

LITIGATION SETTLEMENT AGREEMENT

This Litigation Settlement Agreement is made this 1 day of October, 2020
by and between the Township of Neptune Zoning Board of Adjustment and Hovsons, Inc.

WHEREAS, the Township of Neptune Zoning Board of Adjustment (hereinafter, “Neptune Zoning Board”) is the duly constituted zoning board of adjustment created by the governing body of the Township of Neptune by ordinance pursuant to N.J.S.A. 40:55D-69; and

WHEREAS, Hovsons, Inc.(hereinafter “Hovsons”) is the owner of real property located in the Township of Neptune, identified on the Neptune Township Tax Maps as Lots 1, 2 and 3 in Block 4001 (hereinafter “Hovsons Property”); and

WHEREAS, Hovsons, filed an application for a use variance and site plan approval to permit 312 apartments, reduced during the hearings to 272 apartments, on the Hovsons Property on or about January 8, 2013 and pursued that application to conclusion on April 18, 2018, when the Neptune Zoning Board voted to deny Hovsons application for use variance, site plan approval and other relief, with the Board adopting a memorializing resolution on June 6, 2018; and

WHEREAS, Hovsons, filed a Complaint in lieu of Prerogative Writs on July 24, 2018, challenging the decision of the Neptune Zoning Board denying the requested use variance and site plan approval, with such appeal being docketed as MON-L-002643-18; and

WHEREAS, after briefing and initial scheduling of trial on the appeal filed by Hovsons, the parties discussed potential settlement of the pending litigation based upon a revised concept development plan and the settlement procedures described and authorized in Whispering Woods at Bamm Hollow, Inc.,v. Township of Middletown Planning Board, 220 N.J. Super. 161 (Law.

Div. 1987) and Friends of Peapack-Gladstone v. Borough of Peapack-Gladstone Land Use Board, 407 N.J. Super. 404 (App. Div. 2009); and

WHEREAS, the parties have engaged in extensive negotiations in an attempt to settle the pending litigation; and

WHEREAS, the parties have reached an agreement on the terms and conditions for settlement of the pending litigation, said settlement being contingent upon conditions set forth herein and which conform with the procedures set forth in Whispering Woods at Bamm Hollow, Inc., the Township of Middletown Planning Board, 220 N.J. Super. 161 (Law. Div. 1987).

NOW, THEREFORE, in consideration of the mutual covenants, promises and terms and conditions hereinafter provided, it is agreed by and between the Neptune Zoning Board and Hovsons as follows:

1. Due Deliberation. This Agreement is reached after due deliberation by the parties, and is based upon the considered judgment of the parties that it is in the best interest of the public good and welfare to attempt to settle this litigation upon the terms and conditions contained in this Litigation Settlement Agreement in order to fully resolve the dispute between the parties.

2. Stay of Litigation and Process for Dismissal. Upon final execution of the within Litigation Settlement Agreement, the parties agree to execute a Stipulation of Dismissal Without Prejudice for the pending litigation. However, in the event that the Neptune Zoning Board does not grant subdivision/site plan approval and/or does not adopt a resolution of memorialization based upon the revised plans and Board discussion, which terms shall be satisfactory to both parties, based upon the presentation and Board vote on the revised plans, the pending litigation shall be reinstated by motion of either party for reinstatement.

Due to the fact that the proposed hearing under Whispering Woods is based on an attempted Settlement Agreement and hearing for same, the parties acknowledge that there will be no appeal by either party in the event the Zoning Board denies the revised settlement application. There shall be, upon notice to the Court, an immediate reinstatement of the underlying matter should the matter be denied. However, in the event that the revised settlement application is approved by the Board in a manner satisfactory to both parties, and an appeal or objection is filed by a third party to the Superior Court based on the approval granted by the Neptune Zoning Board to Hovsons on the revised plans, then the Neptune Zoning Board reserves the right to defend the decision of the Zoning Board on appeal prior to having the pending litigation reinstated by either party.

3. Concept Plans. The attached conceptual site plan and conceptual elevation, attached as Exhibit A to this Litigation Settlement Agreement, presents the agreed upon conceptual plan to be converted into engineering plans and architectural plans for preliminary and final subdivision/site plan application submission to the Neptune Zoning Board. This conceptual site plan shows 101 for-sale townhouses with attached garages, which shall be considered “for-sale” units and shall not be developed as a “rental complex”.

4. Residential Development Fee. The parties acknowledge that the current applicable residential development fee pursuant to the Neptune Township Ordinance is 1.5% of the equalized assessed value of the Hovsons Property, said fee to be payable pursuant to the requirements of the Neptune Township Ordinance.

(a) Hearing Process and Deadlines. Hovsons retains the right to submit an engineered site plan/subdivision and supporting documents for the application as soon as possible after final execution of this Litigation Settlement Agreement, or wait to file said plans

until such time as any appeal challenging the terms of this Litigation Settlement Agreement is filed and resolved by the Law Division.

(b) The parties agree to limit the number of hearings on the site plan/subdivision application and the total number of hearings shall not exceed six (6) hearings. Said hearings shall be held back- to- back, in other words, in sequential months unless Hovsons indicates that it is not ready to proceed to a meeting or, if the parties determine that a special meeting or meetings is necessary to timely complete the public hearing on the application. In the event that special meetings are necessary, Hovson understands that it will be subject to payment of a special meeting fee. The Neptune Zoning Board of Adjustment shall allocate a minimum of 1½ to 2 hours at each regular meeting for the site plan/subdivision application, and any special meeting shall be devoted solely to the Hovsons application. The beginning date of these successive meetings shall be scheduled with the Zoning Board Secretary upon notice so that the Zoning Board can allot the appropriate time given other pending applications.

(c) Testimony by witnesses for the Applicant and for the Board shall be limited to only engineering testimony on site plans/subdivisions, architectural testimony on the elevations and planning testimony on any variances and site plan exceptions. The parties agree that it is unnecessary to have any witnesses on environmental impact, traffic or similar issues.

(d) The parties agree that there would be a dedicated meeting, if necessary to allow all public comments to be placed in the record, and the Board will exercise its usual discretion in providing for the review, scope and direction of the comments on the pending application.

(e) The parties agree that Hovsons may request bulk variances and site plan/subdivision exceptions without violating the terms of this Settlement Agreement. .

5. Representation by Counsel. The Neptune Zoning Board and Hovsons were represented in the settlement process by counsel of their choice.

6. Agreement Binding and Enforceable. Upon execution, this Litigation Settlement Agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns. This Litigation Settlement Agreement shall be enforceable in the Law Division of the Superior Court.

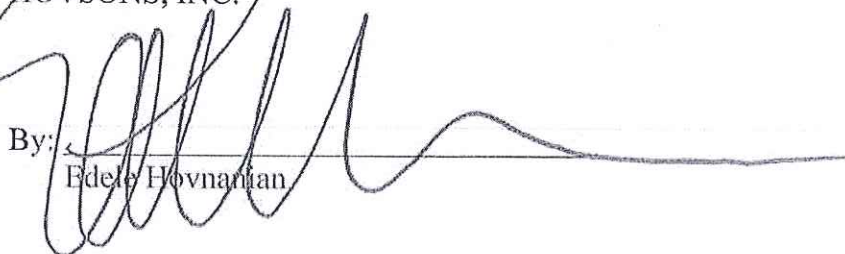
NEPTUNE TOWNSHIP ZONING
BOARD OF ADJUSTMENT

By: 
Chairman William Frantz


ATTEST:

By: 
Neptune Zoning Board of Adjustment
Administrator - Kristie Dickert

HOVSONS, INC.

By: 
Edele Hovnarian

WITNESS:

By: 
Tracy Bacon