

RESOLUTION OF APPROVAL
AMENDED APPLICATION OF
MORRIS HABITAT FOR HUMANITY

IN THE MATTER OF	: ZONING BOARD OF ADJUSTMENT
MORRIS HABITAT FOR	: CITY OF SUMMIT
HUMANITY	: APPLICATION NO. ZB-18-1938-2
	: BLOCK 4208, LOT 1
	: 146 MORRIS AVENUE

WHEREAS, Morris Habitat for Humanity (“MHH”), had requested Minor Subdivision pursuant to N.J.S.A. 40:55D-47 and Preliminary and Final Major Site Plan Approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 and variances pursuant to N.J.S.A. 40:55D-70(c)(2) and (d)(5) to subdivide one lot into two lots and to construct 12 affordable homes on the proposed lot 1.01 on the property located at Block 4208, Lot 1 on the tax map of the City of Summit, being commonly known as 146 Morris Avenue, Summit, New Jersey, and said premises being in the R-5 Zone and O-L 7 Zone; and

WHEREAS, the Board held public hearings on said application on December 3, 2018, February 4, 2019, March 4, 2019, April 15, 2019, May 20, 2019, and June 13, 2019; and

WHEREAS, on June 13, 2019, the Board approved MHH’s application, and on July 15, 2019 adopted a resolution memorializing its approval of MHH’s application; and

WHEREAS, On September 9, 2019, objectors filed a complaint against the Board, MHH, and the City of Summit seeking to invalidate the Board’s Resolution in the Superior Court of New Jersey captioned Gagliano v. Summit Zoning Board of Adjustment, Docket No. UNN-L-003155-19; and

WHEREAS, the parties have reached a settlement agreement to resolve the litigation by, among other things, amending MHH’s application before the Board to relocate the project’s driveway onto Morris Avenue while retaining the sidewalk in its currently proposed location through the Cul-de-Sac Extension to Ashwood Court until development of the Cul-de-Sac Extension for the two units of affordable housing; at such time, the sidewalk from the Project to Ashwood Court shall be relocated to the easement on Block 4208, Lot 13 by the developer of the two units of affordable housing; and

WHEREAS, on April 5, 2021, MHH submitted an application for modification of its prior approval in accordance with the settlement agreement; and

WHEREAS, the Board held public hearings on MHH's application for modification on May 5, 2021; and

WHEREAS, the applicant provided adequate notice of the hearing in accordance with N.J.S.A. 40:55D-12; and

WHEREAS, the applicant was represented by Counsel, Michael K. Mullen, Esquire; and

WHEREAS, the Board heard the testimony and evidence presented by the applicant, and received comments from the public.

NOW, THEREFORE BE IT RESOLVED, that the Board of Adjustment of the City of Summit, County of Union and State of New Jersey, made the following findings:

1. The Board found the application complete.
2. According to the application, the applicant is seeking the following variances:
 - A. Proposed density of 13.32 units per acre, whereas the OL-7 overlay zone permits a maximum of 13.25 units per acre.
 - B. Proposed minimum side yard setback of 4.3 feet from the railroad to proposed air conditioning units, whereas 7 feet is required.
 - C. Proposed minimum side yard setback of 11 feet to proposed air conditioning units, whereas 11 feet is required.
 - D. Proposed minimum side yard setback of 7.7 feet to a proposed dumpster enclosure, whereas 12 feet is required.
 - E. Proposed fence within a front yard only until such time that the portion of Ashwood Court is formally vacated by the City.
3. Based upon the comments of the applicant's Attorney, Michael K. Mullen, Esquire, the Board made the following findings of fact:
 - A. MHH's proposed amended application conforms with the scope of the Settlement Agreement among the parties.

- B. MHH relied on the record of the prior hearings that resulted in the Board's approval of the original application on June 13, 2019.
4. Based on the sworn testimony of Fred Stewart, P.E. and/or Doug Wright, the Board made the following findings of fact:
- A. The amended application proposes the relocation of site access to be exclusively from a two-way driveway on Morris Avenue. A private pedestrian walkway will extend from Morris Avenue through the site to Ashwood Court.
 - B. The property, located on Lot 1, can accommodate a de minimis increase in density with sufficient parking and on-site circulation and with same ingress and egress via the proposed driveway from Morris Avenue.
 - C. The proposal will result in the removal of a pre-existing, non-conforming use, which will be demolished as part of this application.
 - D. The setback variances for air conditioning units result from the site shape and will accommodate the optimal placement of the air conditioning units.
 - E. The setback variances for the dumpster enclosure results from the site shape and will accommodate the optimal placement of the dumpster enclosure. The area of the dumpster enclosure will have a six foot high solid vinyl fence that runs along the side of the adjacent lots and landscaping for screening.
 - F. The variance for a fence within a front yard is only required until such time that the portion of Ashwood Court is formally vacated.
 - G. The variance for a driveway to Morris Avenue rather than Ashwood Court is required to comply with the City's settlement agreement in order to provide 12 units of affordable housing in accordance with the City's Affordable Housing Plan.

CONCLUSIONS OF LAW:

WHEREAS, after careful deliberation, the Board determined that this application has met the requirements of N.J.S.A. 40:55D-70 (c)(2) because the

construction of the 12 affordable homes is critical to meet the City's Affordable Housing Plan described in N.J.S.A. 40:55D-2 (a) "To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;" and

WHEREAS, after careful deliberation, the Board determined that this site has met the requirements of N.J.S.A. 40:55D-70 (d)(5) because the it can accommodate the modest increase in density resulting from the affordable housing units; and

WHEREAS, the Board has determined that the relief sought can be granted without a substantial negative impact, provided all conditions of approval are satisfied or met; and

WHEREAS, the Board has determined that the relief sought does not impair the intent and purpose of the Master Plan or Zoning Ordinance of the City of Summit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the City of Summit, in the County of Union and State of New Jersey, on the 5th day of May, 2021, upon a motion made by Thomas Ucko and seconded by Claire Toth that the application of Morris Habitat for Humanity be granted, subject to the following terms and conditions:

1. The applicant shall be bound by all exhibits introduced, all representations made and all testimony given before the Board at its meeting of May 5, 2021.
2. The applicant shall provide all required Site Performance Bond and Inspection Fees in accordance with the Municipal Ordinance.
3. The applicant will have one (1) year from the date of this Resolution to obtain a building permit.
4. The applicant shall be responsible for obtaining any other approvals or permits from other governmental agencies, as may be required by law, including but not limited to the Municipality's and State's affordable housing regulations; and the applicant shall comply with any requirements or conditions of such approvals or permits.
5. The applicant must comply with all of the City of Summit and State of New Jersey's rules regarding affordable housing.
6. The Board retains drainage jurisdiction for a period of four years from the issuance of the certificate of occupancy.

7. The Board retains landscaping jurisdiction for a period of two years from the issuance of the certificate of occupancy.
8. The property is to be deed restricted as required by Summit's Affordable Housing plan and agreement.
9. The Applicant is to comply with the Board Engineer's letter dated April 28, 2021, which is attached hereto as Exhibit "A", except as modified the representations made and the testimony given before the Board at its meeting of May 5, 2021.
10. Publication of a notice of this decision will be published in one of the City's officially designated newspapers, at the cost of the applicant.

VOTE ON ROLL CALL:

IN FAVOR: Vice Chairwoman Elizabeth Newell; Thomas Ucko; David Mollin; Ayman Maleh; Claire Toth; Diana Sajer; Chairman Steven Spurr

OPPOSED: None

CERTIFICATION

It is hereby certified the attached is a true copy of the Resolution for Application #ZB-18-1938-2, approved on May 5, 2021 and duly adopted as to form by the Zoning Board and memorialized at its regular meeting on May 5, 2021.



STEVEN SPURR
Chairman
City of Summit
Zoning Board of Adjustment



CHRISTOPHER NICOLA
Secretary
City of Summit
Zoning Board of Adjustment