

**RESOLUTION
TOWNSHIP OF HOWELL PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
AMENDED PRELIMINARY AND FINAL SITE PLAN
APPROVAL WITH ANCILLARY VARIANCE RELIEF**

**Approved: July 20, 2023
Memorialized: December 14, 2023**

**IN THE MATTER OF: VILLAGE SQUARE AT HOWELL, LLC
APPLICATION NO. SP-852A**

WHEREAS, an application for amended preliminary and final site plan approval has been made to the Howell Township Planning Board (hereinafter referred to as the “Board”) by Village Square at Howell, LLC (hereinafter referred to as the “Applicant”), on lands known and designated as Block 74, Lot 7.01 as depicted on the Tax Map of the Township of Howell (hereinafter “Township”), and more commonly known as 4862-4870 US Highway 9 South and Kent Road in the HD-1 (Highway Development 1) Zone; and

WHEREAS, a public hearing were held before the Board on July 20 2023 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Howell Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 4.96 acres and is a through lot with approximately 262 feet of frontage along Route 9 South and 336 feet of frontage along Kent Road within the Highway

Development (“HD-1”) Zone. The subject Property is improved with a 11,050 square foot one-story building located along the Route 9 frontage containing a “Dunkin’” with a drive-thru window and four (4) other commercial businesses, as well as a 20,000 square foot, one-story medical office building located along the Kent Road frontage. The front of the subject Property contains sixty (60) parking spaces associated with the commercial building while there are eighty (80) parking spaces located in the rear associated with the medical office building. The subject Property also contains sidewalks, curbing, lighting, landscaping, trash facilities, and stormwater management basins. The subject Property is accessed by one (1) right-in/right-out driveway from Route 9 South and one (1) full-movement driveway from Kent Road.

2. The Applicant is proposing to construct eight (8) additional parking spaces with associated pavement, striping, and curbing in the rear portion of the subject Property for use by the medical office building. The subject Property will therefore have a new total of 148 parking spaces. The Applicant is also proposing to extend the sidewalk abutting the office building and to construct a 4-foot tall fence and landscape block retaining wall near the sidewalk extension. The application does not propose any other changes to the overall site layout.

3. Counsel for the Applicant, Mark Breitman, Esq., stated that the Applicant had received final site plan approval in 2006. He explained that the Applicant was now proposing to construct eight (8) additional parking spaces near the medical office building which is located along Kent Road. He stated that the parking spaces would alleviate the parking demand for the early morning patients. Mr. Breitman also noted that the Applicant was seeking two (2) variances and one (1) design waiver.

4. The Applicant’s Engineer and Planner, Josh Sewald, P.E., P.P., testified that the subject Property contained 4.96 acres. Mr. Sewald also stated that the Applicant had previously

received final site plan approval in 2006 permitting the construction of an approximately 11,000 square foot building located near the front of the subject Property and an approximately 20,000 square foot office building, which housed an oncologist medical office.

5. Mr. Sewald also stated that 140 parking spaces had been constructed as part of the 2006 approval. He explained that 140 parking spaces complied with Ordinance requirements and that the Applicant was now proposing to construct eight (8) additional parking spaces. Mr. Sewald stated that one (1) space would be located near the front of the medical office building with seven (7) spaces located on the north side of the parking lot. He further explained that the residential dwelling on the adjacent property to the north had been demolished and that the property was now approved for an office building. Mr. Sewald stated that the residential uses to the west across Kent Road remained residential. He noted that the Applicant would provide seventy-five (75) plantings to enhance the residential buffer along Kent Road and near the new parking spaces. He stated that the new parking spaces were not reserved for any particular tenant. He also confirmed that the dimensions of the parking spaces were 9' x 18' with a thirty (30) foot wide drive aisle.

6. Mr. Sewald identified the following required variance relief:

- a. **Section 188-63A** – Every application for site plan approval on lots of one acre or more shall contain a fifty-foot perimeter buffer and is required along all lot lines separating a nonresidential use from either a residential use or residential zoning district line; whereas the property is adjacent to a residential use to the north, and the proposed parking stalls encroach further in the required fifty-foot buffer.
- b. **Section 188-63D** – No structure, disturbance, storage of materials or parking of vehicles shall be permitted in a buffer area, whereas the proposed improvements are located within the required buffer area.

7. Mr. Sewald also identified the following required design waiver relief:

- a. **Section 188-107C** – The minimum number of parking spaces required appears to be 322; whereas the application has proposed increasing the total parking from 140 spaces to 148 spaces.

8. Mr. Sewald testified that the Applicant was seeking variance relief from §188-63A which requires a fifty (50) foot buffer to a residential use. He explained that one (1) of the new parking spaces would encroach into the buffer by one (1) foot. He stated that the Applicant was also seeking variance relief from §188-63D, which did not permit any parking within the fifty (50) foot buffer. He explained that the same parking space triggered the need for relief. Mr. Sewald explained that the Ordinance required the buffer to meet two (2) out of four (4) requirements and that a buffer was not required in 2006. The existing buffer, therefore, did not meet any of the four (4) buffer requirements.

9. Mr. Sewald next testified that the Applicant was seeking design waiver relief for the number of parking spaces. He explained that parking space calculation in 2006 was based on a shopping center use for the front building and an office use for the rear building. He further explained that the current calculation was based upon the specific users. Mr. Sewald explained that the Applicant was not proposing any changes to the buildings. Mr. Sewald further testified that while the number of parking spaces was compliant with the 2006 approval, a total of 322 parking spaces was now required. He confirmed that the Applicant was proposing to improve the number of parking spaces from 140 spaces to 148 spaces but still required relief.

10. Mr. Sewald opined that the relief could be granted under the c(2) criteria because it was an improvement from the existing conditions. He stated that the grant of variance relief would advance purpose a) of the Municipal Land Use Law (MLUL) by promoting the public health, safety, morals, and general welfare. Mr. Sewald further testified that purpose g) would be advanced by providing sufficient space in appropriate locations for a commercial use. He also opined that purpose i) would be advanced because the Applicant was proposing seventy-five (75) new plantings which

created a desirable visual environment. He further testified that purpose m) would be advanced because keeping the existing tenants onsite instead of developing a new site was a more efficient use of land. Mr. Sewald concluded that the grant of variance relief would not result in any detriment to the public good or to the Master Plan or Zone.

11. Mr. Sewald also agreed that the Applicant would comply with all other comments contained within the Reports of the Board's Professionals. He also explained that the medical office was appointment only and that the parking demand could be controlled by scheduling. Mr. Sewald stated that the Applicant did not need design waiver relief from §188-266B because the residential use on the adjacent property to the north had been demolished. He also stated that the adjacent property to the north was zoned HD-1, not residential.

12. In response to questions from the Board, Mr. Sewald stated that the sidewalk in front of the building was being extended to the one (1) new parking space located in front of the building. Mr. Sewald also testified that the number of parking spaces was based upon what he believed was the actual demand of the uses. He specifically explained that the new parking spaces would accommodate the demand from the oncologist office. Mr. Sewald further testified that the Applicant did not desire to reserve specific parking spaces because different tenants had different peak hours.

13. In response to further questions from the Board, Mr. Sewald opined that there would not be any conflict with cars entering the site from Kent Road and cars backing out of the parking spaces. He explained that a fifty (50) foot distance was located between the parking spaces and the stop bar. Mr. Sewald also stated that there was a speed hump that would slow down traffic entering the site before reaching the parking spaces.

14. The Applicant's Traffic Engineer, Justin Taylor, P.E., PTOE, LEED AP, confirmed Mr. Sewald's testimony that there was fifty (50) feet distance between the parking spaces and the stop

bar. He also stated that the distance was sufficient for stacking two (2) cars. Mr. Taylor further testified that he observed no more than one (1) car queued at the stop bar at Kent Road. Mr. Taylor also testified that the average left turn speed for cars was 15 mph and that the average right turn speed for cars was 9 mph. He stated that the American Association of State Highway and Transportation Officials (AASHTO) required a stopping distance of eighty-five (85) feet for speeds of 15 mph. Mr. Taylor explained that the distance from the southbound lane of Kent Road and the parking spaces was greater than eighty-five (85) feet.

15. In response to discussion from the Board, the Applicant agreed to designate and sign the new parking spaces as employee parking.

16. Mr. Sewald further testified that bollards were not currently located on-site. He stated that none were required for the eight (8) new parking spaces which would not be located immediately in front of a building.

17. There were no members of the public expressing an interest in this application.

18. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the attached Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Howell Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Howell; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant's request for amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50

along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted.

I. Variance Relief

The Board finds that the Applicant has proposed a permitted use in the Zone but does require bulk variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance.

It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds that the Applicant has satisfied the positive criteria. The Board finds that the required variance relief all relate to a *de minimis* encroachment of one (1) parking space into the residential buffer. The Board also recognizes that the subject Property is currently developed with permitted uses. The Board finds that the deviations from Ordinance requirements promote advances the public welfare by increasing the number of onsite parking spaces by the permitted use. The Board also finds that providing additional parking would encourage the tenants to remain on the developed site instead of seeking construction of an undeveloped site, which was a more efficient use of land. The Board therefore finds that the goals of planning enumerated at N.J.S.A. 40:55D-2 have been advanced and the positive criteria has therefore been satisfied.

The Board also finds that the negative criteria has been satisfied. The grant of variance relief will not increase traffic, noise, or density beyond what is contemplated by the Ordinance. The deviation is also minor and not visually perceptible. The Board therefore concludes that the grant of variance relief will not result in substantial detriment to the public welfare or substantial detriment to the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and that variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.

II. Design Waiver Relief

The Board finds that the Applicant is seeking design waiver relief from Section 188-107C. The Board finds that this Section requires 322 parking spaces, whereas 148 parking spaces are proposed. The Board finds that 140 parking spaces which satisfied all Ordinance requirements at

the time of the initial approval. The proposal will bring the site into greater compliance with current Ordinance requirements. The Board also finds that requiring 322 parking spaces would create an excessive amount of impervious coverage. The Board therefore determines that the Applicant would encounter practicable difficulty in developing the subject Property in the most efficient manner for its permitted use if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

III. Site Plan Approval

With the exception of the above referenced relief, the Applicant has satisfied all other site plan, zoning and design standard ordinances. The Applicant further agreed to all of the previously referenced conditions of approval. The Board therefore determines that amended preliminary site plan approval and amended final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Howell on this 14th day of December 2023, that the action of the Planning Board taken on July 20, 2023, granting Application No. SP-852A of Village Square at Howell, LLC, for amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50, ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 are hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in the strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the Reports of the Board's Professionals.

3. The Applicant shall identify “employee parking” spaces subject to review and approval by the Board Engineer.
4. All terms and conditions of the prior approval remain in full force and effect unless modified herein.
5. The Applicant shall provide a certificate that taxes are paid to date of approval.
6. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
7. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Howell, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

Paul Boisvert, Chairman
Howell Township Planning Board

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAINED:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Howell Township Planning Board, Monmouth County, New Jersey at a public meeting held on December 14, 2023.

Eileen Rubano, Secretary
Howell Township Planning Board

HOWELL TOWNSHIP PLANNING BOARD
EXHIBITS

Case No. SP-852A / Village Square at Howell, LLC
Amended Preliminary and Final Major Site Plan
With Ancillary Variance and Design Waiver Relief
April 13, 2023
May 11, 2023
July 20, 2023

- A-1 Development application
- A-2 Application Checklist
- A-3 Site and Grading Plan consisting of four (4) sheets prepared by Dynamic Engineering, dated 5/20/21, last revised 5/2/23
- A-4 Prior resolution of approval dated 10/21/04
- A-5 Prior Resolution of approval dated 11/3/05
- A-6 A request for checklist waivers, undated
- A-7 Submission Letter prepared by Mark L. Breitman, dated 7/21/22
- A-8 Final As-Built plan consisting of three (3) sheets prepared by DPK Consulting LLC dated 12/14/06
- A-9 Parking Assessment report prepared by Dynamic Traffic dated 4/24/23

INTEROFFICE REPORTS

- B-1 Fire Bureau site plan review dated 9/13/22
- B-2 Environmental Commission site plan review dated 9/14/22
- B-3 Shade Tree Commission site plan review dated 9/21/22
- B-4 Board Engineer's review letter dated 9/29/22
- B-5 Farmers Advisory Committee site plan review dated 10/27/22
- B-6 Board Engineer's completeness memo dated 10/21/22
- B-7 Board Engineer's review letter dated 2/7/23

- B-8 Environmental Commission site plan review dated 2/8/23
- B-9 Shade Tree Commission site plan review dated 2/15/23
- B-10 Fire Bureau site plan review dated 2/22/23
- B-11 Farmers Advisory Committee site plan review dated 2/23/23
- B-12 Board Planner's review letter dated 3/14/23
- B-13 Monmouth County Board of Health memo dated 3/20/23

NOTICE

PLEASE TAKE NOTICE THAT ON JULY 20, 2023, THE PLANNING BOARD OF THE TOWNSHIP OF HOWELL GRANTED AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH ANCILLARY VARIANCE AND DESIGN WAIVER RELIEF TO VILLAGE SQUARE AT HOWELL, LLC FOR BLOCK 74, LOT 7.01 AS DEPICTED ON THE TAX MAP OF THE TOWNSHIP OF HOWELL, AND MORE COMMONLY KNOWN AS 4862-4870 US HIGHWAY 9 SOUTH AND KENT ROAD, HOWELL TOWNSHIP, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER SP-852A TO PERMIT THE CONSTRUCTION OF EIGHT (8) ADDITIONAL PARKING SPACES. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE PLANNING BOARD, HOWELL TOWNSHIP MUNICIPAL BUILDING, 4567 ROUTE 9 NORTH, HOWELL, NEW JERSEY.

VILLAGE SQUARE AT HOWELL, LLC