum of 62 years of age, except for related persons such as spouses, siblings or civil union partners who may be under 62 years of age, although the average age of new residents will be 78-82 years of age.

66. Assisted living units and independent living units will include meals and housekeeping services as part of residing in those units.

67. The assisted living units and the independent living units will offer facilities similar or equivalent to those offered by the facility described in Jayber, Inc., v. Municipal Council of the Township of West Orange, 238 N.J. Super. 165 (App. Div. 1990), which was found to be an inherently beneficial use, such services including lounges, recreational and social activities, an exercise facility, a “wellness center,” a nurse on the premises, physical and occupational therapy facilities, laundry facilities, transportation, a staffed “front desk,” and other support services.

68. The proposed continuum of care facility enables residents to move from the independent living component to the assisted living component and the skilled nursing component as residents' personal situations and needs for assistance change.

69. The proposed continuum of care facility, as well as each of its component uses, are "inherently beneficial" as that term is defined in the MLUL at N.J.S.A. 40:55D-4 and interpreted in case law.

70. Daughters' expert planning witness (Banisch) submitted a planning report ("Applicant's Planning Report") and introduced planning proofs in support of use variance relief not only as an inherently beneficial use which satisfies the balancing test with respect to the negative criteria set forth in Sica v. Bd. of Adjustment of Tp. of Wall, 127 N.J. 152 (1992), but also based on hardship and particular suitability which satisfies the burden of proof articulated in Medici v. BPR Co., 107 N.J. 1 (1987), and Price v. Himeji, 214 N.J. 263 (2013).

71. The R-2 District permits hospitals, a use substantially similar to the nursing home component of Daughters' continuum of care facility, but with potentially much more intensive impacts and greater impacts on the surrounding area.

72. The R-2 District also permits senior housing, a use substantially similar to the independent living component of Daughters' continuum of care facility, but only if it is funded through the U.S. Department of Housing and Urban Development under the Section 202 program for Housing for the Elderly with Supportive Service and the applicable Interim Regulations published in the Federal Register, dated June 12, 1991, 24 CFR Part 889. See Land Use Regulations § 25-4.

73. As set forth in Applicant's Planning Report, the Project is consistent not only with the Township's 1989 Master Plan (which is the most recent), but also with the 2010 Master Plan Reexamination Report, which establishes as an objective to provide for the housing needs of senior citizens and low and moderate income households.

74. This 2010 objective was carried through and reaffirmed in the 2019 Master Plan Reexamination Report, which went further in establishing as a principle that "[s]enior and specialized housing options should be supported as well, as long as potential development impacts are addressed" and further provided that "[t]his principle should not be construed, however, as supporting increased densities and out-of-scale development in established residential neighborhoods" (emphasis added).

75. There are only a handful of single-family homes in the R-2 Zone and, although there are some adjacent residences along Parson Drive and Skyline Drive, they are in a different zoning district.

76. Daughters is part of a localized node of nursing and rehabilitation care facilities which depart from the residential character of the surrounding area, but are arranged in a compact node, with the two largest, Daughters and the Kessler Institute for Rehabilitation, fronting on Pleasant Valley Way.

77. The 2019 Master Plan Reexamination Report included a set of "2019 Land Use Plan Recommendations for Land Use Regulations Ordinance" in which ordinance amendments affecting nursing homes and senior living were among the updated Land Use Plan recommendations, including a recommendation to "[s]upport land uses and

development design that promote 'aging in place' for older adults and undertake other measures that support the Township's Senior Livability Initiative."

78. The Project is consistent with this recommendation, as well as with numerous other goals, objectives and principles of the Township's master planning documents as set forth in the Applicant's Planning Report.

79. The Project is also consistent with purpose "I" of the MLUL, "[t]o encourage senior citizen community housing construction," the only purpose of the MLUL to encourage development of a specific land use. N.J.S.A. 40:55D-2.I.

80. The Applicant's Planning Report, the comprehensive planning testimony presented by Banisch at the public hearing, and the testimony of Daughters' other witnesses establish conclusively that the Project satisfies the positive and negative criteria for the grant of "d(1)," "d(6)," and "c" variance relief, and satisfies the standards for the grant of preliminary and final site plan approval and ancillary permits and approvals, sought in the Application.

Objector Testimony at the Public Hearing

81. Objector Svetvilas (the "Objector") resides at 699 Prospect Avenue (a property that is more than 5,000 feet from the subject Property) and, as such, Objector Svetvilas is not a party immediately concerned pursuant to the MLUL.

82. Objector Svetvilas called one expert, Barbara Allen Woolley-Dillon, P.P., AICP, a licensed professional planner who was accepted as an expert in professional planning.

83. Woolley-Dillon initially failed to submit a planning report ten days prior to the hearing, as is required by § 4.02.b. of the Rules of Procedure of the Zoning Board

of Adjustment of the Township of West Orange, New Jersey (the “Rules of Procedure”), and only after Daughters through counsel advised the Board of its intent to seek to preclude her testimony for failure to submit such a report, did she submit a document purporting to be the required planning report.

84. The purported planning report was not on the letterhead of any individual or firm, was undated, failed to identify the name of its author, and was not signed and sealed as is required by N.J.A.C. 13:41-1.2 and -1.3 (the “Objector’s Planning Report”). The report was therefore not admitted into evidence.

85. Because of these shortcomings, Objector failed to submit a planning report as required by the Rules of Procedure.

86. The remedy for such failure under the Rules of Procedure is that the planning witness “shall be precluded from testifying.”

87. Daughters moved to have Woolley-Dillon’s testimony precluded, but despite this mandatory provision of the Rules of Procedure, that motion was denied.

88. The motion should have been granted, and Woolley-Dillon’s testimony should have been precluded as the Rules of Procedure require.

89. In addition to not being signed and sealed, the Objector’s Planning Report contained numerous factual errors and misstatements, and was clearly “cut-and-pasted” from other reports that Woolley-Dillon has submitted to other towns, for other projects. For instance, by way of example and not limitation, her report contained references to consistency with the Cape May County Master Plan and to the Great Cedar Swamp (even though the Project is about 150 miles away from Cape May and has nothing to do with the Great Cedar Swamp), a discussion of the components

of the Township's "resort economy" (even though West Orange does not have a resort economy), references to dates of master plans and master plan reexaminations that do not coincide with West Orange's master planning documents, and erroneous statements that the Property contains a non-conforming resource extraction industry and that the applicant is proposing to add a concrete redi-mix plant.

90. Woolley-Dillon refused to answer questions about the content of the Objector's Planning Report and about these errors and inconsistencies, on the basis that the report was not accepted into evidence.

91. In testimony, Woolley-Dillon was combative at times, yet was unable to answer, or answer accurately, basic questions such as the street on which her client's property was located or its approximate distance from the Property. She initially testified, under oath, that her client's property was less than 200 feet from the subject Property, then she clarified that it was approximately 600 feet away when prompted by the Objector's attorney. The reality, however, is that the Objector's property is over 5,000 feet away from the subject Property.

92. Woolley-Dillon asserted that a "d(5)" density variance was required pursuant to N.J.S.A. 40:55D-70.d.(5), despite the lack of a density standard in the Land Use Regulations applicable to the R-2 District. After Daughters and the Objector briefed this issue, and with the advice of the Board attorney and Planning Director Grygiel, the Board rejected this contention.

93. Finally, Woolley-Dillon insisted that all necessary variances required independent proofs even though the New Jersey Supreme Court has observed that "[t]here is little doubt about the fact that a use variance, by its nature, carries with it

the implication that the ordinary bulk and density requirements of the zone will not be applied” such that variances to deviate from these standards are subsumed with the “d(1)” variance. Price v. Himeji, 214 N.J. 263, 299 (2013).

94. In short, Woolley-Dillon’s testimony constituted a series of net opinions and as such should have been given no weight.

95. Woolley-Dillon has tried this act before in other zoning matters. In a recent decision in the matter of Furey v. Voorhees Township Zoning Board of Adjustment, Docket No. CAM-L-519-22, issued on February 1, 2023, by the Superior Court of New Jersey, Camden County, Law Division, Judge Deborah Silverman Katz, A.J.S.C., determined that Woolley-Dillon’s testimony before the Voorhees Township Zoning Board of Adjustment opposing a use variance application on behalf of an objector was “at times both irrelevant and seemingly based only upon personal experience,” that some of her answers were “inherently unbelievable,” and that her testimony “appears to misunderstand the nature of use variance relief.” Id. at 14.

96. Other than Woolley-Dillon, no experts were called in opposition to the Application.

97. Therefore, the expert civil engineering, architectural and traffic testimony presented by Daughters was unrefuted.

98. Twelve members of the public gave testimony during the public hearing, of which two spoke in favor and ten spoke in opposition.

99. Among those who spoke in opposition, only three live within 200 feet of the Property and are a “party immediately concerned” as defined in the MLUL.

Board Deliberations and Action on the Application

100. The Board deliberated on the Application during its meeting on May 11, 2023.

101. At the start of deliberations, a resolution to approve the Application was moved by the Chairman and seconded by the Vice Chairman.

102. The resolution included a series of proposed conditions of approval, which are set forth in Addendum #2 to the Resolution.

103. During deliberations, the proposed conditions of approval were thoroughly discussed, modified, and refined.

104. As part of the deliberations, each Board member was called upon to present their views on the Application.

105. The four members of the Board who voted in favor of the Application described in detail the manner in which the Project, in each of their respective views, was an inherently beneficial use, met the statutory criteria for the grant of relief, and would be beneficial for the community.

106. The three members of the Board who voted against the Application expressed their respective views of why the Application should be denied.

107. Reasons given by the Board members voting against the Application, some of which became the Board's only findings in the Resolution purportedly supporting the denial, are unsupported by the record or reflect improper considerations that do not warrant or justify denial. For instance:

a. The Resolution contains a finding and conclusion that the "height is too tall for the zone and this particular property." That finding and conclusion lacks

support in the record, given the weight of the evidence – including exhibits submitted by Daughters demonstrating the height of the building relative to adjacent properties, and showing what those neighbors would see both in winter and summer; testimony that because of a substantial grade change, the Project will be compatible with both the adjacent Kessler Institute (which will appear taller) and the adjacent residential homes along Parson Drive and Skyline Drive (which will be at a higher elevation than the roof of the Project); and the lack of any exhibits or other admissible evidence to the contrary.

b. The Resolution contains a finding and conclusion that Daughters was “not clear on its funding for the project as well as the need for the long construction phase (of six years, reduced from ten), resulting in doubt about whether the project would be completed as proposed.” That finding is not only unsupported by the record, but it is legally irrelevant to a land use variance. The testimony from Daughters’ President (Halper) and its Chief Financial Officer (Stafford) – which was unrefuted – confirmed that development of the Project in phases was necessary since current residents would be living at the facility while construction of the new buildings occurred. The testimony also generally described the sources of funding for the Project, including debt financing, Daughters’ own funds, and fundraising (including a \$20 million commitment to the Project from a well-known philanthropist). But more importantly, Daughters’ financial condition, its method of financing the Project, and its fundraising plans are simply not relevant considerations under the law in deciding a variance application.

c. The Resolution contains a finding and conclusion expressing “concern for current residents of the facility during the construction phases as well as whether they would be able to continue as residents of the facility after construction due to economic factors.” Such matters are within the purview of other agencies (e.g., the New Jersey Department of Health) and are wholly outside of the Board’s jurisdiction. In any event, concerns for the health, safety and welfare of existing residents during construction were fully addressed during the public hearing, and concerns about residents who are unable to remain due to financial reasons is a broader issue within the health care system whether or not the Project is built. Again, such issues are simply not relevant considerations under the law in deciding a variance application.

d. The Resolution contains a finding and conclusion that Daughters, as a non-profit entity, did not offer proofs as to how the market rate independent living units would be treated from a real property taxation standpoint. This conclusion is not correct. The unrefuted testimony at the public hearing from Daughters’ Chief Financial Officer (Stafford) confirmed that Daughters currently pays property taxes to the Township with respect to a communications facility on the rooftop of the existing building, and that Daughters expected to pay additional property taxes on the market rate independent living units in an amount to be determined by the tax assessor. Such testimony was repeatedly ignored by the Board members who voted “no” and by the small cadre of “NIMBY” members of the public who asked questions at each hearing. More importantly, it is well established that whether the applicant is a for-profit or a non-profit entity, and hence whether or not it pays property taxes, improperly shifts

the focus from the proposed use of the Property to the status of the applicant and therefore is not a proper consideration in deciding a variance application and has no bearing on whether a variance application satisfies the statutory criteria.

e. Finally, the Resolution contains a finding and conclusion that Daughters' traffic testimony was "lacking" because it supposedly did not include construction traffic and relied in part on traffic counts conducted during the COVID-19 lockdown period. This conclusion also is not correct. Such concerns are unsupported by the record because after these concerns were brought up, Daughters' traffic expert (Hughes) took additional counts which reflected lower trip generation than the conservatively-adjusted counts taken previously, addressed construction traffic in a revised traffic report which was submitted to the Board, and presented additional testimony on both of these topics. No contrary testimony or evidence was presented to the Board.

108. A roll call vote followed, in which four Board members voted in favor of the Application, and three Board members voted against the Application.

109. The Application was therefore denied because it did not achieve the five affirmative votes required by the MLJL, N.J.S.A. 40:55D-70.d., even though a majority of members – including the Chairman and Vice Chairman – found the Project to be an inherently beneficial use and voted in favor of approval.

110. The reasons for the Board's denial set forth in the Resolution fail to adequately justify the Board's decision, are entirely lacking support in the record, and do not satisfy relevant legal standards.

111. This action was commenced within 45 days both from the Board's denial of the Application and from its memorialization of the Resolution and, therefore, pursuant to R. 4:69-6, this Complaint has been timely filed.

COUNT ONE

(Action in lieu of prerogative writs seeking reversal of the Resolution and grant of approval because the Board's denial of the Application was arbitrary, capricious, and unreasonable)

112. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

113. Daughters submitted substantial evidence and testimony establishing each of the criteria required for the grant of use variance relief in accordance with N.J.S.A. 40:55D-70.d.(1) and governing case law.

114. Daughters submitted substantial evidence and testimony establishing each of the criteria required for the grant of height variance relief in accordance with N.J.S.A. 40:55D-70.d.(6) and governing case law.

115. Daughters submitted substantial evidence and testimony establishing each of the criteria required for the grant of "c" variance relief in accordance with N.J.S.A. 40:55D-70.c.(1) and (2) and governing case law.

116. Daughters submitted substantial evidence and testimony establishing entitlement to design standard exception relief in accordance with N.J.S.A. 40:55D-51 and governing case law.

117. Daughters submitted substantial evidence and testimony establishing entitlement to preliminary site plan approval in accordance with N.J.S.A. 40:55D-49 and governing case law.

118. Daughters submitted substantial evidence and testimony establishing entitlement to final site plan approval in accordance with N.J.S.A. 40:55D-50 and governing case law.

119. Daughters submitted substantial evidence and testimony establishing entitlement to a soil removal permit in accordance with Chapter 30 of the Township Code.

120. Daughters submitted substantial evidence and testimony establishing entitlement to a tree removal permit in accordance with Land Use Regulations § 25-27.

121. The actions of the Board in denying the Application were against the weight of the evidence adduced at the public hearing, without basis under governing law, and constitute an arbitrary, capricious and unreasonable exercise of the Board's authority.

122. The Board failed in the exercise of its authority, pursuant to statute and governing law, to consider the weight of the evidence in favor of the Application and failed to make a determination based upon the proper statutory criteria for variance relief.

123. The Board ignored the complete absence of any competent, admissible and legally appropriate evidence conflicting with the proofs presented by Daughters and arbitrarily, capriciously, and unreasonably denied the Daughters' Application.

124. Daughters' interests have been adversely affected by the Board's arbitrary, capricious, and unreasonable application of its zoning and land use powers, which have been exercised in violation of the MLUL and other statutory law and governing case law.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring the Board's denial of the Application arbitrary, capricious, unreasonable, null, void, and of no force or effect;
- B. Declaring the Resolution to be arbitrary, capricious, unreasonable, invalid, illegal, null, void and of no force or effect;
- C. Reversing the Board's denial and approving the Application;
- D. Awarding damages to Daughters;
- E. Awarding attorney fees and costs of suit to Daughters; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT TWO
(Abuse of Discretion)

125. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

126. The individual actions, as well as the totality of the actions, of the Board were arbitrary, capricious, unreasonable and otherwise without basis in law or fact, and were contrary to the Board's statutory obligations and the lawful rights of Daughters.

127. The Board abused its discretion in failing to grant the use variance, height variance, and "c" or dimensional variance relief, together with preliminary and final site plan approval and ancillary permits and approvals, as requested in the Application, in light of overwhelming, credible and persuasive testimony and evidence presented in support of same.

128. Daughters' interests have been adversely affected by the Board's abuse of discretion in the application of its zoning and land use powers, which have been exercised in violation of the MLUL and other statutory law and governing case law.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring the Board's denial of the Application was an abuse of discretion and contrary to the MLUL and is null, void, and of no force or effect;
- B. Declaring the Resolution to be an abuse of discretion, contrary to the MLUL, and null, void and of no force or effect;
- C. Reversing the Board's denial and approving the Application;
- D. Awarding damages to Daughters;
- E. Awarding attorney fees and costs of suit to Daughters; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT THREE
(Unsupported Resolution)

129. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

130. A land use board's decision must reflect the actual deliberations and specific findings of fact made by its members in order to sustain the validity and propriety of its conclusions.

131. The reasons set forth in the Resolution for the denial of the Application are unsupported by the record created during the public hearing, inaccurately reflect

the testimony offered by Daughters, and in some instances, reflect improper considerations or matters outside of the Board's jurisdiction.

132. Substantive comments offered by certain members of the Board voting against the Application at the time the vote was taken make clear that their focus was on improper and unlawful considerations, including but not limited to Daughters' non-profit status and whether it would pay real property taxes on the market rate independent living units.

133. The Board failed to make proper findings of fact and conclusions of law in accordance with the MLUL and governing case law because the record does not support the action taken.

134. The Resolution is unsupported by the record.

135. Therefore, the Board's adoption of the Resolution was arbitrary, capricious and unreasonable, and the findings and conclusions contained therein are without basis in fact or law, entirely unsupported and contrary to the Board's statutory obligations and the rights of Daughters.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring the Board's denial of the Application was arbitrary, capricious, unreasonable, an abuse of discretion and contrary to the MLUL, null, void, and of no force or effect;
- B. Declaring the Resolution to be arbitrary, capricious, unreasonable, an abuse of discretion, invalid, illegal, null, void and of no force or effect;
- C. Reversing the Board's denial and approving the Application;

- D. Awarding damages to Daughters;
- E. Awarding attorney fees and costs of suit to Daughters; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT FOUR
(Duty to “Turn Square Corners”)

136. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

137. A land use board owes a duty to Daughters and the public to “turn square corners,” by acting solely in the public interest, which duty was articulated by the New Jersey Supreme Court in F.M.C. Stores Co. v. Township of Morris Plains, 100 N.J. 418 (1985), among other cases.

138. Daughters provided substantial credible testimony and evidence establishing its right to the relief requested in the Application, and the substantial public interest which would be served, consistent with the Township’s master planning documents, to provide housing for seniors which would allow them to age in place.

139. The action of the Board in denying the Application without basis in the record violates fundamental concepts of fairness and represents a dereliction of the Board’s duty to “turn square corners” and act solely in the public interest.

140. As a result of the Board’s conduct, Daughters has been and continues to be injured and deprived of its rights, entitling Daughters to relief from this Court.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring the Board's denial of the Application was a failure to "turn square corners" in its dealings with Daughters, contrary to the MLUL, the ordinances of the Township, and the lawful rights of Daughters, and therefore was arbitrary, capricious, unreasonable, an abuse of discretion and contrary to the MLUL, null, void, and of no force or effect;
- B. Declaring the Resolution to be invalid, illegal, null, void and of no force or effect;
- C. Reversing the Board's denial and approving the Application;
- D. Awarding damages to Daughters;
- E. Awarding attorney fees and costs of suit to Daughters; and
- F. Awarding such further relief as the Court deems just and proper.

COUNT FIVE
(Disqualification of Board Member Scott)

141. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

142. Board Member Scott initially stated that he lived within 200 feet of the Property which, if true, would render him a party immediately concerned and require his disqualification from the Application.

143. Board Member Scott displayed bias against Daughters, its non-profit status, and the elderly in general during and after the public hearing on the Application.

144. Board Member Scott improperly engaged in communications with members of the public concerning the Application outside of the public hearing.

145. Board Member Scott failed to participate in the initial briefing for new members required by Section 2.07 of the Rules of Procedure.⁶

146. Board Member Scott made statements on the record which demonstrate — despite the quasi-judicial nature of the proceeding and the requirements of New Jersey land use law which require that in reaching a decision on a variance application, zoning board of adjustment members consider only the evidence presented at the public hearing — a blatant acknowledgment that his decision to vote against the Application was influenced by political considerations, baldly stating “it annoys me as a citizen when boards like this ignore the will of the voters.”

147. At the time of the vote, Board Member Ricci was absent, causing Alternate #1 (Dannemiller) to be seated in Ricci’s place.

⁶ Section 2.07 provides as follows:

2.07 New Members.

In addition to attending the Basic Course in Land Use Law and Planning offered through the Office of the New Jersey Department of Community Affairs, all Members appointed to the Zoning Board, after being duly sworn, shall make themselves available, as soon as practicable after their appointment, to the Board Attorney or Planner and any Member designated by the Chairperson, for a briefing session to cover:

- a. The Act, the Open Public Meetings Act, the Ordinance and all related documents.
- b. These Rules and Master Plan.
- c. Board’s responsibilities and limitations.
- d. Legal aspects of zoning and planning.
- e. Conflicts of interest.
- f. Electronic communication requirements, limitations and etiquette.
- g. Such other training as may be required by law or any state or county agency with such authority.

148. Alternate #2 (Scalora) was absent from the May 11, 2023 meeting at which the vote was taken.

149. Alternate #3 (Sussman) was present, and during deliberations gave his reasons in support of the Application and stated that if given the opportunity to vote, he would vote in favor.

150. Thus, if Board Member Scott had not participated, Board Member Sussman would have been seated in his place and the Application would have been approved.

151. For these reasons, and others, Board Member Scott should have been disqualified from voting on the Application.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring Board Member Scott disqualified from participation in the Application;
- B. Declaring the Board's denial of the Application was arbitrary, capricious, unreasonable, an abuse of discretion and contrary to the MLUL, null, void, and of no force or effect;
- C. Declaring the Resolution to be invalid, illegal, null, void and of no force or effect;
- D. Substituting Alternate #3 (Sussman), who expressed an intent to vote in support of the Application if called upon to vote, for Board Member Scott;
- E. Reversing the Board's denial and approving the Application;
- F. Awarding damages to Daughters;

G. Awarding attorney fees and costs of suit to Daughters; and

H. Awarding such further relief as the Court deems just and proper.

COUNT SIX
(Disqualification of Board Member Eben)

152. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

153. Board Member Eben left the final public hearing at a critical time during deliberations, during which time each Board member expressed his or her views on the Application and the manner in which he or she intended to vote.

154. During his absence, Board Member Eben missed the impassioned statements of Board Member Weiss and Board Member Dannemiller in support of the Application, both of whom spoke before him.

155. As a result, Board Member Eben did not have the full benefit of the thought process, reasons for supporting the Application, and overall opinions of two of the other six Board members (representing one third of the Board's voting members) in formulating his own opinions before expressing his views on the Application upon his return to the hearing.

156. If Board Member Eben had not participated, Board Member Sussman would have been seated in his place and the Application would have been approved.

157. For these reasons, and others, Board Member Eben should have been disqualified from voting on the Application.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring Board Member Eben disqualified from participation in the Application;
- B. Declaring the Board's denial of the Application was arbitrary, capricious, unreasonable, an abuse of discretion and contrary to the MLUL, null, void, and of no force or effect;
- C. Declaring the Resolution to be invalid, illegal, null, void and of no force or effect;
- D. Substituting Alternate #3 (Sussman), who expressed an intent to vote in support of the Application if called upon to vote, for Board Member Eben;
- E. Reversing the Board's denial and approving the Application;
- F. Awarding damages to Daughters;
- G. Awarding attorney fees and costs of suit to Daughters; and
- H. Awarding such further relief as the Court deems just and proper.

COUNT SEVEN
(Violation of Open Public Meetings Act)

158. Daughters repeats each and every allegation contained above as if fully set forth at length herein.

159. The Board violated the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21 ("OPMA") by failing to provide adequate notice of one or more meetings at which the Application was considered or decided, in accordance with and as required by N.J.S.A. 10:4-8.

160. The Board violated the OPMA by failing to follow, enforce or otherwise comply with the regulations and protocols for the conduct of remote meetings and remote public hearings, in accordance with OPMA, N.J.A.C. 5:39, guidance from the Department of Community Affairs, and as otherwise required by law.

161. The Board failed to comply with OPMA in other respects.

162. As such, the Resolution must be declared null, void, and of no effect.

WHEREFORE, Daughters demands judgment against the Board as follows:

- A. Declaring the Board's denial of the Application void and of no force or effect for failure to comply with the OPMA;
- B. Declaring the Resolution void and of no force or effect for failure to comply with the OPMA;
- C. Awarding damages to Daughters;
- D. Awarding attorney fees and costs of suit to Daughters; and
- E. Awarding such further relief as the Court deems just and proper.

GIBBONS P.C.

Attorneys for Plaintiff,
Daughters of Israel, Inc.

By: 
Howard D. Geneslaw

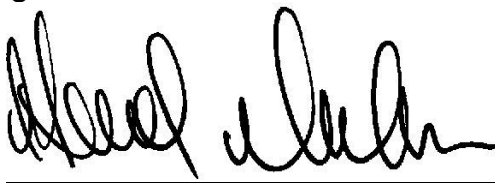
Dated: June 23, 2023

CERTIFICATION PURSUANT TO R. 4:5-1

Pursuant to Rule 4:5-1, I hereby certify that, to the best of my knowledge, the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding. I further certify that I know of no other non-parties who should be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts, at this time.

GIBBONS P.C.

One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
Daughters of Israel, Inc.

By: 

Howard D. Geneslaw

Dated: June 23, 2023

TRIAL ATTORNEY DESIGNATION PURSUANT TO R. 4:5-1(c) AND R. 4:25-4

Pursuant to R. 4:5-1(c) and R. 4:25-4, the undersigned is hereby designated as trial counsel for Plaintiff in this matter.

GIBBONS P.C.

One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
Daughters of Israel, Inc.

By: 
Howard D. Geneslaw

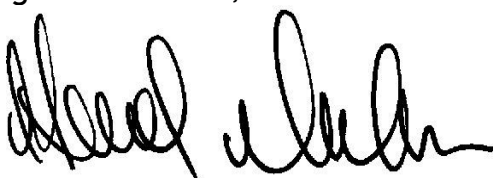
Dated: June 23, 2023

CERTIFICATION PURSUANT TO R. 4:69-4

Pursuant to Rule 4:69-4, I hereby certify that I ordered, caused to be ordered, or have otherwise obtained all necessary transcripts of local agency proceedings in this matter to the extent audio recordings have been or will be made available.

GIBBONS P.C.

One Gateway Center
Newark, New Jersey 07102
Attorneys for Plaintiff,
Daughters of Israel, Inc.

By: 
Howard D. Geneslaw

Dated: June 23, 2023

EXHIBIT A
RESOLUTION

**WEST ORANGE ZONING BOARD OF ADJUSTMENT
APPLICATION NO. ZB 21-21**

DAUGHTERS OF ISRAEL (1155 Pleasant Valley Way)

WHEREAS, Daughters of Israel, (the "Applicant"), with an address of 1155 Pleasant Valley Way, West Orange, New Jersey, the owner of 1155 Pleasant Valley Way, (Block 171 Lot 12), located in the R-2 zone, (the "Property") applied to the West Orange Zoning Board of Adjustment (the "Board"), for preliminary and final site plan approval with a (1) "d(1)" use variance for construction of a continuum of care facility including independent living, assisted living and skilled nursing, which is not permitted in R-2 zone; (2) a "d(1)" variance for three principals uses, when only one is permitted; (3) a "d(6)" height variance for a structure of 57.50 feet when 35 feet is the maximum height permitted; (4) a "c" 5-story structure when the maximum stories permitted in the zone is 2 ½ stories; (5) a "c" bulk variance for maximum building coverage of 28.18% when 29.64% is existing and only 20% is permitted (using "effective lot area"); (6) a "c" bulk variance for maximum lot coverage of 67.42 (37.46)% when 69.35% (38.53%) is existing and 30% is the maximum effective coverage permitted; (7) a "c" bulk variance for maximum retaining wall height of ten feet when four feet is the maximum permitted and 4 feet is the existing; (8) a "c" variance for maximum length of continuous

parking row without landscaped island of 22 spaces when less the existing longest row is less than 20 spaces and 20 spaces is the maximum size of the row permitted without landscape island; and (9) a "c" variance for 1 loading space when 13 are required and only 2 are present in existing condition; (10) a "c" variance for minimum number of parking spaces of 429, (including EV credit, actual number of spaces 381 when 479 are required and 236 are existing; (10) a "c" variance for parking of a vehicle with dual rear wheels which is not permitted in order to permit parking of the Applicant's existing or similar shuttle bus; (11) a variance for parking of commercial vehicle(s) (shuttle bus and several delivery vans) which are over 20' long, over 7' high and over 6000 lbs. gross vehicle weight, when same is only permitted indoors or with commercial markings removed, which is not permitted; (12) a "c" variance for a light pole height of 25 feet when less than 18 feet is existing and only 18 foot is permitted; (13) a "c" variance for a freestanding sign, externally illuminated with ground-mounted light fixture and building signs with reverse lit channel letter when an externally illuminated sign with a ground mounted light fixture is existing and no illumination is permitted; (14) "c" variances for 5 façade signs, 1 monument sign, 1 freestanding sign 1 identification sign and 4 freestanding directional signs when only 1 monument sign exists and only 1 sign is permitted;

(15) a "c" variance for maximum sign area of 8.765 feet to 56 square feet when one 56 square foot sign exists by variance, and only a 1 square foot sign for a nameplate or a 2 square foot sign for a professional office is permitted; (16) a "c" variance for 11 signs per linear foot when only 1 exists and a maximum of 8 are allowed (4 signs ever 250 square feet, with 648 feet of frontage) are permitted; (17) a "c" variance for steep slope development in 25% of the area where the grade is 20-24.99% when only 20% development is permitted; and (18) for steep slope development of 16% of the area where the grade is greater than 25%, where no development is allowed; (the "Application"); and

WHEREAS, the Applicant submitted proof that notification was made by mail or personal service, at least ten (10) days prior to the date set forth for public hearing, to property owners within 200 feet of the property and all those entitled to notice, and also submitted proof of publication in the official newspaper, in accordance with the Zoning Ordinance of the Township of West Orange (the "Ordinance") and N.J.S.A. 40:55D-1, et. seq.; and

WHEREAS, the Applicant was represented by Howard Geneslaw, Esq., and

WHEREAS, the Board has considered the Application with reference to the objectives set forth in the applicable West Orange Zoning Ordinance and the statutes of the State of New Jersey as

amended and supplemented; and

WHEREAS, public hearings were held on September 15, 2022, October 6, 2022, December 15, 2022, January 12, 2023, January 19, 2023, February 9, 2023, February 16, 2023, March 16, 2023, March 23, 2023, April 20, 2023, and May 11, 2023; (collectively, the "Hearings"); and

WHEREAS, Applicant offered the testimony of Jason Halper, the president of the the Daughters of Israel Board of Governors, Mr. Halper testified that he has been on the Board for 24 years, that he became involved when a family member was cared for at the facility, he explained that the Daughters of Israel is a non-profit, 501(c) charity under the Internal Revenue Code, that it has ben operating for over 100 years and since 1962 in West Orange, that its mission is to provide health care and services to Jewish persons and others (all demoninations are welcome), that it currently operates a skilled nursing facility with 303 beds at its Pleasant Valley Way facility but only has a steady patient population of 130-150 patients, that it provides sub-acute rehabilitation, hospice care, social education programing and transport, that 70-75% of its population are Medicaid recipients, that due to low population numbers it feels it has to make a change or it will continue to operate at a loss, that its current business model is not sustainable, and that if a change is not made it feels

it will be out of business in 10-15 years, that after market studies and other professional examination it now wants to become a continuing care community, with a lower number of skilled nursing beds(80), and build 64 assisted living (including 20 memory care bed) units and 182 indepedendent living units that will be sold for a profit to subsidize the skilled nursing beds, that Daughters has received a 20 million dollar commitment towards the project from the Cooperman Family Campus; and

WHEREAS the Applicant presented the testimony of J. Michael Petry, a licensed professional engineer of the State of New Jersey, who was accepted by the Board as an expert in the field of civil engineering, Mr. Petry presented an aerial tax and zoning map to show property lines, an existing steep slopes map, a proposed conditions steep slope map, an overall layout of the proposed changes and additions contemplated by the Application, a layout of the proposed parking, explained the proposed drainage plan, the lighting plan, the building phasing plan (four phases over ten years) the tree removal plan, discussed the height variances requested and the sleep slope variance requested; and

WHEREAS, the Applicant offered the testimony of David Fowles, a licensed professional architect of the State of New Jersey, who was recognized by the Board as an expert in the field of architecture, Mr. Fowles presented the architectural plans for the

proposed new buildings to be built including the tallest at 57.7 feet in height, while the existing is 39.90 feet, and outlined the proposed phases of construction and timing of each, which were planned to extend out over ten years; and

WHEREAS, the Applicant offered the testimony of Connor Hughes, a licensed professional engineer of the State of New Jersey, with a specialty in traffic engineering, who was recognized by the Board as an expert in traffic engineering, Mr. Hughes testified about traffic studies he conducted in November 2021 and May 2022, about the traffic at the intersection of Pleasant Valley Way and Mount Pleasant Avenue, how the Applicant will seek permission from the County of Essex to alter the timing of the light at the entrance to the Kessler Institute, and that he admitted that his earlier traffic studies were completed during COVID; and

WHEREAS, the Applicant offered the testimony of David Stafford, Chief Financial Officer of the Daughters of Israel, who then testified about the planned amenities that will be offered to residents under the new development, that the facility will operate with a three (3) employee shift that will be staggered, some of the employees drive to work and some take the bus, that there will be ample parking that will not be assigned, that the Daughters' vehicles will be stored on the lower level of the parking garage,

deliveries will take place on the lower level, and that during construction, every care will be taken to ensure a safe and healthy environment for the existing nursing home residents; and

WHEREAS, the Applicant re-called Mr. David Fowles, its architect, after a redesign of the project, he testified about the revised architectural plans which eliminated one story from the tallest building, eliminating 19 apartments in the northwest corner of the building and that phase 4 has been eliminated and the project can be completed in six years instead of ten; and

WHEREAS the Applicant offered the testimony of Frank Bannister, a licensed professional planner of the State of New Jersey, who was recognized by the Board as an expert in the field of planning, Mr. Bannister testified about the statutory justification for the variances needed, that in his opinion the bulk variances are sub-sumed within the use variance, but believes there are independent c-2 reasons supporting the grant of the "c" bulk variances, that his summary of his report and conclusions are contained in his March 3, 2023 report which was admitted into evidence, that the application presents an inherently beneficial use, but also that the applicant can satisfy other purposes of municipal zoning, such as promoting general health safety and welfare of the community, he pointed out that the R-2 zone permits the construction of federal (low income) senior housing, that

although the independent apartment owners will pay market rents, these rents will subsidize the medicare and medicaid patients in the nursing beds, that assisted living is recognized by the State of New Jersey as a housing need, because more assisted living beds reduces the need for skilled nursing beds, and gives residents a better quality of life, that the West Orange Master Plan recognizes the goal of aging in place, and this project presents residents with that choice, that he believes the use variance, the d(6) variance can be granted, that the new plan is for a building within the existing foot print, not expanding out, that a continuing care community, by definition, has three components, hence the need for a variance for three principal uses, that in his opinion a congregate care facility is still an inherently beneficial use, even if it is for profit, that the property owner would suffer undue hardship if it was limited by its existing structure and existing business plan, that the use is particularly suited to the property because the new plan stays within the existing footprint, in an appropriate location, (as less than 3% of this particular R-2 zone contains single family residences), and the project serves the ideals of the West Orange Master Plan, that the Applicant also meets the negative criteria because the project presents no substantial detriment to the public good, the zone plan or the zoning ordinance, that on balance, the positive criteria outweighs

any adverse impact that can be ameliorated with conditions, the project cares for the elderly, brings existing conditions up to date, will make a better facility than what is there now, improves the aesthetics, provides green roofing, making a positive visual impact, will maximize light for the residents, involves no air pollution, there is only a minor traffic impact, limited steep slope and tree removal, in his opinion no negative impact to the neighbors on Skyline Drive, the Applicant eliminated one of the stories from its initial plan, and the Applicant has accepted the Board's suggested conditions; and

WHEREAS, Richard Webster, Esq. Attorney at Law, filed an appearance and represented West Orange resident Loren Svetvilas of Prospect Avenue in the proceedings; Mr. Webster cross-examined the Applicant's witnesses and presented the testimony of a professional planner Ms. Barbara Allen Wooley Dillon; and

WHEREAS, Ms. Barbara Allen Wooley, a licensed professional planner of the State of New Jersey, who was recognized by the Board as an expert in the field of planning, Ms. Wooley initially opined that the Applicant had not requested or noticed for a D-5 density variance she believed was necessary for the Application, she then opined that the use could be found not to be inherently beneficial under recent unreported actions of other municipalities which found that if a municipality already

contained multiple other properties offering the same use (here, assisted living facilities) that a Board could consider another similar application to not be inherently beneficial, that the current application is no longer the preferred model in elder housing combined with medical services, and that the plan represents a planned obsolescence, and that the Applicant, in her opinion had not demonstrated that the positive criteria outweighed the negative criteria; and

WHEREAS, the Applicant recalled Mr. Stafford to testify in rebuttal to the testimony of Ms. Wooley, advising the Board of the minimum and average age of the persons they expected to be residents in the independent living units, the services the assisted living and the independent living residents would receive, the meals provided as part of the anticipated service fee (estimated to be from \$5,000.00-\$7,000.00 a month), he discussed the buy in fee (from \$100,000.00 to \$500,000.00) that would be necessary for both the assisted and independent living units, and how the facility would handle residents who may run out of financial resources to continue to reside at the facility and that he believes the CCRC model is neither outdated nor designed for obsolescence; and

WHEREAS, the Board considered the reports of Paul Grygiel, AICP, PP, Township Planning Director, dated December 7, 2021,

June 17, 2022, November 4, 2022, November 7, 2022, and February 1, 2023, as well as his testimony at the hearings; and

WHEREAS, the Board considered the reports of John Hess, P.E. of Consulting Municipal Engineers, the Board's consulting engineers, dated June 20, 2022, November 15, 2022, January 26, 2023, February 6, 2023, and his testimony at the hearings, and

WHEREAS the following documents, over and above those submitted as part of the Application and its amendments (a complete list is contained in an addendum # 3 to this Resolution) were admitted into evidence and considered by the Board:

A-1 Presentation Boards (August 5, 2023)
 A-2 KDA Architectural Exhibits (Undated)
 A-3 16 Civil Engineering Exhibits (January 26, 2023)

A-4 KDA Architects Exhibits (February 6, 2023)

A-5 Planning Report (March 3, 2023)

A-6 Google Map demonstrating the distance between Applicant's property and Mr. Svetvilas' property;

A-7 Geneslaw legal memorandum dated May 8, 2013, on issue of D(5) density variance;

A-8 Exhibit A8 - DOI (May 9, 2023)

LS-1 Webster legal memorandum dated May 9, 2023, on issue of D(5) density variance

WHEREAS, Public Advocate Sarabraj J. Thapar attended the hearings and cross-examined the Applicant's witnesses; and

WHEREAS, the Board, after consultation with legal counsel and its planner Mr. Grygiel determined that a D-5 density variance was not necessary for the Application, and in any event, that if that opinion proved to be erroneous, the Applicant's notice was sufficiently descriptive to apprise the public of the nature of the variances sought, the density of the Application and provided for sufficient request for amendment of the Application if deemed necessary by the Board and its professionals; and

WHEREAS, the following members of the public questioned the Applicant's witnesses:

Kevin Malanga, 57 Ridge Road;

Darren Tobia, Columbia Street,

Joyce Rudin, 38 Woodland Avenue

Mr. Majekodummi, Parsons Drive

Miky Faibis, 24 Skyline Drive

Sally Malanga, 57 Ridge Road

Robert Rashkes, 35 Oak Crest Road

Bill Fitts, 16 Schmidt Road

Zasah Khademi, 4 Dawes Avenue

Renee Faibis, 24 Skyline Drive

Paul Litwinoff, 11 Linden Avenue

Mark Paull, 27 Sunnyside Road

Edie Behr, 14 Dogwood Drive

Kein Schnitzer, 6 Skyline Drive

Claire Silvestri, 20 Grandview Terrace

Solomon Nnanna 6 Parsons Drive; and

WHEREAS the following members of the public gave testimony on the Application:

Kevin Malanga, 57 Ridge Road, who indicated he does not believe the Application should be deemed an inherently beneficial use and the plan is too big, will take too long to construct, and is unfair to the neighbors;

Zasah Khademi, 4 Dawes Avenue, who testified that Pleasant Valley Way is already full of traffic in the middle of the day, making the traffic expert not credible in his opinion, that it is cruel to make the neighbors suffer through six years of construction, that Essex County does not need more assisted living facilities, that a six story building will be out of character to everything in the surrounding area, especially in a single family home area, and therefore the Board should not approve this Application;

Renne Faibis, 24 Skyline Drive, who testified that she has been a resident of Skyline Drive for 38 years and that traffic on Pleasant Valley Way is not as light as depicted by the traffic expert, and that current or future residents of

Daughters of Israel should not be thrown out on the street if they can't continue to pay the fees, and that construction will be a nuisance to the residents of the neighborhood; and

Victoria Nnanna 6 Parsons Drive, testified that the 6th floor occupants of the new structure will be comparable in height and will be able to "look right at" the residents on Parsons Drive; and

Claire Silvestri, 20 Grandview Drive, who testified that West Orange already has enough assisted living units, that the luxury apartment living is out of character, that the whole project is too dense, too high, will impact steep slopes, and will bring more traffic, and that 6 years of construction is a burden on the neighbors and the community as a whole; and

Andrea Sultan, 11 Swayze Street, who testified she is on the Board at Daughters of Israel and that they do good work and she supports the Application;

Roz Feder, 28 Lakeview Avenue, who testified that she is also on the Daughters of Israel Board, which is a major asset to the community and the Zoning Board of Adjustment should grant the Application; and

Phil Litwinoff, 11 Linden Avenue, who testified that based on the long time planned for construction, he is concerned that the Applicant may not have the financing it needs in place and

may abandon the project and that there are already plenty of this type of facility in the area and also voiced a traffic concern; and

Joyce Rudin, 38 Woodland Avenue, who testified that this Application presents the wrong project in the wrong area, the profit portion is not part of the Applicant's mission, that the construction noise can be very detrimental to the Applicant's existing patients, especially those with dementia, and urged the Board members to vote "No"; and

Sally Malanga, 57 Ridge Road, testified and urged the Board to consider that its decision will affect the community for 50 years, that the project is not a good one since it will bring down trees, the Applicant has not presented a business plan and there is fear that there will not be enough money to complete the project, it remains a non-profit despite for-profit apartments it will be unfair to the other taxpayers, and if the facility is in financial trouble it should scale back the project or sell the property; and

Ella Slivaka 8 Parsons Drive, testified she is an original resident of the neighborhood since 1959, and that she wants to remain in her home, which she has maintained well, she raised her children here and she taught in West Orange, this Application presents a high rise in her back yard, it will block

the beauty of the sky and woods behind her house, the construction will create noise and dust, which will nullify her quality of life, her concern as a 63 year tax paying citizen of West Orange that Daughters of Israel may not pay taxes on its 163 market rate units, and she urges the Board to vote "No"; and

Robert Rashkes, Oak Crest Road also testified that he is concerned about the Applicant's economic viability, he is worried about how current Daughters' residents feel about this Application, that the Applicant should have provided information about how it did during the COVID-19 crisis and that he thinks a Greenhouse Model is a better alternative; and

WHEREAS, the Applicant's attorney, Howard Geneslaw, having made a closing statement; and

WHEREAS, Richard Webster, Esq., representing Loren Svetvilas, having made a closing statement; and

WHEREAS, a motion was made by Chairman Neuer and second by Mr. Schwarzbaum, to approve the Application with sixteen stated Conditions (as listed in addendum 2, herein) and voted upon as follows:

Barbee:	no to approve
Dannemiller	yes to approve
Eben:	no to approve
Schwarzbaum:	yes to approve

Scott: no to approve
Weiss: yes to approve
Neuer: yes to approve

The Application, having failed to achieve five (5) affirmative votes for approval is denied, on a vote of 4 to approve and 3 to deny.

WHEREAS, those Board members opposing the Application noted as follows:

Mr. Scott was concerned about construction noise and whether heavy construction equipment should be removed, and whether the Board could order a construction hiatus between the construction phases, he indicated he was not in favor of the Application because it is unfair if the Applicant does not pay taxes on market rate units, that every resident with the exception of two who are associated with the Applicant was against the Application, he is concerned about the Applicant's ability to complete the project because it is stringing out construction for six years, and the Application is not good for the community;

Mr. Barbee expressed concern about where the current residents would move to if they were asked to leave for financial reasons, that he was concerned with the Applicant's

financial capability to complete the project, and whether real estate taxes would be paid on the market rate units owned by this non-profit, as well as feeling that the proposed project was too large, in the wrong location and detrimental to the Parsons Drive neighbors;

Mr. Eben indicated that the project offered no benefit to the community and he questioned the Applicant's architect's ability to practice architecture in the State of New Jersey; and

NOW THEREFORE BE IT RESOLVED that the Board makes the following findings of fact and conclusions of Law:

A. The Applicant applied to the Board for preliminary and final site plan approval with two "D" use variances, one "d(6)" height variance, and 15 "C" variances for a total of 18 variances.

B. After certain amendments were made to the Application, at the time of the conclusion of its proofs, the Applicant needed the following variances: (See Addendum #1)

C. While there was a dispute between the Applicant and those opposing the Application as to whether the entire project constituted an inherently beneficial use and although the majority of the Board Members found this to be an inherently beneficial use, regardless, the Board members opposing the Application found that the Applicant did not demonstrate that the benefits outweighed the detriments of the Application.

D. The height is too tall for the zone and this particular property, coming near even with the properties on the ridge line to the West (Parsons and Skyline Drive).

E. The Applicant was not clear on its funding for the project as well as the need for the long construction phase (of six years, reduced from ten), resulting in doubt about whether the project would be completed as proposed.

F. There was concern for current residents of the facility during the construction phases as well as whether they would be able to continue as residents of the facility after construction, due to economic factors.

G. The Applicant did not offer proofs as to how the property would be treated, when completed, from a real estate tax standpoint, given that the owner/operator is a non-profit, recognized 501(c) charity under the Internal Revenue Code, but that it will be offering market-rate apartments.

H. The traffic testimony, in this case, was lacking because it failed to include information on construction traffic and its effect on the surrounding area and particularly Pleasant Valley Way. There was also concern that some of the traffic counts used were conducted during the COVID-19 lockdown period.

The Resolution, memorializing the Board's decision, was hereby voted upon as follows:

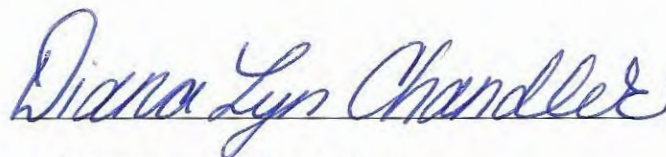
Those in Favor:

Those Opposed:

Abstention:

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of June 15, 2023, and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on May 11, 2023, denying the Application by a vote 4 in favor of the Application and 3 opposed, constituting a denial of the Application.

Dated: June ,2023



Diana L. Chandler,
Board Secretary

ADDENDUM # 1

Variances required in Final Version of Application.

<i>"d(1)" Variances</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
25-7.1 Permitted Use	Various residential and other uses	Nursing home	Continuum of care facility including independent living, assisted living and skilled nursing
25-8.12 More than one principal use upon any single lot	Only permitted in the B-1, B-2, P-C, O-R and I Districts	One principal use	Three principal uses
<i>"d(6)" Variance</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
25-7.1 Maximum building height	35 ft.	Not provided	57.77 57.50 ft.
<i>"c" Variances</i>			
SECTION/REQUIREMENT	PERMITTED /REQUIRED	EXISTING	PROPOSED
25-7.1 Maximum number of stories	2 ½ stories	2 stories	5 stories
25-7.1 Maximum building coverage ¹	20%	26.15 29.64% (16.47% ²)	24.86 28.18% (15.72%)
25-7.1 Maximum lot coverage ¹	30%	61.19 69.35% (38.53%)	59.48 67.42% (37.25 37.46%)
25-8.4 Maximum retaining wall height	Four feet	Four feet	10 feet
25-12.1 o. Maximum length of continuous parking row without landscaped island	20 spaces	>20 spaces	22 spaces

25-12.2 b.1. Minimum number of parking spaces ³	448 479	236	426 429, including EV credits (381 actual spaces, including 34 banked spaces)
25-12.3 a.2. Minimum number of loading spaces	13	2	1
25-12.4 a.6. Parking of vehicle with dual rear wheels	Not permitted	Parking of existing shuttle bus	Parking of the same or similar shuttle bus
25-12.4 b.3. Parking of commercial vehicles	In garage, or if too large, outdoors with commercial markings removed; single axle; maximum 20' long, 7' high and 6,000 lb. gross vehicle weight	Parking of existing shuttle bus and several delivery vans outdoors, with commercial markings, some having a double axle and/or exceeding size limit	Parking of same or similar shuttle bus and several delivery vans outdoors, with commercial markings, some having a double axle and/or exceeding size limit
25-14.1 c. Maximum light pole height	18 ft.	>18 ft.	25 ft.
25-15.3 Sign illumination	Illumination not expressly permitted in R-2 district	Externally illuminated with ground-mounted light fixture	Freestanding signs: Externally illuminated with ground-mounted light fixture Building signs: Reverse lit channel letters
25-15.3 b. Number of signs per lot	1	1 monument sign	5 facade signs 1 monument sign (existing) 1 freestanding identification sign (health center) 4 freestanding directional signs

25-15.3 b. Maximum sign area	1 sq. ft. for a nameplate, 2 sq. ft. for a professional office	56 sq. ft. monument sign (variance granted)	Ranges from 8.75 sq. ft. to 56 sq. ft.
25-15.4 a. Maximum number of signs per linear frontage	8 (4 signs/250 ft.; 648 ft. of frontage)	1	11
25-28.8 b. Maximum disturbed area	20 to 24.99%: 20%; 25% or greater: 0%	Not provided	20 to 24.99%: 25%; 25% or greater: 2%+6%
25-28.8 c. Disturbance of slopes 25% or more	Prohibited	Not provided	Proposed

¹ Calculated using "effective lot area" per Section 25-28.8d

² Coverage figures in parentheses calculated using actual lot area

³ See below for discussion of applicable parking and loading requirements

ADDENDUM # 2

Conditions cited in motion to approve Application:

1. The traffic study will be redone after completion of construction to determine the correct timing for the traffic light at the intersection of Pleasant Valley Way and Mt. Pleasant Avenue [State Route 10].
2. The entire Application, and any changes to the traffic light, are subject to the approval of the Essex County Planning Board.
3. Phase 4 of the project is eliminated.
4. Time for completion of the entire project is no more than 6 years.
5. The minimum age requirement for at least one occupant of the units shall be at least 62 years of age.
6. Between phases 1 and 2 and then phases 2 and 3, upon completion of exterior construction and site work, all cranes and heavy equipment shall be removed from the site.
7. Compliance with engineering comments on green infrastructure shall be required, as well as landscaping comments by the township forester dated 2/2/23 and in review letter #3 dated 2/6/23 from Board Engineer, John Hess
8. All certificates of need and other licenses required for the facility will be obtained prior to occupancy with a copy being

provided to the board secretary.

9. Area noted on the plans as a "pub" may be constructed to be used as a dining venue, if alcohol is to be served the proper Alcohol Beverage License will be obtained.

10. The final plans for the Board Chairman's signature will list square footage of each component of the project on record as of 2/23/23.

11. As-Built Landscaping plans will be supplied as agreed to by Applicant at the Board meeting of 1/12/23.

12. All new equipment shall meet the requirements of all applicable West Orange Ordinances.

13. Upon completion of construction, there will be no off-site parking for employees, staff, residents, or guests.

14. The garage will be solely for the use of the independent living residents.

15. The Applicant is bound by all exhibits, accepted Conditions, and testimony given.

16. These conditions are to be printed prominently on the cover sheet of the final site plan. Approved plans will not be signed without the satisfaction of this condition.

ADDENDUM #3

Applicant's Exhibits submitted with Application and revised submissions.

- (V1) Zoning Board Application
- (V1) Previous Approvals with Exhibits
- (V1) Reasons for Relief with Exhibits
- (V1) Site Plan Checklist
- (V1) Environmental Impact Statement (Dated October 29, 2021)
- (V1) EIS Steep Slope Figures (Superseded by V3- EIS Steep Slope Figures Resubmission)
- (V1) EIS Fig. 1-4
- (V1) Parking Study
- (V1) Fig. 1-4 to Parking Study
- (V1) Stormwater Management Report (Superseded by (V3) Resubmission - Stormwater Management Report Rev#2 Dated 11/3/2022)
- (V1) Figures for Stormwater Report
- (V1) Preliminary & Final Site Plan (10-29-2021) (Superseded by (V3) Resubmission - Preliminary Final Site Plan Dated 11/3/2022)
- (V1) Survey
- (V1) Architectural & Landscape Plans (10-29-2021)
- (V1) Landscape Plans for Tree Removal Application
- (V1) Tree Removal Plan & Tree Removal List (Superseded by (V3) Resubmission - Tree Removal Plan List 11/3/3022)
- (V1) Grading Plan for Tree Removal Application
- (V1) Transmittal Letter
- (V1) Corporate Disclosure Statement-executed
- (V1) Owner's Consent Affidavit-executed
- (V1) Proposal
- (V1) List of Plans--Exhibits
- (V1) Sustainability Checklist- 10-29-2021
- (V1) Tax Payment Certification
- (V1) Required Regulatory Approvals
- (V1) List of Variances
- (V1) List of Design Standard Exceptions
- (V1) List of Submission-Waivers
- (V1) Request for De Minimis Exception from RSIS
- (V1) Fees Escrow
- (V1) IRS Form W-9 EIN-redacted
- (V1) Property Owner List 10-13-2021
- (V1) Solid Waste Management Statement-FINAL
- (V1) Traffic Impact Study
- (V1) Planner's Report
- (V1) Application for Tree Removal
- (V1) Owners Consent Affidavit-executed
- (V1) Restrictions Covenants and Easements with Exhibits
- (V1) Transmittal Letter 6/1/2022
- (V1) ZBA Application Executed

(V1) Corporate Disclosure Statement Executed
(V2) Owner's Consent Affidavit Executed
(V2) RESUBMISSION: Previous Approvals with Exhibits
(V2) RESUBMISSION: Proposal (Revised- May 20, 2022)
(V2) RESUBMISSION: Reasons for Relief (Revised- May 20, 2022)
(V2) RESUBMISSION: List of Plans and Exhibits
(V2) RESUBMISSION: Site Plan Checklist
(V2) RESUBMISSION: Sustainability Checklist and Appendix (Revision Date- May 10, 2022)
(V2) RESUBMISSION: Tax Payment Certification (Dated- May, 17,2022)
(V2) RESUBMISSION: Required Regulatory Approvals and Permits
(V2) RESUBMISSION: List of Variances (Revision Date- May 20, 2022)
(V2) RESUBMISSION: List of Design Standard Exceptions (Revision Date- May 20, 2022)
(V2) RESUBMISSION: List of Submission Waivers (Revision Date- May 20,2022)
(V2) RESUBMISSION: Request for De Minimis Exception (Dated- May 20, 2022)
(V2) RESUBMISSION: Fees and Escrow Computation (Revised- May 20,2022)
(V2) RESUBMISSION: Response to SPRAB Comments Dated 5/26/22
(V2) RESUBMISSION: Property Owner List 5/16/22
(V2) RESUBMISSION: Solid Waste Management Report Date 5/26/22
(V2) RESUBMISSION: Environmental Impact Statement Report Revision Date 5/18/22
(V2) RESUBMISSION: Parking Study 5/20/22
(V2) RESUBMISSION: DOI Traffic Impact Study Revision Date 5/6/22
(V2) RESUBMISSION: DOI Planning Report Final Dated 5/31/22
(V2) RESUBMISSION: Stormwater Management Report Rev #1 Dated 5/20/22 (Superseded by (V3) Resubmission - Stormwater Management Report Rev#2 Dated 11/3/2022)
(V2) RESUBMISSION: Stormwater Figures
(V2) RESUBMISSION: Site Plans Dated 5/20/22
(V2) RESUBMISSION: Phasing Plan Signed 5/20/22 (Superseded by (V3) Resubmission Overall Phasing 11/3/2022)
(V2) RESUBMISSION: Survey (Dated - 4-22-2020)
(V2) RESUBMISSION: Architecture and Landscaping Plans Revision Dated 5/20/22
(V2) RESUBMISSION: Restrictions Covenants and Easements with Exhibits
(V2) RESUBMISSION: Retaining Wall Calculations 5/20/22
(V2) RESUBMISSION: Application for Tree Removal
(V2) RESUBMISSION: Tree Removal Plan and List 5/20/22 (Superseded by V3 Resubmission - Tree Removal Plan List 11/3/3022)
(V2) RESUBMISSION: Grading and Drainage Plan Dated 5/20/22
(V2) RESUBMISSION: Owners Consent Affidavit Executed - Dated 10/27/21
(V2) Planning Director Memo – Dated 6/17/2022
(V2) ZB-21-21 - Presentation Boards.pdf
(V2) KDA Architectural Exhibits - Final (Undated) (Superseded by (V3) Resubmission - KDA Architectural Exhibits A-2 11/2/2022)
(V2) Exhibit List- Daughters of Israel
(V2) Submission Letter- Exhibits Dated 8/5/2022
Letter to D Chandler re: Legal Issues (Dated 9-22-2022)
Letter to P. Neuer and ZBA- legal issues (Dated 9-22-2022)
(V3) Resubmission - EIS Steep Slope Figures
(V3) Resubmission - Environmental Impact Statement Rev #2 (Dated 11/3/2022)
(V3) Resubmission - Exhibit List 11/3/2022-3043218_1
(V3) Resubmission - Figures for Stormwater Report
(V3) Resubmission - KDA Architectural Exhibits A-2 (Dated 11/2/2022)

(V3) Resubmission Overall Phasing (Dated 11/3/2022)
(V3) Resubmission - Preliminary Final Site Plan (Dated 11/3/2022)
(V3) Resubmission - Response to Township Engineers Review #1 (Dated 11/3/2022)
(V3) Resubmission - Stormwater Maintenance Manual
(V3) Resubmission - Stormwater Management Report Rev#2 (Dated 11/3/2022)
(V3) Resubmission - Transmittal Letter (Dated 11/4/2022)
(V3) Resubmission - Tree Removal Plan List (Dated 11/3/2022)
Planning Director Memo ZB 21-21 Daughters of Israel (Updated 11/4/2022)
Planning Director Memo - ZB-21-21 - Daughters of Israel-updated 11-7-22.pdf
CME - Engineer Review #2 (11-15-2022)
Town Forester Memorandum (Dated - November 16, 2022)
Town Forester Memorandum (Dated - November 18, 2022)
(V4) 00 - Transmittal Letter 3057473 1
(V4) 01 - Proposal (1-30-2023) 2923862 3
(V4) 02 - List of Plans Exhibits 2923942 3
(V4) 03 - Tax Payment Certification (1-27-2023)
(V4) 04 - List of Variances 2923844 3
(V4) 05 - Letter to ZBA - Alcoholic Beverage Club License 3057483 1
(V4) 06 - Response to Board Engineers Review 2 (1-26-2023)
(V4) 07 - Solid Waste Management Report (1-27-2023)
(V4) 08 - EIS (1-26-2023)
(V4) 09 - Parking Study (1-26-2023)
(V4) 10 - Traffic Impact Study - Rev 2 (1-27-2023)
(V4) 11 - Stormwater Report-Rev.-3 (1-26-2023)
(V4) 12 - Stormwater Maintenance Manual
(V4) 13 - Site Plans (1-26-2023)
(V4) 14 - Phasing Plan (1-26-2023)
(V4) 15 - Architectural Plans (1-30-2023)
(V4) 16 - Civil Engineering Exhibits (1-26-2023)
(V4) a. - Landscape Plan Details (1-30-2023)
(V4) b. - Tree Removal Plan (1-26-2023)
(V4) c. - Grading Drainage Plan (1-26-2023)
Supplemental Planning Review Memo - ZB-21-21 - Daughters of Israel 2-1-23
2-2-2023 Email from Town Forester (re-new tree removal plan and landscape plan)
Architectural Exhibits (2-6-2023)
Transmittal Letter (2-6-2023)
CME 2-6-2023 Review #3
DOI Planning Report - 3-3-23 signed sealed
ZB-21-21 Ltr Diana Chandler submitting revised Planning Report (3-6-2023)
3063728 1
H. Geneslaw Ltr to A. Beirne (3-31-2023)
ZB-21-21 Daughters of Israel - Objectors Planning Report Dol
ZB-21-21 Daughters of Israel - woolley resume (Objector Planner)
Correspondence (re-noticing for 5-11-2023 mtg.)

DOI - Affidavit of Service May 11 2023 hearing

Furey v. Voorhees Township Zoning Board of Adjustment Docket No. CAM-L-519-22
highlighted

Google Map - Distance to 699 Prospect Avenue (Dated 4-25-2023)

Submission letter (4-28-2023) 3073394 2

Daughters of Israel d(5) variance letter memorandum Geneslaw 050823

Daughters Israel Variance Letter Webster 050823

Daughters of Israel d(5) variance reply memorandum Geneslaw 050923



New Jersey Judiciary
Civil Practice Division

Civil Case Information Statement (CIS)

Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.

For Use by Clerk's Office Only

Payment type ☐ check ☐ charge ☐ cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name Howard D. Geneslaw, Esq.		Telephone Number (973) 596-4647 ext.		County of Venue Essex
Firm Name (if applicable) Gibbons P.C.			Docket Number (when available)	
Office Address - Street One Gateway Center		City Newark	State NJ	Zip 07102
Document Type Complaint in Lieu of Prerogative Writs			Jury Demand ☐ Yes ☒ No	
Name of Party (e.g., John Doe, Plaintiff) Daughters of Israel, Inc.		Caption Daughters of Israel, Inc., v. Zoning Board of Adjustment of the Township of West Orange		
Case Type Number (See page 3 for listing) <u>701</u>				
Are sexual abuse claims alleged?			☐ Yes ☒ No	
Does this case involve claims related to COVID-19?			☐ Yes ☒ No	
Is this a professional malpractice case? If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.			☐ Yes ☒ No	
Related Cases Pending? If "Yes," list docket numbers			☐ Yes ☒ No	
Do you anticipate adding any parties (arising out of same transaction or occurrence)?			☐ Yes ☒ No	
Name of defendant's primary insurance company (if known)			☐ None ☒ Unknown	

The Information Provided on This Form Cannot be Introduced into Evidence.**Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation**Do parties have a current, past or recurrent relationship? ☐ Yes ☒ No

If "Yes," is that relationship:

☐ Employer/Employee ☐ Friend/Neighbor ☐ Familial ☐ Business
☐ Other (explain) _____
Does the statute governing this case provide for payment of fees by the losing party? ☐ Yes ☒ No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

Do you or your client need any disability accommodations? ☐ Yes ☒ No

If yes, please identify the requested accommodation:

Will an interpreter be needed? ☐ Yes ☒ No

If yes, for what language?

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Attorney/Self-Represented Litigant Signature: _____

Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES

(Choose one and enter number of case type in appropriate space on page 1.)

Track I - 150 days discovery

- 151 Name Change
- 175 Forfeiture
- 302 Tenancy
- 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 Book Account (debt collection matters only)
- 505 Other Insurance Claim (including declaratory judgment actions)
- 506 PIP Coverage
- 510 UM or UIM Claim (coverage issues only)
- 511 Action on Negotiable Instrument
- 512 Lemon Law
- 801 Summary Action
- 802 Open Public Records Act (summary action)
- 999 Other (briefly describe nature of action)

Track II - 300 days discovery

- 305 Construction
- 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD))
- 599 Contract/Commercial Transaction
- 603N Auto Negligence – Personal Injury (non-verbal threshold)
- 603Y Auto Negligence – Personal Injury (verbal threshold)
- 605 Personal Injury
- 610 Auto Negligence – Property Damage
- 621 UM or UIM Claim (includes bodily injury)
- 699 Tort – Other

Track III - 450 days discovery

- 005 Civil Rights
- 301 Condemnation
- 602 Assault and Battery
- 604 Medical Malpractice
- 606 Product Liability
- 607 Professional Malpractice
- 608 Toxic Tort
- 609 Defamation
- 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases
- 617 Inverse Condemnation
- 618 Law Against Discrimination (LAD) Cases

Track IV - Active Case Management by Individual Judge / 450 days discovery

156 Environmental/Environmental Coverage Litigation
 303 Mt. Laurel
 508 Complex Commercial
 513 Complex Construction
 514 Insurance Fraud
 620 False Claims Act
 701 Actions in Lieu of Prerogative Writs

Multicounty Litigation (Track IV)

271 Accutane/Isotretinoin
 281 Bristol-Myers Squibb Environmental
 282 Fosamax
 285 Stryker Trident Hip Implants
 291 Pelvic Mesh/Gynecare
 292 Pelvic Mesh/Bard
 293 DePuy ASR Hip Implant Litigation
 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components
 299 Olmesartan Medoxomil Medications/Benicar
 300 Talc-Based Body Powders
 601 Asbestos
 624 Stryker LFIT CoCr V40 Femoral Heads
 625 Firefighter Hearing Loss Litigation
 626 Abilify
 627 Physiomesh Flexible Composite Mesh
 628 Taxotere/Docetaxel
 629 Zostavax
 630 Proceed Mesh/Patch
 631 Proton-Pump Inhibitors
 632 HealthPlus Surgery Center
 633 Prolene Hernia System Mesh
 634 Allergan Biocell Textured Breast Implants
 635 Tassigna
 636 Strattice Hernia Mesh
 637 Singulair
 638 Elmiron

If you believe this case requires a track other than that provided above, please indicate the reason on page 1, in the space under “Case Characteristics”.

Please check off each applicable category☐ **Putative Class Action**☐ **Title 59**☐ **Consumer Fraud**

Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-004045-23

Case Caption: DAUGHTERS OF ISRAEL, INC. VS TP. OF W. ORANGE Z

Case Initiation Date: 06/23/2023

Attorney Name: HOWARD D GENESLAW

Firm Name: GIBBONS PC

Address: ONE GATEWAY CTR

NEWARK NJ 071025310

Phone: 9735964500

Name of Party: PLAINTIFF : Daughters of Israel, Inc.

Name of Defendant's Primary Insurance Company
(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Daughters of Israel, Inc.? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

06/23/2023

Dated

/s/ HOWARD D GENESLAW

Signed

