

Supplemental
Planning Report
In Support Of
Daughters of Israel

Variance
and
Site Plan
Application

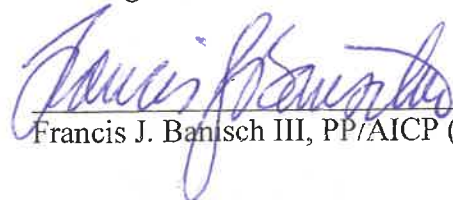
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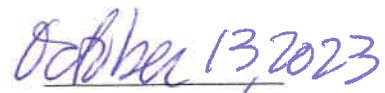
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The original of this document has been signed and sealed in accordance with N.J.S.A. 13:41-1.2.


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Date

Introduction

The purposes of this supplemental planning report are:

- to compare the terms of the application presented by the Daughters of Israel (DOI) and denied by the Zoning Board to the settlement plan,
- to identify the changes proposed by DOI and
- to confirm that the justification I presented for the variances in the denied application apply more than equally to the settlement plans.

Daughters of Israel presented a site plan application with variances, including a use variance (Application No. ZB-21-21), which on May 11, 2023, the Zoning Board voted 4-3 in favor of approval. This amounted to a denial because the motion to approve did not achieve the required 5 votes. DOI then appealed the denial.

Summary of Settlement Plan Changes

In an effort to resolve the litigation, DOI prepared revised plans that included significant reductions in the scale of the project and its impacts. A summary of the changes on the settlement architectural plans, include the following:

	Prior Proposal	Settlement Plan
independent living units	163	157
assisted living beds	64 (40 memory care)	64 (40 memory care)
skilled nursing beds	84	84
ancillary and accessory support facilities	Community room and amenities	Same

The changes on the settlement engineering plans, as seen on the site data chart, include the following:

Ordinance Standard	Ordinance Requires	Existing Condition	Previous Plan	Current Plan
Maximum Lot Coverage (impervious)	30%	38.53%	37.25%	35.67%
Maximum Effective Lot Coverage	30%	61.19%	59.16%	56.62%
Minimum Required Parking Prior Plan	448		392 (w/45 EV bonus) + 34 future = 347 built	
Minimum Required Parking Revised Plan	437			387 (w/44 EV bonus) + 14 future = 401 (357 actual stalls w/ 14 banked = 343 built)
Loading	13 before 12 now			
Tree Removal			10/29/21 Plan - 395 trees (274 major, 89 minor, 32 dead) 1/26/23 plan – 181 trees	128 trees (70 major, 26 minor and 32 dead)
Wooded Area disturbance			2.4%	2.3%
20% or Greater Steep Slopes Disturbance	None		2.0%	0.1%

The architectural settlement plans address the Board’s expressed concerns by reducing the height and bulk of the built elements. Additionally, as seen on the engineering settlement plan, compared to the prior proposal, the changes substantially reduce the environmental and other impacts of the proposal, including

- dramatically reduced steep slope disturbance,
- dramatically reduced tree removal
- reduced lot coverage and reduced effective lot coverage.

The tree removal plan was modified and now only requires DOI to replace 70 major trees and 26 minor trees. The settlement plan allows 53 more trees to be saved over the previous

plan and 267 saved over original plan. The new plan has also eliminated the variance previously sought for a row of parking spaces longer than 20 spaces, and the plans now meet the requirements and achieve the target number for major tree replacement.

The only instance in which a variance is now seeking greater relief than sought for the prior plan is the parking variance, where the prior plan had a shortfall of 22 spaces and the current proposal results in a 36-stall shortfall compared to the ordinance requirement. However, the Parking Study indicates that the ordinance requires far more parking than actually needed. The Parking Study demonstrates that DOI will provide parking exceeding the need.

Because the unit count has been reduced by 6 (three 2-bedroom units and three 1-bedroom units) the parking requirement per the West Orange Ordinance has decreased from 448 spaces to 437 spaces. Similarly, the parking need as per the Parking Study is reduced by 9 spaces from 339.5 to 330.5 (say 331).

A total of 343 parking stalls will be constructed, excluding the EV credits and the 14 banked parking stalls. This represents 12 more parking spaces than the 331 calculated need in the Parking Study. As a result, it is likely that DOI will never need the banked spaces, but they remain available as “belt and suspenders”.

As a result of these changes, the variances with the greatest impact on the natural environment have been significantly reduced, as have the massing and bulk of the building and the parking relief, while technically increasing, will not impair the ability of DOI to fully meet the parking demands generated on site.

Variance Proofs

My Planner's report dated March 3, 2023, included the following:

- a description of the prior proposal and required variances;
- a description of the site and the surrounding area;
- an analysis of the West Orange Master Plan and Master Plan Reexaminations and the zoning regulations applicable to the DOI campus in the R-2 single-family Residential Zone; and
- an analysis of the statutory requirements for the grant of use and bulk variances for this development.

As a result of my review, I concluded that:

1. Use variance relief under N.J.S.A. 40:55D-70d (1) should be granted because:
 - a. The proposed use(s) provide inherent benefits to the public.
 - b. DOI would suffer undue hardship if compelled to use the property for the permitted residential uses, since it would have to abandon and remove the existing facilities and redevelop the site for large-lot single-family homes.
 - c. Continuing care use would also serve the public welfare because the DOI site is particularly suited to the proposed use given that it has been improved with a skilled nursing facility for decades.
2. Height variance relief under N.J.S.A. 40:55D-70d(6) should be granted because special reasons exist whereby the proposed building height is not inconsistent with the surrounding neighborhood and will not offend any of the purposes of the height limitation in the zoning ordinance (light, air, open space).
3. Bulk variance relief under N.J.S.A. 40:55D-70c(2) should be granted because unique site attributes are well adapted to the redevelopment that will substantially expand the inherently beneficial elements with minimal or no detrimental impact. Thus, the project, when viewed in its entirety satisfies the variance criteria, both positive and negative.

Summary and Conclusions

The combined changes to the proposal have the overall effect of being significantly less impactful than the prior plan, both in its footprint on the land as well as the way it meets the eye. Compared with the prior proposal, the settlement plan involves considerably less tree removal, far less steep slope disturbance and reduces lot coverage, thus treading more lightly on the land. It also reduces the bulk and height of the building and reduces the number and intensity of required variances.

As I previously testified, the requested use variance relief under N.J.S.A. 40:55D-70d(1) should be granted because:

- a. The proposed use(s) provide inherent benefits to the public.
- b. DOI would suffer undue hardship if compelled to use the property for the permitted residential uses, and
- c. The DOI site is particularly suited to the proposed CCRC.

As I previously opined, the use variance to permit the elements of a CCRC, either separately or together, seeks approval for a use not permitted in the R-2 Zone. While this combination of uses inherently serve the public interest, DOI would certainly endure undue hardship if required to comply with the residential zoning of the site. Together or separately, all proposed elements in the proposed CCRC qualify for use variance relief. Their value in service to the frail and low income aging population and others whose capacity for independent living is changing has been highly regarded by the Courts. I suggest that it should be so regarded in this context.

The Sica balancing test reveals no detrimental effects that require amelioration and hence no special conditions of approval are required to ameliorate any harm. Rather, while the future use will be totally reconfigured and rebuilt, it will bear land use similarities to the current use that maximize its compatibility in the neighborhood. The tallest elements will be situated toward the County Road and away from most residences, where they will transform the appearance and create a handsome and prominent new facade. Structured

parking will reduce the coverage of the site by asphalt and the new outdoor parking area will be landscaped attractively.

The bulk variance requests, some of which have been reduced or eliminated, will facilitate the removal of the nursing home and reconstruction of the site as a CCRC. As such, they help to achieve the inherent benefits resulting from the grant of the expanded use.

In conclusion, the proposed CCRC development and its component elements provide inherent community benefits, well recognized by New Jersey Courts, and the application meets the positive criteria. Additionally, the Sica balancing test reveals no detriment to the public good requiring special conditions of approval. Thus, since the modified proposal reduces the intensity of the building elements and the environmental and other impacts on the land, I continue to find that the special reasons I previously offered to support the use and height variance relief required for this development application apply to the revised proposal. Similarly, I reassert the justifications for the grant of the bulk variances required for this revised development application. As a result, I find that the statutory criteria for the use and bulk variances have been satisfied and the application should be approved.