

RESOLUTION  
of the  
BOROUGH OF NEW PROVIDENCE  
Resolution No. 2013-084

Council Meeting Date: 02-25-2013

Date Adopted: 02-25-2013

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE, COUNTY UNION, STATE OF NEW JERSEY, APPROVING A DEVELOPER'S AGREEMENT WITH FOLEY SQUARE AT MURRAY HILL, LLC, REGARDING A PROPOSED 22 UNIT TOWNHOUSE DEVELOPMENT

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Lesnewich.

WHEREAS, the Board of Adjustment by Resolution on Application 2010-16, also designated as Application 2012-28A, dated September 8, 2010, has granted variance relief and preliminary and final site plan approval for development of a townhouse complex consisting of a total of 22 units, including those that were approved by Resolution 2007-13, dated September 5, 2007, for premises located on South Street, Southgate Road and Westerly Avenue, designated as Block 330, Lots 4 and 5 and Block 331, Lots 1, 2, 3, 4, 5, 6, and 7 on the Tax Map of the Borough of New Providence, County of Union, New Jersey; and

WHEREAS, said approvals require the execution of a Developer's Agreement with the Borough as a condition of said approvals, which agreement has been submitted and been found acceptable;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of New Providence, County of Union, State of New Jersey, that said Developer's Agreement, copy attached hereto, with Foley Square at Murray Hill, LLC, be hereby accepted and that the Mayor and Clerk are hereby authorized to execute the same.

APPROVED, this 25<sup>th</sup> day of February, 2013.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
LESNEWICH	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 25<sup>th</sup> day of February, 2013.

Wendi B. Barry, Borough Clerk



## **ARTICLE I: COMPLETION OF IMPROVEMENTS**

The DEVELOPER shall at its own cost and expense complete on or about July 1, 2013, all required improvements in accordance with the plans and specifications therefore approved by the Borough Board of Adjustment. The topping of the roadway however, may not be completed by that date.

The DEVELOPER shall arrange for the installation of all underground utilities to be installed by public utility companies which will own and maintain such facilities after installation. Such underground utilities shall be installed in accordance with the plans therefore approved by the Borough Board of Adjustment. The DEVELOPER has paid, or is about to pay, to said public utility companies all charges which are required for such installation, including any refundable deposits, and evidence of such payment is attached hereto and made a part hereof.

## **ARTICLE II: PERFORMANCE GUARANTEES**

The DEVELOPER shall furnish to the Borough a performance bond or bonds, escrows and fees as set forth in a letter from Maser Consultants, P.A., dated September 27, 2012 and its attachments thereto, dated August 10, 2012 and August 20, 2012. (Exhibit B attached hereto)

The performance bond or bonds shall contain provisions for a maintenance guarantee. The cash deposit agreement, performance bonds and maintenance bond shall be in a form approved by the Township Attorney.

The amount of performance bond or bonds may be reduced in accordance with the provisions of R.S. 40:55D-53 when portions of the subdivision improvements have been completed and approved.

## **ARTICLE III: ACCEPTANCE OF TRACT IMPROVEMENTS**

Upon completion and approval, the BOROUGH shall accept all those subdivision improvements which shall be owned and maintained by the BOROUGH. Acceptance shall be in accordance with the provisions of R.S. 40:55D-53.

Prior to the acceptance, the DEVELOPER shall correct any adverse conditions within road rights-of-way or easements to be conveyed to the BOROUGH either caused by the forces of nature or resulting from the performance of work in the course of the development of the TRACT.

Upon acceptance of improvements, the DEVELOPER shall convey to the BOROUGH the road rights-of-way, all required easements and all improvements thereon and therein. All conveyances shall be free and clear of all encumbrances and liens.

#### **ARTICLE IV: MAINTENANCE OF IMPROVEMENTS**

The DEVELOPER at its own cost and expense shall maintain all improvements required to be installed for the TRACT for a period of two (2) years from the date of acceptance by the BOROUGH, provided, however, that this requirement shall not apply to any underground utility installed by a public utility company which will be owned and maintained by such company after installation. Maintenance shall include the repair, reconstruction and replacement of any improvement or portion thereof, which is necessitated by reason of faulty materials or workmanship, settlement or the effects of the forces of nature. Maintenance shall also include the correction of any adverse conditions within road rights-of-way or easements conveyed to the Township caused by the forces of nature and not evident at the time of acceptance by the Township. Maintenance shall be deemed to be satisfactorily performed when inspected and approved by the Township Engineer of the BOROUGH.

#### **ARTICLE V: MAINTENANCE GUARANTEES**

If upon the acceptance of improvements for the TRACT by the BOROUGH, the DEVELOPER desires to have the performance bond or bonds released, the DEVELOPER shall furnish to the BOROUGH, a maintenance bond guaranteeing the maintenance of all improvements as provided in ARTICLE IV, which bond shall be in an amount equal to fifteen percent (15%) of the cost of the improvements required to be maintained as such cost is determined by the Township Engineer of the BOROUGH.

The maintenance bond shall be in a form approved by the BOROUGH attorney.

#### **ARTICLE VI: ACCESS TO LOTS**

The DEVELOPER shall, on and after the occupancy of any dwelling in the TRACT, provide and maintain adequate and suitable vehicular access to said dwelling from the nearest municipal, County or State highway. Adequate and suitable access shall mean access by a curbed street having a sub grade and base course meeting BOROUGH road specifications and the maintenance of such access shall include the plowing of snow and the sanding of the road surface when necessary. The responsibility of the DEVELOPER to maintain the aforesaid access shall continue until sixty (60) days after the road has been fully completed with the surface course and inspected and approved by the Township Engineer of the BOROUGH.

#### **ARTICLE VII: COMPLIANCE WITH ORDINANCES, LAWS AND TERMS AND CONDITIONS OF SUBDIVISION APPROVAL; REMEDIES**

In the development of the TRACT, the DEVELOPER shall comply with all applicable State laws, rules and regulations and all BOROUGH ordinances.

Foley Square at Murray Hill  
4065.4

The DEVELOPER hereby accepts all the terms and conditions of site plan approval as set forth in the attached Resolution of the Borough Board of Adjustment adopted on September 8, 2010.

It is understood and agreed by the BOROUGH and the DEVELOPER that if during the course of the development of the TRACT, the DEVELOPER shall fail to comply with any applicable State law, rule, regulation or any BOROUGH ordinance or any term and condition of the site plan approval and such failure of compliance shall have any current adverse effect upon any person or property designed to be protected during the course of the development of the injunctive and other relief to restrain further violations or compel compliance with applicable State laws, rules and regulations or BOROUGH ordinance provisions or terms and conditions of site plan approval and, if necessary or appropriate, to recover the reasonable costs of effectuating the same and the BOROUGH shall not be required to await the date set for the completion of all improvements before instituting such a proceeding or obtaining relief against the DEVELOPERS. Any performance bond furnished by the DEVELOPER shall recognize the right of the BOROUGH to proceed against the Surety to obtain the aforementioned reasonable costs without waiting for the date set for the completion of all improvements.

The reference to certain remedies which may be elected by the BOROUGH is not intended to exclude any other remedy provided by law, all of which are intended to be available to the BOROUGH for the protection of the public interest.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals or caused these presents to be executed and attested by their proper corporate officers and their seals affixed hereto on the day and year first above written.

WITNESS:

FOLEY SQUARE AT MURRAY HILL, LLC

  
Print Name Here: Elise Smykowsk

By:   
Print Name Here: MARK F. WEIZERMAN

ATTEST:

BOROUGH OF NEW PROVIDENCE

\_\_\_\_\_  
Print Name Here:  
Place Seal Here:

By: \_\_\_\_\_  
Print Name Here:

**BOROUGH OF NEW PROVIDENCE**

**BOARD OF ADJUSTMENT**

**RESOLUTION**

**WHEREAS**, Foley Square at Murray Hill LLC, with an address of South Street, Southgate Road and Westerly Avenue, also known as Block 330, Lots 4 and 5 and Block 331 Lots 1, 2, 3, 4, 5, 6, and 7, on the Tax Map of the Borough New Providence, New Jersey (the "Applicant"), has applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for a variance relief pursuant to N.J.S.A. 40:55D-70(c) from the Borough's zoning ordinance as well as amended preliminary and final site plan for approval for an the construction of an additional four (4) townhome dwelling units on Lot 5 of Block 331, which was not part of the Applicant's prior variance and site plan approval of 18 townhome dwelling units. The property lies in the R-4 Residential Zone; and

**WHEREAS**, the Board previously granted approval for variance relief and site plan in 2007 for 18 townhome dwelling units; and

**WHEREAS**, the Board has reviewed the application, testimony and exhibits presented by the Applicant at the hearing conducted on July 19, 2010; and

**WHEREAS**, the Board has made the following findings of fact and drawn the following conclusions of law:

EXHIBIT A

### FINDINGS OF FACT

1. Foley Square at Murray Hill LLC is the applicant and has the consent of the owner to proceed with an application for development for Block 331, Lot 5, New Providence, New Jersey. The property is lies in the R-4 Residential Zone.

2. Joseph Murray, Esq., attorney for the Applicant, stated that in 2007 the Board approved a development which included 18 units. The Applicant is now a contract purchaser of Lot 5 in Block 331 and is proposing an additional four (4) units. Mr. Murray referenced Exhibit A-1, which includes the buildings approved depicted in dark brown, and the proposed four (4) new units as light brown on the plan. He stated that the subject property is to the west of the 2007 approved project. At the time of the 2007 application this property was unavailable and, in the interim, the Applicant acquired the additional lot and proposes to proceed with four (4) additional units. The Applicant has proposed no changes to the footprint or architectural design of the previously approved project.

3. Karen M. Luongo, AIA was sworn in and accepted as an expert in the field of architecture. She stated that she previously appeared on this project in 2007. Ms. Luongo testified that the additional lot will complete the project and make the development a contiguous development and more aesthetically pleasing. Ms. Luongo reviewed exhibit marked as A-3 which is a conceptual view of Building A as it fronts on South Street and exhibit A-4 , which is a view of Building C as it fronts on Westerly Avenue.

4. Ms. Luongo stated that Lot 5 is .34 acres, bringing the total area of the project to 1.84 acres. Lot 5 currently consists of three-family home in a state of disrepair. It fronts on Southgate and it is 21 feet from the front setback, i.e. the existing structure is in violation of the front yard setback as it exists now. Directly across from this lot is the Murray Hill Train Station. Ms. Luongo said that they are orienting the building to front the train station. The driveway will be off Westerly Avenue and will connect to the previously approved circulation plan. The new building will be Building E on the plans, and is proposed to contain four (4) units, configured similarly to previously approved Buildings A and B.

5. The two interior units will duplicate the interior units in the other buildings. All the proposed units will have three (3) bedrooms. One will have 3 ½ baths, and the other three will have 2 ½ baths. Each will have 2 car garages, and the lower level of the units will have space for a media or family room. All will be sprinklered and have the capability of having elevators, consistent with the prior approvals for the other buildings. Ms. Luongo further testified that the architectural design will be similar to the other buildings, including a single gambol roof, identical trim details and crown moldings. She further described the design details as including on the first story a stone veneer with shingles above, double hung windows, a bell tower roof and copper overhangs. She confirmed that these units are proposed to match the design of the previous approval.

6. Ms. Luongo also addressed the basic zoning criteria. She noted that the property is in the R-4 Zone and the proposed use is a permitted use. She stated that 14 units per acre is conforming, and that the proposed addition to the project increases the

previously proposed density modestly, as it contains an overall density of 11.96 units per acre and the previous density was 11.92 per acre. She noted that the density of Lot 5 is still "conforming" in that the 4 proposed units on the additional acreage translates to 12.12 units per acre, however, a variance for minimum lot area for the project was previously approved. The project is also dedicating/deeding .1 acre to the Borough for the re-alignment of the intersection and to continue the sidewalk on Westerly to enhance public safety and access to the rail station.

7. She noted that the front yard setback required is 30 feet and that a staggered setback is proposed, ranging from 9.6 feet, to 12.5 feet, to 28 feet to 33 feet. She stated that the height of the retaining wall requires a variance and that the Applicant also needs approval of an amended site plan that accounts for the improvements on the new lot. Ms. Luongo stated that the Applicants meet R-4 lot requirements for density and impervious coverage. She also noted that the Applicants can not obtain additional land as there is no more to obtain but that the addition of Lot 5 to the project brings it closer to conformity than before. She also noted that several properties in the area do not meet the required 30 foot front yard setback and noted that the subject property has three (3) front yards, and that she considers this a hardship.

8. Bill Hollows, P.E., was sworn in and was accepted as an expert. He prepared the current engineering site plan and the previous plan as well. The improvements are extensions to the sanitary sewer, modifications to the drainage plan, a new driveway, but that there are no changes except as relates to the addition of four (4) more units. There are minimal engineering changes such as extending the utilities, and re-grading site, and additional landscaping. There is a retaining wall in the corner of the

new building. He believed that the retaining wall would be aesthetically better than a sharp increase in height at the building itself. He noted that the Applicant is dedicating a portion of the corner property to the Borough to assist in the realignment of the road and to allow for the installation of a sidewalk to increase safety for both vehicles and pedestrians.

9. Michael Tobia, PP was sworn in and accepted as an expert. He stated that one of the variance requests is for minimum lot area, which has improved with the addition of this lot to the project, but it cannot be made any better as there is no way to acquire additional property to meet the 2 acre minimum requirement. He stated that such a situation is a "classic hardship under N.J.S.A. 40:55D-70(c)(1).

10. As to the front yard setback, he noted that 30 feet is the minimum required and 9.6 feet is proposed in one spot on Westerly Avenue and it increases to 12.5 feet, 28 feet, and 33 feet. He said that while the constructing of three (3) units instead of four (4) units would improve the setbacks, there is a hardship here with three (3) front yards and also noted that the lot lines are not straight. He further stressed as a mitigating factor that where the largest setback deviation is, the property fronts the rail station. He also stated that even single family homes in the immediate neighborhood violate the front yard setbacks. He stated that the development helps create a "pedestrian friendly" area. He stated that such a variance could be supported based upon hardship grounds or under a "benefits versus detriment" analysis. He further stressed that the proposed use is a permitted use in the zone and there is no substantial detriment created to impact the zoning ordinance or Master Plan.

11. Mr. Armand Galluccio, 126 Pleasantview was sworn in. He said that he was happy to see that this Applicant acquired the additional lot, and he hopes that the property which has become an eyesore will be developed into this new project. No other members of the public testified with respect to the application.

12. The Board has accepted the representations and sworn testimony of the witnesses and has reviewed the professional staff reports and all exhibits that have been presented and confirms the factual representations may by the various witnesses for the purpose of its conclusions in this matter. The Board has also considered the factual findings and conclusions set forth in its prior resolution in application No. 2007-12, which set forth a grant of preliminary and final site plan approval and related variances for the construction of 18 single family residential townhome units within the properties which were the subject of that application.

13. The Board has further determined that the granting of the variance relief requested and amended site plan will not be detrimental to the Borough zoning ordinances or the Master Plan and it will not negatively impact the neighbors.

#### CONCLUSIONS OF LAW

1. The proposed addition of four (4) units to the existing approved development plan does not comply with the requirements for the R-4 zone, including minimum lot area and minimum front yard setback requirements. The request for four (4) additional units requires the granting of "c" variance for relief pursuant to N.J.S.A. 40:55D-70(c).

2. Through the testimony and exhibits presented, the Applicant has pursuant to N.J.S.A. 40:550-70(c) established that the application:

(a) relates to a specific piece of property, namely the Applicants' premises;

(b) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely the promotion of the public health, safety, morals and general welfare and the preservation of neighborhood character and conservation of neighborhood values;

(c) that the variances can be granted without substantial detriment to the public good;

(d) that the benefits of the deviations would substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance; and

(e) that the addition of Lot 5 in Block 331 to the previously approved development as reflected in Resolution 2007-47, enhances the aesthetic appearance of the neighborhood within which this project is located. This project, upon its development completion, substantially improves the appearance of the entry area of the Borough of New Providence from the east. The approvals herein granted further enhance the intent and purpose of the zone plan through this aesthetic improvement and the vision of the neighborhood character and conservation of neighborhood values, which are currently negatively impaired by the existing condition of Lot 5.

**NOW, THEREFORE, BE IT RESOLVED**, on this 19th day of July, 2010, that Foley Square at Murray Hill LLC's application for "c" variances and amended preliminary and final site plan approval be and hereby is **GRANTED**, subject to the following conditions:

1. The Applicant shall comply with the requirements of the Board Engineer's and Planner's letter, as modified by the testimony presented before the Board; and
2. The Applicant shall comply with all requirements of the 2007 Resolution of approval, which is attached hereto as Exhibit A; and
3. The Applicant must obtain a building permit and commence construction within twelve (12) months from the date of its issuance and complete construction within twenty-four (24) months thereafter; and
4. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance if necessary; and
5. The variances and site plan approval granted herein shall not constitute authority to engage in any construction which is not authorized by the Zoning Ordinance of the Borough of New Providence, except as expressly stated herein; and
6. The findings of fact and conclusions of law set forth in this Resolution shall supersede the findings and conclusions contained prior resolution adopted by the Board at its August 2, 2010 meeting.

**ROLL CALL VOTE**

Those in Favor: Mr. Mayer and Mr. Kang.

Those Opposed: -----

The foregoing is a Resolution duly adopted by the Zoning Board of Adjustment of the Borough of New Providence at its meeting on September 8, 2010.

ATTEST:

  
Secretary, Board of Adjustment

  
Chairman, Board of Adjustment

On July 19, 2010 when application hearing held Mr. Wycko, Mr. Pennisi, Mr. Mayer, Mr. Kang and Mr. Nadelberg voted affirmatively. Above Members only ones in attendance 9/8/10 eligible to vote on within Revised Resolution.

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, Foley Square at Murray Hill, LLC, the applicant for development of property located on South Street, Southgate Road and Westerly Avenue in New Providence, New Jersey, and designated as Lots 4 and 5 of Block 330 and Lots 1, 2, 4, 6 and 7 of Block 331 on the Tax Map of the Borough of New Providence, New Jersey, (the "Applicant"), has applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for relief from the Borough's zoning ordinances through variances pursuant to N.J.S.A. 40:55D-70(c) and (d) as well as preliminary and final site plan approval proposes to demolish all existing dwellings and construct 18 single family residential townhouse units; and

WHEREAS, the property lies in the R-4 District; and

WHEREAS, the Board has reviewed the application, testimony and exhibits presented by the Applicant at the hearings conducted on June 4, 2007, and June 18, 2007; and

WHEREAS, the Board has made the following findings of fact and drawn the following conclusions of law:

FINDINGS OF FACT

1. The Applicant, Foley Square at Murray Hill, LLC, is the applicant for development and the owner of property located on South Street, Southgate Road and

EXHIBIT A-1

Westerly Avenue and designated as Lots 4 and 5 of Block 330 and Lots 1, 2, 3, 4, 6 and 7 of Block 331 on the Tax Map of the Borough of New Providence, New Jersey.

2. The Applicant seeks relief from Chapter 310, Article IV, Section 310-10, Schedule II of the Borough zoning ordinances through an application to the Board for use and bulk variances pursuant to N.J.S.A. 40:55D-70(c) and (d). Specifically, the Applicant is seeking a variance as to height, as the proposed height of the 33.12 feet for Building C exceeds the maximum allowed height of 30 feet by more than 10%. Applicant is also seeking bulk variance relief as to lot size, whereas the total acreage is 1.79 acres and 2 acres is the minimum lot size permitted. Applicant is also requesting a variance for front yard setbacks, as Building A is <sup>27.2</sup>27.7 feet from South Street, 19.1 feet from Westerly, and 25 feet from Southgate; Building B is 27.7 feet; Building C is 21 feet; and the setback from lots 4 and 5 of Block 330 are 25 feet from South Street and 25 feet from Waverly, whereas 30 feet is the minimum permitted. Additionally, the rear setback from Lots 4 and 5 of Block 330 is 31.7 feet, whereas 40 feet is the minimum permitted. Applicant is also seeking relief for sign location (25 foot setback required with 15 feet proposed) and size (6 square feet permitted with 25 feet, which was modified to 12 feet during the hearing being proposed).

3. The Applicant proposes to demolish existing dwellings and constructing 18 new single family residential townhouse units.

4. Joseph E. Murray, Esq., the attorney for the Applicant, advised that this application involves the same property as a previous application, which was heard during the fall of 2006 and which was denied by the Board. The denial is the subject of litigation in Union County Superior Court. He advised that the Applicant will present

testimony dealing with the subject of *res judicata* and that he intended to present the following expert testimony during the course of the hearings in this matter: Ms. Karen Luongo, Architect; Mr. Michael Tobia, Planner; Mr. Joseph Staigar, Traffic Engineer; and Mr. William Hollows, P.E.

5. The Applicant proposes to demolish all existing structures on site, consolidate existing lots into two lots and to construct 18 townhouse units in four buildings with associated parking, driveway and drainage facilities and landscaping.

6. Michael Tobia, P.P. was sworn in and was accepted as an expert in the field of professional planning. Mr. Tobia reviewed the location and surrounding properties and uses. He noted that the total area of the property is 1.79 acres, with .28 on the smaller lot and 1.51 on larger lot. The Applicant proposes 18 townhouse units contained in 4 buildings designated as buildings A, B, C, and D. There are 5 units in buildings A, B, and C. Building D contains 3 units. There is a curb cut on Southgate and Westerly and Westerly is a one-way street. The layout provides for the parking and garages in the rear of the buildings, side walks on Southgate and Westerly and a single sign in the southeast corner of the property. The other signs on the previous application have been eliminated. The number of parking places has been changed and the parking setbacks have been reduced. The plan provides for 67 parking spaces, which is in excess of the Residential Site Improvement Standards. The Applicant has an agreement with Murray Hill Commons, which will allow parking in their lot from Friday 5 p.m. to Monday 8 a.m., for the residents to use on holidays and weekends. This lot has 43 additional parking stalls. This Applicant will substantially improve the lot with curbing, resurfacing, re-striping, landscape, etc.

7. As to res judicata, Mr. Tobia reviewed the prior site plan with the Board. He stated that res judicata prevents applicants from coming before the Board with the same application time and again. An applicant can only come back with a substantially changed plan. He then identified the substantial changes. The prior plan had 20 units while the new site plan has 18 units and the prior density variance is eliminated. The front yard set back has been increased. On Southgate it was 11.2 feet to 15 feet in some spots. Building D had a setback of 18 feet, and now it is 25.4 feet. Building B is now a minimum of 27.7 feet. Building A was 20 feet and now is a minimum of 27.7 feet.

8. The building coverage variance in the prior application has been eliminated. The size of the units has been reduced. The height variance is still needed for Building C, however. He also noted that the design of the bay windows creates an encroachment in the front yard set backs. This Applicant could remove the bay windows and not ask for this variance, however, the Applicant considers the windows esthetically pleasing. The size of the lot area has not changed and the Applicant will comply with the request of the Police Department to include new sidewalks and pedestrian cross walks.

9. Karen Luongo, AIA, was sworn in. She was accepted as an expert in her field. She stated that she has worked on the subject property project for approximately 4 to 5 years. She described in detail the architecture of the buildings, including the number of units and buildings. While several of the bulk design features have changed, the architectural style has not changed. She reviewed the details of the shingles, the stone incorporated into the façade and the crown molding, and described the design as very gracious. She also referred to the bay windows, porticos, and carriage doors, noting that the design is consistent with the community at large. Additionally, the density now

conforms. There has been 7,500 square feet of area removed from the plan. There is a unique configuration here since property fronts on 3 streets. Ms. Luongo reviewed all the setbacks for all the buildings and stated that the houses on the property now all encroach upon the setbacks, with one at the setback. While a height variance is necessary, she opined that the height will not negatively impact anyone as the height requested is 33.12 feet, while the maximum for the zone is 30 feet. They are also requesting a signage variance, but for one sign only.

10. William Hollows, P.E. was sworn in. He was accepted as an expert in his field. He reviewed the plan with Board, including design elements, site plan, drainage plan, lighting, landscaping. He noted that the parking exceeds both Borough and RSIS standards. He reviewed the storm drainage plans. He spoke about the grading and the low spot and that they will have drainage there and it will eliminate the low spot. He reviewed the wall on South which is 2 tiered and the fence that will be erected, which requires a variance. At the corner there will be a sign and small floodlights on same, which will be located on the ground by the sign. Mr. Hollows reviewed the Borough Engineer's report. The Board agreed that, if the application is approved, to allow the Borough Engineer to approve the final drainage plan. The Applicant agreed to a condition in which the recycling pick up will be located behind the buildings away from the public street.

11. Joseph Staigar, P.E., traffic expert was sworn in. He was accepted as an expert. He has worked on this project since about 2003. He has done the traffic analysis 3 times. The project is now scaled down to 18 units. It is taking place of 5 single-family homes and one contractor's yard. The increase in traffic will be nominal. He worked

with the site engineer on the layout and the largest fire truck can get in and out of the rear and around the buildings.

12. At the continuation of the application, Mr. Murray stated that the Applicant's engineer and Borough Engineer met and there are changes to the location of the fire hydrants and Mr. Tobia will discuss these changes and also give his planning testimony.

13. Michael Tobia, P.P., noted that the revised plans presented this evening incorporate recommendations from the Borough's fire official. An additional exhibit provides more detail on landscaping, showing a visual barrier of vegetation by Building D. He then discussed the variances being requested. There is a (d) variance requested for height, and 5 bulk variances. The height for Building C is 33.12 feet, with the maximum allowed of 30 feet. Buildings A, B, and D meet the height requirement. Building C will be built in a depression, which is a hardship. The height could be reduced, but it will not be esthetically pleasing. This building is not on the road, it faces the tracks and the parking lot – so it is buffered. He referred to benefits of maintaining this height for architectural integrity. As to the bulk variances, the Applicant is required to have a minimum of 2 acres to develop a multi family dwelling. The Applicant has assembled 1.51 acres. However, the Applicant has reduced the density on the site, but has been unsuccessful in obtaining extra acreage. Over the years, they have tried to purchase an additional land, but have been unable to do so. As to the front yard setback, it is graduated 19.1 feet to 27.1 feet, while the required setback is 30 feet. The bay windows primarily cause these setback issues, but such windows add additional visual interest. If they built the premises without them, the fronts would be flat and less attractive. Also,

most homes in this area do not meet the front yard setback. This area is characterized with front yard non-compliance. This variance is reasonable and grantable.

14. As to any perceived detriments, the purpose of the setback is to give air, light and open space, and the Applicant will install fencing, new lawns, and a visually pleasing architectural style. They are creating pedestrian accessibility and new landscaping. As to negative criteria, all these variances are not substantially detrimental to the public good nor do they impair the zoning ordinance or land use law. These are minor variances with the benefits outweighing any detriment to the public good. He concluded that the area will be better off with this project being built as this area sorely needs redevelopment. As to the requested sign variance, after discussion with the Borough Engineer, the Applicant agreed to reduce the sign to 8 feet by 1.5 feet for a total of 12 square feet with the words "Foley Square."

15. Nina Turnbull, owner of 27 Southgate Road, was sworn in. She takes offense to the applicant's statements that the area is falling apart. She does not believe 2 car garages will be adequate. Christopher Nevill, 375 South Street, was sworn in. He is concerned with size of the sign and the lighting. No other members of the public spoke for or against the application.

#### CONCLUSIONS OF LAW

1. The Applicant requests permission to demolish existing dwellings and structures and to construct 18 single family residential townhouses in four separate buildings. The request requires the granting of a "c" and "d" variance pursuant to N.J.S.A. 40:55D-70(c) and (d) as well as site plan approval.

2. Through the testimony and exhibits presented, the Applicant has established that:

(a) the proposed variances requested will advance several of the purposes of zoning set forth at N.J.S.A. 40:55D-2;

(b) the site is particularly suited to advancement of the zoning purposes by the proposed use; and

(c) the variances requested can be granted without substantial detriment to the public good; and

(d) the variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**NOW, THEREFORE, BE IT RESOLVED**, on this 5th day of September, 2007, that Foley Square at Murray Hill LLC's application for "c" and "d" variances and preliminary and final site plan approval be and hereby is **GRANTED**, subject to the following conditions:

1. The project must be constructed strictly in accordance with the plans and testimony presented to the Board and all conditions of approval set forth in the record of the proceedings, including:

a. sign size will be twelve (12) square feet and lighting will be low wattage designed to illuminate the sign only and designed consistent with the lights at the Murray Hill Square with the Borough Engineer to review and approve same;

b. Board to retain jurisdiction over landscaping and lights for two years;

c. Applicant agrees to restrict and shall include a restriction in the homeowners' association documents filed with the Union County Clerk's office against the parking of recreational vehicles at the site, including boats;

d. Applicant agrees to include as part of the homeowners' association documents that the storm sewer and sanitary sewer systems will be owned and maintained by the homeowner's association in perpetuity;

e. Applicant agrees to file all maintenance manual required with respect to the storm and sanitary sewers in connection with its filing with the Union County Clerk;

f. Snow removal shall be the responsibility of the homeowners' association and shall be set forth in the homeowners' association's documents, and shall include a provision for hauling snow from major storms off-site should the storing of snow on-site impose a hazard or impediment to public health and safety;

g. The homeowners' association shall be responsible and shall set forth in the homeowners' association's documents the responsibility for arranging for trash and recycling collection, which shall be provided by private hauler and located behind the buildings so as not to be visible from the public street;

h. Homeowner association documents are to be submitted to and reviewed by the Board attorney at the sole cost and expense of the Applicant;

i. Provided that the Borough receives NJ Transit approval, the Applicant agrees to construct a sidewalk; however, if the Borough is unsuccessful in

receiving NJ Transit approval, the Applicant shall submit a revised plan subject to review and approval of the Borough Engineer to reduce the size of the roadway to provide a sidewalk provided the roadway meets all required standards;

- j. Applicant shall provide evidence of treatment works approval;
- k. Applicant shall provide a water flow report;
- l. Applicant shall install three (3) fire hydrants in accordance with the advice and recommendation of the Borough Fire Department;
- m. Applicant shall dedicate sight easements for all corners to the Borough;
- n. Applicant shall obtain all necessary soil removal permits;
- o. Applicant shall install Belgium block curbing as per testimony and architectural rendering presented to the Board
- p. Applicant shall provide evidence of utility service to the property;
- q. Applicant shall confirm that the culverts can handle fire trucks used by the Borough Fire Department;
- r. Applicant agrees that all buildings will be sprinklered;
- s. Applicant agrees that the facade of the buildings will be as shown in renderings.

t. Applicant shall comply with all obligations under the Fair Housing Act; all regulations promulgated by the Council on Affordable Housing and any requirements under Borough ordinance;

u. Applicant agrees to provide additional shade trees on Westerly;

v. Applicant agrees to repair, re-stripe and refurbish the parking lot adjacent to the property;

w. Applicant shall record a certified copy of this Resolution with any master deed and homeowner's association documents to insure that future homeowners are aware of any conditions set forth therein; and

x. Applicant shall comply with all conditions of site plan approval in accordance with Borough ordinances and shall consult with the Borough engineer with respect to same.

2. The Applicant must obtain a building permit and commence construction within twelve (12) months from the date of its issuance and complete construction within twenty-four (24) months thereafter; and

3. These variances shall not constitute authority to engage in any construction which is not authorized by the Zoning Ordinance of the Borough of New Providence, except as expressly stated herein.

ROLL CALL VOTE

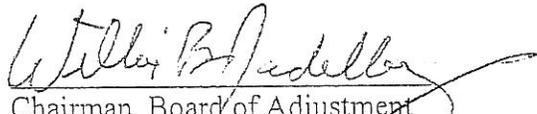
Those in Favor: Mr. Galluccio, Mr. Karr, Mr. Jarvis, Mr. Nadelberg.

Those Opposed: \_\_\_\_\_

The foregoing is a Resolution of Memorialization duly adopted by the Zoning Board of Adjustment of the Borough of New Providence at its meeting on September 5, 2007.

ATTEST:

  
Secretary, Board of Adjustment

  
Chairman, Board of Adjustment

The Members listed above were the Members present at the meeting on 9/5/07 to memorialize the Resolution. However, at the final hearing and ultimate approval of this application on 6/18/07 the following Members were eligible and voted affirmatively: Mr. Galluccio, Mr. Karr, Mr. Medina, Mr. Wycko, Mr. Jarvis, Ms. Carey, Mr. Nadelberg.



Engineers  
Planners  
Surveyors  
Landscape Architects  
Environmental Scientists

200 Valley Road, Suite 400  
Mount Arlington, NJ 07856  
T: 973.398.3110  
F: 973.398.3199  
www.maserconsulting.com

September 27, 2012

VIA E-MAIL AND REGULAR MAIL

Philip J. Morin III, Esq.  
Florio Perrucci Steinhardt & Fader, LLC  
218 Route 17 North  
Rochelle Park, NJ 07662

Re: Foley Square  
Bonding & Escrow Requirements for  
Developer's Agreement (Revised)  
Block 330, Lots 4 & 5;  
Block 331, Lots 1, 2, 3, 4, 5, 6 & 7  
South Street, Southgate Road and Westerly Avenue  
Borough of New Providence, Union County, NJ  
MC Project No. NPZ-139

Dear Mr. Morin:

The Applicant for the above-referenced matter is requesting to structure the bonding and escrow requirements in a phased fashion. An August 11, 2011 correspondence (attached) from Maser Consulting P. A. (Maser Consulting) addressed the entire site requirements. The Applicant has requested (as explained in August 10, 2012 correspondence attached) to start the onsite work without bonding of that work with the understanding that he cannot start the building work or receive a building permit until the onsite work is completed or bonded for. The Applicant is requesting to bond the municipal road improvement portion of the project first as he intends to perform this work first. It is our understanding that once municipal road improvements are completed, site work will begin and the Applicant will request release or reduction of bonds for municipal road improvements and then post bonds for the site work. To this end, the Applicant's engineer has submitted a construction cost estimate for the Westerly Avenue Improvements and we offer the following information regarding bonding and escrows.

- a. The cost estimate for the Westerly Avenue Road Improvements is \$232,710.00 according to the estimate provided by the Applicant's engineer (attached). Based on our review of the estimate and quantities, we take no exceptions to the estimate.
- b. N.J.S. 40:55D-53 allows the Borough to acquire a Performance Guarantee of an amount not to exceed 120% of the cost of installation of the improvements. It also allows the Borough to acquire 10% of that guarantee in the form of cash. Therefore, a Performance Guarantee of \$279,252.00, of which \$27,925.00 should be in the form of cash and \$251,327.00 in the form of a bond.

Customer Loyalty through Client Satisfaction

Exhibit B



- c. After the Borough accepts the site improvements, a maintenance bond shall be posted. N.J.S. 40:55D-53 allows the Borough to acquire 15% of the cost of installation of improvements, which would result in a \$34,906.00 maintenance bond. N.J.S. 40:53D-53 restricts the time this bond can be held to two (2) years.
- d. N.J.S. 40:55D-53h allows the Borough to collect fees in the amount not to exceed the greater of \$500 or 5% of the cost of the improvements to cover inspection services. The overall construction cost estimate is \$1,300,815.00. Therefore, the Borough will require the Applicant to post \$65,040.00 in an escrow to cover the Borough's inspection fees.

Thank you for your kind attention in this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in black ink, appearing to read 'A. R. Hipolit', with the word 'For' written in a circle to the right of the signature.

Andrew R. Hipolit, P.E., P.P., C.M.E.  
Borough Engineer

ARH/psn

Enclosures

cc: Keith Lynch, Building Official (via e-mail)  
Margaret Koontz, Zoning Board of Adjustment Secretary (via e-mail)  
Carl Woodward, Esq., Borough Attorney  
William Hollows, P.E.

# Foley Square at Murray Hill, LLC

PO Box 745  
Summit, NJ 07902  
908 273 2444  
908 273 3745 (fax)

August 10, 2012

Andrew R. Hipolit, P.E.  
Borough of New Providence Engineer  
Borough Of New Providence  
360 Elkwood Avenue  
New Providence, NJ 07974  
Via email: [ahipolit@maserconsulting.com](mailto:ahipolit@maserconsulting.com)

Re: Foley Square at Murray Hill Bonding Requirements

Dear Mr. Hipolit:

As discussed in the meeting on August 8, 2012, please review our below request on the posting of the Performance Guarantee for our project, Foley Square at Murray Hill:

It is our understanding that we are able to begin site improvements at the Foley Square location without posting any bonds as long as we are not applying for building permits, with the exception of bonding Westerly Avenue. A revised bond estimate will be forthcoming from Bill Hollows.

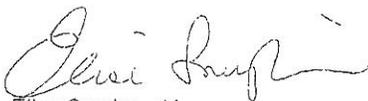
It is our intention to complete as much of the site improvements as possible over the first few months, and then have this work inspected and approved by your office, thus reducing the amount of both the performance bond and the cash portion of the bond.

It is also understood as per our meeting that the \$ 65,040.00 in inspection escrow fees can be paid in increments, beginning with an initial payment of \$ 20,000, paid prior to the start of the work.

Please advise us if there is any additional information needed from us or if there is anything that needs further clarification.

Please contact me at 908 273 2444 ext 468 if you have any additional questions. We look forward to your reply.

Sincerely,



Elise Smykowski  
For Foley Square at Murray Hill LLC

Cc: Howard Weinerman, Newstar Homes LLC  
William Hollows, Murphy & Hollows Associates, Inc.  
Mark Demareski, Assistant Borough Engineer

# Murphy & Hollows Associates LLC

CIVIL ENGINEERING AND SURVEYING

331 Elm Street

Stirling, New Jersey 07980

Tel: 908.580.1255 Fax: 908.580.1605

Email: murphyhollows@gmail.com

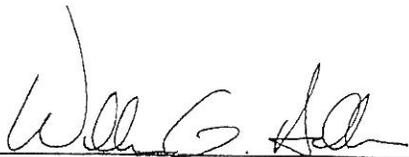
August 20, 2012

## QUANTITIES ESTIMATE FOLEY SQUARE AT MURRAY HILL WESTERLY AVENUE NEW PROVIDENCE, NJ

<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
Soil Erosion and Sediment Control	LS	1	5000.00	5000.00
Clearing	LS	1	7500.00	7500.00
<u>Sanitary Sewer</u>				
Manholes	Unit	3	2800.00	8400.00
8" PVC	LF	262	55.00	14,410.00
Tee/ Wye	Unit	5	300.00	1500.00
4" PVC House Connection	LF	150	50.00	<u>7500.00</u>
			Sanitary Sewer Subtotal	\$31,810.00
<u>Storm Sewer</u>				
Storm Manhole	Ea	3	2800.00	8400.00
Drain Inlets	Ea	7	2600.00	18,200.00
15" RCP	LF	55	50.00	2750.00
18" RCP	LF	111	75.00	8325.00
24" RCP	LF	58	100.00	5800.00
36" RCP	LF	113	110.00	<u>12,430.00</u>
			Storm Sewer Subtotal	\$55,905.00

QUANTITIES ESTIMATE  
FOLEY SQUARE AT MURRAY HILL  
WESTERLY AVENUE  
NEW PROVIDENCE, NJ

<u>Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Cost</u>
Granite Block Curb	LF	815	23.00	18,745.00
Concrete Sidewalk	LF	712	50.00	35,600.00
Pavement	SY	1285	35.00	44,975.00
Signs	Unit	5	275.00	1375.00
Lights (pole mounted)	Unit	7	3800.00	26,600.00
Fine Grading and Seeding	SY	1300	4.00	<u>5200.00</u>
			Total	\$232,710.00



William G. Hollows, PE, PLS #GB 27473  
For the Firm

Note: This estimate is an opinion of probable construction costs and does not include the cost for blasting if required. Public Utilities are not included, i.e. gas, water, electric, telephone or CATV.