

CITY OF HACKENSACK  
BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION AS TO  
OFFICIAL ACTION DENYING OF VARIANCES.

In the matter of V# 23-08 SP# 21-08  
for variances and site plan approval  
address: 320 Summit Avenue; 329 Prospect Avenue  
Block 344, Lots 3,4,5,14      Zone R-75 and R-3

WHEREAS, Bergen/Passaic Long Term Acute Care Hospital LLC ("the Applicant" or "LTACH") has applied to the City of Hackensack Zoning Board of Adjustment ("the Board") for permission to demolish the existing buildings located at 320 Summit Avenue and 329 Prospect Avenue, Hackensack, New Jersey, also known as Block 344 lots 3, 4, 5 and 14, on the current tax assessment map of the City of Hackensack; and construct a 24-story building, containing a long-term acute-care hospital facility with 144 beds, a dialysis center with 84 kidney dialysis chairs, and an adult-daycare facility with 250 adult daycare clients; and

WHEREAS, over the course of the hearings, the Applicant modified its proposal to request a 19-story building with 120 LTACH beds, 63 dialysis chairs, and 180 adult-daycare slots; and

WHEREAS, the Applicant has submitted proof that notification by mail or personal service at least 10 days prior to the date set forth for public hearing of all

persons owning properties within 200 feet from the extreme limits of the subject premises as set forth on a certified list of said owners furnished to the Applicant by the Tax Assessor of the City of Hackensack has been completed in accordance with the Zoning Ordinance of the City of Hackensack and N.J.S.A. 40:55D-1 et seq.; and

**WHEREAS**, the Applicant has submitted proof that a copy of said notification has been published at least 10 days prior to the date set forth for public hearing in the official newspaper of the City of Hackensack in accordance with the Zoning Ordinance of the City of Hackensack as amended and supplemented and N.J.S.A. 40:55D-1 et seq.; and

**WHEREAS**, the Board conducted public hearings on April 15, 2009, May 14, 2009, June 25, 2009, Sept 23, 2009, July 22, 2009, December 10, 2009, January 7, 2010, February 23, 2010, April 29, 2010, May 27, 2010, June 23, 2010, July 29, 2010, August 25, 2010, October 27, 2010, November 30, 2010, January 20, 2011, March 3, 2011, July 26, 2011, September 15, 2011, October 26, 2011 and January 19, 2012; and

**WHEREAS**, the property is located in the R-75 Single Family Residential zone and the R-75 High Density Multi-Family Residential zone, in which hospital facilities and dialysis units are not permitted uses, and adult-daycare centers are a conditionally permitted use in the R-75 zone

and the proposal does not meet the required conditions, and the use is not permitted in the R-3 district; and

**WHEREAS,** the Applicant was denied a permit to construct the proposed long-term acute care hospital with a dialysis center and an adult-daycare center, as the uses are not permitted and the proposal requires numerous bulk variances, by the City's Construction Official because the proposed installation does not conform with the requirements and the conditions set forth in Section 175-of the Hackensack Zoning Ordinance due to the following:

- The three uses proposed do not comply with the permitted uses in the R-75 and the R-3 zoning district.
- The proposal does not comply with the minimum lot-width requirement of the Schedule of Regulations of the R-3 District, as the proposed lot is 100 feet wide where 125 feet is required.
- The proposal does not comply with the minimum height ratio for the front yard of the Schedule of Regulations of the R-3 district.
- The proposal does not comply with the maximum lot coverage requirement of the Schedule of Regulations of the R-3 District, with 40.5% coverage proposed for the R-3 district where 30% is permitted.

- The proposal does not comply with the minimum height ratio for a side yard where 15 feet are provided and 56.75 feet are required pursuant to the Schedule of Regulations for the R-3 district.
- The proposal fails to meet the buffer zone requirement pursuant to Hackensack Ordinance Section 175-9.1A(1).
- The proposal fails to comply with Hackensack Ordinance Section 175-10.1B, as it would provide 413 parking spaces where 608 spaces are required.
- The proposal fails to comply with Hackensack Ordinance Section 175-10.2C, which requires an 18-to-22 foot wide driveway for two-way traffic where only 10 feet are proposed.
- The proposal fails to comply with Hackensack Ordinance Section 175-10.21 due to proposed paving in the side yards, which is not permitted.
- The proposal fails to comply with Hackensack Ordinance Section 175-10.2D(3)a, providing 18.5 feet for a backup aisle where 22 feet is required.
- The proposal fails to comply with Hackensack Ordinance Section 175-7.14C(3)c, proposing a zero-foot sign setback where 35 feet is required.

- The sign area proposed is 108 square feet, where 12 square feet is permitted pursuant to Hackensack Ordinance Section 175-7.14C(3)b.

The Applicant was represented by Joseph Basralian, Esq., of Winnie Banta, Hetherington, Basralian & Kahn, PC. Concerned neighbor Anastasia Burlock was represented by Christos Diktas, Esq., of Diktas, Schandler, & Gillen, Esq. Ted Moskowitz, Esq., made an appearance on behalf of the Prospect Avenue Coalition, LLC.

The Applicant presented testimony by Richard Pineles, a principal of the Applicant, who testified that the facility will employ 500 people. The LTACH is not an acute-care hospital such as Hackensack University Medical Center, but it is a hospital. It provides a higher level of service than a nursing home, but does not have an emergency room and is characterized by extended patient stays. Mr. Pineles testified that he is a principal of the Prospect Heights nursing home, located across the street from the project and admitted that the nursing home has problems with insufficient parking. He stated that taking that experience into account, they made extra efforts to provide what he believes is more than adequate parking for LTACH. Mr. Pineles further testified that there is a need for this facility. He identified Exhibit A-1, a

Certificate of Need dated July 17, 2008, indicating a need for 72 beds rather than the 144 beds requested.

Michael D. Szerbaty, was qualified as a licensed architect and testified as a principal of M.D. Szerbaty and Associates, architecture firm. He introduced Exhibit A-2, the context plan of the local neighborhood area of the site. He described the neighborhood as split between the R-3 high-rise zone and the R-75 residential zone. The proposed site is a lot of 50,000 square feet, or 1.15 acres, between Summit and Prospect Avenues. The Applicant proposes a park-like entrance on the Summit Avenue side and a building on the Prospect Avenue side, the latter of which would also have the main access to the parking garage via a ramp. The parking garage will also contain oxygen tanks, a trash compactor, and a loading dock. The Summit side will have a U-shaped circular driveway to a passenger drop off.

The public raised concerns about the safety of a diesel generator that would be placed in the basement along with oxygen tanks. Other members of the public expressed concerns about a 24-story building looming over their neighborhood and requiring 14 variances. The public had concerns about locating a commercial use on Summit Avenue, which was called the "crown jewel" of Hackensack and the residential showplace of Hackensack. Concerns were raised

with the number of ambulances that would arrive at the LTACH at all hours.

Mr. Szerbaty admitted that it was very unique to put a building such as that proposed in a residential neighborhood. He stated that the parking garage will require excavation 68 to 70 feet into the ground. It will have five levels of below-grade garage and a level for the building's mechanical systems.

Charles Thomas Jr., of Omland Engineering, testified as the Applicant's engineer. His firm reviewed the plans of the Applicant's prior engineer and re-certified them without any changes. The project comprises four lots fronting both Summit Avenue and Prospect Avenue that total 10,000 square feet. The Board engineer, Gregory Polyniak, questioned Mr. Thomas concerning the low height of the Summit Avenue access drive and whether larger vehicles such as a SUV would be able to exit. Mr. Polyniak noted that the architectural and engineering plans do not conform with each other. Mr. Thomas testified that no geotechnical evaluation had been done, nor a staging plan to show where building materials will be held, nor turning templates as to the tractor-trailers entering and exiting the site as well as a flow test.

One member of the public asked if it is usual to require 14 variances. Mr. Thomas stated that because of the location "it is like a domino effect."

Eric Keller, P.E. of Omland Engineering, testified as the Applicant's traffic engineer. It was discerned that another traffic engineer had done the study and report previously, but that the Applicant preferred Omland's study on traffic and parking. Mr. Keller admitted that he used the same data and assumptions that the prior traffic engineer did. He never looked at other medical business run by Mr. Pineles to study the number of visitors or employees. He opined that traffic presently is level of service D except for the two approaches at Summit and Central Avenues where existing conditions are level E. Keller testified that there was no industry data for parking for an adult-daycare facility, nor for an LTACH, which he said is not like a traditional hospital. He also stated that dialysis will not require the same amount of parking as an ordinary physician's office, but had no study or data to back up his opinion. He based his opinion on a survey done of Prospect Heights Care Center, a nursing home owned by Mr. Pineles that Mr. Pineles admitted has a substantial parking deficiency.



The survey of Prospect Heights Care Center workers was not performed by any professional researcher, but rather was a questionnaire that merely asked the employees how they traveled to work. It showed that 84% drive to work, 11% were dropped off and only 3% take public transportation. Two percent walk or ride a bicycle. Mr. Keller admitted that the project will eliminate nine parking spaces from the streets, despite already-limited parking.

Regarding traffic, Mr. Keller testified that the Applicant could mitigate some of the detrimental impacts of the traffic generated by reallocating pavement for a left-turn lane as well as upgrading the traffic signal. However, the Board traffic engineer testified that doing so will harm cross traffic. Mr. Keller did traffic counts on the nearby streets, but did not have any studies of traffic and parking demands for the proposed three uses.

Mr. Keller concurred that the twice-a-week food-delivery tractor trailer, the oxygen-delivery trucks, and refuse trucks, will have to back in from Prospect Avenue, blocking traffic for an indeterminate time. Mr. Keller admitted that they could not regulate the time of delivery of a food-truck driver. There also were no studies of other hospitals showing that one of this size would have a

food delivery only twice a week. He further stated that when a 40-foot delivery truck would unload the LTACH would handle it as an operational issue; however, he did not know how long it would block traffic, but speculated that it would be for a few minutes.

Traffic would also be stopped for refuse trucks and oxygen delivery trucks. Members of the public testified that they had watched a food-delivery truck unload for 10 to 15 minutes, blocking an ambulance that finally had to go onto the sidewalk to pass. Mr. Polyniak testified that backing up a 40-foot tractor-trailer onto Prospect Avenue is a hazard.

Mr. Keller based his opinions primarily on information provided to him by Mr. Pineles. He testified that that the traditional hospital, medical office and community service parking requirements would not apply for the proposed LTACH uses; however, he did not have any studies of existing LTACH's, dialysis centers, or adult-daycare facilities to back up his conclusion that the significant parking deficiency would be adequate for the proposed three uses. He did not look at the nearby Veteran's Administration building.

Mr. Keller's traffic report indicated that the peak times for the parking garage will be at shift changes at 7

a.m. and 3 p.m. He opined that at 3 p.m. the parking garage would be at 82% capacity. The public questioned Mr. Keller as to how at a shift change the garage could accommodate the 175 LTACH employees leaving and the 175 employees arriving, along with the additional uses. The Applicant is proposing 413 parking spaces, where 608 spaces are required pursuant to Hackensack Ordinance, a deficiency of 195 parking spaces. Mr. Keller testified that an LTACH is different than a hospital and that using the parking requirements for a hospital is not appropriate. Frank Miskovich, P.E. testified as a Board consultant on traffic and parking. His analysis was slightly different than that of Mr. Keller, with Mr. Miskovich finding that the number of dialysis van trips may park longer, and that a slightly higher percentage of workers drive to work. He also thought visitors to the LTACH may stay longer than Keller opined, further increasing the parking demand. Miskovich found the traffic impact from the proposed facility to be higher than Keller did, particularly on Passaic Avenue. He also noted that the project proposed would have sight distance issues and increased delays on Summit Avenue and Passaic Street.

Joseph Burgis, P.P. testified as a professional planner for the application. He reviewed the project

variances indicating that it needed a use variance requiring that the Applicant prove the 1.15-acre site meets both the positive and negative criteria, with no substantial impairment to the intent and purposes of the zone plan or master plan and zoning ordinance, and no detriment to the public good. Mr. Burgis stated that the project would add three cars at peak hours, causing only a slight additional inconvenience. He opined that the parking deficiency and the problem of trucks backing out into the street seven to 11 times a month should be weighed against the healthcare needs of residents. He also compared the size and bulk of the proposed LTACH with that of some larger multi-family dwellings on Prospect Avenue.

Mr. Burgis testified that the lot-width variance of 100 feet where 125 feet are required is due to an inability to acquire additional land. He justified the side yard variance as due to the design placing the building on the Prospect Avenue portion of the property. He said they need a 108-square-foot sign instead of a permitted 12-square-foot sign so it is readable from Prospect Street. Mr. Burgis justified the 10-foot-wide, two-way driveway by stating it would function adequately.

Stan Lacz was qualified as a licensed architect, engineer and planner, although on cross-examination it

appeared as though his engineering and planning licenses had expired in the State of New Jersey due to nonpayment of the annual filing fee with DCA. At a later meeting evidence that Mr. Lacz paid the fees was provided. Mr. Lacz testified that the Hackensack Ordinance requires that the parking garage, being attached to the hospital, is required to comply with all the bulk standards including setbacks and coverage as the primary building does. The proposed building does not comply with the setbacks in distance and the height ratio required. He found that the building located in the R-3 zone is required to limit lot coverage to 30 percent but has a proposed 88 percent. The truck loading dock is not screened as is required and may be visible from adjacent residential property. Mr. Lacz found the proposed plan required a D6 height variance, as well as use variances and 53 bulk variances. He opined that a hospital would need 4.3 acres of land to not require bulk variances, not the 1.15 acres the subject property contains. He further testified that the proposed plan is not secure from fire due to the width of the driveway with oxygen containers next to an adjoining residential use. Furthermore, the site does not provide adequate light air and open space. The proposal has five driveways in different directions and does not promote the free flow of

traffic. Mr. Lacz stated that the proposal fails to meet the negative criteria as it would create a substantial detriment to the intent and purpose of the zone plan and zoning ordinance.

Gregory Polyniak, the Board engineer and planner, summarized the plans as requiring 14 bulk variances in addition to the use variances for a hospital, dialysis center and adult-daycare facility. His report indicated the Applicant would have to establish that the height of the proposed building and increased nonresidential traffic would not constitute significant detriments. He noted that the proposed setback of 15 feet from the side property line results in a need for a bulk variance due to the increased height ratio. The proposed height requires a 70-foot setback. Mr. Polyniak's report was concerned with various unsafe circulation issues, some of which were not addressed by site-plan revisions, including the exiting of large trucks from the garage; obstructing traffic along Prospect Avenue; ramp sloping at 16%, causing an unsafe condition; and an insufficient maneuvering area within the garage around the loading spaces. In addition, his report indicated that the traffic generated by the proposed LTACH will be 175 to 156 trips during weekday morning while a

residential use would generate 36 to 56 trips during the same hours, a significant increase.

WHEREAS, the following exhibits were submitted into evidence:

Exhibit A-1 Certificate of Need dated July 17, 2008 issued by the New Jersey Department of Health and Senior Services

Exhibit A-2 Context Plan entitled "Bergen Passaic LTACH" prepared by MPFP, LLC dated December 11, 2008

Exhibit A-3 Colorized Site Plan prepared by MPFP, LLC dated December 11, 2008 - Sheet 2

Exhibit A-4 Building, South Elevation prepared by MPFP, LLC dated December 11, 2008 - Sheet 17R

Exhibit A-5 Building Program Diagram prepared by MPFP, LLC dated December 11, 2008 - Sheet 21

Exhibit A-6 Building Floor Plan, Ground Level Floor Plan prepared by MPFP, LLC dated December 11, 2008 - Sheet 14

Exhibit A-7 Building Floor Plan, Second Floor through Fourteenth Floor prepared by MPFP, LLC dated December 11, 2008 - Sheet 15

Exhibit A-8 Building Floor Plan, Fifteenth Floor through Roof prepared by MPFP, LLC dated December 11, 2008 - Sheet 16

Exhibit A-9 Parking Floor Plans prepared by MPFP, LLC dated December 11, 2008 - Sheet P1

Exhibit A-10 Landscape Prospective 3, Plaza Drop Off Looking Towards the Water Fall prepared by MPFP, LLC dated December 11, 2008 - Sheet 5

Exhibit A-11 Landscape Prospective 2, Park Open to Public prepared by MPFP, LLC dated December 11, 2008 - Sheet 4

- Exhibit A-12 Landscape Prospective 1, Driveway Ending on Summit Avenue prepared by MPFP, LLC dated December 11, 2008 - Sheet 3
- Exhibit A-13 Existing Conditions Plan, Bergen Passaic LTACH, Lots 3, 4, 5 & 14, Block 344, City of Hackensack prepared by Omland Engineering Associates, Inc. dated May 6, 2009
- Exhibit A-14 Site Plan, Bergen Passaic LTACH, Lots 3, 4, 5 & 14, Block 344, City of Hackensack prepared by Omland Engineering Associates, Inc. dated May 6, 2009 consisting of 9 sheets
- Exhibit A-15 Grading and Utility Plan, Bergen Passaic LTACH, Lots 3, 4, 5 & 14, Block 344, City of Hackensack prepared by Omland Engineering Associates, Inc. dated May 6, 2009
- Exhibit A-16 Vehicles Turning Path Plan, Bergen Passaic LTACH, Lots 3, 4, 5 & 14, Block 344, City of Hackensack prepared by Omland Engineering Associates, Inc. dated May 6, 2009
- Exhibit A-17 Stormwater Management Report prepared by Omland Engineering Associates, Inc. dated May 6, 2009
- Exhibit A-18 Minor Subdivision Plat prepared by Gluckler & Den Bleyker dated October 23, 2008
- Exhibit A-19 Existing Conditions Aerial Map prepared by Omland Engineering Associates, Inc. dated May 6, 2009
- Exhibit A-20 Site Plan Rendering prepared by Omland Engineering Associates, Inc. dated May 14, 2009
- Exhibit A-21 Building, East Elevation prepared by MPFP, LLC dated December 11, 2008 (Sheet 20R)
- Exhibit A-22 Building, East Elevation, Detailed prepared by MPFP, LLC dated December 11, 2008 and revised through July 22, 2009 (Sheets 20R1 and 20R2)



- Exhibit A-23 Site Plan prepared by Omland Engineering Associates, Inc. revised through September 9, 2009 addressing the stormwater management system changes
- Exhibit A-24 Stormwater Management Report prepared by Omland Engineering Associates, Inc. revised through September 9, 2009
- Exhibit A-25 Traffic Assessment Study, Bergen Passaic LTACH dated September 28, 2009, revised November 23, 2009 prepared by Omland Engineering Associates, Inc.
- Exhibit A-26 Sheet 9 of Site Plan, Vehicles Turning Path Plan
- Exhibit A-27 Sheet 1A/SU-3 Turning Path Plan dated 12/10/09 prepared by Omland Engineering Associates, Inc.
- Exhibit A-28 Sheet 1B of 1, Ambulance Turning Path Plan dated 12/10/09 prepared by Omland Engineering Associates, Inc.
- Exhibit A-29 Area Roadway May, Sheet 1 of 1 dated 12/9/09 prepared by Omland Engineering Associates, Inc.
- Exhibit A-30 Summit Avenue and Central Avenue Proposed Mitigation dated 12/9/09 prepared by Omland Engineering Associates, Inc.
- Exhibit A-31 Parking Utilization for All Programs prepared by Omland Engineering Associates, Inc.
- Exhibit A-32 Building, South Elevation prepared by MPFP, LLC dated December 11, 2008 - Sheet 17R, revised through November 24, 2009
- Exhibit A-33 Building Program Diagram prepared by MPFP, LLC dated December 11, 2008 - Sheet 21, revised through November 24, 2009
- Exhibit A-34 Building Floor Plan, Ground Level Floor Plan prepared by MPFP, LLC dated December 11, 2008 - Sheet 14, revised through November 24, 2009

- Exhibit A-35 Building Floor Plan, Second Floor through Fourteenth Floor prepared by MPFP, LLC dated December 11, 2008 - Sheet 15, revised through November 24, 2009
- Exhibit A-36 Building Floor Plan, Fifteenth Floor through Roof prepared by MPFP, LLC dated December 11, 2008 - Sheet 16, revised through November 24, 2009
- Exhibit A-37 Parking Floor Plans prepared by MPFP, LLC dated December 11, 2008 - Sheet P1, revised through November 24, 2009
- Exhibit A-38 Building, East Elevation, Detailed prepared by MPFP, LLC dated December 11, 2008 and revised through July 22, 2009 (Sheets 20R1 and 20R2), revised through November 24, 2009
- Exhibit A-39 Zoning Limits Plan prepared by MPFP, LLC dated November 24, 2009 - Sheet 01
- Exhibit A-40 Aerial View of Prospect Avenue - 1966 prepared by Burgis Associates, Inc.
- Exhibit A-41 Aerial View of Prospect Avenue - 1979 prepared by Burgis Associates, Inc.
- Exhibit A-42 Aerial View of Prospect Avenue - 1987 prepared by Burgis Associates, Inc.
- Exhibit A-43 Aerial View of Prospect Avenue - 2008 prepared by Burgis Associates, Inc.
- Exhibit A-44 Existing Land Use prepared by Burgis Associates, Inc.
- Exhibit A-45 Multifamily Site with Commercial Uses prepared by Burgis Associates, Inc.
- Exhibit A-46 Aerial View of Prospect Avenue - 2010 (including all buildings 10 stories or higher) prepared by Burgis Associates, Inc.
- Exhibit A-47 Lot Coverage Ratio Analysis prepared by Burgis Associates, Inc.

Exhibit A-48 Floor Area Ratio Analysis prepared by Burgis Associates, Inc.

Exhibit A-49 Building Area (SF) vs. Site Area (SF) prepared by Burgis Associates, Inc.

Exhibit B-1 Notes of Mr. Lacz (3 Pages) March 3, 2011.

Exhibit B-2 NFPA 55 on July 26, 2011.

Exhibit Moskowitz 1 Mr. Keller's response to Mr. Moskowitz with respect to Exhibit 8 on August 25, 2010.

Exhibit Moskowitz 2 email from E. Keller to T Moskowitz dated 8/24/10 on January 20, 2011

Exhibit Moskowitz 3 email from R. Pineles to E. Keller dated 7/16/98 on January 20, 2011

Exhibit M-5 Mr. Keller's notes (19 pages) with attached letter dated 3/3/11 on September 15, 2011. .

Exhibit M-6 Boswell Engineering traffic impact study dated 12-23-08 on September 15, 2011.

M-6A Appendix B under trip Generation Calculations of exhibit M-6 on September 15, 2011.

A-1 Division of Community Affairs Planner License Search on March 3, 2011

A-2 Division of Community Affairs Engineer License Search on March 3, 2011.

**NOW THEREFORE, BE IT RESOLVED,** by the Board of Adjustment of the City of Hackensack that the following findings of fact and conclusions are made by the Board:

1. That all of the "whereas" recitals herein set forth are incorporated herein by reference.

2. That the application and supporting documents, exhibits and reports submitted by the Applicant are made part of the record.
3. The Property is situated in both the R-3 single-family zone and the R-75 high-rise multi-family zones. Hospitals are only permitted within the HCS District and are not a permitted use in the R-75 and R-3 Districts. A use variance is required for a long-term acute care hospital with a dialysis center and medical adult-daycare facility.
4. In addition to the use variances, at least 14 bulk variances are required by the application. The property fails to comply with the minimum lot area for the R-3 zone and fails to meet the minimum lot-width required of 125 feet by providing only 100 feet. The project requires variances for minimum height ratio in the front yard, minimum rear yard, maximum lot coverage for the R-3 zone, minimum height ratio for the side yard, and buffer zone required of six feet where zero feet are provided in the R-3 zone. The project also requires a variance to provide a mere 413 parking spaces where 608 spaces are required under Hackensack Ordinance # 175.10.1B; minimum driveway width for the service drive where 18

to 22 feet are required and 10 feet are proposed; paving in the side yards; a backup aisle of 18.5 feet where 22 feet are required; a sign of 108 square feet where 12 square feet is permitted; and a sign setback variance of zero feet where 35 feet is required.

5. The Board finds that the testimony of a principal of the Applicant, Richard Pineles, particularly with respect to the number of LTACH beds needed and the number of parking spots required, to be less than credible. Mr. Pineles testified that the staffing of an LTACH is "higher than any other type of health care" but that this proposed facility, despite employing 500 workers, should have adequate parking despite a substantial parking variance where 405 parking spaces are proposed and 565 spaces are required by Ordinance. In the past, Mr. Pineles has testified for another medical facility in Hackensack, the Prospect Heights Nursing Home, which he presently admits has inadequate parking. Mr. Pineles also stated that there is a great need for LTACH beds; however, the Certificate of Need provided as Exhibit A-1 of July 17, 2009 showed a need for 72 beds when the application was for 144 beds. Nevertheless, the

Board finds that the proposed LTACH facility is an inherently beneficial use.

6. The Applicant's architect testified that the building would have a glass façade and will have a "pedestrian scale." The public disagreed, noting that no other building on Prospect Avenue has a glass façade. The architect described the proposed building which would have a double-story entryway. Adult daycare will be on the third and fourth floors, and patient floors on the fifth floor and higher. Patient rooms will all be ventilator equipped. They proposed four floors of dialysis seats with nurse stations. The top level will include building mechanical systems. The underground parking garage has six spaces for ambulances and passenger vans, four spaces for delivery trucks and four levels of parking for cars. In addition, the building on the adjacent property is seven stories and there are no nearby buildings on the street over 12 stories. Thus, the proposed 19-story building would be out of character in the neighborhood due to the structure's height as well as the proposed glass façade. Members of the public testified that the proposed LTACH would permanently change the nature of their neighborhood. One noted

that the residential building next to the LTACH will have views of the LTACH trash compactor, oxygen storage tanks and trailer truck deliveries, and traffic entering and exiting the garage. Members of the public repeatedly testified that a hospital, adult-daycare and dialysis center, in a residential neighborhood would not be keeping with the residential appearance of Prospect Avenue. The Board finds that the proposed facility will create a negative impact in that it will not blend in with the residential nature of the neighboring buildings, and will tower over many of them. In addition, the height variance combined with the small side yard setback creates a building that appears too large for the site. The board finds that the proposed three commercial uses will be contrary to the zone plan which specifies a zone for hospital use, and will create a substantial detriment to the zone plan and zoning ordinance.

7. The Board finds that the proposed LTACH with adult day care and dialysis in a 19-story building will have a substantial negative impact upon the neighborhood. Hackensack has a hospital zone for LTACH use. These hospital, daycare, and dialysis

uses are proposed for residential zones. The combined three commercial uses will have a substantial impact upon the zone plan, particularly as both zones are residential, and the proposal is not for only one, but three, commercial uses. The Board considered imposing various conditions to lessen the impacts but either the Applicant was unwilling to agree to these conditions, or the conditions would not lessen the detriments.

8. The proposed three-use facility will also have a substantial detrimental impact upon the neighbors. The architectural design is that of a high rise commercial structure. It would be the only all-glass exterior building and would tower over nearby buildings. The present problems with the Prospect Heights Nursing Home, which is across the street from the proposed facility and has a serious parking deficiency admitted to by Mr. Pineles, would be even greater with the proposed 19-story three-use LTACH. The Board finds that the facility will have ambulance traffic at all hours, as the neighbors testified that Prospect Heights has such traffic. The Board does not find the Applicant's statements that there would be fewer ambulances convincing. The dialysis center



is proposed for six days a week, starting very early in the morning. Residential neighbors will be disturbed by noisy ambulances and vans bring dialysis patients and adult-daycare clients. The board finds that the intensity of the three commercial uses combined in a residential zone will be detrimental to the neighbors.

9. Residential neighbors would have their views disturbed by trucks and van deliveries, ambulances, and assorted commercial traffic and noises including, but not limited to, early-morning vans and large tractor trailers.
10. The proposal locates a hospital with two additional uses in a residential zone and is contrary to the zone plan and zoning Ordinance. The Ordinance has a specific area in the City of Hackensack for hospitals, the HCS zone. The proposal asks for three commercial, non-permitted uses — hospital, dialysis and adult daycare — in two residential zones. The Applicant failed to justify its need to build this facility in a residential zone, rather than in the City of Hackensack's hospital zone.
11. The Applicant failed to prove that the substantial parking variance requested was justified. The

Applicant produced no studies on the proposed three uses to justify such a significant deviation from the Ordinance's parking requirements. The Board finds that the testimony of Eric Keller and Richard Pineles on parking demand was not credible. There is no evidence proving that a LTACH should require less parking than a hospital; the staffing needs appear to be similar. There is no reason why long-term stays may engender fewer visitors requiring parking than any other hospital, and no study of an LTACH was produced.

12. While there may be justification for a reduced parking demand for a medical adult-daycare facility; there is no justification proving that the dialysis center will require less parking than a physician's office. The substantial parking variance required, providing only 413 parking spaces where 608 are required, will create a substantial detriment to the neighborhood by forcing numerous vehicles on the street where parking is already inadequate.
13. The uses proposed are inherently beneficial uses; however, the certificate of need for the LTACH is for a smaller hospital facility than that proposed,

indicating that the proposal may be too intense, particularly for the site at issue.

14. The site plan would create numerous unsafe conditions, particularly the need for food delivery, oxygen delivery, and garbage trucks to back out into the street to exit the facility. In addition, the Board found the testimony and report of Neglia Engineering indicating that the sight distant conflicts that may occur when two vehicles are exiting from adjacent Summit Avenue driveways to be hazardous. The Prospect Avenue driveway ramp into the garage is too narrow for trucks to enter and exit, creating unsafe conditions. These detriments are due to the very high intensity of the proposed, commercial uses. Trucks turning within the garage will encroach into oncoming traffic. A 27-foot-long box truck will barely be able to fit through the road curves to reach the loading docks, again creating a hazard.

15. The extent of excavation required to construct the parking facility is equivalent to 7,000 18-yard truckloads of material will also create a substantial negative impact upon the neighborhood and the street flow of traffic. The excavation proposed is

extremely high to the high intensity of use. The Applicant failed to show that the depth of the excavation would not create problems due to the water table.

16. The proposal will create substantial negative impacts upon the neighborhood due to the parking deficiency, the noise generated by ambulances in a residential neighborhood, and unsafe traffic due created by fitting three commercial uses in a 50,000-square-foot lot. These detriments cannot be mitigated by the Applicant's proposed modifications to the nearby traffic lights. In particular, the creation of a site sorely deficient in parking with almost no street parking available will create a bad situation in a neighborhood already suffering from lack of parking.
17. The Applicant was unwilling to accept various conditions that may have mitigated some of the detriments. The Applicant was not willing to reduce the size of the project to permit it to have adequate parking and to avoid the various unsafe traffic conditions the site plan would create. Although the Applicant reduced the size of its initial plans for 24 stories to 19, the proposal is still too much in

too small a space. The Board finds that the testimony of Stan Lacz and Gregory Polyniak are credible, while the testimony of Eric Keller is based on assumptions that are not factual. The Board believes that a hospital should be located in the hospital zone, and should be built on a lot substantially larger than 1.15 acres to minimize detriments to the neighborhood and zone plan. Upon weighing the benefits and the detriments, the board finds that the detriments to the neighborhood and the zone plan outweigh the benefits of another hospital to be located in the City of Hackensack.

**WHEREAS**, the Board finds that the Applicant has not satisfied the requirements of N.J.S.A. 40:55D-70(d1) for a variance due to the serious and substantial detriments that would impact the neighborhood, due to inadequate parking, hazardous truck movements, trucks backing out into the street, noisy ambulances in a residential zone, and the detriments of three busy, intense commercial uses located in a residential zone. While the proposed uses are inherently beneficial, the Applicant has not demonstrated that the variance can be granted without substantial detriment to the public good and (c) he proposal will substantially impair the intent and purpose

of the zone plan and zoning ordinance (the Negative Criteria). The zone plan has a zone specifically for hospitals. The Board considered the imposition of conditions to ameliorate the detriments but the Applicant would not accept conditions that would provide a safe and efficient circulation on site.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Adjustment hereby memorializes its action of January 19, 2012 and denies the application for variance relief and site plan approval as contained in the body of this Resolution. Notice of this decision shall be published in the official newspaper of the City of Hackensack.

**BE IT FURTHER RESOLVED** that the members of the Board of Adjustment who voted in favor of said variances do hereby MEMORIALIZE AND CONFIRM the foregoing findings of fact, determinations and decisions set forth in this Resolution of Memorialization as the "Official Action" taken by this Board of said date in accordance with the provisions of N.J.S.A. 40:55D(g)(2) of the New Jersey Municipal Land Use Law this 19th day of April, 2012.

I hereby certify that this Resolution of Memorialization was duly adopted by a majority vote of the members of the City of Hackensack Board of Adjustment who voted in favor of said decision, a quorum of the membership

being present, at the official public meeting of said Board  
held on the            day of            , 2012.

Motion to deny by Chairman Michael Guerra

Second by Mr. Rodriguez.

**Vote for the Motion:**

Michael Guerra	<u>  x  </u>	<u>      </u>
Frank Rodriguez	<u>  x  </u>	<u>      </u>
John Carroll	<u>  x  </u>	<u>      </u>
George Diana	<u>  x  </u>	<u>      </u>
Humberto Goez	<u>  x  </u>	<u>      </u>
Larry Eisen		Not qualified to vote

**Vote for the Memorialization:**

Michael Guerra	<u>      </u>	<u>      </u>
Frank Rodriguez	<u>      </u>	<u>      </u>
John Carroll	<u>      </u>	<u>      </u>
George Diana	<u>      </u>	<u>      </u>
Humberto Goez	<u>      </u>	<u>      </u>
Larry Eisen		Not qualified to vote