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CLINTON TOWNSHIP BOARD OF ADJUSTMENT

HARRISON REAL ESTATE ASSOCIATES, LLC
BLOCK 72, LOT 1

CASE NO. 2007-05

MODIFICATION OF PRIOR "D(1)" VARIANCE CONDITIONS AND WAIVER OF SITE
PLAN APPROVAL TO PERMIT CHANGE OF OFFICE USE

RESOLUTION NO. 2008-06

WHEREAS, Harrison Real Estate Associates, LLC (the "applicant") owns certain property in the Township of Clinton which is designated as Block 72, Lot 1 (the "property") and has applied to the Board to modify two (2) conditions of a previously granted "d(1)" use variance that permits the existing building on the property (the "building") to be used as an office building and for waiver of site plan approval (the "application") to permit a change in use of the building from one office use to another office use, specifically, to a professional office (the "proposed development");

WHEREAS, the application for modification of the prior conditions as well as the application for waiver of site plan approval are both connected to a previously granted "d" variance so the Board has exclusive subject matter jurisdiction over the application pursuant to N.J.S.A. 40:55D-70d, 76b and 20;

WHEREAS, the application was deemed complete upon the applicant's submittal of documents / information required by Board Resolution No. 2007-14 adopted on January 15, 2008, which resolution granted certain completeness waivers;

WHEREAS, the following documents were submitted with regard to the application, are on file with the Board, and are part of the record in this matter:

1. Application for waiver of site plan approval and modification of two (2) conditions of a previously granted "d(1)" use variance dated September 5, 2007, with the following attachments:

- a. Application checklist,
- b. Comments in support of waiver of site plan approval,
- c. Outline of testimony of John A. Madden, PP in support of modification of the two (2) use variance conditions,
- d. Escrow agreement,

2. Site plan for Resource Management International, Inc. ("Resource Management"), the prior owner of the property, prepared by Robert J. Clerico, P.E. dated April 25, 1997, last revised September 26, 1997,

3. Letter to the Board from Raymond B. Drake, Esq. dated January 22, 2008, raising issues of potential conflicts of two Board members and enclosing the following:

a. Memo to Raymond Drake, Esq. and Jason Newcomb from John Madden, PP dated January 7, 2008, explaining the justification for the requested waiver of site plan approval and suggesting substitute conditions in place of the two (2) conditions the applicant seeks to have eliminated,

4. Email to Raymond B. Drake, Esq. from Jonathan E. Drill, Esq. dated January 26, 2008 advising that one of the Board members with a potential conflict was not reappointed to the Board and requesting information regarding the Board member's alleged conflict,

5. Email to Raymond B. Drake, Esq. from Jonathan E. Drill, Esq. dated January 26, 2008 requesting copies of the prior approval resolutions,

6. Letter to the Board from Lloyd Tubman, Esq. dated January 28, 2008, providing ownership information and information on the alleged conflict (which turned out to not be a conflict) and enclosing the following:

a. Board Resolution No. 7-97 adopted on April 28, 1997, granting a bifurcated "d(1)" use variance to Resource Management to use the building as an office building,

b. Board Resolution No. 9-97 adopted on August 25, 1997, memorializing the grant of preliminary and final site plan approval along with some site plan ordinance exceptions,

7. Memo to the Board from Jonathan E. Drill, Esq. dated March 9, 2008, offering advice on the standards that apply to a request to modify or eliminate prior approval conditions,

8. Memo to the Board from Cathleen Marcelli, P.E. dated March 18, 2008, stating that she had no engineering comments,

9. Memo to the Board from Michael Sullivan, P.P. and Elizabeth McManus, P.P. dated March 18, 2008, commenting on planning issues involved in the application, and

10. Letter to the Board from Lloyd Tubman, Esq. discussing the intent of the prior approval conditions that the applicant seeks to eliminate but replace with other conditions regarding the amount of traffic and parking at the property;

WHEREAS, a duly noticed public hearing was held on the application on March 24, 2008, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Lloyd Tubman, Esq.;

WHEREAS, the following individuals testified during the hearing and were subject to cross examination, which testimony is part of the record in this matter:

1. Steven Jones (one of applicant's members),
2. Jason Newcomb (one of applicant's members),
3. John Madden, P.P. (applicant's planning expert),
4. Michael Sullivan, P.P. (Board's planning expert),
5. Cathleen Marcelli, P.E. (Board's engineering expert),
6. Sean Rogan (neighboring lot owner residing at 23 Harrison Street, testifying in favor of the application), and
7. John Dwyer (neighboring lot owner residing at 6 Fulper Alley, testifying in favor of the application);

WHEREAS, no exhibits were entered into evidence during the hearing;

WHEREAS, the Board, after considering the application, documents and testimony referenced above, and giving appropriate weight to same, makes the following factual findings:

A. FACTUAL FINDINGS

1. **The Property, Zoning, Improvements and Prior Approvals.**

a. The property is a 0.89-acre lot located at 16 Harrison Street and surrounded on three sides by roads, Route 31 to the north, Harrison Street to the west, and Fulper Alley to the south. The property is situated in the VR Village Residential zoning district which permits one-family dwellings, two-family dwellings, agricultural uses (excluding commercial greenhouses), and municipal uses and facilities as principal permitted uses pursuant to ordinance section 165-134.A to D. Virtually all of the lots in the neighborhood of the property are zoned residential and have residential dwellings on them.

b. An approximately 3,000 square foot building (the "building") exists on the property along with some related improvements (the "site improvements"). The building has been used as an office building since 1997 when this Board granted a "d(1)" use variance via Resolution No. 7-97, followed by preliminary and final site plan approval memorialized in Resolution No. 9-97 (the "prior approvals"). At the time of the prior approvals, the property was zoned R-5 residential and office buildings were prohibited in that zone. As set forth above, the property is now located in the VR Village Residential zoning district. Office buildings continue to be prohibited on the property as they are not permitted in the VR zone so are prohibited by virtue of ordinance section 165-93 which provides that "where a use is not specifically permitted in a zone district, it is prohibited." The office building use here, however, is a lawfully created pre-existing nonconforming use so is entitled to continue pursuant to ordinance section 165-118. However, the office building use is subject to the conditions set forth in Resolution No. 7-97 and Resolution No. 9-97.

c. As set forth above, the property was previously zoned R-5 residential. One of the principal permitted uses in the R-5 zone was churches and houses of worship. In or about 1967, the First Church of Christ Scientist (the "Church") obtained approval from the Planning Board to construct and operate a permitted church on the property. Thereafter, the Church constructed the building and began to operate its house of worship in the building on the property. The last service was held on Thanksgiving, 1996.

d. As set forth above, this Board adopted Resolution No. 7-97 on April 28, 1997, which granted a bifurcated "d(1)" use variance to Resource Management International, Inc., an international business consulting firm ("Resource Management"), to convert the church building into an office building for its use. (A "d(1)" use variance was necessary because office buildings were also prohibited in the R-5 zone.) The Board found at that time that special reasons existed due to the particular suitability of the site to warrant the grant of the use variance in that the Board found the "requested office use", which would have "very few visitors", would "constitute the most appropriate use of the land and buildings in this residential setting, since the traffic [impact] will be small" The Board found that the use variance could be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance essentially because the Board found that the property and the office use proposed would not cause any traffic generation or parking problems (subject to site plan review and approval of lighting, landscaping and the specific parking configuration that would be presented at site plan review). While the Board did not limit by condition the type of office uses that were permitted so, technically, general office usage would be permitted under the prior approvals, the Board imposed the following three (3) conditions to insure that the office users would be low traffic generators: (1) The "user of the building shall be a single entity"; (2) There shall be "no sub-leasing of office space"; and (3) The "maximum number of employees which can be employed, utilized on site, shall be ten."

e. As set forth above, this Board granted preliminary and final site

plan approval to the Resource Management site plan on July 28, 1997, which was memorialized in Resolution No. 9-97 adopted on August 25, 1997. That resolution restated the conditions of use variance Resolution No. 7-97.

2. **The Proposed Development and Requested Relief.**

a. The applicant purchased the property and proposes to re-occupy the building for the following low traffic generating professional office uses: financial advisors; and providers of similar / related professional financial services including: tax accountants; investment managers; estate attorneys; security brokers; pension and retirement plan consultants; and/or administrators of charitable, educational and/or private estate trust funds. The applicant stipulated that it would not rent and/or lease space to any non-professional office tenants. In this regard, the Board notes that the definition of "office" pursuant to ordinance section 165-4 is "one or more rooms or group of rooms, each used primarily for conducting the affairs of a business, profession, service, industry or government, but not including manufacturing, assembly or productions of goods on the premises, banks or the sale of products from the premises" Thus, besides not permitting uses such as manufacturing, assembly, banks and retail on the property, the applicant would not be permitted to have business, non-professional service, industry or governmental offices on the property. Further, the applicant also stipulated that it would not rent or lease space to any high traffic generating professional office tenants including but not limited to medical professionals, doctors and/or dentists; and real estate sales and/or real estate management tenants. If this were all that the applicant was proposing, the Board would have no trouble finding that the proposed new office use could continue under the previously granted "d(1)" use variance as the Board finds that the proposed new use is substantially similar to the prior office use approved via the "d(1)" use variance.

b. The applicant requests and requires, however, elimination of two of the three conditions imposed in connection with Resolution No. 7-97. Specifically, the applicant requests that the Board eliminate the first two conditions set forth above, namely, that the user of the building shall be a single entity; and that there shall be no sub-leasing of office space. The applicant explained that these conditions would prevent it from using the property for a low traffic generating office use as envisioned by Board Resolution No. 7-97 because it would prevent the multiple small but related tenants proposed here from subleasing space in the building. Specifically, the applicant explained that the primary tenant would be Newroads Financial Group ("Newroads"), whose partners are also the partners of the applicant. But, these same partners would also need to form separate professional business entities to contend with professional licensing, legal and regulatory compliance issues affecting each particular aspect of the firm's overall services. With the single entity condition and the no sub-leasing condition, Newroads would be also prohibited from diversifying its practice to accommodate other related financial professionals who usually require the flexibility to maintain their own separate business entities for the reasons set forth above. The applicant stipulated that it can and would abide by the condition limiting the maximum number of employees that can be employed and utilized on site to 10. The applicant also proposes some replacement conditions so that, technically, the applicant is proposing to modify, and not merely to eliminate, the conditions set forth in

Resolution No. 7-97 and Resolution No. 9-97.

c. The applicant also requests and requires a waiver from site plan approval pursuant to recently adopted ordinance section 165-36.1.

3. **Elimination of the Two Conditions at Issue.**

a. The Board's findings as to elimination of the two conditions at issue are as follows. First, the Board finds that the intent behind imposing these conditions in the first instance was to insure that the office users of the building would be low traffic generators. And, the Board finds that the conditions were imposed as part of the satisfaction of both the positive and negative criteria of the underlying "d(1)" use variance. Thus, the Board finds that the two conditions at issue are significant, and were not merely imposed for general welfare purposes. Next, the Board finds that the two conditions can be eliminated without substantially impairing the intent and purpose of their imposition in the first instance but if and only if the replacement conditions suggested by the applicant and set forth below are imposed and complied with. In the absence of these replacement conditions, the Board would have found that the two conditions could not be eliminated without substantially impairing the intent and purpose of their imposition in the first instance.

b. Specifically, the applicant proposes the following replacement conditions and the Board finds that these replacement conditions will insure the continued satisfaction of the positive and negative criteria of the "d(1)" use variance to permit low traffic generating office usage on the property:

(1) Office usage of the property shall be limited to low traffic generating professional office uses only, specifically, for financial advisors and the following related professional services: tax accountants; investment managers; estate attorneys; security brokers; pension and retirement plan consultants; and/or administrators of charitable, educational and/or private estate trust funds.

(2) The property shall not be used for and shall not be leased or rented to any high traffic generating professional office tenants including but not limited to medical professionals, doctors and/or dentists; and real estate sales and/or real estate management tenants.

(3) The property shall not be used for and shall not be leased or rented for non-professional office usage. In this regard, the Board notes that the definition of "office" pursuant to ordinance section 165-4 is "one or more rooms or group of rooms, each used primarily for conducting the affairs of a business, profession, service, industry or government, but not including manufacturing, assembly or productions of goods on the premises, banks or the sale of products from the premises" Thus, besides not permitting uses such as manufacturing, assembly, banks and retail on the property, no general business offices, non-professional service offices, industry offices and/or governmental offices shall be permitted on

the property.

(4) The applicant abandons for it and for all future owners of the property the right to operate any general office uses permitted by virtue of Resolution No. 7-97 on the property (as the prior approvals did not limit the type of office usage on the property).

(5) If the applicant wishes to lease or rent space in the building to any other type of tenant not included on the list of permitted tenants in condition #1 above, it must first apply to the Board on notice for Board review of whether the proposed tenant is substantially similar to the low traffic generating professional office tenants included on the list of permitted tenants in condition #1 above. (The applicant shall not require a "d(1)" use variance unless the Board finds that the proposed tenant is not substantially similar to the low traffic generating professional office tenants included on the list of permitted tenants.)

(6) The maximum number of tenants and/or separate legal entities renting and/or leasing space and/or doing business in and/or on the property shall be ten (10).

(7) The maximum number of employees which can be employed, utilized on the property, shall be ten (10).

4. **Waiver of Site Plan Approval.**

a. The Board's findings as to waiver of site plan approval are as follows. First, the Board finds that there are no improvements proposed that would fall within the site plan waiver criteria for "normal repair, maintenance or replacement" or that would fall within the site plan waiver criteria for "not affecting existing circulation, parking, drainage, landscaping, buffering, lighting and other considerations of site plan review." Thus, site plan waiver cannot be granted on those bases. The Board thus finds that the issue becomes whether the Board can find that the proposed development "secured previous site plan approval" and whether "the proposed development will have insignificant impact on the previously approved site plan." See, ordinance section 165-36.1.A(1). If the Board can make this finding, then and only then can the Board waive the requirement of site plan approval.

b. The Board's findings on this issue are as follows. The building and existing site improvements did, in fact, secure a previous site plan approval. As set forth above, the prior site plan approval was secured via Board Resolution No. 9-97 and the building's footprint will not change under the proposed development. The issue here essentially boils down to whether the proposed elimination of the two conditions at issue and the prior field changes that were made as to a few of the site improvements will have an insignificant impact on the previously approved site plan. The Board finds that if the applicant was allowed unfettered discretion to change the tenant mix and/or site improvements as it pleased without oversight, review and approval by the Board, the changes could have a significant impact on the previously approved site plan but if the changes were subject to conditions requiring review and approval by

the Board, the changes would have an insignificant impact. The Board thus finds that, subject to the conditions set forth below being imposed and complied with, the proposed elimination of the two conditions at issue and the field changes in the site improvements that were previously made will have an insignificant impact on the previously approved site plan so that the Board can grant a waiver from site plan approval but subject to the conditions set forth below.

c. As set forth above, the applicant proposed a number of replacement conditions for the two conditions it wishes to have eliminated and the Board found that these replacement conditions will insure the continued satisfaction of the positive and negative criteria of the "d(1)" use variance to permit low traffic generating office usage on the property. The Board finds that the replacement conditions must be imposed in order for it to waive site plan approval. The Board further finds that the following conditions must also be imposed in order for the Board to waive site plan approval in this case:

(1) There shall be no more than one (1) sign on the property identifying the address and one tenant name only such as "Newroads Financial Group" "16 Harrison Street".

(2) There shall be no sign illumination on the property.

(3) The light poles that are located next to the parking spaces rather than on the inside of the driveway as called for on the site plan can remain as, evidently, a field change was made to create better lighting conditions where the vehicles are parked and to direct lighting inward toward the building.

(4) The applicant shall install the one (1) oak tree shown on the site plan to the north of the parking spaces that was not installed.

(5) The applicant shall re-stripe the parking spaces and may keep the number of spaces at 12 conventional spaces and one (1) handicapped space as currently exists on the property rather than the 13 conventional spaces and one (1) handicapped space shown on the site plan.

WHEREAS, the Board, based on the factual findings set forth above, and after considering the application, documents and testimony referenced above, and having given appropriate weight to same, and based on its understanding of the law, makes the following legal conclusions:

B. LEGAL CONCLUSIONS

1. Elimination of the Two Conditions at Issue.

a. Our courts have held that planning boards and boards of adjustment have the power to modify and/or amend prior approval conditions if "enforcement of

the restrictions would frustrate an appropriate purpose", upon a "proper showing of changed circumstances", or "other good cause" warranting modification and/or amendment. See, Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), cert. Den. 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990).

b. As to change in circumstances grounds for condition modification, our courts have held that the Board should consider whether there have been changes in the law or facts and the effect of those changes in terms of the conditions under consideration. See, Russell v. Tenaflly Board of Adj., 31 N.J. 58, 66 (1959). While there has been a change in the law in this case, namely, the change in the zoning of the property from R-5 to RC, the Board concludes that the zone change has no impact on the conditions at issue because office use is prohibited under both zone designations. The applicant did not present any change in the facts and, in fact, the Board notes that the development of the neighborhood surrounding the property has remained residential. The only changes that have occurred here is that Resource Management has moved out of the building and the applicant has moved in and wants to be able to lawfully operate with multiple tenants in the building. The Board, however, concludes that kind of change does not in and of itself constitute a change in circumstances that would warrant modification of prior approval conditions. The Board thus concludes that changed circumstances do not apply to the within application.

c. As to the "frustration of an appropriate purpose" grounds referred to in Allied, 221 N.J. Super. at 414, the Board believes that it should consider whether the proposed elimination of the conditions at issue would result in appropriate use of the property as envisioned in the underlying approval at issue and, if so, whether the restrictive conditions at issue frustrates that appropriate purpose without modification or elimination. While the Board has found that the proposed professional office usage with the replacement conditions would be appropriate for the property, the Board has not found and cannot conclude that the two conditions at issue frustrate the purposes of the underlying prior approvals so the Board cannot conclude that the two conditions should be eliminated on that basis.

d. As to the "good cause" grounds, our courts have held that the Board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or amend the condition is consistent with or contrary to that intent. See, Sherman, 242 N.J. Super. at 430. In this regard, our courts have held that the Board is not limited to the four corners of the resolution to determine intent and can consider Board minutes of the underlying hearing, transcripts if available, and/or expert reports filed with the application. The object is to determine how significant the condition was, meaning whether the underlying approval would not have been granted without the imposition of the condition, or whether the condition was imposed for general welfare purposes only, meaning to advance the general welfare but not critical for the survival of the underlying approval. Id. As set forth above in the factual findings, the Board has found that the intent behind imposing the two conditions in the first instance was to insure that the office users of the building would be low traffic generators. And, the Board found that the conditions were imposed as part of the

satisfaction of both the positive and negative criteria of the underlying "d(1)" use variance. Thus, the Board found that the two conditions at issue are significant, and were not merely imposed for general welfare purposes. Having found that, however, the Board further found that the two conditions could be eliminated without substantially impairing the intent and purpose of their imposition in the first instance but if and only if the replacement conditions set forth below are imposed and complied with. (In the absence of these replacement conditions, the Board would have found that the two conditions could not be eliminated without substantially impairing the intent and purpose of their imposition in the first instance.)

e. The Board thus concludes that it can and should eliminate the two conditions at issue but subject to the conditions set forth below being imposed and complied with.

2. Waiver of Site Plan Approval.

a. Township ordinance section 165-36 provides that, "[p]rior to the ... issuance of a construction permit or certificate of occupancy for any development, an application for subdivision, site plan or planned development review, as the case may be, shall be submitted to and approved by the Planning Board in accordance with the requirements of this article" The only exceptions are for "subdivision or individual lot applications for detached one- or two-family dwelling unit buildings." Thus, while some may question whether site plan approval can be required where the only work proposed is interior work, the Board concludes that the answer under the Township ordinance is a resounding "yes." Further, the Board notes that our courts have held that such ordinances, even if requiring site plan review and approval for a mere change from one permitted use to another permitted use, represent legitimate municipal concerns as new uses might involve substantial changes in such issues such as traffic, access, parking, lighting, drainage, and buffer requirements, all of which best treated through the process of site plan review. Garofalo v. Burlington Township, 212 N.J. Super. 458, 461 (Law Div. 1985).

b. Recognizing that having to obtain site plan approval in every case (especially, but not necessarily limited to, cases involving mere changes of use and/or internal only renovations) could be burdensome to applicants both as to time and money, the Garofalo court intimated that a planning board might "waive" site plan requirements for modest changes in use. Id. at 464. For the same reasons, the Board proposed in 2007 and the Township adopted in 2007 a site plan waiver provision which permits the Board to waive site plan approval if, after reviewing the application, the Board makes certain determinations. Specifically, ordinance section 165-36-1 provides that:

- A. The approving authority may waive the requirement of site plan review, in part or in its entirety, if the Board finds that the proposed development:
- (1) Secured previous site plan approval under the terms of this title and the proposed development will have insignificant impact on the previously approved site plan; or
 - (2) Involves normal repair, maintenance or replacement; or

- (3) Will not affect existing circulation, parking, drainage, building arrangements, landscaping, buffering, lighting and other considerations of site plan review.

The Board notes that to qualify for a waiver of site plan approval, the proposed development must fit within at one of the above three categories; the proposed development need not fit within all three categories.

c. As set forth above in the factual findings, the Board found that the proposed development fit within category #3. Specifically, the Board found that the building and site improvements did, in fact, secure a previous site plan approval. As set forth above, the prior site plan approvals were secured in 1997 and the building's footprint will not change under the proposed development. As to the issue of whether the proposed elimination of the two conditions at issue and the prior field changes that were made as to a few of the site improvements will have an insignificant impact on the previously approved site plan, the Board found that if the applicant was allowed unfettered discretion to change the tenant mix and/or site improvements as it pleased without oversight, review and approval by the Board, the changes could have a significant impact on the previously approved site plan but if the changes were subject to conditions requiring review and approval by the Board, the changes would have an insignificant impact. The Board thus found that, subject to the conditions set forth below being imposed and complied with, the proposed elimination of the two conditions at issue and the field changes in the site improvements that were previously made would have an insignificant impact on the previously approved site plan so that the Board could grant a waiver from site plan approval but subject to the conditions set forth below. The Board thus concludes that it can and should grant to the applicant a waiver from having to secure site plan approval, but subject to the conditions set forth below, in order to change the use of the building from the offices for the single tenant entity "Resource Management International" to the offices for the multi tenant professional financial advisor entity "Newroads Financial" and its related entities and sub-tenants.

3. **Authority to Impose Conditions.** Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. den., 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. (Ch. Div. 1966); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994). Moreover, the MLUL authorizes a board to impose conditions on an approval, even where the proposed development fully conforms to all ordinance requirements. Such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). Finally, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox, New Jersey Zoning and Land Use Administration (Gann 2007), section 13-2.2. In this case, the Board concludes that the various conditions set forth below have been imposed on the basis of the Board's inherent authority and

in order for the Board to find that the requirements necessary to approve the elimination of the two conditions at issues and the site plan waiver have been met.

NOW, THEREFORE, BE IT RESOLVED, by the Board, by motion duly made and seconded on March 17, 2008 as follows:

C. RELIEF GRANTED

1. Modification of the Conditions at Issue. Subject to the conditions set forth below, the conditions set forth in Resolution No. 7-97 and re-stated in Resolution No. 9-97 are modified as set forth below in the conditions set forth below.

2. Waiver of Site Plan Approval. Subject to the conditions set forth below, site plan approval is waived to permit the conversion of the building from the offices of the single tenant Resource Management to the offices of Newroads and its related subtenants.

D. CONDITIONS

1. Prior Approval Conditions. All conditions set forth in Resolution No. 7-97 and Resolution No. 9-97 shall remain in full force and effect except that the conditions that provide: "(1) The user of the building shall a single entity; (2) There shall be no sub-leasing of office space; and (3) The maximum number of employees which can be employed, utilized on site, shall be ten" are eliminated and the conditions set forth below are added as conditions of the "d(1)" use variance and site plan approval that were previously granted as well as constituting conditions of the relief granted by the Board as memorialized in the within resolution.

2. Limitation on Use to Low Traffic Generating Professional Offices. Office usage of the property shall be limited to low traffic generating professional office uses only. The Board further limits the users of the building to the following low traffic generating professional office uses: financial advisors; and providers of similar / related professional financial services including: tax accountants; investment managers; estate attorneys; security brokers; pension and retirement plan consultants; and/or administrators of charitable, educational and/or private estate trust funds (the "permitted office list"). The property shall not be used for and shall not be leased or rented to any high traffic generating professional office tenants including but not limited to medical professionals, doctors and/or dentists; and real estate sales and/or real estate management tenants. The property shall not be used for and shall not be leased or rented for non-professional office usage. In this regard, the Board notes that the definition of "office" pursuant to ordinance section 165-4 is "one or more rooms or group of rooms, each used primarily for conducting the affairs of a business, profession, service, industry or government, but not including manufacturing, assembly or productions of goods on the premises, banks or the sale of products from the premises" Thus, besides not permitting uses such as manufacturing, assembly, banks and retail on the property, no general business offices, non-professional service offices, industry offices and/or governmental offices shall be permitted on the property.

3. **Abandonment of Prior General Office Use.** The applicant abandons for it and for all future owners of the property the right to operate any general office uses permitted by virtue of Resolution No. 7-97 on the property (as the prior approvals did not limit the type of office usage on the property).

4. **Lease or Rental of Offices to Tenants not Included on the Permitted List.** If the applicant wishes to lease or rent space in the building to any other type of tenant not included on the permitted office list in condition #1 above, it must first apply to the Board on notice for Board review of whether the proposed tenant is substantially similar to the low traffic generating professional office tenants included on the list of permitted tenants in condition #1 above. (The applicant shall not require a "d(1)" use variance unless the Board finds that the proposed tenant is not substantially similar to the low traffic generating professional office tenants included on the list of permitted tenants.)

5. **Maximum Number of Tenants or Separate Legal Entities Renting or Leasing Space.** The maximum number of tenants and/or separate legal entities renting and/or leasing space and/or doing business in and/or on the property shall be ten (10).

6. **Maximum Number of Employees on the Property.** The maximum number of employees that can be employed and/or utilized on the property shall be ten (10).

7. **Signage.** There shall be no more than one (1) sign on the property identifying the address and one tenant name only such as "Newroads Financial Group" "16 Harrison Street". There shall be no sign illumination on the property.

8. **Lighting.** The light poles that are located next to the parking spaces rather than on the inside of the driveway as called for on the site plan can remain as, evidently, a field change was made to create better lighting conditions where the vehicles are parked and to direct lighting inward toward the building.

9. **Landscaping.** The applicant shall install the one (1) 2-1/2-inch red maple tree shown on the site plan to the north of the parking spaces that was not installed. (If the location shown on the site plan is not longer viable, the tree's location can be modified in the field provided that the applicant first obtains the approval of the Township Engineer in writing to the new location.)

10. **Parking.** The applicant may keep the number of spaces at 12 conventional spaces and one (1) handicapped space as currently exists on the property rather than the 13 conventional spaces and one (1) handicapped space shown on the site plan.

11. **Subject to Other Approvals and Laws.** The within approval and the use of the property are conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal

governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

**THOSE IN FAVOR: MATSEN, STEVENS, FILUS, LEFKUS, SWITLYK &
McCAFFREY.**

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on April 28, 2008 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
MATSEN	X			
STEVENS				X
FILUS	X			
LEFKUS				X
SWITLYK	X			
McCAFFREY	X			

ATTEST:


REBECCA D'ALLEINNE, Board Secretary

CLINTON TOWNSHIP BOARD OF ADJUSTMENT

HARRISON REAL ESTATE ASSOCIATES
BLOCK 72, LOT 1

CASE NO. 2007-05

WAIVERS FROM COMPLETENESS REQUIREMENTS FOR "D(1)" VARIANCE
APPLICATION SEEKING MODIFICATION OF PRIOR "D(1)" VARIANCE CONDITIONS

RESOLUTION NO. 2007-14

WHEREAS, Harrison Real Estate Associates (the "applicant") owns certain property in the Township of Clinton which is designated as Block 72, Lot 1 (the "property") and has applied to the Board for a "d(1)" variance (the "application") to permit modification of two (2) conditions of a previously granted "d(1)" use variance to use the former First church of Christ the Scientist building located on Harrison Street for a professional office, which prior approval is memorialized on Board Resolution No. 7-97 adopted on August 25, 1997;

WHEREAS, in connection with the application, the applicant has requested waivers from submission of certain of the information required for completeness of the application, which waiver requests and recommendations on the requests are contained in a memo to the Board from Cathleen Marcelli, P.E. dated November 19, 2007 (the "Marcelli memo");

WHEREAS, N.J.S.A. 40:55D-10.3 provides that the Board, or an authorized committee of the Board, shall grant or deny a request for completeness submission waivers within 45 days of the submission of the request;

WHEREAS, the Board considered the requests for the waivers at its meeting held on November 26, 2007 and, after considering the Marcelli memo, the Board determined that the completeness submission waiver requests set forth below should be granted for the reasons set forth below, but that such waivers should be granted subject to the conditions set forth below;

NOW, THEREFORE, BE IT RESOLVED by the Board, by motion duly made and seconded on November 26, 2007, as follows:

1. **Grant of Waivers.** Subject to the conditions set forth below, waivers from submission of the following items are hereby granted for completeness purposes only because the items, information or documentation at issue are not needed at this time because the application seeks to modify two prior approval conditions and not to add any improvements to the property: #s 14, 18, 20, 37, 41, 42, 56 and 59.
2. **Denial of Waivers.** (Intentionally omitted.)
3. **Statutory Rights and Obligations of the Applicant and the Board.** The granting of the completeness waivers set forth in paragraph 1 above shall not diminish the

applicant's obligation to prove in the application process that it is entitled to approval of the application. Further, the Board may subsequently require in the course of the application process submission of waived items and/or correction or revision of any information submitted and/or submission of additional information not required to be submitted for completeness purposes if such items, corrections, revisions and/or additional submissions are reasonably necessary to enable the Board to make an informed decision as to whether the requirements necessary for approval of the application have been met. The application shall not thereafter, however, be deemed incomplete for lack of any such items, corrections, revisions and/or additional submissions as may be so required by the Board.

4. **Submission Requirement in order to Obtain Complete Application.**

The Administrative Officer shall not determine the application to be complete until she reviews all submissions to determine whether any other items that have not been waived are required to be submitted and should the Administrative Officer fail to determine the application complete within 45 days of November 26, 2007, the application shall be deemed to be complete by operation of law.

**THOSE IN FAVOR: STEVENS, FENNELL, BRIENES, McCAFFREY, GEIGER,
ROBERTS & MATSEN.**

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on December 10, 2007 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
STEVENS	X			
BRIENES	X			
McCAFFREY	X			
GEIGER	X			
ROBERTS	X			
MATSEN	X			

ATTEST:


REBECCA D'ALLEINNE, Board Secretary

P.D. Jello

CLINTON TOWNSHIP BOARD OF ADJUSTMENT
BOARD OF ADJUSTMENT RESOLUTION #9-97
RESOURCE MANAGEMENT INTERNATIONAL - C. KENNEDY
BLOCK 72, LOT 1 LOCATED ON HARRISON STREET,
CLINTON TOWNSHIP CONSISTING OF 0.89 ACRES
IN THE R-5 ZONE
PRELIMINARY AND FINAL SITE PLAN TO CONVERT
THE FIRST CHURCH OF CHRIST SCIENTIST PROPERTY
TO AN OFFICE OF APPROXIMATELY 2800 SQ. FT.
JULY 28, 1997 -- MEMORIALIZED AUGUST 25, 1997

The application of Resource Management International came on for hearing before this board on July 28, 1997.

The application is for site plan approval in connection with changing a former church building to office use.

CHECKLIST WAIVERS

Associated with the site plan approval is a request for a number of waivers.

Checklist Item No. 11, Consent of Owner, has been supplied.

The board grants a waiver from checklist Item 23, the requirement of two foot contours for the property plus 100' beyond as the existing church building and surrounding properties have existed for many years, there will be no change in the building and no substantial change in any contours so that this requirement would be an unnecessary burden and hardship and can be waived and still carry out the purposes of the ordinance.

As to checklist Item No. 26 dealing with curbing, the board's engineer expressing the view that the present long existing drainage with no concentration caused by curbing is superior to a program involving curbing. The requirement for curbing is waived.

Similarly, Checklist item No. 26, stormwater management plan, is waived because the repaving of the driveway involves minimal change and the existing stormwater situation has proven satisfactory.

Checklist Item 27, other approvals, is waived at this moment with all other approvals as required still being required but not having to be on hand at this time.

Checklist Item 28, final building floor plan, is waived as the plan submitted adequately covers this requirement.

Checklist Item 33, a cost estimate, is waived at this time as it would be an unnecessary expense to require the applicant to recompute the cost estimate depending on whatever changes might occur at this hearing.

Checklist Item 35, soil erosion and sediment report, is waived for the same reasons of the storm management in that the existing

situation has prevailed satisfactorily for a number of years and no significant change is proposed.

Checklist Item 37, deeds or dedications to the township is waived as none are needed.

Checklist Item 36, environmental impact statement, is waived because the present situation has existed for many years without difficulty.

Checklist Item 42, dealing with inspection fees and deposits is waived at this time, to be taken care of when applicant gets final site plan approval.

The Board finds that all of these requirements can be waived without interfering with the reasonable operation of the ordinance in achieving its desired goals.

DESIGN WAIVERS

The applicant then asked for three design waivers set forth in Paragraph 4 of Planner Bolan's report, Exhibit B-2.

As to 4(a), the ordinance requires a parking setback of twelve feet from the street. The applicant has requested two feet in order to permit the handicap parking space to be at the closest available location to be building entrance. The board finds that this is reasonable in that Harrison Street, which formerly went on to enter the adjoining state highway has been blocked off as a result of the recent dualization and hence there is very little traffic in this area.

As to design waiver described in 4 (b) of the planner's report that is the requirement that parking be setback 12' from property lines where the applicant requests two feet, we have a situation as shown by the map that the alleyway running along the side of the property opposite from the state highway for unknown reasons becomes quite wide in terms of its right of way at the location where applicant proposes its parking. Thus, even with the two foot setback from the property line there is a substantial distance, much in excess of the required 12' to the actual alley itself. Consequently, this waiver can be granted.

As to the design waiver described in Paragraph 4 (c) of the planner's report, namely that parking be setback 12' from the residential zone, this is waived as the property itself is in the

residential zone so we have no boundary from which to figure it.

All these waivers may be provided while still maintaining the desired protections and benefits of the ordinance.

SITE PLAN

Having disposed of the various waivers the board makes the following findings concerning the site plan application itself.

1. The necessary notices have been served and published.
2. The taxes have been paid.
3. The application deals with a 0.89 acre lot in the R-5 Zone which lot is known as Block 72, Lot 1.
4. Situate on this lot is a former church property with a horseshoe driveway starting at Harrison Street and running around the building and returning to Harrison Street. This driveway is presently penetration macadam.
5. Office use of the property is now permitted by virtue of a use variance granted by this board on April 28, 1997 which imposed certain conditions including the following:
 1. The user of the building shall be a single entity. There shall be no subleasing of office space.
 2. The maximum number of employees which can be employed, utilized on site, shall be ten.
6. Applicant proposes to utilize the former church building for its office for its consulting business, at first with five (5) employees, with possible growth to a maximum on ten (10) employees.
7. Applicant proposes to repave the existing driveway with minor changes to accommodate the required number of parking spaces, applicant leaving some of the existing parking spaces not presently required in their present condition.
8. Applicant proposes to provide lighting by carriage type lights more appropriate to residential setting than the normal commercial shoebox type lights.
9. There will be no noticeable change in drainage since there is no change in the grade, the building footprint and area remains the same, the sidewalk area is substantially the same and the parking somewhat smaller than with the former church property.
10. The board has a concern that the parking spaces which are of the head-in type may, in some instances, be used to back in with the exhaust directed towards the residential neighborhood.

This can be corrected by signs indicating (head-in parking only) or words to that effect with sufficient number of signs being used to adequately cover the various head-in parking spaces.

PRELIMINARY SITE PLAN APPROVAL

Consequently, this board grants preliminary site plan approval to applicant as presented with only two changes, one dealing with head-in parking signs, the second change dealing with the requirement that certain conditions of the basic variance be set forth on the site plan.

Preliminary site plan approval is granted subject to the following conditions:

1. That applicant secure all other approvals and comply with all other laws, regulations and requirements.

2. That applicant provide on the site plan for head-in parking only type signs at locations and in numbers satisfactory to the board's engineer.

3. Application shall affix to the site plan:

THE APRIL 28, 1997 VARIANCE PERMITTING OFFICE USE
CONTAINS CONDITIONS:

1. The use of the building shall be a single entity.
There shall be no sub-leasing of office space.

2. The maximum number of employees which can be employed utilized on site, shall be ten.

3. That applicant, before qualifying for final site plan approval, shall arrange a pre-construction conference on at least 24 hours notice to the township engineer, shall provide all the required inspections fees, escrows and charges, shall provide any required development agreement with the township, and shall provide the improvements required by the site plan or provide performance guarantees to insure that they will be provided.

A motion was made by Mr. Hanley, seconded by Mr. Breines that Board of Adjustment Resolution #9-97 be approved:

ROLL CALL VOTE AS FOLLOWS:

Mr. Hanley	-- yes
Mr. Matsen	-- not eligible to vote
Dr. Duke	-- absent
Mr. Breines	-- yes
Mr. Luftglass	-- absent
Mr. Ciarlariello	-- yes
Dr. Monsul Barnes Alt. I	-- yes
Mr. Mills, Alt. II	-- yes

Motion carried.


No further discussion.

Board of Adjustment Resolution #9-97 memorialized and adopted
by the Clinton Township Board of Adjustment on August 25, 1997.



JOSEPH T. HANLEY, CHAIRMAN
CLINTON TOWNSHIP BOARD OF ADJUSTMENT

ATTEST:



PATRICIA SCHICKEDANZ, ADMINISTRATOR
CLINTON TOWNSHIP BOARD OF ADJUSTMENT

CLINTON TOWNSHIP BOARD OF ADJUSTMENT
BOARD OF ADJUSTMENT RESOLUTION #7-97
FIRST CHURCH OF CHRIST SCIENTIST
USE VARIANCE FOR OFFICE - BLOCK 72, LOT 1
16 HARRISON STREET, CLINTON TOWNSHIP
RESOURCE MANAGEMENT INTERNATIONAL
R-5 ZONE CONSISTING OF 0.890 ACRES
APRIL 28, 1997

The application of Resource Management International, Inc., came on for hearing before this Board this 28th day of April, 1997.

The relief sought is a variance permitting office use in a church building. The applicant requests a waiver from site plan review.

The questions before the Board are:

1. Have the necessary notices been served and published;
2. Does applicant have a particular situation;
3. Do special reasons found in the purpose of the Land use Law exist;
4. Can requested relief be granted without substantial detriment to the public good;
5. If so, can the requested relief be granted without substantially impairing the intent and purpose of the zone plan and ordinance;
6. Is there any provision in the ordinance permitting the Board of Adjustment to waive the site plan entirely?

The applicant presented as witnesses owner, J. Christman Kennedy, and planner Soriano.

No persons appeared in opposition and the Board called no witnesses.

The applicant placed the following exhibits in evidence:

Exhibit A-1 -- Packet consisting of proof of publication, affidavit of owners, forms of notice, clerk's list, utility list and Post Office Department slips.

Exhibit A-2 -- Picture Board.

Exhibit A-3 -- Photo of part of tax map.

Exhibit A-4 -- Plan of existing conditions.

After reviewing the testimony and exhibits, the Board makes the following findings:

1. The necessary notices have been served and published;
2. Applicant with consent of owner proposed to use the premises known as 16 Harrison Street, Block 72, Lot 1 consisting of 0.89 acres, situate in the R-5 zone, as an office building. The applicant proposed repairs to the structure and upgrading of the site to include relaying deteriorating sidewalks, recinderling the parking lot as well as providing landscaping.

3. The existing structure has been used for a church for some thirty years; however, the last service was on Thanksgiving 1996.
4. The zoning in the area does permit home office occupation up to 500 square feet.
5. Applicant is an international consulting business presently with five employees, with office hours of 9:00 a.m. to 5:00 p.m., with occasional early morning or evening or occasional weekend hours. Applicant envisions maximum number of employees as ten.
6. Site has a large potential parking area.
7. The site is located adjacent to a recently enlarged or widened State dual Highway, Route 31.
8. The structure is approximately twice the size of the houses in the area.
9. Applicant proposes no exterior change to the building, other to paint the exterior and perhaps adding a handicapped approach and some sidewalks.
10. Applicant has very few visitors.
11. Applicant proposes minimal lighting, which would be the subject of site plan review.
12. The building is approximately 3,000 square feet in size with twelve foot ceilings, with windows about eighteen inches from the ceiling. The bottom of the window is about chest height, making it difficult for residential use. Also, revision of residential use may not be economically feasible.
13. Applicant does have a particular situation with this presently unused church building in this residential zone.
14. Special reasons exist to permit the requested office use in that it will constitute the most appropriate use of land and buildings in this residential setting, since the traffic will be small, most of the activity will be inside and the proposed use will provide an existing base for the proper maintenance of the building and grounds.
15. The requested relief can be granted without substantial detriment to the public good in that the premises are served by public water and sewer. The lot size exceeds that generally prevailing in the area and with the provisions for lighting. Parking and landscaping during site plan review will provide a facility which will not have any substantial problem of traffic.
16. The requested relief can be granted without substantially impairing the intent and purpose of the zone plan and ordinance, and that again in this residential area office activities will be carried on inside. There is ample space for parking, and with revisions which may be imposed during site plan review, the impact at residential area will be minimal.

Consequently, the Board grants a use variance to applicant to permit office use in this building subject to the following conditions:

1. The user of the building shall be a single entity. There shall be no sub-leasing of office space.
2. The maximum number of employees which can be employed, utilized on site, shall be ten.

3. This variance shall be subject to applicant obtaining site plan approval.

This variance shall become effective only after applicant has obtained site plan approval.

4. Applicant shall apply for site plan approval within eighteen months of this date or this variance shall expire.
5. This is a use variance. This decision merely relaxes the limitations on use. Applicant shall comply with all other law, ordinances, rules and regulations.

Mr. Herr, the attorney announced end of resolution for your consideration.

The Chairman -- Any discussion?

A motion was made by Mr. Matsen, seconded by Mr. Luftglass that Board of Adjustment Resolution #7-97 be approved as drafted by the attorney.


ROLL CALL VOTE AS FOLLOWS:

Mr. Hanley	-- yes
Mr. Matsen	-- yes
Dr. Duke	-- yes
Mr. Luftglass	-- yes
Mr. Ciarlariello	-- yes
Mr. Breines	-- absent
Mr. Haynes	-- absent
Dr. Monsul Barnes, Alt. I	-- yes
Mr. Mills, Alt. II	-- yes


Motion carried.

No further discussion.

Board of adjustment Resolution #7-97 adopted by the Clinton Township Board of Adjustment on April 28, 1997.


JOSEPH T. HANLEY, CHAIRMAN
CLINTON TOWNSHIP BOARD OF ADJUSTMENT

ATTEST:


PATRICIA SCHICKEDANZ, ADMINISTRATOR
CLINTON TOWNSHIP BOARD OF ADJUSTMENT

Post-it® Fax Note	7671	Date	3/16	# of pages	3
To	B. McMANUS	From	B. D'ALLEYNE		
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