

CITY OF SOUTH AMBOY PLANNING BOARD

RESOLUTION PB- 13 -17

Case Number 374-17

**Block 10 - Lots 1 and 10.01
611 Bordentown Avenue
City of South Amboy**

Resolution denying use variance;

WHEREAS, pursuant to the applicable provisions of the City of South Amboy Land Use Ordinance the within application has been submitted to the City of South Amboy Planning Board (the "Board") by **611 BORDENTOWN AVENUE, LLC** (the "Applicant") for a use variance, a (d)(6) height variance and bulk variances related to lot depth, front yard setback, rear yard setback, lot coverage and lot landscaping, for premises located at 611 Bordentown Avenue, also known as Block 10, Lots 1 and 10.01, located on the Tax Map of the City of South Amboy and situated in a B-2 Zone (hereinafter the "Subject Property"); and

WHEREAS, the application reviewed by the Board consisted of those plans and documents as identified in the reports prepared by Angelo J. Valetutto, P.E., P.P. the consultant to the Planning Board dated May 16, 2017 and July 13, 2017 (hereinafter the "May Planning Report" and the "July Planning Report"); and

WHEREAS, the application was certified as complete on April 26, 2017 and public hearings with respect to the Application were held by the Board May 31, 2017, July 26, 2017 and August 23, 2017, as per public notice and personal notice pursuant to N.J.S.A. 40:55D-12 ; and

WHEREAS, as part of the instant application and based upon the initial plans submitted and reviewed by the professional staff, the Applicant required a use variance, as residential uses are not permitted within the B-2 Zone, as well as bulk variances from the zoning requirements as set forth in the ordinance;

<u>Description</u>	<u>Required</u>	<u>Proposed</u>
Lot Depth	200 feet	114.2 feet
Front Yard Setback	50 feet	3 feet
Rear Yard Setback	25 feet	12.8 feet
Lot Coverage	25%	69.5%
Site Landscaping	10 feet	6.9 feet

Specifically, these exhibits were identified as follows:

- Exhibit A-1 1979 Historic Aerial Photograph of Subject Property
- Exhibit A-2 2012 Aerial Photograph of Subject Property
- Exhibit A-3 Colorized Landscaping Plan
- Exhibit A-4 SU-30 Turning Template superimposed on Sheet 2 of the Variance Plan

7. Mr. French thereafter provided testimony concerning the conditions on the Subject Property, as well as the uses on the surrounding properties. He indicated that the Subject Property consists of approximately 1.36 acres with an irregular long, narrow shape; fronting mainly on improved roadways. Mr. French advised that Route 35 elevates at the frontage of the Subject Property to the west.
8. Referring to Exhibit A-1, Mr. French informed the Board that the Subject Property was previously used as a supermarket. He indicated that the structure was initially constructed during the 1960's and additions were made to the structure thereafter. Mr. French, referring to Exhibits A-1 and A-2, indicated that since the 1970's, the entirety of the Subject Property has been covered with impervious coverage and structures.
9. Referring to Exhibit A-3, Mr. French reviewed the improvements to the Subject Property proposed by the Applicant. He advised that the Applicant was proposing a three story building with 56 parking spaces, a lobby and a utility room on the first floor. Mr. French indicated that access to the building would be supplied by right in/right out driveway on Bordentown Avenue and a full movement driveway on Parker Avenue. He noted that 44 surface parking spaces were proposed for remaining portion of the Subject Property; with a full movement driveway from Portia Street.
10. Mr. French further indicated that Exhibit A-3 demonstrated that the Applicant proposed to reduce the impervious coverage on the Subject Property to 69.5% (from the existing 93.2%). He noted that that the Applicant proposed landscape screening along the property line adjoining the residential properties to the east. Mr. French advised that a streetscape along Bordentown Avenue and Parker Avenue was proposed; and that the surface parking area would be improved with shade trees. He testified that lighting would be supplied by LED light fixtures which would be shielded to direct the light downward and prevent spillage onto adjoining properties.
11. Mr. French then reviewed the six (6) statutory elements of a site plan and supplied his opinion of the feasibility of developing the Subject Property, if the use variance and bulk variances were granted. Specifically, Mr. French testified:
 - A. Grading: the Subject Property is relatively flat and little regrading would

- Exhibit A-5 Colorized Architectural Building Footprint
- Exhibit A-6 Elevation views from surface parking lot and Route 35
- Exhibit A-7 Elevation views from Bordentown Avenue and Parker Avenue
- Exhibit A-8 Colorized highlights of elevations from Bordentown Avenue and Parker Avenue

15. Ms. Rummler testified that in developing the architectural style for the project, the Applicant utilized elements from both New Jersey shore communities, as well existing structures within the City. She acknowledged that, if the present application were approved, the Applicant would develop a full architectural plan for the project prior to the site plan application.
16. Ms. Rummler confirmed that the height of the structure, at its highest portion, would be 47 feet, 8 inches.
17. Ms. Rummler advised that each of the two residential floors of the structure would contain twenty-five (25) units for a total of fifty (50) residential units. She indicated that twenty-six (26) of the units would be one-bedroom units; while twenty-four (24) of the units would be two-bedroom units.
18. Upon inquiry from the Board, Ms. Rummler confirmed that the no HVAC units were planned for the roof of the building. She indicated that the residential units would have individual HVAC units which vented directly to the outside. Mr. Rummler confirmed that the vents were not shown on the plans; but that they would be approximately 30 inches by 24 inches and painted to match the building façade.
19. Mr. Rea thereafter reviewed the site parking, site circulation and traffic impacts of the Applicant's proposed development. He opined that the Subject Property was desirable location from a transportation perspective. Mr. Rea acknowledged the City railroad station, the park-and-ride facility and the roadway network supply numerous avenues for a resident to travel to and from the Subject Property.
20. Mr. Rea reviewed the on-site parking; noting that the Applicant is proposing 100 parking spaces; a rate of 2 parking spaces per residential unit. He indicated that the Residential Site Improvement Standards (hereinafter the "RSIS") require 1.8 parking spaces per one-bedroom unit; and 2 parking spaces per two-bedroom unit; concluding that the Applicant was proposing on-site parking which exceeded the RSIS standards. Mr. Rea added that, based upon his experience with similar projects, the maximum peak parking demand would be approximately 1.5 parking spaces per unit.
21. Mr. Rea then examined the ingress and egress to the Subject Property, as well as the site circulation. He confirmed that right-in/right-out access to the underground parking area was being supplied from Bordentown Avenue; while

29. At the hearing on May 31, 2017, members of the public made inquiries of the Applicant and its professionals, as well as supplied testimony concerning the Applicant's proposal. Specifically, the following comments were received:
 - A. In light of the number of proposed units and the number of proposed parking spaces, there will be insufficient on-site parking to handle holiday parking conditions.
 - B. The first floor of the structure should be used for a commercial purpose in conformity with the B-2 Zone with the residential use being confined to the upper floors.
 - C. Despite the fact that water lines have been recently replaced, there is insufficient water pressure within the neighborhood in which the Subject Property is located. A conforming use would not demand as much water as the proposed residential use.
 - D. There will be insufficient screening of the Subject Property from the adjoining residential properties, as well as loss of privacy due to the windows in the proposed building which overlook the rear yards of the adjoining residential properties.
 - E. There is a significant traffic condition on Parker Avenue which will only be exacerbated by the Applicant's proposed development.
 - F. The size of the proposed structure is too large for the Subject Property.
 - G. The Subject Property is not a properly location for a fifty (50) unit apartment complex.
30. At the hearing on July 26, 2017, Mr. Pape again appeared and acknowledged receipt of the July Planning Report on behalf of the Applicant.
31. The Applicant's professionals from the prior hearing, as well as the Applicant's representative, Mr. Felix Bruselovsky; and the Applicant's Professional Planner, James W. Higgins, P.P., appeared on behalf of the Applicant. These witnesses supplied testimony in support of the application and responded to inquiries from the Board and the public.
32. Initially, Mr. Pape advised the Board that revised plans had been prepared and submitted in response to the comments received from the Board and the public at the hearing on May 31, 2017.
33. Mr. Pape also advised that the Applicant had investigated whether the water

38. Upon inquiry from Angelo J. Valetutto, P.E., P.P., Mr. French advised that the reduction in the square footage of the structure had been accomplished by removing the four units within the building nearest Parker Avenue. This area measured approximately 33 feet by 63 feet. Mr. French noted that the parking area below the area of the structure which was removed still remains on the first floor.
39. Mr. Bruselovsky stated that the Applicant is a family owned enterprise. He advised the Board that he was the managing member of the Applicant. Mr. Bruselovsky noted that the Applicant intends for the Subject Property to be a business asset.
40. Mr. Bruselovsky thereafter provided testimony concerning the identification of the Subject Property by the Applicant and the decision to develop it in the manner proposed. He testified that initially the Applicant explored the development of the Subject Property for a conforming commercial use. Mr. Bruselovsky noted that the Applicant has business relationships with 7-Eleven and other retail chains; but that none of these entities was interested due to the limited traffic flow at the Subject Property. He advised that the Applicant decided to pursue the present residential use as a result of its inability to identify a commercial tenant for a conforming use.
41. Mr. Bruselovsky testified that the Applicant currently owns a number of buildings throughout the State of New Jersey. He indicated that, as a result, the Applicant has a maintenance team on staff which is available 24 hours per day, 7 days per week. Mr. Bruselovsky also advised that trash and recycling removal would be handled by a private hauler; allowing the Applicant to control the time and frequency of trash and recycling removal.
42. Mr. Bruselovsky stated that the Applicant intends to construct the project with high end materials and amenities; including: stainless steel appliances, washer/dryer in each unit; and granite countertops.
43. Upon inquiry from the Board, Mr. Bruselovsky confirmed that the Applicant had pursued a variety of commercial and professional businesses for the Subject Property; including nail salons, restaurants, lawyers, accountants and engineers. He advised that the Applicant was not successful in locating a commercial or professional tenant wishing to occupy space at the Subject Property.
44. Upon inquiry from the Board, Mr. Bruselovsky indicated that the proximity to the City train station and Route 35 were factors which led the Applicant to pursue the proposed residential development.
45. At the hearing on July 26, 2017, Mr. Higgins identified the variance relief sought

residential use is not permitted in the B-2 Zone; and a (d)(6) height variance, as the proposed height exceeds the permitted height by more than 10%. He indicated that the Applicant does not require a density variance; as there is no density standard within the B-2 zone because residential uses are not permitted.

53. Mr. Higgins thereafter reviewed the City Master Plan; noting that it promotes smart growth. He indicated that smart growth encompasses keeping high density residential uses in close proximity to commercial uses and transportation. Mr. Higgins advised that the Master Plan also seeks to maintain a reasonable balance of housing types. He further noted that the Master Plan contained a recurring theme of enhancing the viability of the City's downtown area. Mr. Higgins opined that the City represents the most important transportation hub in Middlesex County and south of the Raritan River.
54. Mr. Higgins then examined the Applicant's request for a use variance; acknowledging that the proposed use was not inherently beneficial. He opined that the Subject Property was particularly suitable for the proposed residential use. Mr. Higgins indicated that the Subject Property is an orphan site which is not viable for its commercially zoned use. He testified that the shape of the site makes it difficult for commercial use; and added that any commercial use would likely require bulk variance relief and interfere with the adjoining residential uses. Mr. Higgins noted that the inability to access Route 35 due to elevation issues exacerbates the issues with developing the site for a commercial use. He testified that office uses were no longer in demand due to the prevalence of home offices and work-from-home arrangements.
55. Mr. Higgins opined that the shape of the Subject Property was not conducive to single family residential development. He stated that the proposed multifamily use was viable due to the location of the Subject Property and its surrounding medical office use, multifamily use and highway. Mr. Higgins further noted that the dimensions of the Subject Property would require the proposed building to be concentrated on the northerly end of the site. He indicated that the building would act as a sound buffer for the residential uses.
56. Mr. Higgins testified that the Subject Property was ideally suited for the Applicant's proposal. He noted that the use was geared toward the millennial population; and would also be attractive to older residents no longer wishing to live in a single family dwelling. Mr. Higgins indicated that 28% of South Amboy's residents were between the ages of 20 and 29; while 33% of the City's residents were over the age of 50. He advised that the project was marketed towards one to two individual households.
57. Mr. Higgins indicated that the City's downtown is economically strong but still contains vacancies. He stated that the downtown is in need of residents to use the businesses located there. Mr. Higgins noted that the addition of commercial

64. Upon inquiry from the Board, Mr. Valetutto testified that the two developments identified by Mr. Higgins in the vicinity of the Subject Property containing high density residential developments were both located within redevelopment areas. Mr. Valetutto indicated the residential density of each of those developments was within the parameters of the redevelopment plan for each property.
65. Upon inquiry from the Board, Mr. Higgins indicated that any successful commercial business located outside of the downtown area would be detrimentally affecting the downtown by drawing business away from the downtown.
66. At the hearing on July 26, 2017, members of the public made inquiries of the Applicant and its professionals, as well as supplied testimony concerning the Applicant's proposal. Specifically, the following comments were received:
 - A. The proposed parking will detrimentally impact the rear yards of the adjoining residential properties.
 - B. The Subject Property should be improved with single family residential dwellings similarly to the adjoining residential development.
 - C. There is a significant traffic condition on Parker Avenue which will only be exacerbated by the Applicant's proposed development.
 - D. There is a lack of parking within the vicinity of the Subject Property which would only be exacerbated by the proposed development.

Based upon the above Findings of Fact, the Board concludes as follows:

CONCLUSIONS

1. The Board rejects the Applicant's assertion that the Subject Property is particularly suitable for the proposed residential use. Applicant's proofs on this issue rested first upon the existence of a medical office and a high density residential use on properties within the vicinity of the Subject Property. Reference to other properties as part of a particular suitability analysis is misplaced because the correct analysis centers on the characteristics of the Subject Property that render it particularly suitable for the proposed use. In fact, the New Jersey Supreme Court in Medici v. BPR Co. specifically held that the fact that that site was near an interstate highway did not distinguish it from any other property in the vicinity of the highway. Similarly, here the Subject Property's proximity to a medical office use and a high density residential use does not distinguish it from any other property in this neighborhood.
2. Applicant's particular suitability argument also fails because the high density residential use to which Applicant points, Hillcrest Manor, is separated from the

zoning ordinance, a Board of Adjustment may reasonably infer that this inaction was deliberate. Therefore, this Board can justifiably rely upon the commercial zoning of the Subject Property as setting forth the use of the Subject Property intended by the drafters of the Master Plan, and by extension, the City's Zone Plan and Zoning Ordinance.

- B. Second, the proposed development of the Subject Property would result in a residential density of 33.9 units per acre. This density would far exceed the density of 16 units per acre; the highest permitted in the City's zoning ordinance. Further, the Board concludes that the Applicant's assertion that the nonconforming residential density in the Hillcrest Manor development supports its present application for a density of 33.9 units is misplaced. Initially, the Board notes that each application coming before it is judged upon its own individual merits. Moreover, as previously indicated, the Hillcrest Manor property is in a different neighborhood than the Subject Property. If the Board were to accept Applicant's argument, then a Board would be unable to judge each individual application separately on its merits, but would be bound by the prior approval as precedent setting. Applicant's argument, if accepted, would result in the potential for a breakdown of the zone plan due to the granting of a nonconforming density. The granting of the present application could be later used by other property owners in support of the degradation of the adjoining residential development through the construction of other high density residential housing.
6. The Applicant also failed to meet its burden of proof that the use variance could be granted without substantial detriment to the public good. The public good is measured first by examining what negative impacts will be visited upon adjacent properties; and second upon the larger neighborhood. The Board, based upon its knowledgeable conditions, and also considering the uncontroverted testimony of numerous members of the public, is that there currently exists traffic congestion and problems and inadequate parking in this neighborhood. The introduction of Applicant's proposed high-density apartment complex into the existing residential neighborhood would exacerbate these negative traffic and parking conditions.
 7. Turning to the height variance, Applicant also failed to meet its burden of proof as to both the positive and negative criteria. The Applicant failed to establish that the Subject Property is capable of accommodating the issues associated with the proposed height. As indicated herein, the proposed height will detrimentally impact the light, air and open space of the adjoining property owners.
 8. The Applicant failed to meet its burden of proof that the height variance can be granted without substantial detriment to the zone plan and zoning ordinance of the City of South Amboy. It is clear that the height standard in the B-2 Zone is designed to protect the adjoining residential neighborhood. The granting of the

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WHEREAS, pursuant to the applicable provisions of the City of South Amboy Land Use Ordinance the within application has been submitted to the City of South Amboy Planning Board (the "Board") by **611 BORDENTOWN AVENUE, LLC** (the "Applicant") for a use variance, a (d)(6) height variance and bulk variances related to lot depth, front yard setback, rear yard setback, lot coverage and lot landscaping, for premises located at 611 Bordentown Avenue, also known as Block 10, Lots 1 and 10.01, located on the Tax Map of the City of South Amboy and situated in a B-2 Zone (hereinafter the "Subject Property"); and

WHEREAS, the application reviewed by the Board consisted of those plans and documents as identified in the reports prepared by Angelo J. Valetutto, P.E., P.P. the consultant to the Planning Board dated May 16, 2017 and July 13, 2017 (hereinafter the "May Planning Report" and the "July Planning Report"); and

WHEREAS, the application was certified as complete on April 26, 2017 and public hearings with respect to the Application were held by the Board May 31, 2017, July 26, 2017 and August 23, 2017, as per public notice and personal notice pursuant to N.J.S.A. 40:55D-12 ; and

WHEREAS, as part of the instant application and based upon the initial plans submitted and reviewed by the professional staff, the Applicant required a use variance, as residential uses are not permitted within the B-2 Zone, as well as bulk variances from the zoning requirements as set forth in the ordinance;

<u>Description</u>	<u>Required</u>	<u>Proposed</u>
Lot Depth	200 feet	114.2 feet
Front Yard Setback	50 feet	3 feet
Rear Yard Setback	25 feet	12.8 feet
Lot Coverage	25%	69.5%
Site Landscaping	10 feet	6.9 feet

Building Height 35 feet/2 Stories 47 feet, 8 inches/3 stories

WHEREAS, at the public hearings, the following reports were entered into the record:

<u>Description of Report</u>	<u>Date of Report</u>
Planning Report of AJV Engineering Inc.	May 16, 2017
Planning Report of AJV Engineering Inc.	July 13, 2017

WHEREAS, The Board, after carefully considering the evidence presented to it by or on behalf of the Applicant and upon the advice and recommendations of the advisory municipal personnel, agencies and consultants (including, without limitation, those set forth in the aforesaid Planning Report), makes the following findings of facts:

FINDINGS OF FACT

1. The Applicant is the contract purchaser of the Subject Property.
2. At the hearings, the Applicant was represented by Kenneth L. Pape, Esq. of the firm of Heilbrunn Pape of Millstone, NJ.
3. At the initial hearing on May 31, 2017, Mr. Pape, on behalf of Applicant, acknowledged receipt of the May Planning Report.
4. At the initial hearing, on May 31, 2017, the Applicant's engineer, Mr. Andrew L. French, P.E.; the Applicant's Architect, Sang-Yee K. Rummier; and the Applicant's Traffic Engineer, John Rea, P.E., appeared on behalf of the Applicant. These witnesses supplied testimony in support of the application and responded to inquiries from the Board and the public.
5. Initially, Mr. Pape provided a summary of the application. He noted that the Subject Property is adjacent to Florence Avenue, an orphaned street, which the Applicant will seek to have vacated and annexed to the Subject Property. Mr. Pape advised that the Applicant was proposing to construct a three story building consisting of parking on the first floor; and residential apartments on the second and third floors. He noted that the Applicant was proposing 50 residential units and 100 parking spaces. Mr. Pape indicated that the Applicant required a use variance, as the residential use was not permitted within the B-2 Zone. He also indicated that the proposed building height of 47 feet, 8 inches exceeded the maximum permitted height of 35 feet in the B-2 zone; thereby requiring a (d)(6) height variance.
6. Prior to commencing his testimony, Mr. French proffered several exhibits on behalf of the Applicant; which were entered into the record by the Board.

Specifically, these exhibits were identified as follows:

- Exhibit A-1 1979 Historic Aerial Photograph of Subject Property
- Exhibit A-2 2012 Aerial Photograph of Subject Property
- Exhibit A-3 Colorized Landscaping Plan
- Exhibit A-4 SU-30 Turning Template superimposed on Sheet 2 of the Variance Plan

7. Mr. French thereafter provided testimony concerning the conditions on the Subject Property, as well as the uses on the surrounding properties. He indicated that the Subject Property consists of approximately 1.36 acres with an irregular long, narrow shape; fronting mainly on improved roadways. Mr. French advised that Route 35 elevates at the frontage of the Subject Property to the west.
8. Referring to Exhibit A-1, Mr. French informed the Board that the Subject Property was previously used as a supermarket. He indicated that the structure was initially constructed during the 1960's and additions were made to the structure thereafter. Mr. French, referring to Exhibits A-1 and A-2, indicated that since the 1970's, the entirety of the Subject Property has been covered with impervious coverage and structures.
9. Referring to Exhibit A-3, Mr. French reviewed the improvements to the Subject Property proposed by the Applicant. He advised that the Applicant was proposing a three story building with 56 parking spaces, a lobby and a utility room on the first floor. Mr. French indicated that access to the building would be supplied by right in/right out driveway on Bordentown Avenue and a full movement driveway on Parker Avenue. He noted that 44 surface parking spaces were proposed for remaining portion of the Subject Property; with a full movement driveway from Portia Street.
10. Mr. French further indicated that Exhibit A-3 demonstrated that the Applicant proposed to reduce the impervious coverage on the Subject Property to 69.5% (from the existing 93.2%). He noted that that the Applicant proposed landscape screening along the property line adjoining the residential properties to the east. Mr. French advised that a streetscape along Bordentown Avenue and Parker Avenue was proposed; and that the surface parking area would be improved with shade trees. He testified that lighting would be supplied by LED light fixtures which would be shielded to direct the light downward and prevent spillage onto adjoining properties.
11. Mr. French then reviewed the six (6) statutory elements of a site plan and supplied his opinion of the feasibility of developing the Subject Property, if the use variance and bulk variances were granted. Specifically, Mr. French testified:
 - A. — Grading: the Subject Property is relatively flat and little regrading would

be required in order to develop it.

- B. **Drainage/Stormwater Management:** the Applicant proposes to reduce the impervious coverage on the Subject Property, improving the water quality and enhancing groundwater recharge. The mere reduction in impervious coverage alone will improve site drainage.
 - C. **On-Site Traffic Circulation:** the Applicant is proposing underground parking with two way circulation, as well as surface parking with two way circulation. Further, a refuse and recycling area is proposed at the rear of the building in the center of the Subject Property on the Route 35 side, away from the adjoining residential properties. Mr. French noted that Exhibit A-4 demonstrated how a dumpster truck could access the refuse and recycling area.
 - D. **Landscaping:** Mr. Pape acknowledged, on behalf of the Applicant, that any landscaping would be subject to a performance bond, a maintenance bond and an ongoing maintenance obligation. Mr. French confirmed that streetscape landscaping is proposed, as well as landscape buffering of the adjoining residential properties.
 - E. **Lighting:** the lighting would be back-shielded and directed towards Route 35, away from the adjoining residential properties. The lighting would be LED fixtures mounted on low height (20 feet) poles with the bulbs completed recessed.
 - F. **Signage:** Mr. Pape advised that the Applicant had not yet developed a sign plan for the project; and that signage would be designed and provided if the present application were approved.
12. Mr. French confirmed that the Applicant would address the issues raised in the May Planning Report during any subsequent site plan application. He acknowledged that a site plan would be developed, if the use variance application were approved by the Board.
 13. Upon inquiry from the Board concerning the ability of emergency vehicles to access the Subject Property and the proposed improvements thereon, Mr. French advised that the 25 foot aisle width would be sufficient. Further, he stated that any subsequent site plan application would be subject to review by the City Fire Department.
 14. Prior to commencing her testimony, Ms. Rummeler proffered several exhibits on behalf of the Applicant; which were entered into the record by the Board. Specifically, these exhibits were identified as follows:

- Exhibit A-5 Colorized Architectural Building Footprint
- Exhibit A-6 Elevation views from surface parking lot and Route 35
- Exhibit A-7 Elevation views from Bordentown Avenue and Parker Avenue
- Exhibit A-8 Colorized highlights of elevations from Bordentown Avenue and Parker Avenue

15. Ms. Rummler testified that in developing the architectural style for the project, the Applicant utilized elements from both New Jersey shore communities, as well existing structures within the City. She acknowledged that, if the present application were approved, the Applicant would develop a full architectural plan for the project prior to the site plan application.
16. Ms. Rummler confirmed that the height of the structure, at its highest portion, would be 47 feet, 8 inches.
17. Ms. Rummler advised that each of the two residential floors of the structure would contain twenty-five (25) units for a total of fifty (50) residential units. She indicated that twenty-six (26) of the units would be one-bedroom units; while twenty-four (24) of the units would be two-bedroom units.
18. Upon inquiry from the Board, Ms. Rummler confirmed that the no HVAC units were planned for the roof of the building. She indicated that the residential units would have individual HVAC units which vented directly to the outside. Mr. Rummler confirmed that the vents were not shown on the plans; but that they would be approximately 30 inches by 24 inches and painted to match the building façade.
19. Mr. Rea thereafter reviewed the site parking, site circulation and traffic impacts of the Applicant's proposed development. He opined that the Subject Property was desirable location from a transportation perspective. Mr. Rea acknowledged the City railroad station, the park-and-ride facility and the roadway network supply numerous avenues for a resident to travel to and from the Subject Property.
20. Mr. Rea reviewed the on-site parking; noting that the Applicant is proposing 100 parking spaces; a rate of 2 parking spaces per residential unit. He indicated that the Residential Site Improvement Standards (hereinafter the "RSIS") require 1.8 parking spaces per one-bedroom unit; and 2 parking spaces per two-bedroom unit; concluding that the Applicant was proposing on-site parking which exceeded the RSIS standards. Mr. Rea added that, based upon his experience with similar projects, the maximum peak parking demand would be approximately 1.5 parking spaces per unit.
21. Mr. Rea then examined the ingress and egress to the Subject Property, as well as the site circulation. He confirmed that right-in/right-out access to the underground parking area was being supplied from Bordentown Avenue; while

two-way access to the underground parking area was being provided from Parker Avenue. Finally, Mr. Rea advised that two-way access to the surface parking area would be provided from Portia Street. He opined that the surface parking area would be underutilized based upon the anticipated parking demand from the project.

22. Mr. Rea testified that trash removal could be accomplished through the access driveway from Portia Street. He opined that fire trucks could access the Subject Property in a similar manner as the trash removal trucks. Mr. Rea confirmed that the Applicant would supply a site plan demonstrating how emergency vehicles would access the Subject Property, to the satisfaction of the Fire Official, if the application were approved.
23. Upon inquiry from the Board, Mr. French confirmed the dimensions of the proposed refuse and recycling area; and indicated that trash and recycling removal would occur approximately three to four times per week. He noted that the number of pickups could be increased if necessary.
24. Upon inquiry from the Board, Mr. French advised that there is an existing storm sewer line servicing the Subject Property; but that new water lines were proposed. He opined that there was sufficient capacity in the utilities to services the proposed improvements on the Subject Property.
25. Upon inquiry from the Board, Ms. Rummler confirmed that no balconies were proposed for the residential units. She indicated that the entire structure would be ADA compliant. Ms. Rummler confirmed that security gates were proposed for access to the enclosed parking area. She further advised that the interior plans for the residential units had not yet been developed. Finally, Ms. Rummler testified that the units would be offered for rental, rather than for sale.
26. Upon further inquiry from the Board, Ms. Rummler advised of the proposed square footages for the residential units; indicated that the one-bedroom units would contain 710 square feet; the one-bedroom units with den would contain 800 square feet; and the two-bedroom units would contain 1,065 square feet.
27. Upon inquiry from the Board, Mr. Rea advised that one assigned parking space in the enclosed parking area would be supplied for each residential unit. Mr. Pape confirmed that any lease for the residential units would confirm the assignment of the parking space and identify the parking space assigned to the unit.
28. Upon further inquiry from the Board, Mr. Rea indicated the manner in which the traffic study for the Subject Property was conducted. He advised that anticipated traffic generated by the Applicant's proposed residential use would be significantly less than the traffic generated by a use permitted within the B-2 Zone.

29. At the hearing on May 31, 2017, members of the public made inquiries of the Applicant and its professionals, as well as supplied testimony concerning the Applicant's proposal. Specifically, the following comments were received:
- A. In light of the number of proposed units and the number of proposed parking spaces, there will be insufficient on-site parking to handle holiday parking conditions.
 - B. The first floor of the structure should be used for a commercial purpose in conformity with the B-2 Zone with the residential use being confined to the upper floors.
 - C. Despite the fact that water lines have been recently replaced, there is insufficient water pressure within the neighborhood in which the Subject Property is located. A conforming use would not demand as much water as the proposed residential use.
 - D. There will be insufficient screening of the Subject Property from the adjoining residential properties, as well as loss of privacy due to the windows in the proposed building which overlook the rear yards of the adjoining residential properties.
 - E. There is a significant traffic condition on Parker Avenue which will only be exacerbated by the Applicant's proposed development.
 - F. The size of the proposed structure is too large for the Subject Property.
 - G. The Subject Property is not a properly location for a fifty (50) unit apartment complex.
30. At the hearing on July 26, 2017, Mr. Pape again appeared and acknowledged receipt of the July Planning Report on behalf of the Applicant.
31. The Applicant's professionals from the prior hearing, as well as the Applicant's representative, Mr. Felix Bruselovsky; and the Applicant's Professional Planner, James W. Higgins, P.P., appeared on behalf of the Applicant. These witnesses supplied testimony in support of the application and responded to inquiries from the Board and the public.
32. Initially, Mr. Pape advised the Board that revised plans had been prepared and submitted in response to the comments received from the Board and the public at the hearing on May 31, 2017.
33. Mr. Pape also advised that the Applicant had investigated whether the water

utility could supply sufficient capacity to service the improvements proposed for the Subject Property by the Applicant.

34. Prior to commencing his testimony, Mr. French proffered Exhibit B-1 on behalf of the Applicant, consisting of a colorized version of the landscaping plan; which was entered into the record by the Board.
35. Referring to Exhibit B-1, Mr. French confirmed the revisions to the plan which were made by the Applicant in response to the comments received from the Board and the public at the hearing on May 31, 2017. Specifically, Mr. French indicated:
 - A. The number of residential units was reduced from 50 to 46; with a corresponding reduction in the size of the second and third floors by approximately 2,100 square feet.
 - B. The number of on-site parking spaces was increased from 100 spaces to 109 spaces. The increase in the number of spaces combined with the reduction in the number of units resulted in 2.36 spaces per unit. Similarly, the number of parking spaces required is now 88 spaces and 109 spaces are being proposed.
 - C. The enclosed parking area and the surface parking area have been connected.
 - D. The access driveway from Portia Street has been redesigned.
 - E. Middlesex Water Company was contacted regarding the sufficiency of the water service available for the proposed improvements. The company confirmed that there is a 12 inch water main on Parker Avenue. Applicant supplied a copy of the plans to the company which issued a "will-serve" letter confirms that have facilities to serve the proposed development. Finally, the company conducted a hydrant flow test which indicates that there is sufficient capacity to serve the proposed development.
36. Mr. French advised that apart from the aforementioned modifications the remainder of the Applicant's proposed remains the same as previously presented at the hearing on May 31, 2017.
37. Upon inquiry from the Board questioning why the number of units was only reduced by 4, Mr. Pape advised that the Applicant believed that the size of the structure was never an issue, only the proposed parking. He indicated that the Applicant attempted to address the parking issue with the plan revisions; and now the project is "over-parked."

38. Upon inquiry from Angelo J. Valetutto, P.E., P.P., Mr. French advised that the reduction in the square footage of the structure had been accomplished by removing the four units within the building nearest Parker Avenue. This area measured approximately 33 feet by 63 feet. Mr. French noted that the parking area below the area of the structure which was removed still remains on the first floor.
39. Mr. Bruselovsky stated that the Applicant is a family owned enterprise. He advised the Board that he was the managing member of the Applicant. Mr. Bruselovsky noted that the Applicant intends for the Subject Property to be a business asset.
40. Mr. Bruselovsky thereafter provided testimony concerning the identification of the Subject Property by the Applicant and the decision to develop it in the manner proposed. He testified that initially the Applicant explored the development of the Subject Property for a conforming commercial use. Mr. Bruselovsky noted that the Applicant has business relationships with 7-Eleven and other retail chains; but that none of these entities was interested due to the limited traffic flow at the Subject Property. He advised that the Applicant decided to pursue the present residential use as a result of its inability to identify a commercial tenant for a conforming use.
41. Mr. Bruselovsky testified that the Applicant currently owns a number of buildings throughout the State of New Jersey. He indicated that, as a result, the Applicant has a maintenance team on staff which is available 24 hours per day, 7 days per week. Mr. Bruselovsky also advised that trash and recycling removal would be handled by a private hauler; allowing the Applicant to control the time and frequency of trash and recycling removal.
42. Mr. Bruselovsky stated that the Applicant intends to construct the project with high end materials and amenities; including: stainless steel appliances, washer/dryer in each unit; and granite countertops.
43. Upon inquiry from the Board, Mr. Bruselovsky confirmed that the Applicant had pursued a variety of commercial and professional businesses for the Subject Property; including nail salons, restaurants, lawyers, accountants and engineers. He advised that the Applicant was not successful in locating a commercial or professional tenant wishing to occupy space at the Subject Property.
44. Upon inquiry from the Board, Mr. Bruselovsky indicated that the proximity to the City train station and Route 35 were factors which led the Applicant to pursue the proposed residential development.
45. At the hearing on July 26, 2017, Mr. Higgins identified the variance relief sought

by the Applicant and supplied professional planning testimony opining that the variances requested should be granted by the Board.

46. In connection with his testimony, Mr. Higgins proffered several exhibits on behalf of the Applicant; which were entered into the record by the Board. Specifically, these exhibits were identified as follows:

Exhibit B-2 Photograph of residence on southern portion of Subject Property
Exhibit B-2 Photographs (2) of Hillcrest Manor and medical office complex.
Exhibit B-4 Photograph of Route 35 to the west of the Subject Property.

47. Referring to Exhibit B-2, Mr. Higgins advised that the Subject Property is a unique site which is irregularly shaped. He noted that the Subject Property is currently improved with a single family dwelling, as depicted on Exhibit B-2. Mr. Higgins advised that the single family dwelling is in a state of disrepair and is obsolete.
48. Mr. Higgins further advised that the balance of Subject Property as vacant. He noted that the Subject Property was previously improved with a grocery store; which was destroyed by fire and razed. Mr. Higgins reiterated that the owners of the Subject Property have been unable to successfully market the Subject Property for commercial purposes.
49. Mr. Higgins indicated that the neighboring properties to the east of the Subject Property are single-family residences. He noted that to the north of the Subject Property, across Bordentown Avenue, is a former hospital now used as a medical office complex. Mr. Higgins advised that across Route 35 to the south of the Subject Property is Hillcrest Manor; a residential development with a density of 62 units per acre. He stated that the medical office complex and Hillcrest Manor are depicted on Exhibit B-2. Finally, Mr. Higgins indicated that to the west of the Subject Property is elevated Route 35; as depicted on Exhibit B-4.
50. Mr. Higgins testified that Subject Property is within one-half mile of both the City's downtown commercial area and the train station. He opined that the close proximity to both the train station and the commercial area make the Subject Property ideal for the proposed residential use; as the occupants will be capable of walking to both of these areas.
51. Mr. Higgins acknowledged that the Subject Property is zoned B-2; but added that it is an isolated B-2. He explained that the site is not part of a larger B-2 Zone; but consists solely of the Subject Property. Mr. Higgins opined that the Subject Property was zoned B-2 based upon its historic commercial use. He indicated that if the site were vacant it would not have been zoned commercial.
52. Mr. Higgins confirmed that the Applicant required a use variance, as the

residential use is not permitted in the B-2 Zone; and a (d)(6) height variance, as the proposed height exceeds the permitted height by more than 10%. He indicated that the Applicant does not require a density variance; as there is no density standard within the B-2 zone because residential uses are not permitted.

53. Mr. Higgins thereafter reviewed the City Master Plan; noting that it promotes smart growth. He indicated that smart growth encompasses keeping high density residential uses in close proximity to commercial uses and transportation. Mr. Higgins advised that the Master Plan also seeks to maintain a reasonable balance of housing types. He further noted that the Master Plan contained a recurring theme of enhancing the viability of the City's downtown area. Mr. Higgins opined that the City represents the most important transportation hub in Middlesex County and south of the Raritan River.
54. Mr. Higgins then examined the Applicant's request for a use variance; acknowledging that the proposed use was not inherently beneficial. He opined that the Subject Property was particularly suitable for the proposed residential use. Mr. Higgins indicated that the Subject Property is an orphan site which is not viable for its commercially zoned use. He testified that the shape of the site makes it difficult for commercial use; and added that any commercial use would likely require bulk variance relief and interfere with the adjoining residential uses. Mr. Higgins noted that the inability to access Route 35 due to elevation issues exacerbates the issues with developing the site for a commercial use. He testified that office uses were no longer in demand due to the prevalence of home offices and work-from-home arrangements.
55. Mr. Higgins opined that the shape of the Subject Property was not conducive to single family residential development. He stated that the proposed multifamily use was viable due to the location of the Subject Property and its surrounding medical office use, multifamily use and highway. Mr. Higgins further noted that the dimensions of the Subject Property would require the proposed building to be concentrated on the northerly end of the site. He indicated that the building would act as a sound buffer for the residential uses.
56. Mr. Higgins testified that the Subject Property was ideally suited for the Applicant's proposal. He noted that the use was geared toward the millennial population; and would also be attractive to older residents no longer wishing to live in a single family dwelling. Mr. Higgins indicated that 28% of South Amboy's residents were between the ages of 20 and 29; while 33% of the City's residents were over the age of 50. He advised that the project was marketed towards one to two individual households.
57. Mr. Higgins indicated that the City's downtown is economically strong but still contains vacancies. He stated that the downtown is in need of residents to use the businesses located there. Mr. Higgins noted that the addition of commercial

business outside of the downtown, in locations such as the Subject Property, is inimical to the development of the downtown. He concluded such commercial uses would draw patrons from the downtown.

58. Mr. Higgins thereafter acknowledged that the influx of school children was a typical concern for any multifamily residential project. He cited to a Rutgers University study which provided guidance for the anticipated number of school children for the Applicant's proposal; noting that based upon the study 7 school age children could be expected. Mr. Higgins noted that the project contained no amenities for children and was geared towards the millennial population.
 59. Mr. Higgins opined that the Subject Property and the surrounding transportation options are similar to a transit village situation. He noted that transit villages permit densities greater than the density proposed by the Applicant in the present application. Mr. Higgins testified that the proposed density was appropriate based upon the design and use of the proposed project. He advised that the project can accommodate any issues associated with the use variance; indicating that the proposal has adequate parking, buffering, a well-designed building and height which is mitigated by the adjacent elevated roadway.
 60. Mr. Higgins indicated that the Subject Property is essentially an isolated business zone. He opined that the elimination of this isolated business zone is substantial benefit to the city and promotes the City's Master Plan.
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61. Mr. Higgins opined that the use variance and bulk variances can be granted without detriment to the surrounding area. He indicated that the use is appropriate for the Subject Property; and conversely that conforming uses are incompatible. Mr. Higgins testified that there are buildings in the vicinity of the Subject Property which are similar in scale to the Applicant's proposed structure.
 62. Mr. Higgins further testified that the use variance and bulk variances can be granted without substantial detriment to the zone plan and zoning ordinance of the City of South Amboy. He opined that the only reason that the Subject Property is zoned commercial is due to its historic use as a commercial property. Mr. Higgins stated that the Subject Property is a unique, isolated site. He indicated that the Applicant's proposal supports the City's downtown by not creating a competing use outside of the downtown.
 63. Finally, Mr. Higgins confirmed that the Board would have greater control over the Subject Property and the development thereon, due to the fact that the Applicant was pursuing a use variance. He noted that the use variance application would permit the Board to impose appropriate conditions upon the Application which might not be permitted with an application for a use which conformed to the requirements of the B-2 Zone.

64. Upon inquiry from the Board, Mr. Valetutto testified that the two developments identified by Mr. Higgins in the vicinity of the Subject Property containing high density residential developments were both located within redevelopment areas. Mr. Valetutto indicated the residential density of each of those developments was within the parameters of the redevelopment plan for each property.
65. Upon inquiry from the Board, Mr. Higgins indicated that any successful commercial business located outside of the downtown area would be detrimentally affecting the downtown by drawing business away from the downtown.
66. At the hearing on July 26, 2017, members of the public made inquiries of the Applicant and its professionals, as well as supplied testimony concerning the Applicant's proposal. Specifically, the following comments were received:
 - A. The proposed parking will detrimentally impact the rear yards of the adjoining residential properties.
 - B. The Subject Property should be improved with single family residential dwellings similarly to the adjoining residential development.
 - C. There is a significant traffic condition on Parker Avenue which will only be exacerbated by the Applicant's proposed development.
 - D. There is a lack of parking within the vicinity of the Subject Property which would only be exacerbated by the proposed development.

Based upon the above Findings of Fact, the Board concludes as follows:

CONCLUSIONS

1. The Board rejects the Applicant's assertion that the Subject Property is particularly suitable for the proposed residential use. Applicant's proofs on this issue rested first upon the existence of a medical office and a high density residential use on properties within the vicinity of the Subject Property. Reference to other properties as part of a particular suitability analysis is misplaced because the correct analysis centers on the characteristics of the Subject Property that render it particularly suitable for the proposed use. In fact, the New Jersey Supremes Court in Medici v. BPR Co. specifically held that the fact that that site was near an interstate highway did not distinguish it from any other property in the vicinity of the highway. Similarly, here the Subject Property's proximity to a medical office use and a high density residential use does not distinguish it from any other property in this neighborhood.
2. Applicant's particular suitability argument also fails because the high density residential use to which Applicant points, Hillcrest Manor, is separated from the

Subject Property by a four-lane divided highway. Therefore, the Subject Property and Hillcrest Manor are, in essence, in two different neighborhoods. Because of the four-lane divided highway, the neighborhoods on each side of the highway have no effective influence on the other. Moreover, the medical office use is a former hospital which has been converted to medical offices. Both the Hillcrest Manor property and the medical office property were developed utilizing redevelopment plans which contained specific provisions designed to address existing issues unique to those properties. The Board further notes that the Subject Property was not included in the redevelopment plan for either of the Hillcrest Manor or medical office use properties.

3. The Board also rejects the Applicant's assertion that the proximity of the Subject Property to the South Amboy train station and state highways renders the property particularly suitable for the proposed residential apartment use. The Board rejects this assertion for two reasons. First, the Board, based upon its knowledge of local conditions, notes that both the City train station and the Sayreville Park and Ride location pointed to by Applicant are more than one-half mile from the Subject Property. This distance undermines the Applicant's suggestion that the prospective residents of the apartment building could readily walk to mass transit options. Second, for the reasons expressed in conclusion #1, the proximity of the Subject Property to the train station and the Sayreville Park & Ride location, even if easily walkable and apt to be used by residents of the apartment building, does not distinguish the Subject Property from any other property in the vicinity of the City train station and the Sayreville Park and Ride location.
4. In summary, Applicant failed to meet its burden of proof that the Subject Property is particularly suitable for the apartment complex proposed.
5. Applicant failed to meet its burden of proof that the use variance could be granted without substantial detriment to the City's Zone Plan and Zoning Ordinance for the following reasons:
 - A. First, the property is located within one of the City's business zones. The former supermarket use existed on the Subject Property since the 1960's. While the Applicant's Planner opines that the City would have not initially zoned the Subject Property commercial if it were not already being used commercially; such an assertion has no support in the City Master Plan, zone plan or zoning ordinance. The drafters of the City Master Plan are not bound by the existing uses of a property; but rather, may zone a property for any use deemed appropriate. The failure of the drafters of the City Master Plan to change the zoning of the Subject Property cannot be assumed to be based upon a desire to preserve the existing commercial use; as such a use would be permitted to continue as a nonconforming use despite any zone change the drafters of the Master Plan deemed justified. In fact, the opposite is true. When a governing body does not change a

zoning ordinance, a Board of Adjustment may reasonably infer that this inaction was deliberate. Therefore, this Board can justifiably rely upon the commercial zoning of the Subject Property as setting forth the use of the Subject Property intended by the drafters of the Master Plan, and by extension, the City's Zone Plan and Zoning Ordinance.

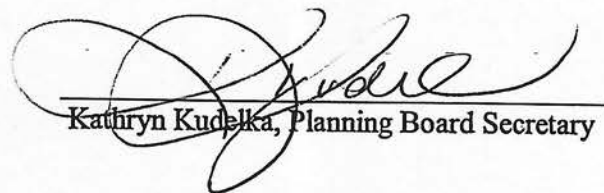
- B. Second, the proposed development of the Subject Property would result in a residential density of 33.9 units per acre. This density would far exceed the density of 16 units per acre; the highest permitted in the City's zoning ordinance. Further, the Board concludes that the Applicant's assertion that the nonconforming residential density in the Hillcrest Manor development supports its present application for a density of 33.9 units is misplaced. Initially, the Board notes that each application coming before it is judged upon its own individual merits. Moreover, as previously indicated, the Hillcrest Manor property is in a different neighborhood than the Subject Property. If the Board were to accept Applicant's argument, then a Board would be unable to judge each individual application separately on its merits, but would be bound by the prior approval as precedent setting. Applicant's argument, if accepted, would result in the potential for a breakdown of the zone plan due to the granting of a nonconforming density. The granting of the present application could be later used by other property owners in support of the degradation of the adjoining residential development through the construction of other high density residential housing.
6. The Applicant also failed to meet its burden of proof that the use variance could be granted without substantial detriment to the public good. The public good is measured first by examining what negative impacts will be visited upon adjacent properties; and second upon the larger neighborhood. The Board, based upon its knowledgeable conditions, and also considering the uncontroverted testimony of numerous members of the public, is that there currently exists traffic congestion and problems and inadequate parking in this neighborhood. The introduction of Applicant's proposed high-density apartment complex into the existing residential neighborhood would exacerbate these negative traffic and parking conditions.
 7. Turning to the height variance, Applicant also failed to meet its burden of proof as to both the positive and negative criteria. The Applicant failed to establish that the Subject Property is capable of accommodating the issues associated with the proposed height. As indicated herein, the proposed height will detrimentally impact the light, air and open space of the adjoining property owners.
 8. The Applicant failed to meet its burden of proof that the height variance can be granted without substantial detriment to the zone plan and zoning ordinance of the City of South Amboy. It is clear that the height standard in the B-2 Zone is designed to protect the adjoining residential neighborhood. The granting of the

height variance could detrimentally impact the zone plan through the construction of additional structures exceeding the height requirements.

9. The Applicant failed to meet its burden of proof that the height variance can be granted without substantial detriment to the public good. The Applicant's failure to meet the height requirement underscores how Applicant's proposal would visit negative impacts upon the adjacent, nearby properties, the larger surrounding neighborhood and, therefore, the public good. For example, the proposed height of 47 feet, 8 inches (36% higher than permitted) would negatively impact the light, air and open space of adjacent properties. Moreover, the privacy of the owners of the adjacent residential properties would be compromised by the units on the second and third floors of the proposed structure, whose windows would overlook into the rear yards of these single family homes.
10. Applicant failed to meet its burdens of proof as to the positive and negative criteria for the various "c" variances that it requested. The analysis denying the use and height variances are also applicable to the analysis to support the denial of the bulk variances. Moreover, the Board considers that the bulk variances are subsumed within the use variance request.

NOW, THEREFORE, BE IT RESOLVED that the City of South Amboy Planning Board hereby **DENIES** Application #374-17 for use variance, (d)(5) height variance and bulk variances for property located at 611 Bordentown Avenue, also known as Block 10, Lots 1 and 10.01 on the Tax Map of the City of South Amboy, and situated in the B-2 Zone; for failure to obtain five (5) affirmative votes in favor of the use variance as required by N.J.S.A. 40:55D-70(d).

THIS IS TO CERTIFY that the foregoing is a true copy of the Resolution adopted by the Planning Board of the Township of South Amboy at its public meeting held on September 27, 2017.


Kathryn Kudelka, Planning Board Secretary