

Res. # 2019-07

**PLANNING BOARD
BOROUGH OF NEW PROVIDENCE**

**BOROUGH OF NEW PROVIDENCE
730 CENTRAL AVENUE
BLOCK 210, LOTS 20 and 32**

RESOLUTION

WHEREAS, the BOROUGH OF NEW PROVIDENCE (the “Applicant”), the court-ordered recipient by settlement agreement of a dedication of a portion of property designated as Block 210, Lots 20 and 32 on the Tax Map of the Borough of New Providence (the “Borough”), more commonly known as 730 Central Avenue (the “Property”), has submitted an application to the Planning Board of the Borough (the “Board”), seeking subdivision approval to subdivide the Property into three lots (Proposed Lots 20, 20.1 and 32), one of which (Proposed Lot 20.1) will be conveyed to the Borough for recreation (athletic field), along with a portion of the adjacent driveway, totaling approximately 3.0 acres, and the remaining two of which (Proposed Lots 20 and 32) will be consolidated into a fully conforming developable lot (Proposed Lot 32); and

WHEREAS, the application was presented at the July 16, 2019 duly noticed, open public meeting, during which William Robertson, Esq., of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., appeared on behalf of the Applicant, and James Webber, Esq., and Samantha Alfonso, Esq., of Dempsey, Dempsey & Sheehan, appeared on behalf of the owner of the Property, Becton Dickinson and Company (the “Owner” or “BD”), and at which members of the public and interested parties had an opportunity to appear and be heard; and

WHEREAS, the Board makes the following findings of fact and conclusions:

1. The Property was rezoned in accordance with the Affordable Housing Settlement Agreement (the “Settlement Agreement”), which was signed by the Mayor, on behalf of the Borough, Fair Share Housing Center (“FSHC”), Murray Hill, LLC by Linde Gas North America, and BD, which (1) settled litigation (Docket No. UNN-L-2442-25)(the “AHDJ Action”) between the Borough, FSHC, Murray Hill, LLC, and BD; (2) established the Borough’s “fair share” of the regional need for very low, low-, and moderate-income housing; and (3) delineated the actions that must be taken for the Borough to satisfy its fair share obligation. On April 5, 2019, a Fairness Hearing took place before the Honorable Karen Cassidy, A.J.S.C., in the AHDJ Action, and, on April 8, 2019, Judge Cassidy entered an Order approving the Settlement Agreement and scheduling a Final Compliance Hearing for September 23, 2019 (the “April 8 Order”).

2. Paragraph 8 of the Settlement Agreement, in relevant part, provides as follows:

The Property, located at Block 210, Lot 32 in the Borough of New Providence, shall be included in the A-H Affordable Housing Zone, which will permit construction of 192 units. BD shall donate to the Borough a portion of the site containing an existing field currently used by the Borough for recreation (soccer field), along with a portion of the adjacent driveway, totaling approximately 2.2 – 2.5 acres. The field will be renamed “Becton Dickinson Field.” Regardless of the amount of eventual acreage left at the Company site (total lot acreage minus the soccer field lot acreage), the total number of dwelling units permitted is 192. BD shall be provided an easement for a right-of-way for access to Central Avenue across the Property being donated to the Borough as set forth in Exhibit C [to the Settlement Agreement]. The design of the easement/right-of-way will be subject to minor subdivision approval.

3. In accordance with the terms of the Settlement Agreement and the April 8 Order approving same, the Applicant is the intended recipient by dedication of a portion of the Property. The proposed subdivision will result in the creation of three lots (Proposed Lots 32, 20, and 20.1). Proposed Lot 20.1 will consist of approximately 130,000 square feet and will include

the existing athletic field along with a portion of the adjacent driveway. Remainder Lots 32 and 20 then will be consolidated as fully conforming Proposed Lot 32.

4. The Applicant's proposal is depicted on a Sketch Plan based on the Conservation Easement Plan prepared by David Lucchi, P.L.S., dated November 5, 2016, unrevised, same consisting of one (1) sheet.

5. Kevin Boyer, P.E., P.P., C.M.E., the Borough Engineer, of Maser Consulting, P.A., having a business address of 331 Newman Springs Road, Suite 203, Red Bank, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering.

6. Mr. Boyer testified that the Owner agreed to convey to the Borough a portion of existing Lots 20 and 32 in accordance with the terms of the Settlement Agreement. Mr. Boyer testified that the Property consists of Lots 20 and 32 and that the Applicant is proposing to subdivide the Property into three lots, Proposed Lots 20, 20.1, and 32, with proposed Lot 20.1 representing the portion of the Property containing the athletic field that is being conveyed to the Borough. He further testified that once Proposed Lot 20.1 is created, the remaining portions of Lots 20 and 32 will be consolidated into Proposed Lot 32, and stipulated, as a condition of approval, to same.

7. Mr. Boyer introduced into evidence, as Exhibit A-1, the engineering plans provided by Edwards Engineering Group, dated January 29, 2016, with colored lines delineating proposed lot lines, and an aerial photograph of the existing athletic field. The plan depicts the portion of the Property being conveyed to the Borough (Proposed Lot 20.1) and explained that said portion of the Property consists of approximately 130,000 square feet. He explained that that Maser Consulting has been retained by the Borough to prepare a formal minor subdivision plan

along with the metes and bounds descriptions for the proposed new lots and easement area to be retained by the Owner, and stipulated to submitting a copy of same to the Board.

8. No member of the public commented on, or objected to, the application.

DECISION

9. After reviewing the testimonial and documentary evidence presented and based thereon, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to the requested minor subdivision (including lot consolidation) approval.

10. The Board finds that the proposed subdivision conforms to design standards that encourage good development patterns within the Borough and conforms to the proposal and conditions shown in the Master Plan and the Official Map, as set forth in § 305-10 of the Subdivision of Land and Site Plan Review Ordinance. In this regard, the Board finds that the proposed subdivision will allow the Borough to take ownership by dedication of a portion of the Property in accordance with the terms of the Settlement Agreement and the April 8 Order approving same. Further, the Board recognizes that the proposed subdivision and related lot consolidation will not create any new nonconforming conditions and will comply with all ordinance requirements, thus resulting in fully conforming lots.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of New Providence, on the 16th day of July, 2019, that the application of the Borough of New Providence, for minor subdivision approval, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Borough to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant/Owner shall submit a final subdivision plan and same shall be subject to the review and approval of the Applicant, the Borough Engineer, the Borough Attorney, and the Planning Board Attorney, in their reasonable discretion;

- (3) The Owner (BD) shall retain a non-exclusive access easement of approximately 30 to 40 feet in width, but no further than the westerly end of the width of the existing driveway, on proposed lot 20.1 for ingress and egress purposes to and from the proposed lot 32;
- (4) The Applicant and Owner of the Property shall prepare and submit a Deed of Subdivision of Lot 32 and 20 (to new Lots 32, 20, and 20.1), a Deed of Consolidation (of new Lots 20 and 32), and an access easement for the adjacent driveway, which easement may be incorporated in the Deed of Subdivision including metes and bounds descriptions of the proposed/resultant lots and a description of the easement area, all of which shall be subject to the review and approval of the Borough Engineer, Borough Attorney and Planning Board Attorney, same to be recorded with the Union County Clerk's Office;
- (5) The Applicant shall name the athletic field located on Proposed Lot 20.1 "Becton Dickinson Field";
- (6) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (7) The Applicants shall comply with all Federal, State, County and Borough statutes, ordinances, rules, regulations and requirements affecting development in the Borough, County and State; and
- (8) All notes included in the approved plans, including any notes required by this Resolution, shall be deemed to be conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

ROLL CALL VOTE:

Those in Favor: Mr. Castagna, Mr. Cumiskey, Mr. Hoefling, Mr. Sartorius, Ms. Torsiello, Mr. Germansky and Vice Chairman Keane

Those Opposed: None

The foregoing is a true copy of a Resolution adopted by the Planning Board of the Borough of New Providence at its meeting of July 16, 2019.

Approved this 16th day of July, 2019


Margaret Koontz, Secretary


John F.X. Keane, Vice Chairman

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Date of Decision:	July 16, 2019
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