CITY OF PLAINFIELD

HISTORIC PRESERVATION COMMISSION
515 WATCHUNG AVENUE, ROOM 202
PLAINFIELD, NEW JERSEY 07060

Adrian O. Mapp, Mayor

William H. Michelson, Chairman
Lawrence T. Quirk, Vice-Chairman

via e-mail and regular mail: srother@postpolak.com

March 28, 2018

Mr. Steven C. Rother, Esq.
425 Eagle Rock Avenue, Suite 200
Roseland, NJ 07068

Re: Historic Preservation Commission Application HPC 2017-13
Zoning Board of Adjustment Application ZB 2017-06
808-14 Central Avenue. Block 760, Lot 10. R-VWB-2 Zone District
Applicant & Property Owner: Yates Real Estate, Inc.

Dear Mr. Rother:

Attached please find: 1) Resolution- Bulk and Height Variances; and 2) Resolution- Use and Density Variances. These Resolutions were adopted by the Historic Preservation Commission (HPC) at a public hearing held on January 23, 2018. Pursuant to Section 17:10-8 of the Land Use Ordinance, these Resolutions are being forwarded to the Zoning Board of Adjustment.

If you have any questions or require additional information about the enclosed Resolutions, please contact me at (908) 753-3580, scott.bauman@plainfieldnj.gov.

Sincerely,

Scott Bauman, AICP, PP
Principal Planner / Historic Preservation Commission Secretary
Division of Planning, Department of Public Works & Urban Development

Attachment

cc: Zoning Board of Adjustment
Historic Preservation Commission
William Nierstedt, Director- Division of Planning
William Michelson, Chairman- Historic Preservation Commission
Peter Vignuolo, Zoning Board Attorney
Certificate of Appropriateness Application File HPC 2017-13
Zoning Board of Adjustment Application File ZB 2017-06

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RESOLUTION – BULK AND HEIGHT VARIANCES

TO: Plainfield Zoning Board of Adjustment

FROM: Plainfield Historic Preservation Commission

DATE: March 27, 2018

RE: Referral from Zoning Board of Adjustment for ZBA 2017-06, HPC 2017-13
"Yates House", formerly known as "Abbott Manor", 810 Central Avenue, Block 760, Lot 6
Van Wyck Brooks Historic District. Applicant: Yates Real Estate, LLC.

On September 26, 2017, October 24, 2017, and January 23, 2018, the Historic Preservation Commission (HPC) of the City of Plainfield held a public hearing for the above-referenced application. During the same time period, further hearings have been held before the Zoning Board of Adjustment (ZBA).

The applicant submitted plans to expand an existing nonconforming two-story building addition in the rear yard, and convert the renovated two-part building (historic house and 1950s-era addition) to 25 apartments. The proposal requires a d(1) use variance, a d(5) density variance, a d(6) height variance (see NJSA 40:55D-70); relief from bulk requirements, relief from supplementary zoning regulations, waivers from site plan design/performance standards, and preliminary and final site plan approval. The property is in the R-VWB-2 zone and the Van Wyck Brooks Historic District. The ZBA referred the application to the HPC for review and comment, pursuant to City Code sec. 17:10-8 (see also NJSA 40:55D-110).

A separate application for a Certificate of Appropriateness was filed with the HPC for renovation and repair of both parts of the existing building, and construction of a third floor on the old addition. The Resolution granting this, with conditions, has already been executed. The HPC has also issued a separate Resolution with respect to the use and density variances. This Resolution is limited to the bulk and height variances.

The identification and details of the necessary variances and other relief were contained in our staff's Planner's Report, dated September 29, 2017, to which we refer in the following discussions.

HPC Recommendations:

1. The HPC has no objection to the proposed seven (7) variances from R-VWB-2 bulk requirements, which deal with lot size, setbacks, and site coverage. These are all pre-existing conditions. With respect to the height variance, architectural revisions discussed at the last HPC hearing may have cured, and have at least lessened, the height issue caused by adding a third floor onto the old addition. With respect to the width of the driveway, the ZBA is requested to determine if it can be reduced.

2. The HPC objects strongly to the d(5) use/density variance, as to which the applicant proposes 36.2 units per acre, but the zone only permits 2.0 units per acre. The arguments on this issue will be addressed in the separate Resolution addressing that aspect of the application.

3. Several of the variance conditions and waiver conditions addressed in the Planner's Report involve landscaping, fences, signs, and issues involving the parking lot and rear yard. The HPC is unable to address these at the current stage of the application, given the far more substantive variances required before such details could be included on the site plan. The HPC requests the ZBA, in the event of its approval, to require sufficient landscaping, and to apply the ordinance sections dealing with fences, signs, parking lot and yards, as they are written.

4. In the event that the ZBA grants site plan approval, and provided the ZBA approves the same details as required by the HPC Certificate of Appropriateness (attached), the HPC has no further objection to preliminary and final site plan approval sought by the applicant. This Resolution, however, is conditioned upon the approval by the ZBA of the details discussed above.

I hereby certify that this Resolution is a true copy and accurately represents actions taken by the Historic Preservation Commission on January 23, 2018.

3/27/18

William H. Michelson, Chairman
Historic Preservation Commission

Date

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RESOLUTION – USE AND DENSITY VARIANCES

TO: Plainfield Zoning Board of Adjustment

FROM: Plainfield Historic Preservation Commission

DATE: March 27, 2018

RE: Referral from Zoning Board of Adjustment for ZBA 2017-06, HPC 2017-13
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A separate Application for a Certificate of Appropriateness (CA) was filed with the HPC for renovation and repair of both parts of the existing building, and construction of a third floor on the old addition. The Resolution granting this, with conditions, has already been executed. The HPC has also issued a separate Resolution, with respect to the bulk and height variances. This Resolution is limited to the use and density variances.

The identification and details of the necessary variances and other relief were contained in our staff's Planner's Report, dated September 29, 2017, to which we refer in the following discussions.

It is noted that the HPC was unable to receive considerable evidence which it would have liked to have in making its determinations, and that public comment was essentially made impossible. This occurred because, at the last hearing, the Applicant's attorney refused to waive the 45-day decisional requirement of NJSA 40:55D-10.3 and HPC By-Law 404, and demanded a vote. The HPC then proceeded to decide the Application, and to include the Commissioners' own knowledge of issues not otherwise presented. Similarly, the HPC had offered to the Applicant's attorney several times to consider any brief or memorandum he might want to file, but he did not do so.

Findings and Discussion:

Historic Preservation - City Land Use Policy: The Application requests radical relief whereby this Property, zoned for 1- or 2-family residential use, would be put to high-density apartment use, which may even be seen as including commercial and institutional characteristics. The only other permitted uses are bed-and-breakfast inns and certain statutorily allowed institutions, neither of which is part of this Application. This would be a blatant disregard of not only the current zoning, but of the Historic Preservation principles which have been of vital importance to Plainfield for nearly 40 years.

The City's policy of maintaining and enhancing the residential qualities and relatively low densities found in our Historic Districts has been repeatedly cited in Master Plan documents and revisions for over 20 years. See the "Objectives and Policies" sections of the 1998 Master Plan at policies 1.1, 1.2, 1.4, 2.2 and 4.3, and the "Historic Preservation Goals" starting on page 64 thereof. This policy was restated in the 2009 Master Plan Re-Examination Report, see "Historic Preservation Plan Element", at page 152 thereof.

The Historic Districts were not the only places where the City adopted a policy of strictly limiting density in residential zones, and reducing it wherever possible. Nearly the entire City was "downzoned" in the 2002 Land Use Ordinance, which was based upon the 1998 Master Plan, thus creating considerably larger bulk requirements and lower densities per acre than were allowed previously. The popular support for this measure was well-demonstrated in that time frame, in public hearings held before the HPC, the Planning Board, and the City Council.

The City Code provides that the minimum size of apartment units is 500 square feet. In this Application, most apartments will be far less, as little as 275 square feet. The HPC does not address apartment size *per se*, but in this context, it is virtually the same thing as density. This Application would, if approved, result in a density of 36.2 units per acre, whereas the requirement in the R-VWB-2 zone is only 2.0 units per acre. The minimum lot size is 40,000 square feet, nearly an acre, and this was specified in an effort to keep remaining large lots from being subdivided. The lot size of this property, 30,069 square feet, is unobjectionable since it is pre-existing, but the bulk regulations demonstrate that the City found it important to preserve the long-standing low densities in the vicinity of this Property.

The Project would interfere greatly with the character of the surrounding area, which is stately and quiet, featuring fine architecture and landscaped spaciousness, associated with the late 19th and early 20th century period when this neighborhood was developed, as a "railroad suburb" populated by well-to-do commuters.

Design and Bulk - With respect to design and bulk, the HPC would rather have seen the old addition demolished, or reduced and relocated somewhat, away from the north lot line, where it comes very close to Lot 5. However, at our request, the Applicant's architect made revisions to his initial plans, to improve numerous design details, and reduce the visual effect of putting a third floor onto the old addition. Further, he changed the surface materials to something more amenable to our view of what would be suitable under our Design Standards. The HPC is satisfied that this effort to accommodate our wishes is the best that can realistically be expected, given the existence of the old addition. It was for these reasons that the HPC has expressed no significant objections to the bulk and height variances that the project would require, and has therefore granted a Certificate of Appropriateness (CA).

Parking and Traffic - Parking is a significant concern. On the short block of Central Avenue between West 8th and West 9th Streets, there are always cars parked, and in recent observations, these ranged between 6 and 27 cars at any given time, with the number usually largest in the evening. This is mostly caused by the apartment complex right across Central Avenue from this Project, which provides off-street parking, but charges for it. The Applicant says that residents will not be allowed to have cars, unless they make arrangements with some nearby property owner to park them. Ironically, the existing parking lot will provide more parking than is needed by the rather minimal staff. As a matter of civil rights, it is doubtful that anyone can tell the people who would live in the Project that they can't have cars. At best, they would probably park their cars on the street, precisely because they don't want to pay

for parking. It is also doubtful that an equitable way could be found to let some residents have cars, or park them in the rear, and not let others do the same.

Traffic is also an issue militating against allowing this Project to go forward. It is to be assumed that the residents will have family and friends coming and going, to a far greater degree than is the case for nearby residents, or even the apartment residents who mostly work during the daytime. The Applicant says it will provide transportation for residents, virtually anytime and anywhere. The HPC is concerned that this will be unenforceable, and will not continue as promised over time. As for vehicles involved in deliveries and service calls, the Applicant wants to have a two-way driveway, but this Commission thinks it may actually be possible to reduce the width of the existing driveway, and perhaps also the size of the parking lot. Doing so would produce additional green space, and improve the visual effect of the Project. The HPC leaves it to the ZBA to assess the traffic and driveway engineering issues.

Tenancies and Number of Occupants - Yet another concern of the HPC is whether the number of occupants would be limited to the number of apartments. It is easy to imagine that some residents would want to have girlfriends, spouses, minor or even young-adult children, and perhaps other relatives and friends, to live with them. This would be undesirable because it would amount to further density, further activity, and more people coming and going. The Applicant stipulated with the ZBA that all residents would have leases under the New Jersey Residential Landlord-Tenant Act. It is therefore difficult to imagine a lawful way to prevent residents from letting others come stay with them, and it would therefore be best to reject the density variance at the outset. Among the situations easily foreseen would be that some may at times need a caretaker to come stay with them, full-time or part-time, because the Applicant does not plan to offer this kind of service.

On a similar note, the fact that residents could only be controlled and evicted pursuant to statute, with the need for statutory notices and time intervals, concerns the HPC because this would be, after all, a sort of social service provider, which is interested in receiving rent, not from the residents, but from the U.S. Veterans' Administration. We are concerned that the Applicant and/or Operator would simply not have the motivation, nor even the power, to enforce the kind of benevolent social environment which it has portrayed to the HPC and ZBA.

The Applicant proposes to let the residents have microwave ovens and stovetops in their units, so that those who wish can prepare their own meals. However, it also proposes providing a central dining room and kitchen, so that they need not fend for themselves. The problem with this is that it collides with

City Code sec. 17:9-46, headed "Prohibited Uses", which says "rooming or boarding houses are not permitted uses in the City of Plainfield". This was a remedial provision enacted as part of the City's entirely new Land Use Ordinance in 2002, to try to get rid of numerous such uses, which tended to produce a large number of *de facto* residents, and thus impose density problems on their surroundings. Old City Code sec. 17:3-1(7) defined "boarding house" as "a building other than a hotel or motel, wherein one (1) or more persons not related in direct line by blood or marriage to the owner or operator of such business, are lodged and served with meals from one (1) kitchen by the owner or operator, for a valuable consideration". A "rooming house" (sec. 17:3-1 (48)) was similar but did not include cooking facilities in the rooms or apartments at all. Note that the definition of "boarding house" did not say whether someone's room could or would contain any cooking equipment at all. A remedial legislative provision is always to be construed broadly, to change whatever situation was deemed a problem needing such attention. In this case, this concern becomes synonymous with density requirements per acre. It is further doubtful that the ZBA would have the power to grant a variance against this particular provision.

The Property – Size and History - The Application seemed to overlook the fact that Block 760, lots 4 and 6, were merged in the ZBA's Resolution of November 2, 2005, by request of the Applicant's predecessor-in-title, which was represented (as now) by Mr. Rother. Lot 4 was the vacant, undersized parcel along West 8th Street, and Lot 6 is where both the historic house and the old addition are located. The HPC is concerned what conclusions may later be drawn from the exclusion of Lot 4 from this Application, and wishes the ZBA to address the foreseeable effects of this.

At one of the ZBA hearings on this matter, Mr. Yates admitted purchasing this property despite full knowledge that it was in a Historic District, that it was zoned solely for 1- and 2-family residential use (plus the minor additional uses described above) at a nearly one-acre minimum size, and that there had been prior litigation involving this property, leading to various Resolutions. The HPC also expressed concern about the re-use of the old addition, from a point of view of structural adequacy, but the Applicant insists this will be no problem. His concern that too few apartments would make his Project financially non-viable is accepted; however, any hardship to the Applicant has been self-created, and provides no basis for relief.

There are three minor issues that appear to have been already worked out. The Applicant wanted one or more flagpoles, and an oversized sign on the front lawn. The HPC would recommend denial of relief for a larger sign, but the request for this has been withdrawn. Second, we note that flagpoles are not mentioned anywhere in our Land Use Ordinance, and are therefore not permitted on private property.

Third, the Applicant agreed to the HPC's request to remove an old wooden handicapped ramp at the northeast part of the property, leading to the porch, and the concrete walkway leading to the ramp.

If the Applicant tries to tack its right to operate a nonconforming use onto the one that existed as a nursing home, such would contravene City Code sec. 17:9-37(C). This limits the period of non-use to two years, after which there is a rebuttable presumption that the non-conformity is abandoned, and cannot be redeemed. The nursing home is believed to have closed its doors around 2009. The then-owner conveyed the property to Mr. Yates, who did not operate any kind of use there, from then until now.

Future Enforceability of Conditions – Even assuming the Applicant has all the best intentions now, the HPC is concerned that his representations to us and to the ZBA, and whatever conditions are placed upon approvals, will be unenforceable in the future, near or far. The project will presumably have a mortgage lender, yet the type of operation proposed, though very interesting in some ways, is newfangled and untested. It is entirely foreseeable that there could eventually be a foreclosure, a bankruptcy, or an execution that would put the Property into the hands of new owners or entities who do not wish to be restricted to a facility housing veterans, much less one required to provide transportation and meals for residents, and other services which the Applicant intends to offer. We are also concerned, as explained above, about former Lot 4, which is undersized and cannot be reconciled with the spacious zoning which is in effect in that part of the Historic District.

Simply stated, if the Applicant is allowed to go ahead with such a radical, new use now, there may never be a way to reassert municipal control, even for the best reasons. Even the Applicant's agreement to give a deed restriction, for the kind of facility it proposes, could well be unenforceable.

Concern has been stated about the possible future behavior of the residents, or the provision of promised services. In this regard, the HPC notes that there is no licensing or governmental agency of any kind to look to, if the Project is eventually mismanaged. When this Property was a nursing home, complaints could be lodged with the New Jersey Department of Health, because it was a licensed facility. There is no analogue available to the current Project, not even through the U.S. Veterans' Administration.

Social service providers – Plainfield has for many years been the location of an extraordinarily high number of social service providers, some charitable or non-profit, some perhaps not. Appendix C to the 2009 Master Plan Re-Examination Report listed 55 of these, and may not even have been complete.

This is probably the result of our depressed real estate prices, compared to nearby towns, as a result of decades of unfairly perceived urban problems.

The HPC believes that, even if this gross burden upon Plainfield could be justified, our Historic Districts are the worst possible places to put it. Whatever the need for housing for homeless veterans, Plainfield is already full.

State and Federal Non-Discrimination Statutes – The Applicant's counsel has made a number of assertions to both boards, arguing that this facility must be allowed, because it is the duty of municipalities to make "reasonable accommodation" to uses serving various social and medical needs, which might otherwise be considered inappropriate or too intense. He has verbally identified three federal statutes: the Federal Fair Housing Act Amendments of 1988, the Americans with Disabilities Act, and the Rehabilitation Act. Past experience suggests that he will also allege that this use must be allowed because it is "inherently beneficial", a phrase used in state zoning law. Despite invitation, counsel has not argued any of this to us, nor submitted a memorandum of law.

A brief search revealed no precedent, from New Jersey or anywhere else, wherein veterans in general, or homeless veterans in particular, have qualified as the sort of beneficiaries whose needs or wants could trigger an upset of local zoning under these statutory principles. The HPC therefore finds that it has no such obligation.

Even so, the HPC made reasonable accommodation, by allowing the Applicant – if otherwise entitled to approvals – to shoehorn its intended use onto this Property with its pre-existing structures. Note, we granted a CA, and have no objection to the bulk and height variances.

HPC Recommendations:

1. The Commission recommends to the ZBA denial of the proposed use variance, which sought the right to develop apartments on a property zoned for 1- or 2-famly residential use. If the Applicant is viewed as needing approval also for what amounts to either commercial or institutional use, the Commission recommends denial of that too.
2. The Commission recommends to the ZBA denial of the proposed density variance, which sought the right to create 18 times as many units per acre as are allowed by existing zoning.

3. If the ZBA agrees to provide any relief from variance conditions, waiver conditions and submission requirements (if any), the HPC requests it to require suitable landscaping and buffering, and to include as a condition the HPC's right to require compliance with design and material details, as set forth in the CA.

I hereby certify that this Resolution is a true copy and accurately represents actions taken by the Historic Preservation Commission on January 23, 2018.

William H. Michelson, Chairman
Historic Preservation Commission

3/27/18
Date