

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2021-10
CASE NUMBER PZ-03-20**

WHEREAS, an application has been submitted by BCUW Madeline Housing Partners, LLC (the “Applicant”) as Owner of property known as 40 Central Avenue, Hillsdale, New Jersey and identified as Block 1407, Lot 6 (the “Property”); and

WHEREAS, attached to the application is Applicant’s Ownership Disclosure identifying Thomas M. Toronto as Co-Manager of Bergen County United Way/Madeline Housing Partners, and further stating that such LLC has two members: Madeline Corporation and United Way of Bergen County; and

WHEREAS, the Applicant applied for preliminary and final site plan approval; a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) (single-family residential permitted and group home/community residence proposed); and bulk variances for total side yard setback (30 feet required and 25.8 feet proposed) and maximum impervious coverage (30% permitted and 37% proposed) in order to construct a two-story residential building containing a four-bedroom group home on the first floor and two one-bedroom low- and moderate-income housing units on the second floor, and other associated site improvements on the property; and

WHEREAS, the Applicant was represented by Antimo DelVecchio, Esq. and Daniel Steinhagen, Esq. of Beattie Padovano, LLC, 50 Chestnut Ridge Road, Suite 208, Montvale, NJ 07645; and

WHEREAS, Mayor Ruocco and Zoltan Horvath recused themselves from the hearings in connection with said application; and

WHEREAS, Schwanewede/Hals Engineering, having an address of 9 Post Road, Suite M11, Oakland, NJ is the project engineer; and

WHEREAS, Virgona & Virgona, having an address of 125 River Road, Suite 201, Edgewater, NJ is the project architect; and

WHEREAS, the Board considered the reports of Christopher P. Statile, PE, dated January 11, 2020, August 10, 2020, and October 7, 2020, along with the Memoranda prepared by Thomas Behrens, Jr., PP, AICP, dated September 22, 2020, October 7, 2020, October 26, 2020 and January 13, 2021; and

WHEREAS, the Board determined that the application was complete and that a public hearing be conducted by the Board; and

WHEREAS, hearings were held on September 10, 2020; October 8, 2020; October 27, 2020; November 12, 2020 and January 26, 2021; and

WHEREAS, during the course of the hearings, the following exhibits were marked:

- Exhibit A-1: Affidavit of service;
- Exhibit A-2: Revised Schwanewede/Hals plans, revised to October 15, 2020;
- Exhibit A-3: Elevation testified to by Virgona & Virgona;
- Exhibit A-4: Rendering No. 1 prepared by Virgona & Virgona that, according to the testimony, was abandoned;
- Exhibit A-5: Rendering No. 2 prepared by Virgona & Virgona;
- Exhibit A-6: Revised Affidavit of service in connection with the Motion for Reconsideration;
- Exhibit A-7: Antimo DelVecchio, Esq.'s December 23, 2020 letter requesting reconsideration of the Board's denial of the application;

- Exhibit A-8: Architectural plans prepared by Virgona and Virgona revised to November 18, 2020; and
- Exhibit A-9: Revised plot plan, consisting of four sheets, prepared by Schwanewede/Hals plans, revised to December 18, 2020.

WHEREAS, at the hearings, the Board's professionals, Christopher P. Statile, PE and Thomas Behrens, PP were duly sworn and provided expert testimony; and

WHEREAS, along with the application, the Applicant submitted the following:

1. Engineering plans prepared by David A. Hals, PE, PP of Schwanewede/Hals Engineering, 9 Post Road, Suite M11, Oakland, NJ 07436, dated May 18, 2020, consisting of the following:

Sheet 1 of 4: Site Plan;

Sheet 2 of 4: Grading, Landscaping & Lighting Plan;

Sheet 3 of 4: Soil Erosion and Sediment Control Plan; and

Sheet 4 of 4: Survey/Soil Movement.

2. Ten (10) color photographs of the site were submitted with the application. The photographs were taken by Mr. Hals on June 2, 2020.

3. Architectural plan prepared by Raymond J. Virgona, RA of Virgona & Virgona Architects/Planners, 125 River Road, Suite 201, Edgewater, NJ 07020, dated March 6, 2020, consisting of the following:

Sheet A-1: Elevations; and

Sheet A-2: Plans.

4. The Applicant also submitted a color rendering of the proposed building prepared by Virgona & Virgona dated March 6, 2020 and identified as SK-1.

WHEREAS, the Applicant submitted proof of notification, by mail or personal service at least 10 days prior to the date set forth for public hearing on all persons owning properties within 200 feet from the extreme limits of the subject premises of the subject application, as set forth on a certified list of said owners furnished to the Applicant by the Tax Assessor of the Borough of Hillsdale and provided proof of service of such notice in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the Municipal Land Use Law (the “MLUL”), N.J.S.A. 40:55D-1 to -163; and

WHEREAS, the Applicant has submitted proof that a copy of said notifications have been published at least 10 days prior to the date set forth for public hearing in the official newspaper of the Borough of Hillsdale in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the MLUL; and

WHEREAS, the Board gave due consideration to all individuals desiring to be heard and after due deliberation, did find and determine that:

A. The Property

1. The Property is located at 40 Central Avenue, designated as Block 1407, Lot 6.
2. The property is situated in the R-4 Residential Zone (minimum lot size 7,500 SF).

The lot is oversized for lot area.

3. The subject property is a 0.60 acre rectangular parcel with 100 feet of frontage on Central Avenue and a depth of 64 feet. The property slopes downward from the northwest corner to the southeast corner of the site. The lot is currently developed with a two-story single-family dwelling with a paved driveway along the northerly portion of the property to a detached garage in the rear yard. There are several existing large trees in the center and around the periphery of the property.

4. Development surrounding the site primarily consists of detached single-family housing and outdoor recreation space associated with George G. White Middle School at the rear of the site. The lot is located approximately one block away from the Borough's Broadway downtown area and is within walking distance to the Hillsdale Train Station along NJ Transit's Pascack Valley line.

B. The Application

5. The Applicant requested a use variance pursuant to N.J.S.A. 40:55D-70(d)(1), preliminary and final site plan approval to demolish the existing frame structure, detached garage and associated site improvements to develop a two-story residential building consisting of four group home bedrooms on the first floor and two one-bedroom units on the second floor. Associated site improvements include a two-way driveway on Central Avenue serving the front yard parking area, rear patio, landscaping and lighting improvements. The revised plans show the dwelling has been repositioned deeper into the lot, with a front yard setback of 72.5 feet, where the previous site plans proposed a front yard setback of 60.6 feet. As such, the proposed rear yard setback has been modified accordingly having been reduced by approximately 12 feet. No changes were made to the proposed dwelling from the original architectural plans.

6. The proposed residential building will include three separate residential units: a four-bedroom group home on the first floor and two one-bedroom units on the second floor. The two apartments will be occupied by service providers who will support the residents of the group home. The group home units will be dedicated to adults with developmental disabilities.

7. The two one-bedroom units on the second floor will qualify as moderate-income affordable units. Group home bedrooms typically qualify as very low-income units. As such,

the entirety of the project will satisfy a portion of the Borough's Third Round unmet need. A deed restriction will be placed on the two one-bedroom units.

8. The basement level will include spaces for storage, utilities and a multi-purpose room with direct access to the rear yard. The first floor plan includes a central entryway, four bedrooms (each having its own bathroom), and a communal kitchen, family room, laundry room, office and den. The second floor contains two one-bedroom apartment units (866 SF and 970 SF), each with its own living/dining, kitchen and bathroom spaces. The residential building will have a common main entrance shared by all of the residential units.

9. The initial application provides for ingress and egress driveways on Central Avenue. The Applicant proposes nine off-street parking spaces, including one handicap space, which complies with RSIS. The site plan revisions include the removal of the ingress and egress driveways on Central Avenue to a single 16 foot wide two-way driveway. The number of proposed off-street parking spaces has been reduced from 9 to 7 spaces, including 1 handicap space, with complies with RSIS. Setbacks have been increased to 24 feet from the northerly side lot line and 16 feet from the southerly side lot line, reducing the proposed impervious coverage from a non-conforming 37% to a conforming 29.7%, where a maximum coverage of 30% is permitted. The application was subsequently revised to further reduce the proposed on-site parking from 7 spaces to 5 parking spaces, including 1 handicap space. In addition, the front setback of the parking area has been increased from the previously proposed 11 feet to 30 feet.

10. As a result of the decrease in the number of parking spaces, the impervious coverage will be further reduced from a conforming 29.7% to 29.2%, where the R-4 Zone permits a maximum impervious coverage of 30%.

11. The Applicant proposes to install a 6-foot high fence along the side and rear property lines. The fence will terminate at the front of the parking area along both side lot lines within the front yard of the property, where §310-56.B permits a maximum fence height of 4 feet in front yard areas in residential zone. Due to the relocation of the proposed dwelling, a new retaining wall is proposed along the northerly walkway.

12. The revised landscape plan provides for two Zelkova trees along the front line. There will be evergreen trees in the front yard intended to screen the front yard parking area. The tree planting in the rear has been enhanced with eight Red Maple trees and two Red Oak trees. Three Red Oak trees are proposed at the northwest corner of the site.

13. The revised lighting plans propose a number of 22 inch high “walkway” lights around the front and side walkways.

C. The Hearings

September 10, 2020 Hearing

14. The Applicant was represented by Daniel Steinhagen, Esq. of Beattie Padovano. At that hearing, the Affidavit of Service was marked as Exhibit A-1. Mr. Steinhagen informed the Board that the Applicant’s proposal is to develop the subject property with a group home, with two apartments on top for occupancy by the caretakers of the individuals who will occupy the group home below.

15. At the first hearing, it was established and discussed that community residences are permitted uses in all residential districts pursuant to N.J.S.A. 40:55D-66.1.

16. The first witness that was presented was Thomas Toronto of Bergen County United Way. Mr. Toronto was duly sworn and provided testimony to the Board in support of the application. Mr. Toronto informed the Board that he has been building group homes for 15

years. He has built group homes in other communities such as Tenafly, Ridgewood and Emerson. The proposal is to replace the existing house use with a proposed group home building. He also informed the Board that Bergen County United Way (“BCUW”) owns other properties and the BCUW remains involved with regard to its developments. They don’t just build the group home and leave. He informed the Board that the proximity of the subject property to Hillsdale’s downtown is very attractive. Many residents are drawn from the local community. New Jersey has a need to care for individuals with developmental and other disabilities. BCUW partners with other organizations and they have a proven track record. BCUW will have ongoing property management after the group home is built.

17. Communities, according to Mr. Toronto, have an expectation that the projects will look good and that this has led to repeat business for BCUW in several other communities.

18. The residents will be served by staff. The apartments above the group home are independent apartments and the goal is to offer the apartments to professionals who will work with the residents with developmental disabilities. This project will assist Hillsdale with its affordable housing obligations. BCUW has no other projects within Hillsdale.

19. The upper units are independent units and are not meant to be part of the group home. The upper units will be moderate-income units and the other units will be low-income units.

20. The Board also heard testimony from Dawn Townsend of Prevail New Jersey. Ms. Townsend was qualified and duly sworn prior to providing testimony to the Board. She provided the Board with an address of 381 Madison Avenue, Suite 217, New Milford, NJ. Ms. Townsend is in the field of intervention. In 2012, her organization created a life skills program for people over age 21. She testified that there is a scarcity of programs for individuals with

autism. Prevail New Jersey, the proposed operator, has set out to become a provider for persons with developmental disabilities. Ms. Townsend has a degree in psychology.

21. Prevail New Jersey partnered with BC UW to operate a group home for individuals with developmental disabilities. The individuals in the apartments above will provide support for persons in the group home below. Ms. Townsend testified that scholars will live in the apartments above. The individuals who will reside above will be staff members of Prevail New Jersey and will be in the process of going to school.

22. Ms. Townsend advised and testified that the site is attractive because of its amenities. The site will fulfill key criteria for individuals with developmental disabilities.

23. There were various discussions regarding relocating the parking to the rear of the proposed building.

24. Ms. Townsend continued her testimony and advised the Board that the residents of the group home will work and will be picked up and dropped off. Prevail New Jersey will have one vehicle, either a minivan or SUV, for transportation purposes. This is Prevail New Jersey's first project. Michele Smigel is Ms. Townsend's partner. Ms. Townsend, in response to a question from the Board Planner, testified that there is great need to provide this type of facility for individuals with developmental disabilities.

25. In response to a question by a member of the Board, Mr. Toronto informed the Board and public that the parking demand for supportive housing is minimal.

26. Ms. Townsend informed the Board that the residents will not have the capacity to drive and to operate a vehicle. The residents will have some level of independence. There are no defined visitor days or times. There will be support for the residents, who will be accompanied by a staff member should they desire to walk into Hillsdale's downtown area.

27. The apartments above the proposed group home will not and shall not be rented out, and shall remain associated with the group home below, meaning that the apartments above are not independent of the proposed group home. According to Ms. Townsend, four people is a nice mixture of individuals. The residents will need 24-hour support in case of emergency. The apartments will not be rented to anyone other than staff members of Prevail New Jersey.

28. The Board expressed concerns with regard to the parking in the front yard of the proposed group home and the Applicant was asked to consider pushing the parking further away from the street. The Applicant agreed to look into same in advance of the next hearing date.

29. Ms. Townsend testified that all residents are ambulatory. The New Jersey Division of Developmental Disabilities has oversight over the proposed group home. According to Ms. Townsend, all residents will be supervised and the age group will be for people over the age of 21. Prevail New Jersey will receive funding from the New Jersey Division of Developmental Disabilities. Prevail New Jersey will conduct fundraising and, according to Ms. Townsend, Ms. Smigel does the fundraising on behalf of Prevail New Jersey. The model is to have separate residences for the residents, who will come and go at different times.

30. Ms. Townsend, in relevant part, testified that the persons who serve the subject population will live in the moderate-income units above the proposed group home. BC UW is the owner of the property. Prevail New Jersey is the service provider.

31. Ms. Townsend informed the Board there are income and eligibility requirements. The intent is to create a new home that operates as a single-family dwelling. As a condition of approval, the Applicant agreed to limit occupancy to persons with developmental disabilities.

32. The ingress and egress to the apartments above is independent of the proposed group home. In addition, the Applicant agreed that, as a condition of approval, the Applicant

shall, as may be required, certify that the residents in the apartments above meet all income limits. Prevail New Jersey is the operator of the proposed group home and BCUW is the owner of the subject property.

33. The Board heard various comments from members of the public in connection with the proposed application.

34. After Ms. Townsend testified, the Board heard comments from various members of the public, who had the opportunity to cross examine Mr. Toronto and Ms. Townsend.

35. David Hals was present at the hearing but did not provide testimony to the Board.

36. The hearing was continued to October 8, 2020, and an announcement was made carrying said application without further notice to the public.

October 8, 2020

37. The Applicant returned on October 8, 2020 and was represented by Antimo DelVecchio, Esq. of Beattie Padovano. Mr. DelVecchio called David Hals, PE to testify. Mr. Hals testified as to the revised plans, dated May 18, 2020 and revised to September 23, 2020. The Applicant submitted revised plans in response to questions from the Board and the public. Mr. Hals was qualified as a licensed professional planner of the State of New Jersey, as well as a professional engineer of the State of New Jersey, and duly sworn.

38. The Board's professionals, Christopher P. Statile, PE and Thomas Behrens, PP, were sworn prior to providing testimony at the hearing.

39. According to Mr. Hals, the plan that he testified to was revised to September 23, 2020. He testified that the parking was scaled down to seven spaces from nine spaces. The subject lot is 100 feet x 264 feet deep. The site consists of 0.60 acres. The rear of the property abuts the George White Middle School. There are existing improvements on the site that will be

removed. The property slopes left to right and front to rear. There is about a 7 foot elevation drop from Central Avenue to the rear of the subject property.

40. The Applicant is proposing a four-bedroom group home. The second floor is for staff of the group home. Parking is proposed in the front of the building and there is one driveway that is proposed at the center of the proposed group home. The parking will meet RSIS. The proposal also meets the bulk requirements, with the exception of the necessity for a variance for combined side yard setbacks.

41. The Applicant is proposing enhanced landscaping on either side of the property. Arborvitaes are proposed on the north and south sides of the parking area to heavily screen the parking. The Applicant proposes to enhance the area around the parking area and add two shade trees in the front and two ornamental trees in the rear. The Applicant agreed to modify the landscaping plan and to work with the Board Engineer. A 6-foot PVC fence along the northerly property line from the front line of the dwelling to about three-quarters of the rear of the subject property is proposed. The Applicant agreed, after a question was raised by a Board member, to have the PVC fence completely surround the property. The fence will be 6 feet in height. No fence is proposed along the front of the subject property. The proposed dwelling is barrier free and will meet all ADA requirements. A trench drain at the driveway connecting to two seepage pits to collect runoff in the driveway is proposed. The Applicant will add an additional trench drain in response to a question by the Board Engineer.

42. Retaining walls are necessary to separate the grade change. Two pole-mounted lights, which are residential-style fixtures, are proposed. The proposed pole-mounted lights will be connected to a 6-foot high post. The lights will light the parking area.

43. The parking that is required is 1.8 spaces per apartment, or 3.6 spaces. Three staff members are proposed, which will trigger a requirement of 7 parking spaces. The Applicant is proposing 7 parking spaces.

44. In response to a question regarding soil movement, Ms. Hals testified that the Applicant proposes to excavate approximately 1,316 cubic yards of soil and 168 cubic yard of soil related to the seepage pits. Approximately 45 truckloads of soil over a period of time are proposed.

45. In terms of the tree replacement, Arborvitaes on the north and south sides of the parking are proposed. BC UW will completely screen the parking area. There was some discussion regarding the Board and Board professionals' desire to have a mix of Arborvitaes and evergreens and a mix of species. There was also some discussion regarding the fencing of the backyard. The Board Engineer advocated for less parking in connection with the project.

46. A garbage area is proposed at the northern corner of the proposed dwelling. There will be an enclosure for garbage and recycling.

47. According to Mr. Hals, the traffic movements are not very frequent. There is no need for a separate sidewalk, and same will add to impervious coverage if same were to be included.

48. In terms of landscaping, it was discussed that 22 trees are required, and the Applicant is proposing four trees, resulting in a deficiency of 18 trees. No signage is proposed, just a house number. Overnight parking is not allowed.

49. The Board revisited the question of parking in the rear, and Mr. Hals responded that parking in the rear would result in a complete redesign of the property and project. If the project was to be redesigned and parking proposed in the rear, the project would require more

retaining walls and would increase the impervious coverage, and same would go “way up”, according to Mr. Hals.

50. The meeting was opened up to the public. The public was given the opportunity to ask questions and to cross examine the witnesses.

51. The matter was carried to the Board’s meeting of October 27, 2020, and the Applicant waived all statutory timeframes.

October 27, 2020

52. On October 27, 2020, the Applicant appeared before the Board. The Board received revised plans in advance of the October 27, 2020 hearing. According to the Memorandum prepared by Thomas Behrens, Jr., PP, AICP dated October 26, 2020, the site plan consisting of four sheets and prepared by Schwanewede/Hals Engineering were revised to October 15, 2020. With regard to the most recent site plan revisions, Mr. Behrens informed the Board, in relevant part, as follows:

- Dwelling location. The dwelling has been repositioned deeper into the lot, with a front yard setback of 72.5 feet, where the previous site plans proposed a front yard setback of 60.6 feet. As such, the proposed rear yard setback has been modified accordingly, having been reduced by approximately 12 feet. No changes to the proposed dwelling from the original architectural plans are proposed.
- Parking. The front parking area has been further reduced from previously proposed seven spaces to five parking spaces, including one handicapped space. Mr. Behrens, in his Memo, noted that the Applicant should address compliance with the RSIS requirements and request relief from any deviations from said

requirements. In addition, the front yard setback of the parking area was increased from the previously proposed 11 feet to 30 feet.

- Impervious coverage. As a result of the proposed decrease in the number of parking spaces, the impervious coverage was further reduced from a conforming 29.7% to 29.2%, where the R-4 Zone permits a maximum impervious coverage of 30%.
- Fencing. The proposed 6-foot high fence is now shown along both the side and rear property lines. The fence will terminate at the front of the parking area along both side lot lines within the front yard of the property, where §310-56.B of Hillsdale's Zoning Ordinance permits a maximum fence height of 4 feet in front yard areas in residential zones. Variance relief is required.
- Retaining wall. Due to the relocation of the proposed dwelling, a new retaining wall is proposed along the northerly walkway.
- Landscaping. The landscaping plan was revised, as follows:
 - The two proposed Japanese maple trees along the front line were replaced by two Zelkova trees, creating a unified street tree arrangement.
 - The evergreen trees in the front yard intended to screen the front yard parking area have been revised from green Giant Arborvitae to Norway spruce.
 - The tree planting in the rear yard has been enhanced with eight red maple trees and two red oak trees, as depicted on the landscape plan.
 - Three red oak trees are proposed at the northwest corner of the site.

- Lighting. The lighting plan has been revised, whereby the two previously proposed freestanding light fixtures have been replaced with a number of 22” high “walkway” lights around the front and side walkways.

53. Mr. Behrens’ report provided the bulk requirements of the R-4 Zone, and same is replicated hereinbelow:

Requirement	R-4 Zone	Existing	Proposed	Previously Proposed
Minimum lot area	7,500 SF	26,400 SF	No change	No change
Minimum frontage	75 feet	100 feet	No change	No change
Minimum lot width	75 feet	100 feet	No change	No change
Minimum lot depth	100 feet	264 feet	No change	No change
Minimum front yard setback	30 feet	31.78 feet	60.6 feet	72.5 feet
Minimum rear yard setback	25 feet	187.66 feet	145.4 feet	133.6 feet
Minimum side yard setback (one/total)	10 feet/ 30% lot width	12.35 feet/ 70.04%	12.2 feet; 25.8% (v)	12.2 feet/ 25.8% (v)
Maximum building coverage	25%	5.7%	13.9%	13.9%
Maximum impervious coverage	30%	16.7%	29.7%	29.2%
Maximum FAR	35%	8.5%	22.0%	22.0%
Maximum building height	33 feet	31.83 feet	32.2 feet	32.2 feet

(V) variance relief required

54. According to the above zoning table, the only bulk variance sought by the Applicant is the combined side yard setback.

55. According to Mr. Behrens’ report, the Applicant applied for (d)(1) use variance relief for the proposed development, consisting of a four-bedroom group home and two one-bedroom apartments in the R-4 Zone. The MLUL permits community residences for the developmentally disabled in all residential zones. The Applicant is applying for the use variance, as the two apartments technically constitute two separate dwelling units within the larger group home structure. Those two units share common access to the principal building and communal spaces of the group home. The Applicant has provided testimony related to the local and regional need for the proposed group home and indicated that the group home is intended to serve eligible individuals already living in and around Hillsdale.

56. As to the combined side yard setback, the proposed building will have a combined side yard setback of 25.8% of the lot width (25.8 feet), where the R-4 Zone requires a minimum combined side yard setback of 30% of the lot width (30 feet). Variance relief is required.

57. In terms of the fencing, the proposed 6-foot high fence extends into the front yard, where a maximum fence height of 4 feet is permitted. Variance relief is required.

58. In terms of the relief, Mr. Behrens informed the Board of the statutory criteria in addressing use and (d)(1) use variances for inherently beneficial uses and (c) bulk variances. According to Mr. Behrens, the Sica balancing test should be considered in evaluating the development application. Inherently beneficial uses are considered to have satisfied the positive criteria set forth in N.J.S.A. 40:55D-70(d) of the MLUL. In the decision of Sica v. Board of Adjustment of the Township of Wall, the Supreme Court stated that in reviewing applications with inherently beneficial uses, the Board must: (1) identify the public interest at stake; (2) identify the detrimental effect that will ensue from the grant of the variance, recognizing that certain impacts will result from permitting a use not normally permitted in a zone. When minimal, such impacts need not outweigh an inherently beneficial use that satisfies the positive criteria; (3) impose reasonable conditions to reduce prospective detrimental effects; and (4) weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

59. The Board was also informed, via Mr. Behrens' Memorandum, of the criteria for evaluating (c) variance relief, which he identified as the physical features test ((c)(1) variance) and public benefits test ((c)(2) variance). In addition to the above, the Applicant is also required to address the negative criteria of the statute.

October 27, 2020 Hearing

60. On October 27, 2020, the Applicant was represented by Antimo DelVecchio, Esq. of Beattie Padovano. The Board heard testimony from James Virgona, PE, a licensed professional architect of the State of New Jersey, who was duly sworn and qualified prior to providing testimony to the Board. Mr. Virgona testified as to Exhibit A-2, which was the rendering prepared by Virgona & Virgona. Mr. Virgona provided the Board with a business address of 125 River Road, Suite 201, Edgewater, NJ.

61. Mr. Virgona testified that the original rendering was revised and the house was pushed back toward the rear. The Applicant's proposal remained a four-bedroom group home, with two apartments above. On the first floor, two entrances are proposed. He testified as to the bedroom size and locations and that the bedrooms are oriented around a center corridor hallway. A patio is proposed for recreational activities. The basement will be used as a multi-purpose room for the residents with autism. It is a sensory room or quiet space from the upper area. According to Mr. Virgona, group homes are required to have storage space for paperwork for the residents. The apartments above will consist of approximately 850 to 900 SF.

62. In terms of the exterior façade, the façade will consist of, in part, cement-board siding. The state of New Jersey requires durable materials to be utilized and materials that will last for a minimum of 30 years. Thirty-year shingles are being proposed. Manufactured stone is proposed on the lower level.

63. The rear of the house is at a lower elevation than the front, as the house is on a slope. There is a grade difference of 7 feet at the rear. Two levels of patio are proposed and the Applicant tried its best to be consistent with all existing elevations.

64. Christopher P. Statile, PE expressed concern regarding the roof height at one area of the proposed dwelling, and requested that the front portion of the roof be shaved by 1 foot. Mr. Virgona testified that he would lower that portion of the roof and revised plans will be submitted. According to Mr. Virgona and in response to a question from Mr. Behrens, an elevator is not required.

65. Mr. Virgona testified that the building is designed to look like a single-family home. Bay windows, durable front door and other features make it residential in nature. The Applicant is proposing to utilize soft hues of earth tones and have it blend within the existing neighborhood. The purpose of the rear yard is for exercise and activities. The bedroom and stairs are at minimum widths. The dimensions of the rooms are generous as they will be occupied by individuals with developmental disabilities. Group homes require individual entrances, per the State of New Jersey and, therefore, the entrances to the group home and to the home above, per state law, must involve separate entrances. A full fire suppression system is proposed.

66. No sheds are proposed. Patio chairs and the like will be stored in the basement of the proposed dwelling. The walls in the rear yard, as depicted in the plans, will not exceed 3 feet in height.

67. According to Mr. Virgona, each resident is required to have 80 SF for storage of paperwork, which is a state requirement.

68. The bedrooms are somewhat adaptable vs. accessible. It is not required for the units to be handicap accessible, but the bedrooms have been designed to be adaptable.

69. Group homes are required to meet certain evacuation standards. In response to a question by the Board, Mr. Virgona agreed to add windows on the sides on the upper units for ventilation purposes.

70. The house has been set back and is closer to the accessory structures to the left and right of the subject property. The Applicant is way under the FAR. The home that was designed is smaller than what is permitted under Hillsdale's Ordinance. The site slopes to the back and the preference is not to push the home further back.

71. After Mr. Virgona testified, the meeting was opened up to the public and the public asked questions of Mr. Virgona.

72. The next witness to testify was David Hals, a licensed professional engineer and planner of the State of New Jersey, who was previously qualified and was sworn prior to providing testimony. Mr. Hals testified as to the site plan revised to October 15, 2020. He testified that the Applicant reduced the number of parking spaces from seven spaces to five spaces. The building was shifted by 12 feet. The impervious coverage was reduced to 29.2%. The Applicant added a generator on AC pads in the rear.

73. Nine trees are being removed, as opposed to 11 trees as previously proposed.

74. The parking has been screened by Norway spruce trees, as opposed to Green Giant Arborvitaes.

75. The Applicant is proposing enhanced landscaping and added Norway spruce around the perimeter of the parking area. The Applicant was able to retain trees at the southerly portion and added four trees at the front of the property.

76. In terms of lighting, 22" pathway lights are proposed vs. the previously proposed residential-type poles.

77. The parking is beyond the front setback line.

78. The Applicant added shade trees around the rear of the property.

79. In terms of the wall height to the rear, Mr. Hals testified that the walls are at or under 3 feet in height. The Applicant is proposing a 2½-foot wall, a 3-foot wall maximum, plus a wall at the northerly side that is 1.5 feet.

80. The trash will be in the rear left corner of the subject property.

81. The drainage was modified slightly. Mr. Hals testified that seepage pits with open grates are proposed in the driveway.

82. According to Mr. Hals, the fence complies with Hillsdale's Zoning Ordinance and no variance is required.

83. Mr. Hals provided planning testimony in conjunction with the application. He testified that the Applicant is requesting a (d)(1) variance for the two apartments and a bulk variance for the combined side yard setback. The residential use on the ground floor is permitted. There are two units on the second floor that will be deed restricted, that will only service the group home. There is a public benefit to operating a group home. There will be reduced vehicle trips on site. The residential style of the home is consistent with the neighborhood.

84. In terms of the combined side yard setback, 25.8 feet is proposed vs. 30 feet required, for a deficiency of 2.8 feet. The home is positioned 72.5 feet from the street, which allows for landscaping along the property lines and minimal impact along the northerly and southerly property lines. The Applicant minimized the impacts by having a second floor set in, so there is no massing.

85. In terms of the (d)(1) variance, a group home is an inherently beneficial use and the two apartments above are tied to the group home, so that is also inherently beneficial, according to Mr. Hals. Under the Sica test, there are no detrimental effects and the site is particularly suited for the proposed use. There is adequate parking. Stormwater is being managed, and the Applicant meets the impervious coverage and building coverage. There will be no substantial detriment in granting the relief requested by the Applicant. The Applicant is mitigating the negative impacts by capturing all stormwater, providing adequate parking and landscaping.

86. In terms of the bulk variance for the combined side yard setback, the landscaping mitigates any impact associated with the proposed project.

87. The apartments are a component part of the group home and subordinate.

88. The existing dwelling is tired and in dire need of renovation or removal, and that will result in a benefit. Under Sica, and according to Mr. Hals, group homes are allowed pursuant to the MLUL, and the proposed use ranks “high on the ladder” as an inherently beneficial use.

89. The individual units being occupied by staff is what triggers the use variance.

90. The Applicant, however, has addressed all negative impacts associated with the proposed project. In terms of the impacts to the properties to the north and south, the proposed dwelling is adjacent to a driveway and garage at the northerly and southerly sides. Landscaping is proposed to minimize any visual impacts. In terms of the FAR that is being proposed, 22% is proposed vs. 35% permitted. The Applicant is proposing a home of approximately 5,880 SF vs. 9,240 SF permitted. The Applicant elected to go left to right and make the building wider as

opposed to going deeper, because of constraints associated with the lot. The lot is oversized for the R-4 Zone.

91. In terms of questions from the Board or Board professionals, the Board Engineer advised that he did not witness the seepage pits, and same is to be addressed between the Board Engineer and the Applicant. Mr. Statile also asked for enhanced vegetation and evergreens around the parking area. The issue of fence height was addressed, and it was determined that a variance is not required.

92. According to Mr. Hals, the two apartments above can be included and considered inherently beneficial.

93. The Board also heard testimony from Thomas Behrens, PP, the Board Planner. Mr. Behrens addressed the Master Plan and addressed the Housing Element and Fair Share Plan dated 2018. Mr. Behrens testified that, while the proposed model of having the two one-bedroom units for supportive housing is not specifically permitted, it will provide the Borough of Hillsdale with four credits. He also, consistent with his Memorandum, advised the Board that they should consider Sica because the proposed use is inherently beneficial.

94. One of the Board members asked the Board Engineer to consider “solidifying” the three trees at the corner, and asked that same be made a condition of approval.

95. The Board also heard limited testimony from Dawn Townsend, who testified that the individuals occupying the two units will not be indigent and that they will be affiliated with the proposed group home.

96. One of the Board members questioned the use of Norway spruce vs. Green Giant Arborvitaes, and asked the Applicant to consider using Green Giant Arborvitaes, which was the

original proposal. In addition thereto, the Applicant agreed to provide the deed restriction to the Board Attorney for review prior to a vote.

97. With regard to the condensers, a Board member questioned whether 16” is adequate, and the Applicant, via Mr. Hals, testified that he will separate out the condensers per Mr. Reardon’s comment, and revised plans will be submitted.

November 12, 2020

98. At the November 12, 2020 hearing, the Board heard testimony from David Hals, PE, who was duly sworn prior to providing testimony to the Board. The Board professionals, Christopher Statile, PE and Thomas Behrens, PP were duly sworn prior to providing testimony to the Board.

99. Mr. Hals informed the Board that on-site soil tests were conducted on November 11, 2020. He testified that he found sandy material in the front yard with no water. He testified that revised drainage calculations were sent to Mr. Statile and there was some discussion regarding the reduction of the size of the test pits. With regard to the rear yard, the test pits had water. Notwithstanding, he informed the Board that an alternative design is proposed and that the same stormwater reduction will be achieved as a result of such alternative design.

100. The meeting was opened to the public following the limited testimony presented by Mr. Hals. The Board heard questions of David Hals from various residents.

101. At the November 12, 2020 meeting, the Board heard closing statements from Antimo DelVecchio, Esq. Mr. DelVecchio, in his closing statement, informed the Board that group homes rank very highly as an inherently beneficial use. The second-floor apartments are accessory to the group home and, according to Mr. DelVecchio, enjoy the same status as the group home. He shared his opinion with the Board that the Board should not deny the

handicapped access to housing. The side yard setback is required because a significant drop in grade exists, as testified to by professionals during the course of the Applicant's presentation to the Board. The proposed group home or community residence is an inherently beneficial use.

102. At that hearing, there was a motion to deny the application because of the accessory apartment and because of the proposed combined side yard setback. There was a 6-1 vote in favor of denial of the application.

103. Following the denial, the Board Attorney was contacted by the Applicant's counsel, who requested that the Board entertain a motion for reconsideration in connection with the denial. The Board agreed to permit the Applicant to return to the Board on a Motion for Reconsideration.

January 26, 2021

104. Antimo DelVecchio, Esq. of Beattie Padovano appeared on behalf of the Applicant at the January 26, 2021 hearing in connection with the motion for reconsideration. Prior to the meeting, the Applicant submitted revised plans to the Board eliminating the combined side yard setback variance, leaving the relief sought by the Applicant as relief pursuant to N.J.S.A. 40:55D-70(d)(1). In anticipation of the January 26, 2021 hearing, revised engineering plans and architectural plans were submitted to the Board. The revised engineering plans were prepared by Schwanede/Hals Engineering, consisting of four sheets, dated May 18, 2020 and revised to December 18, 2020, consisting of the following:

- Sheet 104 entitled "Site Plan";
- Sheet 204 entitled "Grading, Landscaping & Lighting Plan";
- Sheet 304 entitled "Soil Erosion and Sediment Control Plan"; and
- Sheet 404 entitled "Survey/Soil Movement.

105. Mr. Statile noted in his January 11, 2020 report (which should have been dated January 11, 2021), that the revised architectural plan of the interior consists of one sheet, prepared by Virgona & Virgona, dated March 6, 2020 and revised to November 18, 2020. Such plan reduced the width of the dwelling. In addition, Mr. Statile noted that the Applicant submitted a cover letter from Beattie Padovano dated December 23, 2020 requesting that the Board reconsider its vote. Mr. Statile noted in his report, without limitation, that the revised plans include a five-space parking area in front of the building, of which one of the parking spaces is barrier free. In addition, the parking area was redesigned so that it is set back 20 feet from both side property lines. Mr. Statile noted that the Applicant also added landscape plantings around the parking area to help buffer the proposed parking lot. The walkways are lighted by ground-mounted 3 watt LED landscape fixtures at 22 inches high. He also noted the revised design eliminated the need for any bulk variances.

106. Testifying at the January 26, 2021 hearing were David Hals, PE and Thomas Behrens, PP after being qualified and sworn.

107. At the January 26, 2021 hearing, the Applicant applied for a use variance to N.J.S.A. 40:55D-70(d)(1) in connection with the proposed group home, consisting of four bedrooms and supportive housing. Mr. DelVecchio informed the Board that he filed a Motion for Reconsideration on December 23, 2020 and that the combined side yard setback variance was eliminated. Therefore, the Applicant was seeking a (d)(1) variance in light of the supportive housing above the group home which, as testified to by Mr. Behrens, represents a bit of a different model and is a gray area and, therefore, a (d)(1) variance is required.

108. The Board heard testimony regarding N.J.S.A. 40:55D-66.1 involving community residences for the developmentally disabled, which are permitted uses in all residential districts

of a municipality and that the requirements therefore shall be the same as for single-family dwelling units. The proposed use is inherently beneficial.

109. Mr. Behrens was sworn and provided testimony to the Board. He testified that the use as proposed is inherently beneficial and that a (d)(1) variance is required because the model proposed by the Applicant includes supportive housing in the two units above.

110. At the outset, it was noted that all conditions testified to and agreed to during the course of all hearings remained in place, as well as all concessions made by the Applicant, including, but not limited to, the deed restriction, enhanced lighting, and landscaping, as well as the limitation that the group home shall be used only for purposes of housing individuals with developmental disabilities and that the residents must meet income limits and occupancy, without limitation. In addition, occupancy of the supportive housing is limited to employees only on a non-income basis. PVC fencing will be included to complete surround the property. The Applicant shall meet all ADA accessibility requirements.

111. The discussions regarding the residential pole-mounted lighting shall remain in place, as well as all other items related thereto. The tree replacement, as testified to on the record which are not all recited herein, shall also remain a condition of approval. The enclosure for garbage shall be as required by the Board.

112. Grading at the southerly and northerly sides shall be looked at by the Applicant to the satisfaction of the Board and Board Engineer.

113. The Board heard testimony from David Hals, PE, who was duly qualified and sworn prior to providing testimony before the Board. He testified as to the plot plan dated December 18, 2020 and advised the Board that the combined side yard setback variance was eliminated and that the Applicant reduced the overall width by 4' 2". No bulk variances are

being triggered by the application. In addition, the building coverage was reduced from 29.2% to 28.6%, as well as the floor area ratio from 22.0 to 20.2. He testified that the (d)(1) variance is for the two apartments, which will supply support for the community residents below. The residential use on the ground floor is permitted. The two units on the second floor will be deed restricted. There is a benefit to the operator of the group home and the residents because of the supportive housing in the two units above. This is a residential-style home that will be consistent with the neighborhood. Mr. Hals testified that the group home is an inherently beneficial use and the two apartments above are tied to the group home, so that is also an inherently beneficial use. The site is particularly suited for the proposed use and there will be no detrimental effects to the neighborhood or to the zone plan. There is adequate parking, stormwater management and the Applicant meets the zoning standards, with the exception of the (d)(1) variance. The Board can ensure that the deed restriction is followed.

114. Mr. Hals testified that some of the landscaping was adjusted. The trash location was moved to the left rear corner of the proposed dwelling.

115. Mr. Hals confirmed that all prior planning and engineering testimony stands as previously testified to at the prior hearings. The site conforms with the Zone District. During the course of his testimony, Mr. Hals informed the Board that the Applicant could build a home that is 15% larger than what is being built. Mr. Hals also opined that there will not be any negative impacts associated with the project and the use, from a planning perspective, is an inherently beneficial use.

116. The Board heard testimony from Christopher P. Statile, PE, the Board Engineer, who was duly qualified and sworn. He agreed with Mr. Hals that the site conforms with all bulk standards.

117. In terms of tree removal, Mr. Hals confirmed that the Applicant is removing 9 trees and replacing same with 33 trees, well in excess of what is required pursuant to Hillsdale's Ordinance.

118. The Board opened this matter to the public, and there were various comments made by individuals within the neighborhood and in the Borough of Hillsdale.

119. The Board heard testimony from Mr. Behrens at the hearing and considered his reports submitted in connection with the project. Mr. Behrens testified that the subject property is located within the Borough's R-4 Residential Zone, where the proposed group home is not specifically listed as a permitted use. However, in accordance with N.J.S.A. 40:55D-66.1 of the MLUL, community residences for the developmentally disabled shall be a permitted use in all residential districts of a municipality, and the requirements therefore shall be the same as for single-family dwelling units located within such districts. N.J.S.A. 30:11B-2 defines community residences for the developmentally disabled as follows:

“any community residential facility housing up to 16 persons with developmental disabilities, which provides food, shelter, and personal guidance for persons with developmental disabilities who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the Health Care Facilities Planning Act,” P.L. 1971, c. 136 (C. 26:2H-1, et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements and hostels.”

In his report, Mr. Behrens noted that the Applicant applied for (d)(1) use variance relief for the proposed development consisting of a four-bedroom group home and two one-bedroom apartments in the R-4 Zone. The MLUL permits community residences for the developmentally disabled in all residential zones. Mr. Behrens noted that the Applicant applied for the use variance as the two apartments technically constitute two separate dwelling units within the

larger group home structure, though such units share common access to the principal building and communal spaces of the group home. The Applicant has, according to Mr. Behrens in his report, provided testimony related to the local and regional need for the proposed group home and indicated that the group home is intended to serve eligible individuals already living in and around Hillsdale. In his report, Mr. Behrens went on to identify the relief required in connection with the application, as well as the SICA test for inherently beneficial use variances pursuant to N.J.S.A. 40:55D-70(d)(1), as well as for granting (c) variance relief. With regard to SICA, Mr. Behrens noted that, though typically applied to (d)(1) use variances for inherently beneficial uses, the SICA balancing test should be considered in evaluating the subject development application. Inherently beneficial uses are considered to have satisfied the positive criteria as set forth in N.J.S.A. 40:55D-70(d) of the MLUL. In the decision of SICA v. the Board of Adjustment of the Township of Wall, et al., the Supreme Court stated that, in reviewing applications with inherently beneficial uses, the Board must:

1. Identify the public interest a stake;
2. Identify the detriment effect that will ensue from the grant of the variance, recognizing that certain impacts will result from permitting a use not normally permitted in a zone. When minimal, such impacts need not outweigh an inherently beneficial use that satisfies the positive criteria;
3. Impose reasonable conditions to reduce prospective detrimental effects; and
4. Weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

To address the “negative criteria”, the Applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good” nor will the granting

of the variance “substantially impair the intent and the purpose of the zone plan and zoning ordinance” of the municipality. Mr. Behrens, as stated herein and in his reports, also provided the Board with guidance regarding the granting of (c) variance relief, including relief granted pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

120. In his report of January 13, 2021, Mr. Behrens acknowledged receipt of revised plans from the Applicant. He noted that the Applicant submitted revised plans and a request for the Board to reconsider the application to construct a new group home with associated site improvements at the subject site. Mr. Behrens noted that the previously submitted combined side yard setback variance had been eliminated to conform with the R-4 Zone requirements. Mr. Behrens noted that the nature of the two accessory apartments, without limitation, evolved during the course of the several public meetings. He noted that the Applicant agreed to condition Board approval by deed restricting the two accessory apartments to be solely occupied by support personnel of the group home. Mr. Behrens again recited N.J.S.A. 40:55D-66.1 of the MLUL relating to community residences, and he provided testimony at the hearing of January 26, 2021 accordingly. Without limitation, Mr. Behrens noted that the architectural plans were revised to reduce the width of the dwelling in order to accommodate a new conforming side yard setback. He noted that same was achieved by modifying the room dimensions of the basement, first floor and second floor spaces of the dwelling, as shown on the revised floor plans. He also noted the location of the dwelling had been revised from the original plans and that a setback was proposed of 86 feet to the curb on Central Avenue. Without limitation, in his January 13, 2021 report, Mr. Behrens made comments relating to parking, where five parking spaces are permitted. He also noted that, as requested by the Board, a six-foot high solid PVC fence will be installed around the side and rear lot lines to the required 30 foot front yard setback.

Furthermore, he also noted the landscape plan features 16 Norway Spruce with planting heights 8 feet around the front yard parking area, four zelkova street trees, foundation plantings and tree plantings in the rear yard to mitigate the proposed removal of nine existing trees, as depicted on the plans. Furthermore, the lighting plan features three 22-inch high “walkway” lights around the front and side walkways.

121. At the conclusion of the hearing, the Board voted to grant the motion for reconsideration and to approve the application. Mr. DelVecchio, prior to the vote, confirmed that the deed restriction is to be agreed upon with the Board Attorney as a condition of approval, and same shall be recorded with the County of Bergen.

D. Justification for Relief

122. The Board makes the following findings and conclusions with respect to this application:

A. Though typically applied to d’(1) use variances for inherently beneficial uses, the SICA balancing test should be considered in evaluating this development application for the proposed community residence for individuals with developmental disabilities. Inherently beneficial uses are considered to have satisfied the positive criteria set forth in N.J.S.A. 40:55D-70(d) of the Municipal Land Use Law. The Board determined there is a need for housing for individuals with developmental disabilities. The use variance is triggered by the supportive housing above the proposed group home. The application is otherwise conforming and no bulk variances are required by the Applicant. The proposed group home will fit within the character of the neighborhood and will look like a single-family residence. The Applicant located the proposed dwelling on the lot in order to minimize any impacts to the neighborhood and will mitigate any impacts by the proposed

fencing, lighting and landscaping. The Board imposed reasonable conditions to reduce any prospective detrimental effects.

- B. The Board finds that the application as presented will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Borough's Zone Plan and Land Use Ordinance.
- C. The construction of the proposed dwelling on the land will go toward the positive criteria. The Board further determined that the Property can accommodate the use and the site will be adequately parked.
- D. Further, the Board finds that using prudent zoning and planning principles, project will not negatively impact the existing neighborhood nor the community as a whole.
- E. The Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.
- F. The Board hereby determines that the Applicant has met its burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicant.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Hillsdale as follows:

1. The Applicant's application for preliminary and final site plan approval and a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) is hereby granted.
2. The application is specifically conditioned upon any and all other approvals required by any governmental entity having jurisdiction over the development, including, but not limited to Bergen County Planning Board approval or waiver, Bergen County Soil Conservation District approval and NJDEP approval, to the extent applicable.

3. The Applicant shall comply with the reports of the Board Engineer and the Board Planner, as stated herein and on the record.

4. The Applicant shall comply with any and all Federal, State, County and local laws, ordinances, codes, rules and regulations with respect to all aspects of the project, property and proposed use, and with all such applicable laws and codes, and shall be responsible for all costs and fees associated therewith. Notwithstanding the approval granted by the Board, the Applicant shall obtain all other applicable approvals and comply with all applicable laws, codes, ordinances, regulations and the like as to the Property.

5. Before any permits are applied for, it is the responsibility of the owner to see if there are any open permits or violations and address these before a new permit can be issued.

6. When applying for the permits, a copy of the signed resolution and board-approved plans must accompany the permit application.

7. No certificate of occupancy will be issued unless all inspections have been performed, passed, and all prior approvals have been satisfied.

8. The Applicant shall maintain sufficient escrow funds as requested by the Borough of Hillsdale.

9. The Applicant shall obtain all appropriate and applicable approvals and permits as required from all governmental agencies having jurisdiction over the project or the subject matter of this application, shall comply with each and every requirement of every issued permit, and shall be responsible for all costs and fees associated with these approvals. Before any permits are applied for, the Applicant shall determine whether there are any open permits or violations for the Property and resolve any such issues to the satisfaction of the Construction Official. A signed Board resolution and Board-approved plans shall be submitted with all applications for permits.

10. If other agency approvals modify the plan, same will trigger a return to the Board.
11. The Applicant shall comply with the conditions of the Board and Board Engineer, as set forth herein and in the record.
12. The Applicant shall comply with all applicable laws and regulations, including the payment of the non-residential development fee, if applicable, pursuant to the Municipal Land Use Law.
13. There will be a six-month look back as it relates to the proposed lighting by the Board and Board Engineer. The Board and its professionals, Planner or Engineer, may require adjustments to the extent there is spillage or impact to adjacent properties.
14. The Applicant shall comply with the comments and conditions of the Planning Board Engineer, Planning Board Planner, Planning Board Attorney and Board as stated in this Resolution and on the record.
15. The Applicant shall comply with all applicable laws and regulations, including the payment of the non-residential development fee, if applicable, pursuant to the Municipal Land Use Law.
16. That the site be developed with the proposed use and in accordance with the current plans and renderings as submitted to the Planning Board except as modified by the Board as set forth herein.
17. The Applicant agreed that there will be a deed restriction and a reverter clause if the property is not maintained and that the property could revert to municipal ownership, as agreed to by the Applicant.
18. The Applicant agreed to limit occupancy to persons with developmental disabilities.

19. The Applicant shall, as may be required, certify that the residents in the apartments above meet all income limits and are personnel of the facility.

20. The Applicant agreed to modify the landscaping plan and to work with the Board Engineer as to same.

21. The Applicant agreed that a six-foot high solid PVC fence will be installed around the side and rear lot lines to the required 30 foot front yard setback.

22. Revised plans are to be submitted by the Applicant showing the lowering of the front portion of the roof by 1 foot.

23. A landscape plan shall be submitted to the Board for review and approval.

24. The design of the seepage pits is to be addressed between the Board Engineer and the Applicant's Engineer.

25. The Applicant agreed to enhanced vegetation and evergreens around the parking area.

26. The Applicant agreed to solidify the three trees at the corner.

27. The Applicant shall file a deed restriction with the County of Bergen restricting the two one-bedroom units as moderate-income units and limiting occupancy to service providers who provide support to the individuals with developmental disabilities. The two one-bedroom apartments shall not be rented out to any person or entity who is not providing supportive housing to the four units on the first floor. The deed restriction to be filed with the County shall be acceptable to the Board Attorney.

28. Revised plans showing the separation of the condensers are to be submitted by the Applicant.

29. The Applicant agreed to add windows on the sides of the upper units for ventilation purposes.

30. The Applicant agreed to provide the Board with an alternative design for the rear yard stormwater management.

BE IT FURTHER RESOLVED that the Chairman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting lot frontage variances, as described herein, and the Applicant is authorized to advertise the action taken by way of this Resolution in a local newspaper; and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and to the Applicant's counsel, Antimo DeVecchio, Esq.

MOVED BY: Joanne Miano
SECONDED BY: Meredith Kates

VOTE: FOR 6 AGAINST 1 ABSTAIN _____

MEMORIALIZATION VOTE:
MOVED BY:
SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED
Attest:

Meredith Kates, Secretary

Dewey Burleson, Chair

I certify that the foregoing is a true copy of the Resolution adopted on _____,
2021.

Meredith Kates, Secretary

Dated: _____, 2021