

IN THE MATTER OF THE APPLICATION )

OF

**CHRISTIAN HEALTH CARE CENTER** )

**BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Hawthorne that the application of CHRISTIAN HEALTH CARE CENTER for approval of preliminary and final site plans, bulk, use and density variances and a waiver in connection with the development of a Senior Independent Care Facility to be located partially in the Township of Wyckoff, Bergen County and partially in the Borough of Hawthorne, Passaic County be and the same is hereby **GRANTED subject to conditions** and this Board does hereby memorialize and confirm the action taken on June 30, 2014 in the above matter for the reasons, findings and conclusions set forth in a resolution, separate from but attached hereto, which resolution is adopted by reference and incorporated herein and is hereby made a part of the official minutes of the Zoning Board of Adjustment.

Moved:

Seconded:

	Yea	Nay	Abstain	Absent
De Ritter	<u>X</u>	___	___	___
Duffy	<u>X</u>	___	___	___
Gallagher	<u>X</u>	___	___	___
Schroter	<u>X</u>	___	___	___
Terraglia	<u>X</u>	___	___	___
Chamberlin	___	___	<u>X</u>	___
Melfi	___	___	<u>X</u>	___
Agnello	<u>X</u>	___	___	___
Hallock	<u>X</u>	___	___	___

IN THE MATTER OF THE APPLICATION	)	ZONING BOARD OF ADJUSTMENT
	)	
	)	
OF	)	Borough of Hawthorne
	)	
	)	RESOLUTION MEMORIALIZING
CHRISTIAN HEALTH CARE CENTER	)	PREVIOUS ACTION

**WHEREAS**, the Christian Health Care Center (hereinafter “CHCC”), has applied to the Zoning Board of Adjustment of the Borough of Hawthorne for approval of preliminary and final site plans, bulk, use and density variances and a waiver for a development of a Senior Independent Care Facility to be located partially in the Township of Wyckoff, Bergen County and partially in the Borough of Hawthorne, Passaic County at 301 Sicomac Road, Wyckoff, New Jersey. The facility would consist of 199 units, 51 of which would be located in Hawthorne on lots 1, 1.01, 1.02, 1.03, 1.04, and 1.05 in Block 293 on the Borough Tax Map, and,

**WHEREAS**, the applicant has previously gained approval of the Wyckoff portion of the development by resolution dated May 13, 2013, and,

**WHEREAS**, public hearings on the application were held by the Board on October 21 and December 9, 2013 and January 20, February 10, March 24, April 28 and June 30, 2014, and

**WHEREAS**, This Zoning Board of Adjustment of the Borough of Hawthorne, at its public meeting of June 30, 2014 did make the following findings of fact, determinations and decision:

**FACTS:**

1. The required notice regarding the requested relief was given and published and proof thereof was filed with the Board.
2. The Applicant in this matter is represented by Jerome A. Vogel, Esq., Jeffer, Hopkinson & Vogel, Esq., 1600 Rte. 208 North, Hawthorne, New Jersey 07506.

3. The premises in question are located in the R-1 Residence zone of the Borough which does not permit the proposed use consequently necessitating a use variance under Section 540-10 of the Borough Code. In addition, bulk variances for height, 2 ½ stories permitted, 3 proposed, minimum lot area for a dwelling unit, (Bulk Table), bulk and coverage requirements of Section 540-81 for both the R-1 and R-7 zones, retaining walls length and setbacks under Section 540-12, excessive limit on disturbance under Section 540-160 and reduced parking off-street stalls under Section 540-132B. A waiver from the requirement to show topography and existing nearby utilities is also requested along with any other variances or waivers deemed necessary by the Board.

4. Over the course of the hearings the applicant presented six witnesses whose testimony was as follows:

**Douglas Struyk**, President and CEO of the Christian Health Care Center, testified that the CHCC is located on a 79 acre campus that straddles the municipal boundary line separating the Township of Wyckoff from the Borough of Hawthorne. Approximately 16 of these acres are in Hawthorne. CHCC is about 102 years old and contains a variety of health care related facilities including a psychiatric hospital, nursing home, independent and assisted living buildings.

The proposal is to erect a Senior Independent Care Facility to be called “The Vista” to consist of 199 units, 51 of which would be located in Hawthorne. The units would be either one or two bedroom with the facility providing a fitness center, swimming pool, banking facilities, lecture/worship auditorium, convenience store and a Wellness Center. Together with the existing programs of CHCC a “Continuing Care Retirement Community” would be created.

Residents of the Vista who would have to be 65 or older would “age in place” with their needs being first addressed by the Vista facilities and programs and thereafter by assisted living and Nursing care on the CHCC campus.

Residents “...will enter into a contract” with CHCC, paying an entrance fee and thereafter monthly service fees. The entrance fee would depend upon the size of the unit and

whether a refund would be available in the future to the resident or his heirs. Underground parking for one car per unit would be provided.

5. **Kenneth Karle**, President of LAN Associates, Project Engineer, testified that the CHCC property is divided by the municipal boundary line separating Wyckoff from Hawthorne. It currently is comprised of 16.93 acres but coincidental with the application before the Board when and if approval is obtained, there will be a subdivision application creating four reconfigured residential lots out of four existing residential lots owned by the Applicant on Goffle Hill Road Drive reducing the size of the CHCC property in Hawthorne which is the subject of this application to 15 acres.

The Vista has several wings the ends of three of which would extend into Hawthorne. There is no autonomous building proposed for Hawthorne. None of the common facilities are located in the Hawthorne wings. These wings will have underground parking for their residents only.

For public safety access only, there will be a loop road enfolding the Hawthorne wings 26 feet in width. This will require an exception from the RSIS standard of 20 feet but it is proposed for fire and emergency vehicle access. There will be no surface parking in Hawthorne and access to the Vista by visitors will be only through Wyckoff. There will be 21 underground parking spaces for residents in the Hawthorne wings.

Complying with a Borough ordinance there will be a 150 buffer zone extending from the outer edge of the loop road to the rear property lines of the Emeline Drive properties in Hawthorne. While the applicant is committed to maintaining the buffer “disturbance free” it certainly would engage in “selective landscaping improvements” such as selective culling or pruning and add additional drainage facilities if required by the Board.

Drainage of the area will be addressed for the first time and directed through location of the building and loop road catch basins by underground pipes to a new retention basin to be located behind the residences on Goffle Hill Road. The downhill flow will be partially diverted to the retention basin and thus reducing the current impact on the Emeline Drive properties.

Variations are requested for use, maximum number of stories: 3 proposed but 2 ½ permitted, minimum lot area per dwelling unit: 12,808 sq. ft. proposed, 18,750 sq. ft. required; retaining wall length: <less than 10 ft. permitted, >10 feet proposed, 5 ft. from any other fence or wall required, <5 feet proposed; parking space size: 9 ft. x 20 ft. proposed. 10 ft. x 20 ft. required and steep slope disturbance: 20%-24.9%: 20% permitted, 24.1% proposed/25% and over: 10% permitted and 37.9% proposed, 1 ½% of the entire site. In addition waivers for depiction of topography and nearby utilities are requested. When and if the subdivision application is made three of the resultant lots will require variances for front yard setbacks.

On proposed lighting the applicant offered a 6 month period for any changes required by the Board.

6. **Glenn A. Tipton**, Project Architect, testified that the addition of the Vista to CHCC would create a Continuing Care Retirement Community providing independent living, assisted living and nursing care to its senior residents. The proposed architecture offers a residential appearance and “feel” like a single family house. Buildings are 3 stories in height but average less than 35 feet high. The view from Emeline Drive would be of building “ends” and the courtyards separating them.

7. **Louis Luglio**, Traffic Engineer Transportation Planner, testified that a traffic study was conducted in September, 2013 to determine existing conditions then “no build” and “build” scenarios were added. His conclusions are that the project is a low generator of traffic in Hawthorne, lower than a residential development. Consequently, there would be no measurable impact on Hawthorne.

8. **Richard Cording**, a licensed New Jersey Landscape Architect, commenting on the Landscape plan submitted by a Maryland Landscape Architect testified that he endorses the plan and approves the current buffer zone growth except for limbs caught in trees which should be cut out for safety reasons.

9. **Richard M. Preiss**, a Professional Planner, testified that he had been involved with the project since its inception. The project requires a use variance (d-1) and also a density

variance (d-5). The project is “inherently beneficial”. The addition of the Vista will provide a greater balance between independent and assisted living. Because of the entirety of services offered the Vista project qualifies as a “Congregate Care Facility” as defined by the New Jersey Department of Human Services. Applying the SICA test to the project, the project ranks high on the scale of “inherently beneficial” uses. Looking at possible detrimental impacts to the public good, the project’s location would be shielded from residential uses. Its appearance would be attractive and residential in character. There will be no outdoor parking with most, if not all activities conducted indoors. There would be virtually no traffic in Hawthorne, no adverse environmental effect and few municipal services required. As far as the second prong of the negative criteria is concerned, there will be an enhanced variety of housing and effective buffering of incompatible uses. Identifying drainage as a possible detrimental impact, the proposed loop road piping system and retention basin have addressed that. Based on these factors the positive elements of the project outweigh the negative. Density compares favorably with other institutions and the adverse impacts of the bulk violations do not affect Hawthorne.

10. **Joseph H. Burgis**, the Borough’s Professional Planner, testified concurring in the conclusion that the Vista project is an “inherently beneficial” use providing senior housing allowing residents to “age in place” and complying with the Borough Master Plan by encouraging a variety of housing for an increasingly aging population. Potential detrimental effects, such as visual impact, traffic, impact on municipal services, land use compatibility and environment are all minimal if extant at all. Some potentially adverse effects could be alleviated by additional plantings along Emeline Drive and culling or pruning the buffer’s existing growth. Weighing the positive and negative criteria, it is clear there is no “substantial detriment” to the public good or the Zoning Ordinance and master Plan. Regarding the issue of Affordable Housing it is recommended that some form of commitment to satisfy Hawthorne’s share obligations be obtained from the Township of Wyckoff and COAH’s consent to that arrangement. If those units are to be located in Wyckoff, there should be public identification of their attribution to Hawthorne’s obligation. Mr. Burgis opined that invasion of the buffer area for

cleanup should be available without need for a variance from Code Section 540-8T establishing the buffer. Additional plantings and installation of yard drains would require a variance.

11. **Rayna Laiosa**, Chairperson of the Hawthorne Environmental Commission, challenged the applicant's contention that the downhill berm or "dam" of the proposed detention basin did not require DEP review and permitting.

12. The Record in this matter shall consist of the following:

- Amended Application for preliminary and Final Site Plan Review and Development Plan dated June 26, 2013
- Amended Application for Use Variance dated June 25, 2013
- Letter of Jerome A. Vogel, Esq., Jeffer, Hopkinson & Vogel, Esqs., in support of the Application dated June 26, 2013
- Site Plan by LAN Associates, 43 pages, dated December 17, 2008 and revised to January 6, 2014; Sheets L1-1, L3-1, L5-1 and L6-1 revised to July 14, 2014
- Resolution of Twp. of Wyckoff dated May 13, 2013
- Architectural plans of Brown Craig Turner, 12 pages, dated September 14, 2012
- Stormwater Management Report by LAN Associates
- Power Point Printout entitled "The Vista" dated October 21, 2013
- Report of Boswell McClave Engineering dated September 16, 2013
- Report of Boswell McClave Engineering dated October 15, 2013
- Material Color Board
- Letter of LAN Associates clarifying height calculations
- Planning Report for the Vista submitted by Richard M. Preiss
- Fiscal Report for the Vista submitted by Richard M. Preiss
- Power Point Printout for the Vista dated March 24, 2014 submitted by Richard M. Preiss

- Traffic Impact Study prepared by Stantec Consulting Services, Inc., dated September, 2013
- Planning Report on the Vista by Joseph H. Burgis dated October 18, 2013
- Water Usage Report by LAN Associates dated June 20, 2008 revised to January 3, 2014
- Sanitary Sewer Report by LAN Associates dated June 9, 2009 revised to December 7, 2012
- Interim Reports of Passaic County Planning Board dated December 10, 2013 and February 25, 2014
- Test Pit Data by LAN Associates dated May 18, 2011 revised to January 9, 2014
- Dam Safety Report by LAN Associates dated April 28, 2014
- Hawthorne Environmental Commission (“EC”) Report dated April 8, 2014
- Letter of LAN Associates responding to EC Report dated July 9, 2014
- Landscape Plans Review Memorandum by Burgis Associates dated July 17, 2014

**DETERMINATIONS:**

1. The Board accepts the testimony described above.
2. **The Use Variance.** The property is located in the R-1 Residence Zone and the proposed use is not permitted in that zone. Because a “d(1)” variance is required the application must meet both the positive and negative criteria. For Special Reasons, both Professional Planners agree and the Board accepts the determination that the addition of the Vista to the CHCC will expand an “inherently beneficial” Continuing Care Retirement Community use. The completed project will offer its residents “life care”, the ability to “age in place” while enjoying “medical, wellness, socialization, culture retail services and educational programs”.

3. Given its “inherently beneficial” status, the Board must still weigh the positive and negative aspects of the project in accordance with Sica v. Wall Township 127 N.J. 152 (1992).

**The Public Interest.** Senior Citizen housing is a stated purpose of the Municipal Land Use Law, N.J.S.A. 40:55d-2(1), and an objective of the Borough Master Plan.

**Detrimental Impacts/Public Good.** Although located in the R-1 Residence Zone, the nearest residences would be approximately 237 feet away from the ends of two of the five wings of the proposed building and visual impact would be shielded by existing old growth trees and plants as well as proposed screening in the 150 foot buffer zone area. Resident activities will be largely indoors with noise and light at an absolute minimum. Traffic will be limited to residents of these wings, all common facilities and programs being located elsewhere and there will be no surface parking. Proposed drainage facilities will actually reduce the present storm water down flow by redirecting it to a detention basin behind Goffle Hill Road. There will be no impact on Municipal Services.

**Detrimental Impacts/Master plan & Zoning Ordinance.** The Borough Master Plan calls for “a variety of housing types, densities and balanced housing supply”. The project offers a comprehensive senior living facility to meet these goals.

Based on the evidence submitted the Board concludes the positive aspects of the project substantially outweigh the negative.

4. **Density and the Bulk Variances** A density (d5) variance is required because the lot area per unit is less than 18,750 sq. ft. but the proposed lot coverage is less than the maximum required by the R-1 Residence zone so the reduced density can be accommodated on site without substantial detriment. A height of less than 35 feet but exceeding the 2 ½ story limitation is proposed but contrary to the request, no variance is required. The steep slope deficiencies can be directly related to the creation of the detention basin proposed to alleviate storm water runoff and protect the Emeline Drive residences from flooding and erosion, again a benefit clearly outweighing any detriment. The proposed parking lot size more closely

corresponds to RSIS standards and the location of retaining walls of the length proposed in the “front yards” is a technical violation which should not stand in the way of environmental protections.

5. **Buffer Restriction** Section 540-8T of the Borough Code prohibits disturbance or improvement in the 150 buffer zone abutting the Emeline Drive properties. (“The Emeline Drive Buffer Zone”) Section 540-82A establishes the numbers and types of trees required to be planted. It is proposed to “cull” and remove any dangerous or hazardous growth, to install additional drainage facilities and provide additional screening in the zone. To the extent the departure from the Code limitations permitted hereby requires variance relief, this Board hereby grants same as a C(2) variance, subject to conditions hereinafter stated, for the purposes of enhancing safety and controlling/alleviating storm water runoff on to the Emeline Drive properties, a benefit clearly outweighing any detriment.

Accordingly and based on the foregoing findings of fact and analysis,

**NOW THEREFORE, BE IT RESOLVED** that the application of the **CHRISTIAN HEALTH CARE CENTER** for approval of preliminary and final site plans, bulk, use and density variances and a waiver for a development of a Senior Independent Care Facility to be located partially in the Township of Wyckoff, Bergen County and partially in the Borough of Hawthorne, Passaic County be and the same is hereby **GRANTED subject to the following conditions:**

1. Applicant will exercise its best efforts to obtain a written commitment from the Township of Wyckoff to provide all affordable housing units required by the project of the Borough to be built in the Township of Wyckoff and support the Borough of Hawthorne in any application to the Council on Affordable Housing, (COAH) to receive COAH credit for those units associated with the 51 units located in the Borough. Nevertheless, in the absence of which commitment, Applicant shall, prior to the issuance of any certificates of occupancy by the Borough, provide such units and pay all COAH Development fees. It is understood that this is a continuing condition of this Board’s approval of the application.

2. Applicant shall, promptly, apply for a re-subdivision of the Goffle Hill properties to reduce the area of the CHCC application to 15 acres.
3. Prior to the issuance of any building permits by Hawthorne, Applicant shall submit for review and approval by the Borough Engineer an amended site plan incorporating all revisions agreed to over the course of the hearings.
4. Prior to the issuance of any building permits by Hawthorne, the Applicant shall execute a Developers Agreement prepared by the Board Attorney.
5. Prior to the issuance of any building permits by Hawthorne, Applicant shall demonstrate an adequate source of water for the project.
6. Prior to the issuance of any building permits by Hawthorne, Applicant shall submit its plans for the detention basin berm/dam to the DEP to determine the proper dam classification and whether permitting other than by rule is required in which event it will take all actions necessary to secure the appropriate permit(s).
7. All tree and plant growth work in the Emeline Drive Buffer zone to eliminate dangerous and hazardous conditions or invasive species, all additional screening to be installed in the Emeline Drive Buffer zone permitted by approved landscape plans and all drainage control facilities be installed in the Emeline Drive Buffer zone shall be pre-approved by the Village Engineer.
8. The amenities, for the residents described in testimony, must be provided.
9. Minimum resident's age is 65.
10. There shall be no more than two (2) people living in a single unit.
11. Fire suppression and detection systems will be provided for the facility as required by the Borough's Fire Department.
12. All residential cooking stoves will be electric.
13. First responder communications must be receivable within the building. The Applicant must demonstrate that this requirement is met. If required, Applicant will install booster antennas to provide the necessary signal strength so that emergency services can transmit and receive radio communications throughout the entire structure.

14. Procedures for EMS, Police, Fire and 911 calls must be addressed to the satisfaction of the Township of Wyckoff and the Borough of Hawthorne. In addition, proper protocol must be established between both municipalities.
15. A condition of the contract for each unit must be that resident is able to self-evacuate from the building. If they are not able to self-evacuate, that CHCC has the ability to have resident moved to the next stage of care. A copy of the agreement must be provided to the Board Attorney for review.
16. The Applicant must satisfactorily address all comments noted in the Board Engineer's March 24, 2014 letter and must receive written approval from the Board Engineer.
17. There will be no increase in storm water runoff to adjacent properties.
18. The Applicant will provide Storm water Maintenance Manual to the municipality detailing maintenance measures to be followed.
19. The Applicant will maintain storm water management system in accordance with approved Storm water Maintenance Plan.
20. An easement will be provided for the detention basin. The easement will provide the Borough with the ability to maintain the basin, but not the obligation to maintain.
21. The existing driveway to/from the CHCC and Eastern Christian Children's Retreat ("ECCR") to Mountain Avenue will continue to provide access to the CHCC and ECCR. All deliveries to the CHCC will be made from Sicomac Avenue. Signage to be provided at entrance on Mountain Avenue stating "No CHCC Deliveries".
22. There shall be no access to the project from Emeline Drive.
23. The existing access to Merrywood Drive will continue to be utilized as an emergency access only and will remain closed/gated for through traffic.
24. The Applicant will request waiver/notice to exceed RSIS requirement for loop road width.
25. Applicant will Install and maintain landscaping as approved by Hawthorne Zoning Board of Adjustment including installing irrigation of ornamental landscaped areas.
26. Perimeter lighting will have back shields on light fixtures.
27. Site lighting is subject to a 12 month review after installation by Borough whereby the Borough could direct changes in site lighting.
28. Applicant will not have night time events in common areas and the facility will not be subject to rental.
29. The Applicant will provide the Borough with "Will Serve" letters from the intended water and sanitary sewer utilities that will be serving this project.
30. The Applicant must absorb any additional costs associated with sanitary sewer connection and usage imposed by the sewer authority.

31. All utilities will be installed underground.
32. Prior to retaining wall construction, the Applicant must submit design calculations for each retaining wall over two (2') feet in height including wall stability specifications and details of the varying geogrid locations and lengths.
33. For all retaining walls two (2') feet in height or greater constructed on site, the Applicant shall be responsible for providing a certification by a licensed Professional Engineer stating that he/she has provided on-site inspection during the wall construction, that proper construction methods were utilized, the wall has been constructed in accordance with the approved design drawings, the wall has been properly stabilized, and that the wall will prove adequate for the intended purpose. Inspecting engineers must also certify that the appropriate batter, height and location have been respected pursuant to the approved design drawings. Copies of these certifications are to be forwarded to the Municipal Engineer.
34. Refuse and recyclables will be stored inside building.
35. HVAC/roof top equipment will be screened. Additional screening will be installed if required by Borough Officials.
36. Applicant must obtain necessary approvals from outside agencies including, but not limited to, New Jersey Department of Environmental Protection, Bergen County Planning Board, Bergen County Soil Conservation District, Passaic County Planning Board and the Hudson-Essex-Passaic Soil Conservation District.
37. The Applicant is to submit an As-Built Survey upon completion of project.
38. The Applicant will provide the Borough with an anticipated sequence of construction for review and approval. The sequence of construction will be included in the Developer's Agreement.

and this Board does hereby memorialize and confirm the action taken on June 30, 2014 in the above matter. The foregoing approval is subject to concurrent approvals of any other board or agency with appropriate jurisdiction, as well as compliance with the Building Officials Code Annotated and all other ordinances of the Borough of Hawthorne.

The undersigned, Raymond G. Hallock, Chairman, does hereby certify that the above is a true copy of a memorializing resolution adopted by the Board of Adjustment of the Borough of Hawthorne on July 21, 2014.