

PROSPECT STREET NEIGHBORS
ASSOCIATION, LLC, A New Jersey Limited
Liability Company, LISA ARKIN, JOYCE
WOLL, MARY MCBRIDE, PETER
CHARLES DURAN, MICHAEL KELLY,
ANN MARIE PHILLIPS, SANDRA BECK,
BERNARD BECK, BIBI RAMDAYAL,
ROBERT DWORKIN, RONDA CAPILLI,
KERRY MILLER, MICHAEL MILLER,
KATHLEEN DECELIE, SCOTT HOMA,
CHARLES BANK, GINO REINA, JASON
TAYLOR, TING-TING KANG, LYNN
MACAULEY, ROBERT MACAULEY,
and MICHAEL HELLER,

Plaintiffs,

vs.

GLEN PARK VILLAGE, LLC and ZONING
BOARD OF ADJUSTMENT OF THE
BOROUGH OF GLEN ROCK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. BER-L-6641-17

CIVIL ACTION

ORDER

FILED
AUG 19 2019
GREGG A. PADOVANO, J.S.C.

THIS MATTER having come before the court as a bench trial with James M. Turteltaub, Esq. of Carlin & Ward, P.C. appearing on behalf of plaintiffs, Prospect Street Neighbors Association, LLC, a New Jersey Limited Liability Company, Lisa Arkin, Joyce Woll, Mary Mcbride, Peter Charles Duran, Michael Kelly, Ann Marie Phillips, Sandra Beck, Bernard Beck, Bibi Ramdayal, Robert Dworkin, Ronda Capilli, Kerry Miller, Michael Miller, Kathleen Decelie, Scott Homa, Charles Bank, Gino Reina, Jason Taylor, Ting-Ting Kang, Lynn Macauley, Robert Macauley, and Michael Heller and David L. Rutherford, Esq. appearing on behalf of defendant Glen Park Village, LLC and Spencer J. Rothwell, Esq. of Wells, Jaworski & Liebman, LLP appearing on behalf of defendant Zoning Board of Adjustment of the Borough of Glen Rock and the court having issued a written opinion, a copy of which is attached to this order;

IT IS ON THIS 19th DAY OF AUGUST 2019

ORDERED that the June 8, 2017 decision of the Zoning Board of Adjustment of the Borough of Glen Rock, as memorialized by resolution dated August 10, 2017, with regard to the bifurcated application of Glen Park Village, LLC for property located at Block 127, Lots 2 and 3 within the Borough of Glen Rock pursuant to N.J.S.A. 40:55D-70(d)(1), N.J.S.A. 40:55D-70(d)(5) and N.J.S.A. 40:55D-70(d)(6) is reversed and vacated; and it is further

ORDERED that a copy of this Order and attached decision of the court shall be served upon counsel for the parties by eCourts.



GREGG A. PADOVANO, J.S.C.

PROSPECT STREET NEIGHBORS
ASSOCIATION, LLC, A New Jersey
Limited Liability Company, LISA
ARKIN, JOYCE WOLL, MARY
MCBRIDE, PETER CHARLES DURAN,
MICHAEL KELLY, ANN MARIE
PHILLIPS, SANDRA BECK, BERNARD
BECK, BIBI RAMDAYAL, ROBERT
DWORKIN, RONDA CAPILLI, KERRY
MILLER, MICHAEL MILLER,
KATHLEEN DECELIE, SCOTT HOMA,
CHARLES BANK, GINO REINA, JASON
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MACAULEY, ROBERT MACAULEY,
and MICHAEL HELLER,

Plaintiffs,

vs.

GLEN PARK VILLAGE, LLC and
ZONING BOARD OF ADJUSTMENT OF
THE BOROUGH OF GLEN ROCK,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY

DOCKET NO. BER-L-6641-17

CIVIL ACTION

DECISION OF THE COURT¹

August 19, 2019

GREGG A. PADOVANO, J.S.C.

¹ Not for publication without the approval of the committee on opinions. See R.
1:36-1

This matter comes before the court upon a complaint in lieu of prerogative writs filed on behalf of plaintiff Prospect Street Neighbors Association, LLC, a New Jersey Limited Liability, Lisa Arkin, Joyce Woll, Mary McBride, Peter Charles Duran, Michael Kelly, Ann Marie Phillips, Sandra Beck, Bernard Beck, Bibi Ramdayal, Robert Dworkin, Ronda Capilli, Kerry Miller, Michael Miller, Kathleen Decelie, Scott Homa, Charles Bank, Gino Reina, Jason Taylor, Ting-Ting Kang, Lynn Macauley, Robert Macauley, and Michael Heller (hereafter collectively referred to as the "Plaintiff"). Plaintiff seeks judgment invalidating the June 8, 2017 action of the Glen Rock Zoning Board of Adjustment (the "Board") which granted use variance, height variance and density variance approval to defendant Glen Park Village, LLC ("Glen Park") under a bifurcated application for development of certain property located within the Borough of Glen Rock, New Jersey (the "Borough").

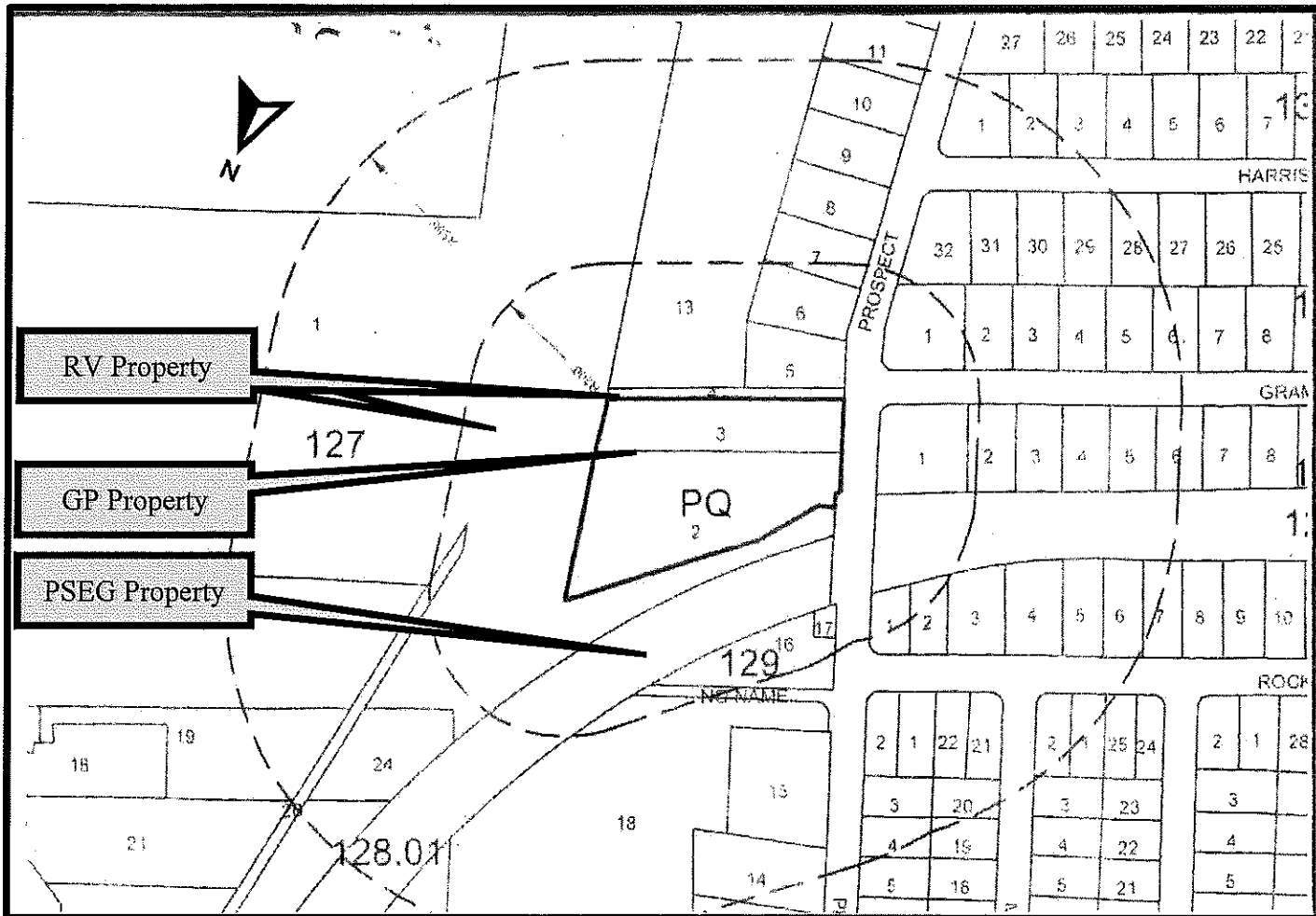
Glen Park proposed development of two parcels located at 569 and 575 Prospect Street, Glen Rock, New Jersey, which parcels are also identified as Block 127, Lot 2 and Lot 3 on the Borough tax map (the "GP Property"). The GP Property is comprised of a total of approximately 1.97 acres with Lot 2 containing 1.31 acres and Lot 3 containing 0.66 acres. The GP Property is located entirely within in the A-2 Single Family Residential Zone District (the "A-2 Zone") of the Borough. Each of the two lots comprising the GP

Property are currently improved with a single family residential dwelling. Each dwelling fronts along and maintain separate driveway access to Prospect Street.

The GP Property abuts property owned by the Village of Ridgewood, New Jersey to the north, south and east. The parcels owned by the Village of Ridgewood are utilized by the Village of Ridgewood in connection with a municipal sewer treatment and municipal department of public works facility and are identified on the current Borough tax map as Block 127, Lots 1 and 4 (the "RV Property"). Both Lot 1 and Lot 4 of the RV Property maintain access to Prospect Street.² Lot 1 of the RV Property encroaches upon property owned by Public Service Electric and Gas which property is identified as Block 128.01, Lot 1 on the current Borough tax map (the "PSEG Property"). The RV Property and PSEG Property are also located within the A-2 Zone.

²The record reflects that the Borough obtained an easement from the Village of Ridgewood for Borough municipal use along Lot 1 of the RV Property.

The following portions of the Borough tax map, submitted as part of Glen Park's application before the Board, further identify the GP Property, the RV Property and the PSEG Property:



[Identifiers added by the court.]

Glen Park initially sought use variance approval under a bifurcated application before the Board whereby it proposed to raze the two existing single family resident dwellings located and construct three buildings containing a total of 57 residential dwelling units (49 units to be offered at market rate and 8 units to be designated for low and/or moderate income affordable housing), 111 on-site parking spaces (12 of which were to be tandem spaces) with sole vehicular access along Lot 1 of the RV Property (the "Initial Application"). Glen Park filed the Initial Application with the Board on or about November 23, 2016.

The record reveals that prior to the filing of the Initial Application, the Borough Mayor and Council (the "Governing Body"), acting at the request of Glen Park, introduced and considered a zoning change of the GP Property and Lot 4 of the RV Property under proposed Ordinance No. 1739. Proposed Ordinance 1739 specifically projected to create a zone identified as the "AR-1 Age Restricted Housing District" ("AR-1 Zone"). The proposed AR-1 Zone would permit multi-family, age-restricted (over 55 years old) residential use, as further defined within the proposed ordinance, with a maximum permitted density of 30 units per acre. Proposed Ordinance 1739 also provided that single family residential use would be permitted "in accordance with the A-2 Residence District regulations as noted in Article X." Proposed Ordinance 1739 also provided various bulk standards, including a maximum permitted

building height of 40 feet and an off-street parking requirement of 1.5 spaces per residential unit with a required parking stall size of 10' x 20'.

The Governing Body held a public hearing and discussed proposed Ordinance 1739 during a "second reading" on April 13, 2016. The record reflects that several Borough residents appeared and spoke during the April 13, 2016 public meeting. The transcript from the April 13, 2016 meeting of the Governing Body also reveals that the chairman of the Borough Planning Board appeared and spoke in favor of proposed Ordinance 1739. See 1T 41:1 - 46:19.³

At the conclusion of the public comments, the Borough Councilmembers voted 4-2 against the adoption of Ordinance 1739. The subject transcript reveals that several Councilmembers who voted against adoption of proposed Ordinance 1739 expressed concern regarding the proposed permitted density and the area which would be impacted by the proposed zoning change. See 1T 77:8-84:25.

A few months later, the Borough Governing Body revisited the zoning ordinance amendment issue under proposed Ordinance 1746. As with proposed Ordinance 1739, proposed Ordinance 1746 also

³ For purposes of the court's decision, transcripts are identified as follows:
"1T"- April 13, 2016 Glen Rock Governing Body public meeting;
"2T"- September 14, 2016 Glen Rock Governing Body public meeting;
"3T"- January 12, 2017 Glen Rock Zoning Board of Adjustment public meeting;
"4T"- March 9, 2017 Glen Rock Zoning Board of Adjustment public meeting;
"5T"- May 11, 2017 Glen Rock Zoning Board of Adjustment public meeting; and
"6T"- June 8, 2017 Glen Rock Zoning Board of Adjustment public meeting

provided for multi-family, age-restricted (over 55 years old), residential use at the GP Property and Lot 4 of the RV Property. However, under proposed Ordinance 1746, the permitted density was reduced to a maximum of 25 units per acre. Proposed Ordinance 1746 also would permit single family residential use "in accordance with the A-2 Residence District regulations as noted in Article X." Proposed Ordinance 1746 also provided various bulk standard including a maximum building height of 40 feet and off-street parking of 1.5 spaces for each 1 bedroom unit and 2 spaces for each two or more bedroom residential units.

The Borough Governing Body conducted a public hearing and discussed proposed Ordinance 1746 at a "second reading" on September 14, 2016 where several members of the public appeared and spoke. At the conclusion of the public comment, the Borough Councilmembers voted 3-2 against the adoption of Ordinance 1746. The transcript of the September 14, 2016 public meeting reveals that the three council members who voted against adoption of proposed Ordinance 1746 specifically expressed concern with the density and location of the proposed zoning change. See 2T 50:28-60:18.

Approximately two months after the Borough Governing Body's rejection of the second ordinance proposal, Glen Park filed the Initial Application with the Board. The Board conducted public hearings in connection with Glen Park's proposed development on

January 12, 2017, March 9, 2017, May 11, 2017 and June 8, 2017.⁴

During the course of the public hearings before the Board, Glen Park presented testimony from four expert witnesses and one fact witness. During the hearings, the Board also received testimony from its professional planner and its professional engineer. Several members of the public also appeared and testified during each of the public hearings.

At the conclusion of the fourth public hearing held on June 8, 2017, the Board voted to approve Glen Park's bifurcated application. The Board's approval was memorialized in a written resolution dated and adopted on August 10, 2017 (the "Resolution"). Subsequent to the publication of the Resolution, Plaintiff timely filed the subject action alleging jurisdictional defects and alleging that the Board's approval was arbitrary, capricious and unreasonable.

The record before the court includes transcripts from the Borough Governing Body's April 13, 2016 and September 14, 2016 public meetings, transcripts of the Board's public hearings conducted on January 12, 2017, March 9, 2017, May 11, 2017 and

⁴The record reflects that the application may have also been reviewed during "work sessions" of the Board held on January 4, 2017, February 1, 2017, March 1, 2017, April 5, 2017, May 3, 2017 and, potentially, May 31, 2017. The court was not provided with transcripts of the Board's work sessions and presumes, for the purposes of this decision, that no testimony or discussion regarding the application were conducted by the Board, its professionals or members of the public during "work sessions." Plaintiff has not asserted any allegation under the complaint regarding work session meetings of the Board in connection with this matter.

June 8, 2017, copies of Glen Park's application, as revised, site plan and architectural plans, as revised, various exhibits and reports submitted to the Board, the Resolution and exhibits submitted by Plaintiff which include the Borough Zoning Ordinance and 2002 Master Plan, 2008 Master Plan Reexamination Report, and 2014 Master Plan Reexamination Report.⁵

The facts presented reveal that the first public hearing regarding Glen Park's Initial Application commenced before the Board on January 12, 2017 (the "January Hearing"). The record reflects that at the commencement of the January Hearing, counsel for Glen Park stated that

[a]s indicated in the application materials, this is a bifurcated application, which means that we seek only the use variance for the proposed use, which is multi[-]family housing without age restriction.

If the [B]oard sees fit to approve the application, we will return at a later time for site plan approval, which may include some bulk variance requests.

[3T 8:19-9:2.]

Glen Park served public notice of the Board's January 4, 2017 work session and of the January 12, 2017 public hearing on or about December 22, 2017 (the "Initial Notice"). The Initial Notice identified the GP Property as the site of the proposed development and stated, in pertinent part, that

⁵ For purposes of the decision of the court, the 2002 Master Plan, 2008 Master Plan Reexamination Report and 2014 Master Plan Reexamination report are collectively referred to as the "Master Plan."

[t]he applicant seeks the approvals needed to construct at 57 unit multi-family housing complex, with affordable units, in two buildings and a clubhouse. The applicant has chosen to bifurcate the application pursuant to N.J.S.A. 40:55D-76(b), so as to seek only the required use variance at this time. The proposed use is not included in the list of permitted uses in the A-2 Zone as found in Section 230-52 of the Ordinance, incorporating by reference Section 250-49. If the application is approved, the applicant will file a subsequent application for site plan approval, which may include a request for bulk variances, and waivers, deviations or exceptions from the site plan standards set forth in the Ordinance.

The applicant also seeks any other variances from the Zoning Ordinance, waivers, deviations and exceptions which the Zoning Board deems to be required within the scope of the bifurcated application seeking use variance relief.

The Initial Notice did not identify the RV Property or the PSEG Property and did not identify that Glen Park was seeking and/or required a density variance pursuant to N.J.S.A. 40:55D-70(d)(5) or a height variance pursuant to N.J.S.A. 40:55D-70(d)(6). Furthermore, the record reflects that the Village of Ridgewood, as the owner of the RV Property, and Public Service Electric and Gas, as the owner of the PSEG Property, did not consent to or authorize Glen Park's application before the Board.

Glen Park first presented testimony from Mr. Tibor Latincsecs, who was accepted by the Board during the January Hearing as an expert engineer. See 3T 16:12-15. The transcript of the January Hearing reveals that Mr. Latincsecs provided testimony

regarding the topography, location and current conditions of the GP Property and the RV Property. See 3T 22:5-31:9 With regard to the Glen Park's Initial Application, Mr. Latincsics testified regarding the proposed configuration and location of the 57 multi-family residential units, proposed drainage, location of on-site fire hydrants and proposed location, size and number of on-site parking spaces(12 of which were proposed to be tandem). See 3T 33:6-49:10.

Mr. Latincsics specifically testified that the proposed development would include three detached buildings, two of which were proposed to be three stories in height each containing nine one-bedroom apartments and eighteen two-bedroom apartments. Ibid. He testified that the third building was proposed to be two stories in height, the first floor of which would be utilized as a common area club house with three one-bedroom units to be located on its second floor. Ibid. He also testified that four of the one bedroom apartments would be designated for low / moderate income affordable housing. Mr. Latincsics further testified that several waivers would be required including a waiver from Section 192-14K of the Glen Rock Ordinance to permit parking stall size of 9' x 18' where 10' x 20' is required. 3T 45:14-17.

Mr. Latincsics also testified that Glen Park sought to eliminate the existing curb cut driveway access along Prospect Street currently serving the single family residential dwellings

located on the GP Property and to provide sole vehicular access through a series of three curb cuts to be constructed along Lot 1 of the RV Property. See 3T 33:6-49:10. During Mr. Latincsics' testimony, counsel for Glen Park submitted a copy of a recorded access agreement dated October 3, 2002 between the Borough and the Village of Ridgewood which permits access along the RV Property by the Borough "for municipal purposes." See 3T 26:7-18. Mr. Latincsics also testified that existing utilities in the area would accommodate the proposed development and that any resulting water run-off would be contained on-site and/or would not cause any adverse impact to other properties in the area. 3T 48:15-49:8.

Several members of the public appeared and commented during the January Hearing. At the conclusion of the January Hearing, the Board announced that the matter would continue to be reviewed by the Board during a work session on February 1, 2017 and during the public meeting of February 9, 2017 public meeting. The record reflects that the February 9, 2017 public meeting of the Board was cancelled due to inclement weather. The Initial Application was thereafter continued at the March 9, 2017 public meeting of the Board without additional notice (the "March Hearing").⁶

⁶ The Plaintiff has not asserted any allegation regarding continued notice in connection with the cancellation of the February 9, 2017 meeting. The court has not been presented any information or notice documents regarding the adjournment of the February 9, 2017 public meeting.

The record reflects that during the March Hearing, Glen Park presented testimony from Mr. Fred Klenk who was accepted by the Board as an expert architect. See 4T 9:5-7. Mr. Klenk testified regarding the architectural design of each of the three proposed buildings, including the proposed building heights, interior parking under one of the buildings and interior fire suppression system. See 4T 10:16-39:24.

Mr. Richard Harrison, principal member of Glen Park, provided fact testimony concerning the proposed location of the buildings on the GP Property, fire suppression system proposed for each building, proposed building heights and proposed on-site traffic flow. See 4T 59:9-62:17. Mr. Harrison also responded to several questions of the Board throughout the March Hearing.

Glen Park also presented testimony from its professional planner, Ms. Kathryn Gregory, in support of the Initial Application during the March Hearing. Ms. Gregory was accepted by the Board as an expert planner. 4T 67:17-19. Ms. Gregory presented her opinion regarding the purported suitability of the GP Property for development as multi-family residential use. She referenced the Master Plan, the 2008 Master Plan Reexamination and the 2014 Master Plan Reexamination several times during her testimony. See e.g. 4T 70:12-71:11. Ms. Gregory testified that the GP Property is "about 7.7 times the minimum lot size for the actual zone its, so it can actually accommodate multi[-]family." 4T 70:6-8. Ms.

Gregory also testified that the development advances the goals of the Master Plan "in terms of providing housing for special needs population [], age 55 and over, and also young professionals." 4T 71:10-11. Ms. Gregory further testified that the Property is located in close proximity to the downtown of Glen Rock with bus routes nearby. She stated that the GP Property is

located only .7 miles away from the downtown. It's a straight shot down Rock Road. And while maybe you don't actually think that's close, it actually really isn't that far.
[4T 71:12-15.]

Ms. Gregory testified that the Master Plan documents contemplate the use advanced under the Initial Application. Ms. Gregory also specifically testified that by providing affordable units as part of the development, the development will promote the general welfare. See 4T 74:18-77:10. Ms. Gregory specifically testified that while the development, as a whole, is not "inherently beneficial", the proposed affordable housing units to be included in the development are inherently beneficial and advance public health, safety, and welfare in accordance with the goals of the Municipal Land Use Law. Ibid.

Ms. Gregory also testified that the proposed development creates a "desirable visual environment" by utilization of pitched roofs and landscaping "so that it would try to fit more in conformity with the residential areas around" the GP Property. 4T 77:11-78:1. Ms. Gregory stated during the March Hearing that

Glen Park was

not asking for a height variance at this juncture, because we are asking for a bifurcated application, but that would one of the reasons that we have the pitched roof and it would be height, because we do think it's in better conformity with the residential area.

[4T 77:21-78:1.]

Ms. Gregory further testified that the proposed elimination of the two existing curb cuts along Prospect Street associated with the existing single family dwellings located on the GP Property is a benefit. Ms. Gregory testified that "we put the access actually on the access road on the side, which is actually a much safer condition than having our access being out directly on Prospect."

4T: 78:8-11.

Ms. Gregory opined that there is no substantial detriment to the public good under the Initial Application. She testified that the impact upon existing single-family uses is minimal since the GP Property does not directly abut a residential parcel. 4T 79:11-14. Ms. Gregory also testified that the Initial Application has "limited exposure to Prospect Street. . ." 4T 79:11-12. With regard to any potential impact upon adjacent properties, Ms. Gregory testified that

in terms of shadows, while I don't have a shadow study there, I'm going to go back to the picture. You can see some of the shadows obviously on this aerial photograph. And I venture to say this is probably, you can see that there's no really [sic] leaves on the

trees, so this is probably a winter picture, not a summer picture. But when you take a look at what the shadows are, basically most of the shadows from these buildings are mostly going to be on our property, because the sun actually comes from the south, it doesn't technically come from above, it technically comes from the south, so the shadows are going to cast this way, obviously, and then this way towards the end of the day. So, most of the shadows are actually contained on our property. So we feel that there's going to be adequate light, air, and open space on the adjacent properties, particularly due to the fact that we also have a roadway here for this neighbor, so there's more room so that the shadows will not extend over onto that property.

[4T 79:15-80:10.]

Ms. Gregory also testified that by providing multi-family residential use, the Initial Application is consistent with the recommendations of the Borough's Master Plan, and in particular the 2014 Master Plan Reexamination. Specifically, Ms. Gregory testified that the Application promotes the goal of the Master Plan to provide housing responsive to changing demographics. See 4T 84:2-4. Ms. Gregory also testified that the proposed development satisfied the second goal of the 2008 Master Plan Reexamination which identifies a recommendation "to provide a reasonable housing choice, particularly for current residents as their lifestyle changes." See 4T 84:12-15. Ms. Gregory further testified that the Initial Application satisfied goal number 6 of the 2008 Master Plan Reexamination by creating "an optimum

community scale." 4T 85:2-4. With regard to density, Ms. Gregory testified that under the Initial Application

28.9 units an acre is what we are proposing, and, again, by way of example, the senior housing development is 40 dwelling units an acre, so that actually has more dwelling units per acre than what we are proposing here at our site.

[4T 85:7-11.]

Several members of the public appeared, questioned the witnesses presented and provided testimony during the March Hearing. At the conclusion of the public comments, the counsel for Board announced that the matter would be continued at its April 13, 2017 regular public meeting.

The matter was not continued during the April 13, 2017 meeting of the Board. Glen Park next came before the Board during its May 11, 2017 public meeting (the "May Hearing"). Prior to the May Hearing, the Glen Park provided a new public notice (the "Second Notice"). For the first time during the proceedings before the Board, Glen Park provided public notice which identified its intention to utilize Lot 1 of the RV Property which encroaches upon the PSEG Property (Block 128.01, Lot 1). Glen Park also, for the first time during the proceedings, provided public notice to property owners located within 200 feet of the RV Property and within 200 feet of the PSEG Property. The following is a copy of the public notice provided for the May 11, 2017 meeting:

BOROUGH OF GLEN ROCK ZONING BOARD OF ADJUSTMENT

NOTICE OF WORK SESSION AND PUBLIC HEARING

Pursuant to the provisions of the Municipal Code of the Borough of Glen Rock, and the provisions of N.J.S.A. 40:55D-12, notice is hereby given that Glen Park Village, LLC, owner of the property at 569 and 575 Prospect St., Glen Rock, New Jersey 07452, also known as Lots 2 and 3 in Block 127 on the tax assessment map of the Borough of Glen Rock, has filed an application with the Zoning Board of Adjustment of the Borough of Glen Rock. The property is located in the A-2 Zone.

As originally filed, the applicant sought the approvals needed to construct a 57 unit multi-family housing complex, with affordable units, in two buildings and a clubhouse. The applicant has chosen to bifurcate the application pursuant to N.J.S.A. 40:55D-76(b), so as to seek only the required use variance at this time. The proposed use is not included in the list of permitted uses in the A-2 Zone as found in Section 230-52 of the Ordinance, incorporating by reference Section 250-49. If the application is approved, the applicant will file a subsequent application for site plan approval, which may include a request for bulk variances, and waivers, deviations or exceptions from the site plan standards set forth in the Ordinance. The applicant proposes to use a roadway located on Lot 1 in Block 127 and which encroaches onto Lot 1 in Block 128.01 for access to the project. Those lots are not part of the application at this time. Public hearings have been held on January 12, 2017 and March 9, 2017.

The applicant also seeks any other variances from the Zoning Ordinance, waivers, deviations and exceptions which the Zoning Board deems to be required within the scope of the bifurcated application seeking use variance relief.

A copy of the application and related documents are on file in the Office of the Borough Clerk, located in the Glen Rock Borough Hall, Harding Plaza, Glen Rock, New Jersey 07452, and may be inspected by members of the public, weekdays, during regular business hours.

A work session with respect to this application has been scheduled for Wednesday, May 3, 2017 and a public hearing for Thursday, May 11, 2017 both at 7:30 PM, or as soon thereafter as the matter can be heard, in the Council Chambers of the Glen Rock Borough Hall, Harding Plaza, Glen Rock, New Jersey 07452. All interested parties are invited to appear and be heard at that time.

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(201) 652-8500
Attorney for Applicant

At the commencement of the May Hearing, the counsel for Glen Park stated that

[w]e did not meet last month due to a notice issue that arose and since that time I have, indeed, re-noticed and published to an enhanced list as per [the Board's legal counsel's] - after consultations with [the Board's legal counsel] and in consultation with him. So we have noticed not only for Lots 2 and 3, but also Lot 1 in Block 127 and Lot 1 in Block 128.01, so as to include, within the purview of the notice, those lots within 200 feet of the proposed access driveway for this property.
[5T 5:25-6:9.]

Counsel for the Board thereafter announced that

I would just like to announce [the RV Property and PSEG Property] to anyone within 200 feet of those properties this evening that the board has available the minutes and the - - well, not the minutes yet, but the transcript and tapes of the prior hearings, if anyone needs to listen to those.
[5T 6:12-17.]

Counsel for Glen Park also announced that Mr. Latincsics and Ms. Gregory would be available to provide testimony regarding certain revisions to the Initial Application and a "brief summary of what we believe are the salient features of the application." 5T 7:3-4.

Glen Park presented Mr. Judd Rocciola, a professional engineer specializing in traffic and parking. Mr. Rocciola was accepted by the Board as an expert witness. 5T 9:4-6. Mr. Rocciola provided testimony regarding his analysis of the

anticipated traffic impact of the project along with his opinion regarding the proposed on-site vehicular circulation.

Mr. Rocciola opined that the existing public roads in the area can accommodate the added traffic without significant impact. See 5T 13:10-17:7. He testified that the proposed development would add 468 daily vehicle trips to the surrounding single-family neighborhood. 5T 14:8. Mr. Rocciola also testified that the revised proposal to provide 111 on-site parking spaces (11 of which would be tandem) would adequately serve the proposed multi-family use. 5T 17:12-20:9.

Mr. Harrison again appeared, provided additional fact testimony and responded to several questions from Board members regarding on-site parking. See 5T 26:21-29:6. Glen Park also recalled Mr. Latincsics for additional testimony during the May Hearing. Mr. Latincsics provided a "summary" of the site and Initial Application including proposed on-site traffic flow and parking. He also presented responses to issues raised in the written reports from the Board's experts. Ms. Gregory was also recalled and again presented additional testimony during the May Hearing. Ms. Gregory specially testified in response to the report dated March 24, 2017 prepared by Mr. Edward Snieckus, the Board's expert Planner. See 5T 156:9-162:4.

For the first time during the public hearings, Glen Park acknowledged the need for an additional variance pursuant to

N.J.S.A. 40:5D-70(d)(6) due to the proposed height of the two three story buildings which exceed the maximum permitted height in the A-2 Zone by more than 10%. See e.g. 5T 156:25-157:5; 158:18-161:7.

Ms. Gregory, relying upon her prior testimony regarding potential "shadow impact" from the proposed buildings, testified that

[a]nd I testified last time, is [sic] you recall, that based on the shadow patters w[e] actually produce shadows mostly on our property. We also have the benefit of Prospect Street. And then we also have the DPW on the other side. And I don't really thing that if there's shadows on the parking lot on the DPW side that that's going to impact anyone in any way, shape or form. And that's actually where the highest building is at 42 feet, adjacent to the DPW. That's really what the impact is.

[5T 160:9-19.]

Ms. Gregory concluded her testimony regarding the building height by stating

[n]ow I know that one of the board members asked can you move the building back? And that may or may not be a solution and, again, I'm not the engineer so there may be an impact to the detention basis and the rest of it with regard to that, but if we provide adequate landscaping and we don't case any shadows on the adjacent property owners or any of the other - there's really only one, but even across the street, then I don't see that there's any anything negative impact between providing enough landscape in the setbacks from Prospect as well. So I believe that we can be granted a (d)(6) variance for the heights.

[5T-160:20-161:7.]

Mr. Edward Snieckus the Board's professional planner and Mr. Gary Ascolese, the Board's professional engineer / traffic expert each asked questions of Glen Park's witnesses and provided their own testimony regarding the Initial Application during the May Hearing.

Several members of the public appeared, asked questions of the witnesses and provided testimony during the May Hearing. At the conclusion of the public comments, the Board announced that the matter would be continued at the June 8, 2017 regular public meeting of the Board.

The fourth public hearing before the Board occurred on June 8, 2017 (the "June Hearing"). Prior to the June Hearing, Glen Park submitted a revised application and plan which proposed to eliminate the previously identified club house building; proposed to reduce the total number of residential units from 57 units to 52; proposed to eliminate all tandem parking spaces; to provide a total of 103 on-site parking spaces; eliminated utilization of Block 124, Lot 4 of the RV Property; and specifically designated all proposed residential units as age-restricted (55 years old and older) while setting aside 7 of the 52 units for low and/or moderate income residents, (hereafter the "Revised Application"). Under the Revised Application, Glen Park proposed to retain sole vehicular access to the GP Property through the three curb cuts previously identified along Lot 1 of the RV Property (which area

undisputedly encroaches upon the PSEG Property).

Glen Park provided an additional public notice for the June Hearing to property owners within 200 feet of the GP Property, the RV Property and the PSEG Property. The following is a copy of the public notice provided for the June Hearing:

BOROUGH OF GLEN ROCK ZONING BOARD OF ADJUSTMENT

AMENDED NOTICE OF PUBLIC HEARING

Pursuant to the provisions of the Municipal Code of the Borough of Glen Rock, and the provisions of N.J.S.A. 40:55D-12, notice is hereby given that Glen Park Village, LLC, owner of the property at 569 and 575 Prospect St., Glen Rock, New Jersey 07452, also known as Lots 2 and 3 in Block 127 on the tax assessment map of the Borough of Glen Rock, has filed an application with the Zoning Board of Adjustment of the Borough of Glen Rock. The property is located in the A-2 Zone.

As originally filed, the applicant sought the approvals needed to construct a 57 unit multi-family housing complex, with affordable units, in two buildings and a clubhouse on Lots 2 and 3. The plan has been revised to call for 52 age-restricted units in two buildings, with no clubhouse, on Lots 2, 3 and 4 (the latter lot owned by the Village of Ridgewood).

The applicant has chosen to bifurcate the application pursuant to N.J.S.A. 40:55D-76(b), so as to seek only the required use variance at this time. The proposed use is not included in the list of permitted uses in the A-2 Zone as found in Section 230-52 of the Ordinance, incorporating by reference Section 250-49. If the application is approved, the applicant will file a subsequent application for site plan approval, which may include a request for bulk variances, and waivers, deviations or exceptions from the site plan standards set forth in the Ordinance.

The applicant proposes to use a roadway located on Lot 1 in Block 127, property owned by the Village of Ridgewood, and which encroaches onto Lot 1 in Block 128.01, for access to the project. Any approval granted by the Board will be conditioned upon the applicant's ability to acquire access rights over Lot 1 in Block 127 and to acquire Lot 4 in Block 127.

Public hearings have been held on January 12, 2017, March 9, 2017 and May 11, 2017.

The applicant also seeks any other variances from the Zoning Ordinance, waivers, deviations and exceptions which the Zoning Board deems to be required within the scope of the bifurcated application seeking use variance relief, including without limitation, a height variance pursuant to N.J.S.A. 40:55D-70(d)(6), a density variance pursuant to N.J.S.A. 40:55D-70(d)(5), a side yard setback and combined side yard setback variances, a rear yard setback variance, a building coverage variance, an impervious coverage variance and a gross floor area variance..

A copy of the application and related documents are on file in the Office of the Borough Clerk, located in the Glen Rock Borough Hall, Harding Plaza, Glen Rock, New Jersey 07452, and may be inspected by members of the public, weekdays, during regular business hours.

A public hearing for this application has been scheduled for Thursday, June 8, 2017, at 7:30 PM or as soon thereafter as the matter can be heard, in the Council Chambers of the Glen Rock Borough Hall, Harding Plaza, Glen Rock, New Jersey 07452. All interested parties are invited to appear and be heard at that time.

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The record reflects that during the June Hearing, Glen Park again presented testimony from the following expert witnesses: Mr. Klenk, Mr. Latincsics and Mr. Rocciola. Ms. Gregory, Glen Park's professional planner, was not present during the June Hearing. Glen Park's counsel, however, stated at the commencement of the June Hearing that Mr. Latincsics, who is a licensed professional planner, would testify "not to offer the planning testimony all over again, but hopefully to respond to some of the concerns that [the Board's] planner, Mr. Snieckus, set forth in his report." 6T 7:9-12.

Mr. Harrison also provided additional fact testimony and provided responses to questions from the Board members and the Board's experts in connection with the Revised Application during the June Hearing. See 6T 12:16-46:12. He specifically testified regarding the location of the buildings under the revised plan and provided fact testimony regarding the proposal to provide affordable housing units. Ibid.

Mr. Klenk testified regarding the revised internal layout of the proposed buildings. He confirmed that the elevations and exterior aesthetics of the proposed buildings had not been altered under the Revised Application. 6T 48:7-49:25.

Mr. Latincsics was also re-called to provide engineering testimony concerning the Revised Application. He testified regarding the two detached buildings and their proposed revised

location on the site. He further testified that under the Revised Application, 103 parking stalls (9' x 18' in size) were proposed where 102 were required. He confirmed that all tandem spaces had been eliminated. He also testified that, under the Revised Application, Glen Park proposed 54 total residential units (age-restricted to 55 years and older), 7 of which would be designated as affordable housing. Mr. Latincsics provided supplemental testimony regarding the height of the proposed buildings. 6T 51:3-14. He stated that while the building height themselves has not changed

we raised the level of the ground, which is the basis of the roof height definition from the highest ridge, that has not changed, the average of the four corners. That is the definition in the zoning code. So that is, it's a height of 40-foot from the highest ridge, the average of the four corners. And it was achieved with flexibility in the grading with the relocated buildings.

[6T 51:7-14.]

The project under the Revised Application still required a variance pursuant to N.J.S.A. 40:55D-70(d)(6) since the proposed building height of 40 feet exceeds the maximum height of 32 feet permitted in the A-2 Zone by more than 10%.

Mr. Rocciola was also recalled and provided additional testimony during the June Hearing as well. He testified that under the revised plan, all units are to be age-restricted for residents 55 years old and older. Mr. Rocciola testified that, under the

Revised Application

[i]n terms of traffic, the traffic itself is reduced by at least 50 percent. It has to do with the number of units is reduced, the number of bedrooms and the tenant mix, being age-restricted, the peak hour traffic is down because less tenants are commuting during the commuter peak hour and the daily trips are down. So, overall, it's at least 50 percent of what would be - 25 percent reduction, I should say.

[6T 53:20-54:3.]

Mr. Latincsics was then called to provide planning testimony since Ms. Gregory was not available. He was qualified as an expert planner and provided additional planning testimony regarding the Revised Application. See 6T 63:2-90:3. He testified that

we also have the fact that we're directly fronting on a county collector roadway is a benefit. Again, this would be a very different project, if it was within the heart of the A-2 zone on Gramercy Place. Added to that, the access driveway, which we gave previous extensive testimony that it is a public road. One could debate the intensity of that use, but it is a public road today. Glen Rock has an easement across that public road. It is previously approved as there's curb cuts out on that driveway for previously approved single family homes. So, the driveway is actually a benefit, it makes the site suitable, it's not a detriment, it's an absolute benefit to the utilization of the site for the proposed use, and it's connecting directly to a county collector roadway, which is a benefit.

So for those reasons, we believe the site is particularly suited for the proposed use.

[6T 67:1-20.]

Mr. Latincsics further testified that

[f]or the reasons previously provided why this site is ideal, there is no negative impact for rezoning if for multifamily housing. Again, that theme of providing semantics, be it 'age-restricted' or 'senior housing,' it is consistent in the prior master plan examinations in 2002, 2008 and 2014.
[6T 68:7-12.]

Mr. Snieckus, the Board's professional planner, and Mr. Ascolese, the Board's professional engineer / traffic expert, also provided testimony and comments regarding the Revised Application during the June Hearing. Several members of the public again appeared, asked questions of the witnesses and provided testimony. Upon conclusion of all testimony, comments from the public, submission of all exhibits and comments from Board members, the Board voted to approve Glen Park's application, as revised, by a vote of 6-1.

A Resolution memorializing the Board's findings and conditions of approval was reviewed and adopted by the Board on August 10, 2017. The record reflects that the Resolution was published on August 18, 2017. The Board identified the following relevant findings of fact, and conclusions of law in the following paragraphs of its Resolution:

50. The Board accepts the testimony and exhibits of the Applicant's experts as well as the Board's own experts as compelling and finds that the d(1) variance for multifamily use in the A-2 zone is warranted.

51. The Applicant proposes a use at the Property that is not permitted in the A-2 Zone. In order to satisfy the positive criteria, the applicant must show proof of special reasons. Special reasons may be established by showing that the use promotes the general welfare because the site is particularly suited for the use. In this instance, the Applicant has provided special reasons demonstrating that the use promotes the general welfare because the site is particularly suited for the use as multifamily development as described by the Applicant. Specifically, the Property is the only two lots fronting on Prospect Street adjacent to the sewer treatment and Ridgewood DPW site, and uniquely and particularly suited to the proposed use as it creates a transition from the other uses to the residential use to the south. The Property is also 7.7 times the minimum lot size for the zone, and thus large enough and in a location providing a residential transition that is particularly suitable for multifamily use. The Board finds that this particular use, as described in detail and as revised during the hearing will fit along with the other permitted uses in the neighborhood of the Property. Furthermore, the Board agrees with the Applicant's planner's testimony that the purposes of zoning pursuant to N.J.S.A. 40:55D-2(a) of the public health, safety, morals and general welfare are advanced, because the proposal incorporates affordable housing. In addition, the proposed plan exhibited for the use variance provides sufficient setbacks and buffers to offset any impacts to the surrounding uses. N.J.S.A. 40:55D-2(i) is also prompted as the proposed use provides a desirable visual environment compatible with the residential

neighborhood. The proposed development also promotes N.J.S.A. 40:55D-2(h) in encouraging transportation routes which will promote the free flow of traffic by eliminating existing curb cuts from a county road with safer access to be obtained by use of the existing access road. All of these purposes will be advanced by permitting the proposed use at the Property.

52. The Applicant must also satisfy the negative criteria by showing that the requested variance can be granted without substantial detriment to the public good and that granting of variances will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Applicant has shown that permitting the multifamily use will not result in a substantial detriment to the public good, and that the proposed use is compatible with the surrounding uses. The Board finds that there are no health or safety concerns associated with the proposed use. Furthermore, the use as testified to by the Applicant will not generate a significant amount of traffic and will be a benefit to the community. The Board agrees with the Applicant's planner's and engineer's testimony that the impact of the proposed use variance on the surrounding properties will be minimal, and agrees with the testimony of Applicant's traffic expert that the roads can accommodate the added traffic without any significant impact.
53. The Applicant has also shown that granting the requested use variances will not substantially impair the intent and purpose of the Zone Plan and the Zoning Ordinance. Multifamily housing is provided for and encouraged in the Master Plan documents. Although age-restricted housing was recently considered by the

Mayor and Council for this proposed area as a zone change and not completed, the age restriction nature was not identified as objectionable and was in fact recommended for approval by the Planning Board. The enhanced quality of proof required from Medici v. BPR, Co., 107 N.J. 1 (1987) that the grant of the use variance will not be inconsistent with the intent and purpose of the master Plan and Zoning Ordinance has been satisfied.

54. The Board concurs with the Applicant's professionals' testimony that the project will not have an adverse impact on municipal services, and that an age-restricted facility like this will also not place a burden on the school system.
55. The Board finds that the Applicant has satisfied the requirements for granting of d(6) variance. The standard, as set forth in the case of Coventry v. Westwood, requires a less stringent standard of proof than d(1) or d(2) variance. The large site would accommodate any problems associated with the proposed height. The use and the changed building height will not have any negative impact on the health or safety of the public, as there is no effect on adequate light, air, or open space in the adjacent areas since the shadow patterns from the building are mostly on the Property, and only one on the adjacent DPW property. Furthermore, the same purposes of zoning advanced by d(1) variance will be advanced by permitting the increased height at the Property.

The Board also identified several reports and exhibits in the following portion of the Resolution which were reviewed and considered by the court here:

57. ...

- a. Gary M. Ascolese, P.E., Glen Rock Engineer - December 28, 2016, rev. April 5., 2017;
- b. Edward Snieckus, Jr., P.P., Glen Rock Planner - December 28, 2016;
- c. Gary M. Ascolese, P.E., Glen Rock Engineer - January 3, 2017;
- d. Edward Snieckus, Jr., P.P., Glen Rock Planner - March 24, 2017;
- e. Gary M. Ascolese, P.E., Glen Rock Engineer - May 30, 2017;
- f. Edward Snieckus, Jr., P.P., Glen Rock Planner - April 5, 2017;
- g. Edward Snieckus, Jr., P.P., Glen Rock Planner - June 7, 2017;

58. ... The Board accepts the Exhibits listed below as Exhibits in evidence at the public hearing:

<u>Exhibit</u>	<u>II. Title</u>	<u>Date</u>	<u>Last Revised</u>	<u>Meeting Date</u>
A-1	Copy of Original 1953 Zoning Map with 1960, 1978 and 2001 Revisions	4/1/1953	2001	1/12/17
A-2	Existing Land Use Map from 2002 Master Plan Report.	4/8/2002		1/12/17
A-3	Comprehensive Master Plan Map	4/8/2002		1/12/17
A-4	2002 Master Plan by Michael F Kauker Associates	4/8/2002		1/12/17
A-5	2008 Master Plan Re-examination Report	1/23/08		1/12/17
A-5	2014 Master Plan Re-examination Report	11/14		1/12/17
A-7	Ho-Ho-Kus Brook Aerial Photo	9/5/12	12/4/13	1/12/17
A-8	40 Scale Aerial Map	1/12/17		1/12/17
A-9	40 Scale Aerial Map with Site Plan "Cut & Paste"	1/12/17		1/12/17
A-10	60 Scale Black & White Area Plan	1/12/17		1/12/17
A-11	County Park Plan			1/12/17
A-12	Existing Conditions Map, Lots 2, 3 & 4, Portion of Lot 13, Block 127, for Glen Park Village, LLC	11/13/13	8/15/14	1/12/17
A-13	2005 NTHMC - FEMA FY-03 Flood Insurance Study	9/5/12		1/12/17

A-14	Sheet 1 to 4 Flood Hazard Area (FHA) Verification Plan Lots 2 & 3, Block 127 for RIC Development, LLC	9/5/12	6/7/13	1/12/17
A-15	NJDEP Flood Hazard Area Verification Approval, File No. 0222-13-0001.1 FHA 130001	6/10/13		1/12/17
A-16 & A-16-A	Sheet 1 and 2, Preliminary Site Plan Lots 2 & 3, Block 127, Glen Park Village for Glen Park Village, LLC	8/31/12	11/21/16 2/9/17	1/12/17 2/9/17
A-17	Site Photographs	varies		1/12/17
A-18	NJDEP Letter of Interpretation: Absence Determination, DLUR File No. 0222-13-0001.2 FWW140001	4/14/14		1/12/17
A-19 & A-32	Architectural Plans, Glen Park Village by Fred Klenk, AIA 2 Sheets; 9 Sheets	11/21/16		1/12/17 3/9/17
A-20	Colored Architectural Rendering	1/12/17		1/12/17
A-21	Traffic Assessment, Glen Park Village, Rocciola Engineering	11/23/16		1/12/17
A-22	Front Setback Study Lots 2-12, Block 127 for Glen Park Village, LLC	5/24/16		1/12/17
A-23	NJDEP Permit 0222-13-0001.3 FHA150001, 0222-13-0001.3 FWW 150001, 0222-13-0001.3 FWW 150003	4-14-15		1/12/17
A-24	Bergen County Department of Planning and Economic Development Conditional Approval	4/15/15		1/12/17
A-25	Bergen County Soil Conservation District Certification	3/12/15		1/12/17
A-26	Boswell Engineering Review Letter	1/3/17		1/12/17
A-27	Burgis Associates, Inc. Memorandum	12/28/16		1/12/17
A-28	NJDEP Letter of Interpretation Lot 127 (County Park)	4/21/14		1/12/17
A-29	Deed from Village of Ridgewood to Jeffrey and Gail Mandel	5/26/89		1/12/17
A-30	Deed of Easement between the Village of Ridgewood and the Borough of Glen Rock	10/3/02		1/12/17
A-31	Prospect Street Low-Point Inlets	1/19/17		5/11/17
A-33	RSIS Water Use	2/9/17	2/9/17	
A-34	Glen Rock Square (Trafalager) Kara Homes Site Plan	3/27/17		5/11/17
A-35	8.5" x 11.0" of Access Driveway	5/11/17	5/11/17	5/11/17
A-36	Glen Rock Square Photographs.	5/3/17		5/11/17
A-16-B	Preliminary Site Plan, Lots 2 & 3 by Conklin Associates, Age Restricted, 52 Apts, 7 Affordable, 103 Stalls	5/17/17	6/7/17	6/8/17
A-37	Rocciola Engineering Traffic Assessment Report	2/17/17		5/11/17
A-38	Conklin Associates Site Access Memo	5/11/17		5/11/17
A-39	Revised Architectural by Fred Klenk for Age Restricted, 2 sheets	2/1/17	6/8/17	6/8/17
A-40	Burgis Associates Memorandum dated 6/7/17	6/7/17		6/8/17

The Board's Resolution also identified the following conditions of approval:

- a) Notwithstanding the approval granted herein, the Applicant shall comply with all of the ordinances of the Borough of Glen Rock and all applicable county, state, and federal statutes, ordinances, rules and regulations except with respect to the variances granted herein. Without limiting the foregoing, the Applicant shall comply with any and all applicable requirements of the Americans with Disabilities Act.
- b) The approval of the within Application shall not be deemed to constitute a determination by this Board as to whether the proposed Application complies with the Americans with Disabilities Act or the applicable regulations promulgated thereunder.
- c) The Applicant shall comply with all of the stipulations made during the hearing on this Application including but not limited to all of the stipulations enumerated herein.
- d) The Applicant shall obtain the approval (or waiver thereof) of any and all other governmental agencies having jurisdiction over the proposed development, including but not limited to the New Jersey Department of Environmental Protection and the Bergen County Department of Planning and Economic Development.
- e) Unless otherwise specifically addressed herein or at the hearings on March 9, 2017, May 11, 2017, and June 8, 2017, the Applicant shall comply with the recommendations of all Borough Officials having jurisdiction with respect to the use of the subject Property.

- f) The Applicant shall post fees and deposits as required by applicable ordinances of the Borough of Glen Rock which shall include payment to the Borough's professionals for the review of the within Application and the inspection of work to be performed incidental thereto.
- g) The Applicant shall certify that all taxes and assessments have been paid up to the present time.
- h) The Applicant shall submit a site plan application which confirms to the plans submitted in support of this bifurcated use variance Application along with all required plan for any and all other approvals and/or permits which are required for the proposed development shall obtain any and all necessary permits and approvals or waivers before any development activity occurs at the Property. This shall include, but shall not be limited to Ridgewood Water, County of Bergen and State approvals including but not limited to New Jersey Department of Environmental Protection.
- i) Subject to the approval of a site plan application, the Applicant shall, at the Borough of Glen Rock's discretion, either provide for any additional affordable units required by the Fair Housing Act and COAH regulations or make a cash contribution in lieu of constructing any such additional required units. Any cash contribution would be subject to a written agreement approved by the Borough of Glen Rock.
- j) Any buildings constructed subsequent to a site plan approval shall include full indoor sprinkler coverage, subject to written approval by the Glen Rock Fire Department Chief or his successor as to the height of the highest window sill and sprinkler coverage provided.

- k) The Applicant shall obtain any required approvals from the Village of Ridgewood for the proposed development's use of the roadway existing on the Ridgewood Sewer Treatment Property for ingress and egress to the Property. If Ridgewood's approval is not obtained, this approval shall be null and void.
- l) Subject to approval of a site plan application, the Applicant shall comply with the Fair Housing Act and COAH regulations, and the units in the development shall be deed restricted for individuals aged 55 and over and restricting any children ages 19 and under.

Following the Board's adoption and publication of the Resolution, Plaintiff timely filed the subject action in lieu of prerogative writs. Plaintiff's complaint asserts the following five counts and pertinent allegations:

Count I - Improper Zoning by Variance

. . . .

156. The Board's decision to grant Glen Park's application for a use variance constitutes an impermissible act of zoning by variance.

157. The Board's decision to grant Glen Park's application for a use variance is in direct contravention of the Borough Council's decision to reject this type of development.

158. The Board's approval of the Application constituted an impermissible re-zoning of the GP Property, RV Property, and PSE&G Property.

159. The Board exceeded its legislative authority by approving the Application.

. . .

Count II Glen Park failed to satisfy the requisite criteria for a variance under N.J.S.A. 40:55D-70(d)(1)

. . .

172. The Board failed to consider the Borough Council's consistent position that age restricted housing should be developed in the downtown district near commercial uses.

173. The evidence adduced at the hearing failed to establish the necessary positive and negative criteria to support the grant of the variances sought by the Application.

174. The evidence adduced at the hearing failed to establish the necessary positive and negative criteria to support the grant of the variances in light of the Borough Council's repeated rejection of the AR-1 Zone.

175. The Board's decision to approve Glen Park's Application was arbitrary, capricious and unreasonable.

. . . .

Count III The Glen Rock Zoning Board lacked jurisdiction to hear Glen Park's application due to a failure to provide adequate notice

. . . .

187. Glen Park's failure to provide notice to all owners within 200 feet of the RV Property and PSE&G Property rendered the Board without jurisdiction to conduct the January 12, 2017, March 9, 2017 and May 11, 2017 hearings.

. . . .

189. The Board did not re-start the hearings after the additional notice of the June 12, 2017 hearing was provided.

190. The Board's jurisdiction to hear Glen Park's Application for a use variance on January 12, 2017 March 9, 2017 and May 11, 2017 is not restored through Glen Park's attempt to rectify this omission by providing notice to property owners within 200 feet of the RV Property and PSE&G Property for the June 8, 2017 hearing.

Count IV Glen Park lacked standing to request a use variance over the RV Property and PSE&G Property

. . . .

199. PSE&G did not sign the application for a variance submitted by Glen Park, nor did it otherwise indicate its consent to a change in use of its land.

200. Accordingly, Glen Park could neither be the applicant nor the developer of the RV Property and PSE&G Property which were part of the approval which was premised on the use of the Access Driveway.

201. Glen Park lacked standing to have the Board grant an approval for the RV Property and PSE&G Property.

. . . .

Count V The Board lacked jurisdiction to grant a use variance over the Property

. . . .

206. The Board, by conditioning Glen Park's use variance solely upon acquisition of a permit to use the Access Driveway and a requirement that the future site plan application substantially conform to the concept plan already submitted, effectively granted a use variance for the RV Property, PSE&G Property and Access Driveway.

207. The RV Property, PSE&G Property and Access Driveway were not listed as properties that were part of the Application. The MLUL does not empower the Board to grant use variances for properties that are not part of the application which is before it.

Glen Park and the Board each timely filed an answer denying all claims asserted under the complaint.

Plaintiff now argues that the Board's approval of Glen Park's Revised Application was a de facto rezoning of the GP Property and that the approval was also arbitrary, capricious, and unreasonable. Plaintiff specifically contends that the Board's approval was an impermissible usurpation of the Borough Governing Body's zoning powers under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL"). Plaintiff argues that the Borough Governing Body twice rejected multi-family use at the GP Property by voting against adoption of proposed Ordinance 1739 and proposed Ordinance 1746. Plaintiff relies upon the appellate court's holding in Township of North Brunswick v. Zoning Bd. of Adj. of Tp. of North Brunswick, 378 N.J. Super 485, 494 (App. Div. 2005) wherein the appellate court vacated an approval given in contravention to a recent zoning amendment adopted by the North Brunswick municipal governing body. Plaintiff argues that the Board's actions here are even more egregious than those vacated in Twp. of North Brunswick.

Plaintiff argues that the Borough Governing Body's actions here in its review of proposed Ordinance 1739 and proposed Ordinance 1746, were site specific to the Glen Park Property and Lot 4 of the RV Property, and, if adopted, would have permitted the same use and almost an identical density as was approved by the Board through variance. Plaintiff argues that the Board's approval here was granted within months after the rejection of the proposed zoning change to permit multi-family residential use. Plaintiff asserts that the Board's approval of the Revised Application, in essence, effectuated the rezoning of the GP Property by variance.

Plaintiff asserts that Glen Park's proper avenue of redress was to file an action in lieu of prerogative writs challenging the rejection of proposed Ordinance 1739 and proposed Ordinance 1746, not to seek a use variance from the Board. Plaintiff argues that by failing to challenge the action of the Governing Body, Glen Park should not now be permitted to argue that said rejection of the proposed ordinances should not be considered by the court.

With regard to the substance of Glen Park's application, Plaintiff further argues that Glen Park failed to satisfy the requisite criteria for approval of a use variance under N.J.S.A. 40:55D-70(d)(1). Plaintiff argues that Glen Park failed to satisfy the requisite "positive criteria" and "negative criteria" required in accordance with the New Jersey Supreme Court's holding under

Medici v. BPR Co., 107 N.J. 1 (1987).

Plaintiff argues that multi-family use at the GP Property is not recommended under the 2002 Master Plan, the 2008 Master Plan Reexamination or the 2014 Master Plan Reexamination which each stressed the maintenance of the single family residential character of the A-2 Zone district. Plaintiff argues that the Master Plan, in fact, specifically directs the Borough to maintain the single-family character in the A-2 zone and to encourage development of multi-family housing in commercial zones in order to spur development in commercial/business areas.

Plaintiff asserts that there is insufficient evidence in the record to support the Board's finding that the GP Property is particularly suited or is an appropriate location for 52 unit multi-family age-restricted housing as proposed under the Revised Application. Plaintiff argues that Glen Park failed to provide competent evidence during the public hearings which identifies the special reasons required for granting the subject use variance as required under the MLUL and applicable case law.

Plaintiff argues that the "particular suitability" of a site requires more than just a showing that the subject lot is large enough to accommodate the proposed use. Plaintiff also argues that although the Board determined that the proposed use of the GP Property creates a "transition" between uses that are permitted in

the zone, creating a transition for permitted uses does not constitute particular suitability.

As to the issue concerning Glen Park's creation of affordable housing units on the site, Plaintiff asserts that the ultimate responsibility of planning the Borough's affordable housing is reserved for the Borough Governing Body, not the Board. Plaintiff also asserts that Glen Park did not provide adequate testimony during the public hearings to support a finding that the 7 affordable housing units under the Revise Application could not be provided at another location within the Borough or could not be provided in a manner that was consistent with the Borough Master Plan and zoning ordinance. Plaintiff also argues that the Borough Governing Body twice rejected zoning amendments which would have provided for potential affordable housing in connection with the development of the GP Property under proposed Ordinance 1739 and proposed Ordinance 1746.

Plaintiff further argues that the Revised Application failed to satisfy the required positive criteria since the Master Plan recommends creation of both senior and multi-family housing, but that the senior housing recommended under the Master Plan is limited to those 62 years of age or older, not 55 years old and older as proposed by Glen Park. Plaintiff further argues that the Master Plan also does not recommend the level of density approved by the Board here.

Finally, Plaintiff argues that the Board's finding that the proposed use will promote the free flow of traffic is unsupported in the record. Plaintiff asserts that there is no proof in the record which reveals that replacing the two existing single family residential driveways with 468 trips through the Lot 1 of the RV Property as testified by Glen Park's witnesses will improve the flow of traffic for the rest of the community or surrounding area.

With regard to the negative criteria, Plaintiff again argues that Glen Park failed to demonstrate that the Revised Application is consistent with the Borough's Master Plan and zone plan. Plaintiff asserts that the Board inappropriately focused on select portions of the Master Plan to justify its approval, but that when viewed as a whole, it is clear that the Revised Application actually violates the recommendations of the Master Plan. Plaintiff specifically asserts that the 2014 Master Plan Reexamination sets forth a clear objective to maintain single-family districts and to discourage development of two-family housing, let alone multi-family projects as proposed here, in the A-2 Zone. Plaintiff argues that the Master Plan actually notes a concern regarding the potential replacement of existing single family dwellings in residential neighborhoods with large structures. Furthermore, Plaintiff argues that while the Master Plan does identify a need for senior housing and multi-family housing in the Borough, the 2014 Master Plan Reexamination

specifically states that senior citizen housing should be supported at "appropriate locations" and that multi-family development should be utilized to attract housing to the Borough's downtown district, not at the GP Property or within the A-2 Zone. For these reasons, Plaintiff asserts that Glen Park failed to satisfy both the positive and negative criteria required to sustain use variance approval and that accordingly, the Board's approval of the Revised Application was arbitrary, capricious and unreasonable and should be vacated by the court.

Plaintiff also argues the Glen Park failed to provide proper notice pursuant to N.J.S.A. 40:55D-12 and N.J.S.A. 40:55D-11 and therefore, the action of the Board is jurisdictionally defective. Plaintiff argues that notice for development must be provided to all property owners within 200 feet of the subject site being developed. Plaintiffs argue that "development" is defined under MLUL as to include the "change in any use of any building or other structure, or land or extension of use of land." N.J.S.A. 40:55D-4. Plaintiff argues that by failing to provide notice of the application to property owners within 200 feet of the RV Property and PSEG Property and by failing to provide notice that Glen Park intended to utilize the RV Property and PSEG Property as part of its development until the Third Notice and final hearing on June 8, 2017 invalidates the action of the Board. Plaintiff asserts that the land which provides a means of access to a particular use

is not only accessory to that use, it also takes on the character of that use. Wolf v. Zoning Bd. Of Adjustment of the Borough of Park Ridge, 79 N.J. Super. 546, 550-551 (App. Div. 1963). Plaintiff argues that since the proposed use of the GP Property greatly expands the use of the Lot 1 of the RV Property, use variance approval is required for that parcel as well. Furthermore, Plaintiff argues that since the PSEG Property is directly impacted by the utilization of Lot 1 of the RV Property, variance approval for the PSEG Property was also required. Plaintiff relies upon the opinion in Brower Development Corp. v. Planning Board of Clinton, 255 N.J. Super. 262, 268 (App. Div. 1992) where the appellate court held that notice must be provided to owners of "off-site" property that is to be acquired and incorporated within the project itself. Plaintiff argues that the notice defect was exacerbated when the Board did not restart the hearing process on June 8, 2017 and instead merely continued where it left off following the prior hearings.

Plaintiff also argues that Glen Park lack standing to apply for, and the Board lack jurisdiction to grant, variance relief to use the RV Property and PSEG property as part of Glen Park's development since neither the Village of Ridgewood nor PSEG authorized or consented to the application. Plaintiff asserts that Glen Park's application required "d" variances for Lot 1 of the RV Property and the PSEG Property. Plaintiff claims that Glen

Park's Initial Application, and Revised Application, did not include those two lots. Plaintiff argues that since Glen Park could not be considered a "developer" of those particular lots under N.J.S.A. 40:55D-5 without any real interest in the RV Property or the PSEG Property, or even the consent of the owners, Glen Park could not be an "applicant" for these properties under N.J.S.A. 40:55D-3. Plaintiff also relies upon the appellate court's holding in Kline v. Bernardsville Assn, Inc. 267 Super. 473 (App. Div. 1993) where it was determined that a board lacked power to act upon land which is not part of an application and that the MLUL does not give a board authority over the rights of non-applicants. Plaintiff concludes that since the Board here did not have the jurisdiction to grant the subject approval and accordingly, its action was arbitrary, capricious and unreasonable.

Glen Park argues there is ample evidence in the record to support the Board's approval of the bifurcated application and that the Board provided a comprehensive Resolution adequately detailing its findings. Glen Park also argues that the jurisdictional requirements for the Board's approval were satisfied as under the bifurcated application since Glen Park sought use variance approval for its property (Block 127, Lots 2 and 3) only. Glen Park acknowledges that the Board's approval of the use variance does not grant relief to the RV Property or the PSEG Property and admits that it did not have consent or approval

of the Village of Ridgewood or PSEG to utilize their properties in connection with the proposed development at the time of the public hearings.

Glen Park argues that the Second Notice provided for the May Hearing does not constitute an admission of jurisdictional defect and that the Second Notice was issued merely out of an abundance of caution since the RV Property and PSEG Property were heavily discussed during the course of the hearings. Glen Park argues that since it had no contractual rights relating to the RV Property or the PSEG Property, those properties were not part of the application and no relief was sought in connection with those parcels. Glen Park argues further that any notice defect was cured by the issuance of the Second Notice and Third Notice since "much of the testimony was repeated at the May and June hearings," and some of the testimony was ultimately not needed because the plan was revised. Glen Park's Trial Brief at 33.

Substantively, Glen Park argues that its witnesses provided credible testimony during the public hearings which established the "special reasons" required to support use variance approval. Glen Park, citing the New Jersey Supreme Court's holding in Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268 (1967), argues that where there is a link between the manner in which the general welfare is served and the chosen location for a development, it can be determined that the subject site is particular suitable for

the proposed use. Glen Park asserts that the Borough's Master Plan, inclusive of the 2008 Master Plan Reexamination and the 2014 Master Plan Reexamination, recommends the development of multi-family and, in particular, age-restricted or senior, housing. Glen Park argues that the testimony presented during the public hearings reveals a shortage of available land and multi-family or senior housing in the Borough and that the goals of the Master Plan, 2008 Master Plan Reexamination and 2014 Master Plan Reexamination have been frustrated by the lack of any provision in the current Borough ordinance which will realistically achieve multi-family development in the Borough.

Glen Park also argues that the Board correctly determined that the multi-family, age restricted use proposed under the Revised Application is appropriate due to the size and location of the GP Property. Glen Park asserts that there is no other property in Glen Rock that has the same features as the GP Property. Glen Park also asserts that while the entire development cannot be said to be "inherently beneficial," the development and designation of the 7 affordable units proposed, in of itself, is inherently beneficial. Glen Park argues that the proposed multi-family use for the property is more appropriate than the single-family use and that the positive criteria required under Medici, supra, has been satisfied.

Glen Park also argues that it presented credible revealing that the Revised Application could be granted without substantial detriment to the public good. Glen Park argues that the Board's findings regarding negative impact or substantial detriment were supported by competent testimony in the record. Glen Park further argues that the future site plan review, as required under the bifurcated process, will address items including landscaping, screening, lighting and drainage.

With regard to the Borough Governing Body's review of proposed Ordinance 1739 and proposed Ordinance 1746, Glen Park argues that the fact that the subject proposed ordinances were not adopted is not evidence of an affirmative act on behalf of the Governing Body to reject the development proposed by Glen Park. Glen Park asserts that a fair conclusion is that there was actually a degree of support for the project by the Borough Councilmembers, even among those who voted in the negative. Glen Park argues that the conclusions Plaintiff asks the court to draw from the defeat of the proposed Ordinances is nothing more than mere speculation.

Glen Park also argues that the facts here are distinguishable from those in Twp. of North Brunswick, supra, as relied upon by Plaintiff. Glen Park argues that in Twp. of North Brunswick, the subject property had just recently been re-zoned to specifically prohibit the exact use that was sought by the applicant. Here, Glen Park argues, there has been no affirmative act to prohibit

the use proposed. Further, Glen Park asserts that the Twp. of North Brunswick case merely exemplifies an analysis of whether the municipality's decision to sue the zoning board was justified based on grounds that the variance would substantially alter the character of the district as described in the zoning ordinance. Glen Park argues that here, the Board found, based on the testimony presented, that approval would not result in substantial alteration of the character of the zoning district. Further, Glen Park argues that the only remedy following the defeat of the AR-1 Ordinance was to apply to the Board for a variance. Glen Park asserts that the Board's approval was not arbitrary, capricious or unreasonable act and should be sustained by the court.

The Board argues that Plaintiff has failed to offer any proof or argument which overcomes the presumption of validity attributable to the Board's action. Furthermore, the Board argues that Glen Park provided uncontroverted testimony of four expert witnesses and a fact witness which provided adequate evidence to satisfy the criteria required for granting a use variance pursuant to N.J.S.A. 40:55D-70(d)(1). The Board argues that "the record is devoid of any testimony which discredits the testimony of Glen Park's professionals." Board's Trial Brief at 12. The Board also argues that the Board's decision was not arbitrary, capricious or unreasonable since the Board's approval was based upon uncontroverted, credible expert.

The Board argues that judicial review of a zoning board's determination presumes the validity of the board's actions and that even when doubt is entertained as to the wisdom of the Board's action, there can be no judicial declaration of invalidity without clear abuse of discretion by the Board. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 303, 312 (1995). The Board argues that its approval comports with the statutory criteria (both positive and negative), and is supported by adequate evidence presented during the public hearings. Accordingly, Glen Park argues that the approval cannot be deemed to be arbitrary or capricious. See, Burbridge v. Mine Hill Tp., 254 N.J. Super. 401, 385 (App. Div. 1991) citing Fobe Assocs. v. V0 Mayor of Demarest, 74 N.J. 519, 538 (1977); and Kramer v. Sea Girt Bd. of Adjustment, 45 N.J. 268, 296 (1965).

With regard to the positive criteria, the Board asserts that Ms. Gregory's testimony revealed that the proposed use promoted the purposed of the MLUL under N.J.S.A. 40:55D-2(a), that is, the advancement of public health, safety, morals and general welfare, by providing 7 affordable housing designated units. The Board also argues that Ms. Gregory's testimony identified that the goals of the MLUL under N.J.S.A. 40:55D-2(i) and N.J.S.A. 40:55D-2(h) were also promoted by the proposed use since the development provides a desirable visual environment compatible with the surrounding neighborhood and that it promotes the free flow of traffic by

eliminating curb cuts from Prospect Street, a county road, with safer access to be obtained from the access road at Lot 1 of the RV Property.

The Board argues that the testimony provided during the March Hearing reveals that the approved use also specifically advances the goals of the Master Plan also providing a balance of mixed housing in accordance with the changing demographics of the Glen Rock's residents, and by providing reasonable housing choice and modest modifications in land use needed in order to create a compatible and efficient land use pattern. The Board also argues that Glen Park provided credible evidence that the GP Property is particularly suited for the proposed use. The Board relies upon Ms. Gregory's testimony where she opined that the GP Property creates a transition from the adjacent uses and that since it is 7.7 times the size of the minimum lot size in the A-2 Zone, it is large enough to support the proposed development.

With regard to the negative criteria, the Board relies upon the testimony of Mr. Latinics and Ms. Gregory which opine that the proposed development will not cause a substantial detriment to the public good or zone plan since the GP Property has limited exposure to other permitted uses in the A-2 Zone. The Board argues that, as noted in the Resolution, the proposed use is compatible with the surrounding uses because it creates a suitable transition from the Ridgewood municipal use on the RV Property. The Board

relies upon the appellate court's holding in Bell Atlantic-New Jersey, Inc. v. Riverdale Zoning Board of Adjustment, 352 N.J. Super. 407, 413 (App. Div. 2002) where the court held that the fact that there are several non-conforming uses in the neighborhood constitutes proof that approval of a variance would not change the character of the neighborhood or be detrimental to the zone plan.

The Board asserts that its approval of the use variance sought did not usurp the zoning authority of the Borough Governing Body. The Board argues that Plaintiff's reliance upon the decision in Twp. of North Brunswick, supra, is misplaced since the facts here are distinguishable. The Board asserts that in Twp. of North Brunswick, the municipal governing body sued its own zoning board of adjustment for approving a use variance on a parcel which was recently rezoned to specifically prohibit the same use. Here, the Board argues, while age-restricted multi-family housing was considered by the Borough Governing Body under proposed Ordinance 1739 and proposed Ordinance 1746, the draft ordinances were not adopted and a zone change or change to the permitted or prohibited uses were not effectuated.

The Board argues that the record reflects that it carefully considered all testimony presented and that the Resolution is adequate and legally sufficient since it provides specific findings of fact necessary to sustain the Board's conclusions. The Board argues that the Resolution specifically cites the

exhibits and evidence reviewed as well as the relevant testimony from each of the applicant's witnesses upon which the Board based its decision. Furthermore, the Board argues that the Resolution references specific testimony from each witness that addresses the statutory criteria and its relation to Glen Park's application, as revised.

The Board also argues that it had jurisdiction to hear the application and that the three public notices provided prior to and during the course of the public hearings were sufficient. The Board contends that Glen Park conservatively provided notices three times during the course of the four public hearings and that the supplemental notice provided for the June 8, 2017 specifically included the RV Property and the PSEG Property. The Board also argues that no parties were prejudiced since any theoretical defect was cured when Glen Park served notice to those within 200 feet of the RV Property and the PSEG Property. The Board also notes that it did not grant any variance relief to the RV Property or the PSEG Property and that the relief granted was solely and exclusively for bifurcated use variance approval on the GP Property. The Board also argues that the Resolution specifically requires Glen Park to return to the Board for site plan review and also requires that Glen Park must obtain approval for the use of Lot 1 of the RV Property from the Village of Ridgewood.

When reviewing challenges to decisions of municipal land use boards as in the matter presented here, the court is guided by a wealth of precedential case law. "In evaluating a challenge to the grant or denial of a variance, the burden is on the challenging party to show that the zoning board's decision was 'arbitrary, capricious, or unreasonable.'" Price v. Himeji, LLC, 214 N.J. 263, 284 (2013), quoting Kramer v. Board of Adjustment, Sea Girt, 45 N.J. 268, 284 (1965). It has been held that

when a party challenges a zoning board's decision through an action in lieu of prerogative writs, the zoning board's decision is entitled to deference. Its factual determinations are presumed to be valid and its decision to grant or deny relief is only overturned if it is arbitrary, capricious or unreasonable.

[Kane Properties, LLC v. City of Hoboken, 214 N.J. 199, 229 (2013); See also, Cell South v. Board of Adjustment of West Windsor Township, 172 N.J. 75, 81 (2002).]

Review of the decision of a Planning Board or Board of Adjustment ordinarily is limited and "[a] board's decision 'is presumptively valid, and is reversible only if arbitrary, capricious, and unreasonable.'" New Brunswick Cellular Tel. Co. v. Bor. of S. Plainfield Bd. of Adj., 160 N.J. 1, 14 (1999) quoting Smart SMR of N.Y., Inc. v. Bor. of Fair Lawn Bd. of Adj., 152 N.J. 309, 327 (1998). The party challenging the municipal board's decision bears the burden of overcoming the presumption of validity and demonstrating the unreasonableness of the board's action. Toll

Bros., Inc. v. Bd. of Chosen Freeholders of Burlington, 194 N.J. 223, 256 (2008).

Zoning Boards of Adjustment are independent administrative bodies which derive its power through statute. See Duffcon Concrete Products, Inc. v. Cresskill, 1 N.J. 509, 515-16 (1949). The Board, acting its capacity as a zoning board of adjustment, acts in a quasi-judicial manner. Dolan v. De Capua, 16 N.J. 599, 612, (1954). It has been recognized that land use boards have particularized knowledge of local conditions and are therefore in the best position to review and determine requests for variance relief. Ibid. Courts should give deference to the boards' determinations where the board has procedurally and substantively complied with the statute. Ward v. Scott, 16 N.J. 16, 23 (1954). In other words, when reviewing board determinations, a court should presume those determinations were correct. Rexon v. Bd. of Adjustment of Haddonfield, 10 N.J. 1, 7 (1952).

It has long been held that a court should not substitute its own judgment for the board's, and should limit its review to the validity of the board's actions. People's Trust Co. v. Bd. of Adjustment of Hasbrouck Heights, 60 N.J. Super. 569, 573 (App. Div. 1959). Land use boards "because of their peculiar knowledge of local conditions must be allowed wide latitude in the exercise of delegated discretion." Kramer, supra, 45 N.J. at 296; Wilson

v. Brick Twp. Zon. Bd., 405 N.J. Super. 189, 196 (App. Div. 2009); Medical Ctr. At Princeton v. Princeton Twp. Zoning Bd., 343 N.J. Super. 177, 213 (App. Div. 2001). A court's scope of review "is not suggest a decision that may be better than the one made by the board, but to determine whether the board could reasonably have reached its decision on the record." Jock v. Zoning Bd. of Adj. Twp. of Wall, 184 N.J. 562, 597 (2005). A board's action is presumed to be valid and the Board is to be given "'wide latitude in the exercise of the delegated discretion.'" Burbridge v. Mine Hill Twp., 117 N.J. 376, 285 (quoting Medici, supra, 107 N.J. at 23. The burden is on the challenging party to overcome this highly deferential standard of review. See Smart SMR of N.Y., Inc., supra, 152 N.J. at 327; Kramer, supra, 45 N.J. at 296. As was stated by the appellate court in CBS Outdoor, Inc. v. Borough of Lebanon Planning Board, 414 N.J. Super. 563, 577 (App. Div. 2010), even if the court was "to harbor reservations as to the good judgment of a local land use agency's decision, 'there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved.'" (quoting Kramer, supra, 45 N.J. at 296-97). The court "cannot substitute an independent judgment for that of the boards in areas of factual disputes." Kramer, supra, 45 N.J. at 296. So long as the power exists to do the act complained of and there is substantial evidence to support it, the judicial branch of the government

cannot interfere. A local zoning determination will be set aside only when it is arbitrary, capricious or unreasonable. Even when doubt is entertained as to the wisdom of the action, or as to some part of it, there can be no judicial declaration of invalidity in the absence of clear abuse of discretion by the public agencies involved. Id. at 296-97 (citations omitted). Additionally, “[c]ourts give greater deference to variance denials than to grants of variances, since variances tend to impair sound zoning.” Med. Ctr. at Princeton, supra, 343 N.J. Super. at 199 (citing Cerdel Constr. Co. v. Twp. Comm. of E. Hanover, 86 N.J. 303, 307 (1981); Mahler v. Bd. of Adjustment of Fair Lawn, 94 N.J. Super. 173, 186, (App. Div. 1967), aff'd o.b., 55 N.J. 1 (1969)).

Though deference is given to a zoning board’s decision, “a reviewing court gives less deference to a grant than to a denial of a use variance.” Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adjustment, 388 N.J. Super. 67, 75 (App. Div. 2006) (citing Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. Super. 200 (App. Div. 1999)). When “reviewing the grant of a use variance, a court must consider whether a zoning board ‘in the guise of a variance proceeding, [has] usurp[ed] the legislative power reserved to the governing body of the municipality to amend or revise the [zoning] plan[.]’” Ibid. (quoting Vidal v. Lisanti Foods, Inc., 292 N.J. Super. 555, 561 (App. Div. 1996)).

With regard to the review of the Board's memorializing Resolution, the court notes that it has been held that "a board's resolution of factual issues must stand if supported by sufficient credible evidence in the record." Tr. Co. of N.J. v. Planning Bd. of Freehold, 244 N.J. Super. 553, 570 (App. Div. 1990). A board's resolution should contain sufficient findings based on the proofs submitted with reasons given for the decisions reached so that a reviewing court can satisfy itself that proper criteria were analyzed and correct procedures were followed. Medici, supra, 107 N.J. at 23. A board has the responsibility of making findings of fact, merely reciting testimony is not sufficient. Id. Pursuant to MLUL, the memorializing resolution acts as the board's official findings and conclusions of law with respect to an application and, when affirming or reversing a zoning board's decision, a court should only review the findings of fact and conclusions of law contained in the resolution. N.J.S.A. 40:55D-10(g); See Scully-Bozarth Post # 1817 of VFW v. Planning Bd. of City of Burlington, 362 N.J. Super. 296, 311-12 (App. Div. 2003).

The court here has considered the Borough Ordinances, Master Plan, entire record presented to the Board, the Resolution, and has reviewed the complaint, answers, all transcripts presented and argument of all parties, as further described herein. The court recognizes that the GP Property, the RV Property and the relevant portion of the PSEG Property are located entirely within the

Borough's A-2 Zone. Article X of the Borough Ordinances provides for permitted and prohibited uses in the A-2 Zone. Article X, Sections 230-52 through 53 provides the follow:

§ 230-52 Permitted uses.

This zone district is designed for single-family residential use, but permits:

- A. Any use in Article IX.
- B. A school, not closer than 30 feet nearest to the adjoining lot line.

§ 230-53 Prohibited uses.

Any use other than those listed in § 230-52 shall be prohibited.

Article IX, section 230-49 of the Borough Ordinance provides the following permitted uses to be included by reference within the A-2 Zone

§ 230-49 Permitted uses

- A. Not more than two roomers or boarders in single-family, owner-occupied premises, except domestic help employed on the premises.
- B. The office of a physician or surgeon, as defined within N.J.S.A. 45:9-5.1, as amended, or dentist residing on the premises, provided that not more than two persons not residing in such dwelling are employed in each office. Such persons may

be nurses, receptionists, secretaries or like assistants. Not more than 1/2 of the floor area of one story of the dwelling may be devoted to the uses permitted in this section.

- C. Municipal buildings, municipal uses and public schools and private schools not for pecuniary profit. A private school should not be closer than 30 feet to the nearest adjoining lot line.
- D. Accessory buildings and uses customarily incident to the above uses, provided that they shall not include any activity customarily conducted for gain.
- E. Private garages in accordance with § 230-18.
- F. Signs in accordance with Article VIII.

The court initially finds that the Board's action in granting use variance approval to permit development of multi-family use at the GP Property was an inappropriate arrogation of the powers of the Glen Rock Governing Body. The court need only look to the undisputed facts presented to conclude that Glen Park obtained by variance what it specifically could not obtain through its attempt at an ordinance change. A zoning board "may not, in the guise of a variance proceeding, usurp the legislative power reserved to the governing body of the municipality to amend or revise the [zoning] plan." Price, supra, 214 N.J. at 285 (alteration in original) (quoting Feiler v. Fort Lee Bd. of Adjustment, 240 N.J. Super.

250, 255 (App. Div. 1990)) (internal quotation marks omitted), certif. denied, 127 N.J. 325 (1991). The "criteria for determining when a variance grant constitutes an impermissible exercise of the zoning power . . . [is] 'whether the impact of the requested variance will be to substantially alter the character of the district as that character has been prescribed by the zoning ordinances.'" Feiler, supra, 240 N.J. Super. at 255 (quoting Twp. of Dover v. Bd. of Adjustment, 158 N.J. Super. 401, 412-13 (App. Div. 1978)).

Here, the court finds that the variances granted will significantly impact the A-2 single family zone by permitting 54 residential units on property which is zoned for a maximum of 1 single family dwelling on each of the two lots comprising the GP Property. Courts must evaluate the relation of the parcel at issue to the character of the district to determine whether granting variance relief would usurp the zoning power. Dover, 158 N.J. Super. at 413. Whether a large parcel or small parcel of land is at issue, a variance may usurp the zoning power if the grant of the variance "substantially alters the municipality's zone plan . . ." Twp. of North Brunswick, supra, 378 N.J. Super. at 493. The record presented here reveals that the Borough Governing Body twice rejected almost the exact development approved here by variance. Actually, the density approved by the Board here was more than that identified within proposed Ordinance 1746 which was

specifically rejected by the Borough Governing Body, with two Councilmembers commenting that they had issues with the density.

See 1T 77:8-84:25; 2T 50:18-60:18

The court finds that the Plaintiff's reliance upon the holding in Twp. of North Brunswick, supra, is not misplaced as argued by the defendants. In Twp. of North Brunswick, a developer sought to develop a four-story, 85 unit, apartment building for active, affluent adults over the age of 55 in a single family residential district. The density of the proposal would be 23.22 units per acre. Under the Township's master plan there, however, only single-family detached homes were permitted in the zone. The board in Twp. of North Brunswick granted the requested variances holding that the proposed use was "uniquely situated to the location, an ideal transitional use between the balance of the R-2 zone and the nearby industrial uses, beneficial for the community, and aesthetically pleasing." The appellate court in Twp. of North Brunswick found that the board's approval was "clearly contrary to the intent and purpose of the Township's Master Plan and zone plan. Id. at 489. The court stated that the effect of the variance would be to "alter the character of the area contrary to the plan of the governing body ... and is clearly inconsistent with the intended development scheme of the district." Ibid. The court further found that the Board's action "blatantly rejected the Township's zoning

plan and improperly aggregate to itself the power to substitute its idea of an appropriate zone plan." Id. at 494.

The facts presented before the court here are remarkably similar. Although the Borough Governing Body did not specifically adopt an ordinance to preclude multi-family use at the GP Property, it did twice review and twice rejected an ordinance change to permit the exact development approved by the Board. The court notes that multi-family use as proposed by Glen Park is expressly prohibited in the A-2 Zone by reasons of the fact that it is not an identified permitted use. The Governing Body here expressly reviewed the exact property, exact multi-family use, at almost the exact density, and affirmatively rejected any change to the zoning ordinances and, in particular rejected any change to the A-2 Zone. The Governing Body's action took place less than one year prior to the Board's approval of Glen Park's use variance. Glen Park and the Board argue that the Borough Governing Body's rejection of proposed Ordinances 1739 and 1746 is not an affirmative act and therefore the approvals granted by the Board are not necessarily averse to the determination of the Borough Governing Body. However, the court finds that the Governing Body's decision to not make a change to the zoning of the GP Property actually is evidence of an affirmative pronouncement not to alter the permitted and prohibited uses at the GP Property or in the A-2 Zone. Clearly, the Borough Governing Body was presented with an opportunity to

adopt a legislative change to permit virtually the same development as was approved by the Board here for the exact parcel of property, yet the Borough Governing Body affirmatively chose not to alter the existing zoning.

Based upon the facts presented, the court finds that the Board's action in granting the subject approval was an arrogation of the legislative power of the Borough Governing Body and therefore must be reversed.

While the court finds that the Board's usurpation of the legislative powers of the Glen Rock Governing Body alone warrants reversal of the Board's action, the court finds that Plaintiff's allegations concerning the public notice warrant review. The MLUL requires notice of public hearings and the opportunity for the public to be heard in matters such as the application presented by Glen Park. Twp. of Stafford v. Stafford Twp. Zoning Bd. of Adjustment, 154 N.J. 62, 70 (1998). The New Jersey Supreme Court in Twp. of Stafford held that

[t]he MLUL ensures that the public has a chance to be heard, either in support of or in opposition to such applications, by imposing notice requirements. N.J.S.A. 40:55D-12. Section 12 requires "[p]ublic notice of a hearing" to be given "on an application for development." N.J.S.A. 40:55D-12(a). Specifically, "[p]ublic notice shall be given by publication in the official newspaper of the municipality, if there be one, or in a newspaper of general circulation in the municipality." Ibid. In addition, notice "shall be given to the owners of all real

property . . . within 200 feet in all directions of the property which is the subject of such hearing." N.J.S.A. 40:55D-12(b).

[Ibid.]

The MLUL requires that the public notice for a variance application include: (1) "the date, time and place of the hearing," (2) "the nature of the matters to be considered," (3) "an identification of the property proposed for development by street address," and (4) "the location and times at which" any supporting documents for application are available. N.J.S.A. 40:55D-11. "[P]roper public notice in accordance with the requirements of the MLUL is a jurisdictional prerequisite for a zoning board's exercise of its authority." Pond Run Watershed Ass'n v. Twp. of Hamilton Zoning Bd. of Adjustment, 397 N.J. Super. 335, 350 (App. Div. 2008) (citing Perlmart of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super. 234, 237 (App. Div. 1996)). The "[f]ailure to provide proper notice deprives a municipal planning board of jurisdiction" Shakoor Supermarkets, Inc. v. Old Bridge Twp. Planning Bd., 420 N.J. Super. 193, 201 (App. Div. 2011) (citing Twp. of Stafford, supra, 154 N.J. at 79).

Here, Glen Park provided three separate public notices during the course of the four public hearings before the Board. It is undisputed that Glen Park did not identify the RV Property or the PSEG Property in the initial notice provided for the January

Hearing. It is also undisputed that no additional notice was provided for the March Hearing. The failure to provide notice of the application to property owners within 200 feet of Lot 1, a critical component of the application, effectively deprived the Board of jurisdiction to conduct the January Hearing and March Hearing. The record reveals that Glen Park's attempt to cure the notice deficiencies by providing a Second Notice and Third Notice and proceeding with the application fell short.

The record is clear that the public hearings were not restarted and that the testimony presented during the January Hearing and March Hearing was not substantively repeated. In fact, the record reveals that Glen Park affirmatively relied upon testimony presented prior to the issuance of the Second Notice and/or Third Notice by reference. The announcement of the availability of "transcript and tapes of the prior hearings, if anyone needs to listen to those" at the commencement of the May Hearing does not cure the jurisdictional defect. See 5T 6:12-17.

Prior to the June Hearing, Glen Park provided its Third Notice which, for the first time, identified the request for a height and density variance. However, the record reveals that Glen Park failed to provide complete and substantive testimony from its witnesses regarding the newly noticed variances. See 6T. The court finds that Glen Park's failure to present complete testimony and information under the properly noticed hearing is fatal to the

subsequent action of the Board. Furthermore, the court finds that Glen Park's failure to notice for and to incorporate Lot 1 of the RV Property as part of the application is fatal to the approval granted here. See Wolf, supra, 79 N.J. Super. at 550-51; see also Nuckel v. Borough of Little Ferry Planning Bd., 208 N.J. 95, 105 (2011).

With regard to Lot 1 of the RV Property, the court notes that all of the testimony, exhibits and application documents reveal that Glen Park seeks to utilize Lot 1 of the RV Property as the sole vehicular access to and from the GP Property. There is to be no vehicular access to Prospect Street except through Lot 1 of the RV Property. The record reflects that Lot 1 of the RV Property is not an improved or dedicated public street. Although often referred to as an "access road," during the public hearings, the undisputed facts reveal that Lot 1 of the RV Property is merely a portion of a separate, private lot owned by the Village of Ridgewood. Lot 1 of the RV Property is also located entirely within the A-2 Zone. Glen Park proposed to utilize Lot 1 of the RV Property, as the sole access point, for a non-permitted multi-family use. Currently, Lot 1 of the RV Property is being utilized as part of a municipal use, a use expressly permitted within the A-2 Zone. Lot 1 of the RV Property is undisputedly a critical component of the proposed development here. In fact, the opinion of each expert witness presented by Glen Park (engineering, traffic

and planning) each expressly stated that its use is conditioned the proposed use upon the utilization of Lot 1 of the RV Property. Yet at no time did the Village of Ridgewood consent to or join Glen Park's application. In fact, the Second Notice provided by Glen Park in connection with the May Hearing specifically states that

The applicant proposes to use a roadway located on Lot 1 in Block 127 and which encroaches onto Lot 1 in Block 128.01 for access to the project. **Those lots are not part of the application at this time.**
[Emphasis added.]

Glen Park addressed Lot 1 of the RV Property within the Third Notice as well by stating

The applicant propose to use a roadway located on Lot 1 in Block 127, property owned by the Village of Ridgewood, and which encroaches onto Lot 1 in Block 128.01, for access to the project. Any approval granted by the Board will be conditioned upon the applicant's ability to acquire access rights over Lot 1 in Block 127 and to acquire Lot 4 in Block 127.⁷

The record reflects that the Board also did not grant approval for use of Lot 1 of the RV Property. The Board's Resolution merely states under "Applicant's Proposal" that Glen Park

indicated that any approval of the Application would include a condition that the Village of Ridgewood approve the proposed development's use of that access road area. No direct access is proposed on Prospect Street.
[Resolution at 4.]

⁷ During the June Hearing, Glen Park specifically abandoned its position as to Lot 4 of the RV Property. See 6T 6:4-10.

The sole reference to Lot 1 of the RV Property in the Resolution is under paragraph "k" of the "Conditions" section which states

- (k) The Applicant shall obtain any required approvals **from the Village of Ridgewood** for the proposed development's use of the roadway existing on the Ridgewood Sewer Treatment Property for ingress and egress on to the Property. If Ridgewood's approval is not obtained, this approval shall be null and void.
[Resolution at 20, emphasis added.]

With the exception of mentioning that the project proposed to utilize Lot 1 of the RV Property as the sole vehicular access to the GP Property, the testimony presented during the public hearings failed to provide any substantive testimony regarding the size, condition, or use of Lot 1 of the RV Property, nor did Glen Park seek any specific approval of that parcel under the application.

The utilization of Lot 1 of the RV Property will certainly impact the character and nature of that parcel from its current condition and its permitted municipal use. The failure to incorporate Lot 1 of the RV Property within the Glen Park's application and Glen Park's failure to seek or obtain use variance approval in connection with this parcel warrants reversal of the Board's approval.

The court next reviews Plaintiff's argument that Glen Park failed to satisfy its burden of proof as to the use, height and density variances sought under the Revised Application. The court

agrees that the testimony presented did not provide an adequate basis for the approval of Glen Park's application.

The Zoning Board has authority to grant use variances, however, N.J.S.A. 40:55D-70(d)(1) specifically states that

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

Since every application is unique to the local conditions that exist in a municipality, "whether to uphold the grant of a variance, the reviewing court must consider each case on its own facts." Burbridge, supra, 117 N.J. at 385. However, the Supreme Court has held that "[v]ariations to allow new nonconforming uses should be granted only sparingly and with great caution since they tend to impair sound zoning." Kohl, supra, 50 NJ. at 275.

The "MLUL 'requires an applicant to prove both positive and negative criteria to obtain a use variance'" under N.J.S.A. 40:55D-70(d). Price, supra, 214 N.J. at 284 (quoting Smart SMR of N.Y., Inc., supra, 152 N.J. at 323. An applicant must prove the positive criteria by showing:

- (1) [] the proposed use inherently serves the public good, such as a school, hospital or public housing facility . . . ;

- (2) [] the property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone . . . ; [or]
- (3) [] the use would serve the general welfare because "the proposed site is particularly suitable for the proposed use."

[Nuckel, supra, 208 N.J. at 102 (quoting Saddle Brook Realty, L.L.C. , supra, 388 N.J. Super. at 76 (internal citations omitted)).]

The first two categories referenced above do not apply here. While Glen Park points out that 7 of the 52 residential units proposed will be reserved and designated for affordable housing units, such designation of less than 14% of the residential units proposed does not render the use as a whole "inherently beneficial," a point acknowledged by Glen Point during the public hearings. See Advance at Branchburg II, LLC v. Branchburg Twp. Bd. of Adjustment, 433 N.J. Super. 247, 258 (App. Div. 2013). Furthermore, there was no evidence that Glen Park would suffer undue hardship if compelled to use the GP Property in conformity with the permitted uses of the A-2 Zone. In fact, the record reflects that each of the two lots comprising the GP Property are currently utilized as a single family residential dwellings, as permitted in the A-2 Zone.

The third category of "special reasons" refers to those uses that "would fill a need in the general community, where there is no other viable location, and where the property itself is particularly well-fitted for the use either in terms of its

location, topography or shape." Funeral Home Management, supra, 319 N.J. Super. at 210. Glen Park failed to provide any testimonial evidence its proposed use was necessary to fulfill an identified need in the community, let alone that no other location was available for the proposed use and the subject property was well-suited for development of 54 residential units age restricted to residents 55 years or older.

The Board's findings with regard to the positive criteria identified within paragraph 51 of the Resolution fail to identify adequate evidence within the record. The conclusion that the GP Property is particularly suited for 52 multi-family residential units because "it creates a transition from the other uses to the residential use to the south" is unsubstantiated by the testimony in the record. The court recognizes that Glen Park's planner testified that the project would create a "transition" to other uses, however there was no support for that opinion presented. The current GP Property is developed as permitted single family dwellings. There was no testimony as to what "transition" from the permitted municipal use on the RV Property to the permitted single family residential use on the GP Property and other single family dwellings in the area along Prospect Street was provided by the development of two three story buildings comprised of 52 dwelling units.

Furthermore, the mere fact that the GP Property was "7.7 times larger than the minimum lot size required in the A-2 Zone⁸" does not, in and of itself, result in a parcel being "particularly suitable" for a certain use. The Board's conclusion that the proposed 52 multi-family residential dwelling units "fit well along with the other permitted uses in the neighborhood of the [GP] Property" is also unsupported by the record. In fact, none of the witnesses presented any analysis of the surrounding residential neighborhood beyond the RV Property.

The court finds that the Board's conclusions, for the most part, are based upon unsubstantiated and specious testimony. For example, Glen Park's assertion that the project "provides a desirable visual environment compatible with the residential neighborhood" is unsupported by evidence in the record. There is nothing in the record to support the conclusionary statements of Glen Park's witnesses in regard to the visual environment here. Also, the Board's finding that the proposal "promotes N.J.S.A. 40:55D-2(h) in encouraging transportation routes" is apparently based upon the fact that proposed elimination of "existing curb cuts from a county road with safer access to be obtained by use of the existing access road." However, Glen Park's development of 52

⁸ Article X, §230-54 E of the Glen Rock Borough Ordinance provides that "[t]he minimum lot area of 11,200 square feet shall be measured within 140 feet of the front street property line. For corner lots, the minimum lot area shall be 14,000 square feet, also measured within 140 feet of the front property line.

residential units and utilization of the RV Property to access Prospect Street does not, in and of itself, make the site "particularly suited" for the proposed use as the increase in traffic will still access Prospect Street directly, albeit utilizing along the RV Property instead of directly from the GP Property.

The Board's reliance upon the planning testimony regarding the opinion that the proposed development is consistent with the goals of the Borough's Master Plan is also misplaced. The Glen Rock Master Plan, the 2008 Master Plan Reexamination and 2014 Master Plan Reexamination each clearly identify recommendations to preserve the single-family residential character of the Borough with specific emphasis on maintaining the single-family residential uses in the A-2 Zone.

The court's review of the 2014 Master Plan Reexamination reveals that it provides under the title "Additional Recommendations" the following:

1. The Borough should support appropriate efforts to develop multi-family and senior citizen housing.
2. The Borough actively encourage multi-family housing in all commercial zones to spur land development, providing business owners with a built-in clientele of young professionals that are attracted such housing.

3. The Borough should implement all recommendations contained in this report in regards to spurring economic activity in the Central Business District.

However, the record reflects that the testimony presented regarding the Revised Application's relation to the Master Plan seems to improperly pick and choose language from the Master Plan in an attempt to fashion a basis for the conclusion that the subject development is actually recommended for the GP Property. When reviewing the Master Plan as a whole, it is revealed that this position is unsupported and fails to provide a legitimate basis upon which Glen Park could satisfy its burden with regard to the positive criteria.

The court recognizes that an applicant for a use variance must also satisfy the negative criteria. In order to satisfy the negative criteria requires proof that the variance will not result in substantial detriment to the public good or substantially impair the purpose of the zoning plan. See Nash v. Bd. of Adj. of Morris Twp., 96 N.J. 97, 102 (1984). The question of whether the deviation sought will cause substantial detriment to the public good "focus[es] . . . on the impact of the variance on neighboring properties." D.Bib. Enters., Inc. v. Planning/Zoning Bd. of Sea Bright, 408 N.J. Super. 345, 358 (App. Div. 2009); See also William M. Cox & Stuart R. Koenig, New Jersey Zoning and Land Use Administration § 36-2.2 (2019). "The proof required for the second

of the negative criteria must reconcile the grant of the variance for the specific project at the designated site with the municipality's contrary determination about the permitted uses as expressed through its zoning ordinance." Price, supra, 214 N.J. at 286 (citing Medici, supra, 107 N.J. at 21).

With respect to the statutory requirement that the variance(s) not substantially impair the intent and purpose of the zone plan and zoning ordinance, the inquiry "focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate." Lang, supra, 160 N.J. at 57. This reconciliation "depends on whether the grounds offered to support the variance . . . adequately justify the board's action in granting an exception from the ordinance's requirements." Id. at 57-58.

The Board here, in Paragraph 52 of the Resolution states that
it

agrees with [Glen Park's] planner's and engineer's testimony that the impact of the proposed use variance on the surrounding properties will be minimal, and agrees with the testimony of Applicant's traffic expert that the roads can accommodate the added traffic without any significant impact.

The Board also concludes that Glen Park has

shown that granting the requested use variances will not substantially impair the intent and purpose of the Zone Plan and the Zoning Ordinance. Multifamily housing is provided for an encourage in the Master Plan documents.

[Resolution ¶53.]

The Board acknowledges in its Resolution that

age-restricted housing was recently considered by the Mayor and Council for this proposed area as a zone change and not completed, the age restriction nature was not identified as objectionable and was in fact recommended for approval by the Planning Board.

[Ibid.]

The Board, however, does not acknowledge that when rejecting the proposed ordinances which would permit the development proposed by Glen Park, members of the Borough Governing Body expressed concern regarding the density and location of the proposed use. See 1T 77:8-84:25; 2T 50:18-60:18

Based upon the record presented and identified herein, the court finds that Glen Park failed to provide competent evidence to satisfy the positive and negative criteria required of all use variance applications pursuant to N.J.S.A. 40:55D-70(d)(1).

With regard to Glen Park's request for variance for density and height under N.J.S.A. 40:55D-70(d)(5)and(6), the court finds that Glen Park also failed to provide adequate testimony and that

the Board failed to identify appropriate findings regarding the requested height and density variances. The court recognizes that

when a zoning board considers an application for a (d)(1) use variance, it tests the associated requests for density and height variances against a more relaxed standard. That means that the applicant is required to demonstrate, to the board's satisfaction, "that the site will accommodate the problems associated with a proposed use with [a greater density] than permitted by the ordinance." Grubbs v. Slothower, 389 N.J. Super. 377, 389 (App. Div. 2007) (alteration in original) (quoting Randolph, supra, Randolph Town Ctr. Assocs. v. Twp. of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999). [Price, supra, 214 N.J. at 297.]

However, the court here notes that the Resolution does not identify any findings regarding the requested density variance under N.J.S.A. 40:55D-70(d)(5). In fact, the density variance is not identified at all in the Board's Resolution.

As to the height variance under N.J.S.A. 40:55D-70(d)(6), the Board appears to rely upon the net opinion of Glen Park's planner regarding the "shadow patterns" of the proposed buildings. See Resolution ¶55. The Board also provides a conclusory statement that "the same purposes of zoning advanced by the D(1) variance will be advanced by permitting the increased height at the Property." Ibid. The Board does not even identify the final proposed height under the Revised Application in its Resolution, yet draws the conclusion that the height is somehow satisfactory.

Based upon the record provided, evidence identified herein and the arguments asserted on behalf of the Plaintiff, Glen Park and the Board, the court finds that Plaintiff has satisfied its burden of proof and that the action of the Board in approving the use variance pursuant to N.J.S.A. 40:55D-70(d)(1), the density variance pursuant to N.J.S.A. 40:55D-70(d)(5) and the height variance pursuant to N.J.S.A. 40:55D-70(d)(6) under the bifurcated application was arbitrary, capricious and unreasonable.

For all of the aforementioned reasons the court finds that the Board's approval of Glen Park's bifurcated application for development is reversed and vacated.