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March 8, 2021  
70573 00

Attn: Ms. Denise Schmied, Secretary  
Southampton Township Zoning Board  
5 Retreat Road  
Southampton, NJ 08088-3591

Re: **Ordinance Interpretation and Use Variances**  
Richards Mobile Home Court, LLC: 12 Richards Court (Interior Lot 774)  
150 Route 530  
Block 701, Lot 4.01

Dear Board Members,

We have reviewed an application for the development of the property referenced above, which included the following documents:

1. Cover Letters from Travis J. Richards, Esq. of the Law Offices Weishoff and Richards, LLC in Mount Holly, NJ dated November 13, 2020 and May 19, 2020;
2. Response Letter from Christopher J. Hanlon, Esq. of Hanlon, Niemann, & Wright in Freehold, NJ dated December 4, 2020;
3. Township Planning Board and Zoning Board Application Form, undated;
4. Trailer Park Utilities Layout Plan prepared by John C. Miller PE of T.I.D.E.S. Co., Inc. in Lumberton, NJ dated 10/10/07 and last revised 5/13/20; and
5. Township Use Variance Checklist Form.

### **General Information**

Applicant / Owner: Richards Mobile Home Court, LLC  
150 Route 530  
Southampton, NJ 08088

Applicant Attorney: Christopher J. Hanlon, Esq.  
Hanlon, Niemann, & Wright  
Juniper Business Plaza  
3499 Route 9 North, Suite 1-F  
Freehold, NJ 07728

Applicant's Engineer: John C. Miller, PE  
T.I.D.E.S., Co., Inc.  
378 Main Street  
Lumberton, NJ 08048

### **Completeness Review**

The Applicant has provided all of the required application checklist items except for Item #4, which requires a "current survey and/or site plan." The submitted Trailer Park Utilities Layout Plan is a schematic plan of the water and wastewater infrastructure for the 68-unit mobile home park business, site manager's house, and maintenance facilities, which has been annotated to show proposed home layouts. It refers to a 7/21/07 survey prepared by Ralph S. Hartman, PLS, which has not yet been provided.

The application concerns a “b” variance for an interpretation of Chapter 12 Land Development, or other special question related to the same, regarding the similarity of a “manufactured housing unit” and a “mobile home” and whether the proposed development to “replace” the latter with the former is a “continuation” of and not an “expansion” of a pre-existing, non-conforming use. For this reason, we find that the Trailer Park Utilities Layout Plan provides the Board, its professionals, and the general public sufficient information.

We recommend that the Board grant the Applicant’s request to waive Item #4 and that the application be considered COMPLETE for review and consideration of the Board’s approval.

**Development Proposal**

The Applicant seeks a zoning permit, which is necessary to receive construction permits to build a permanent foundation space onto which the Applicant would assemble two manufactured housing unit segments into one whole manufactured housing unit. The Applicant does not contend that its business is a pre-existing, non-conforming use in the Pinelands Area’s Agricultural Production (AP) district. The Applicant asserts that:

1. The proposed double-wide (32’) “manufactured housing unit” on a permanent foundation is similar to or has the same general characteristics as the single-wide (16’) “mobile home,” which formerly sat on a non-permanent foundation on Interior Lot #774, a.k.a. 12 Richards Lane, and, therefore, should be treated as such by the Zoning Officer; and
2. Because the replacement of one unit with another is standard practice in the mobile home park business / industry, the assembly of a double-wide manufactured housing unit on a permanent foundation to replace the former single-wide mobile home on a non-permanent foundation is a “continuation” of and not an “expansion” of the pre-existing, non-conforming use.

The Applicant requests a "b" variance to request the Board’s interpretation of Chapter 12 Land Development, or other special question related to the same, which would enable the Applicant to receive a zoning permit for the proposed development as described above; however:

- a. In case the Board denies the "b" variance’s first assertion, because the proposed replacement housing unit would be atop a permanent foundation and/or the manufactured housing unit is not the same as a mobile home, it appears that the Applicant requests a “d(1)” use variance to construct the proposed “non-permitted development”. However, we defer to the Board Attorney for clarification. and
- b. In case the Board denies the "b" variance’s second assertion, it appears that the Applicant requests "d(2)" use variance to "expand a pre-existing, non-conforming use.” However, we defer to the Board Attorney for clarification.

**Definitions**

1. Chapter 12 Land Development §12-2.3 contains the following definition:

***MOBILE HOME:** Any unit, whether licensed or not, used for living, sleeping or business purposes by one or more persons, built on a chassis, designed without a permanent foundation and shall include a dwelling, sleeping or business unit of vehicular design used or intended or constructed for use as a conveyance upon the public streets and highways, whether licensed or not, and shall further include self-propelled and non-self-propelled vehicles and other structures so designed, constructed and reconstructed or added to by*

*means of accessories in such a manner as to permit the occupancy thereof as a dwelling, sleeping place or for business purposes for one or more persons and having no foundation other than wheels, jacks, piers or skirting so arranged as to be integral with or portable by the mobile home and shall further include the type of dwelling known as a trailer or camp car.*

The Applicant is a Township-licensed “mobile home park” per Chapter 10 Mobile Homes and Mobile Home Parks, which contains the following definitions in §10-1:

**MOBILE HOME:** *A vehicle without means of self-propulsion but licensable as a conveyance on public streets or highways and which is constructed to permit occupancy as a dwelling or sleeping bed place for one or more persons.*

**MOBILE HOME PARK:** *Any plot of ground upon which two or more occupied mobile homes are located.*

The definitions in the Municipal Land Use Law (N.J.S.A. 40:55D-1 *et seq.*, or MLUL) supersede those in local ordinances. The MLUL does not define the term “mobile home” in sections 3 through 7; however, section 102, which was added as part of the New Jersey “Affordable Housing Act of 1983,” does define several terms that may be relevant to this application:

**“COMMISSIONER”** *means the Commissioner of the [NJ]Department of Community Affairs;*

**“MANUFACTURED HOME”** *means a unit of housing which:*

- (1) Consists of one or more transportable sections which are substantially constructed off site and, if more than one section, are joined together on site;*
- (2) Is built on a permanent chassis;*
- (3) Is designed to be used, when connected to utilities, as a dwelling on a permanent or non-permanent foundation; and*
- (4) Is manufactured in accordance with the standards promulgated for a manufactured home by the secretary pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," Pub. L. 93-383 (42 U.S.C. s. 5401 et seq.) and the standards promulgated for a manufactured or mobile home by the commissioner pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.);*

This MLUL definition is basically the same as the one in the "National Manufactured Housing Construction and Safety Standards Act of 1974." When the Federal Act went into effect on June 15, 1976, all factory-built housing units on a chassis became “manufactured homes” and made subject to safety and construction standards established by the US Department of Housing and Urban Development (HUD).

The State and Federal acts do not define “mobile homes,” but this term and other regional variants remain in common public usage. The housing industry and general legislation refer to factory-built housing units on a chassis fabricated prior to June 15, 1976, which generally following American National Standards

Institute (ANSI) standards, as “Pre-HUD Manufactured Homes” or “Pre-HUD Mobile Homes.”

*"MOBILE HOME PARK" means a parcel of land, or two or more parcels of land, containing no fewer than 10 sites equipped for the installation of manufactured homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured home for the installation thereof, and where the owner or owners provide services, which are provided by the municipality in which the park is located for property owners outside the park, which services may include but shall not be limited to:*

- (1) The construction and maintenance of streets;*
- (2) Lighting of streets and other common areas;*
- (3) Garbage removal;*
- (4) Snow removal; and*
- (5) Provisions for the drainage of surface water from home sites and common areas.*

*A parcel, or any contiguous parcels, of land which contain, on the effective date of this act, no fewer than three sites equipped for the installation of manufactured homes, and which otherwise conform to the provisions of this subsection, shall qualify as a mobile home park for the purposes of this act;*

*"NON-PERMANENT FOUNDATION" means any foundation consisting of non-mortared blocks, wheels, concrete slab, runners, or any combination thereof, or any other system approved by the commissioner for the installation and anchorage of a manufactured home on other than a permanent foundation;*

*"PERMANENT FOUNDATION" means a system of support installed either partially or entirely below grade, which is:*

- (1) Capable of transferring all design loads imposed by or upon the structure into soil or bedrock without failure;*
- (2) Placed at an adequate depth below grade to prevent frost damage; and*
- (3) Constructed of material approved by the commissioner;*

*"RUNNERS" means a system of support consisting of poured concrete strips running the length of the chassis of a manufactured home under the lengthwise walls of that home;*

*"SECRETARY" means the Secretary of the United States Department of Housing and Urban Development; and*

*"TRAILER" means a recreational vehicle, travel trailer, camper or other transportable, temporary dwelling unit, with or without its own motor power, designed and constructed for travel and recreational purposes to be installed on a nonpermanent foundation if installation is required.*

### **Area and Bulk Standards**

1. The Trailer Park Utilities Layout plan indicates that Interior Lot 774 is at least 2,400 SF in area, at least 35' in width, and on a driveway or other clear area with unobstructed access to a public street. It also has a minimum spacing between other manufactured housing units of 25' side-to-side and 12' end-to-end. It is also more than 50' from the right-of-way of South Pemberton Road (CR 530). All of these are in accordance with §§10-3.1 and 10-3.3, which regulates minimum area and bulk standards for trailer parks.

**General Comments**

2. The Applicant should provide testimony about the following:
  - a. History of its business, the nature of its Township license, total number of permitted and current number of occupied mobile home sites, and how it meets the MLUL definition of a “mobile home park;”
  - b. Age, shape, size, and condition of the housing unit, foundation, utilities, improvements, and other amenities that formerly occupied Interior Lot 774, as well as the period of time that this interior lot has been unoccupied;
  - c. Type, size, and number of bedrooms of the proposed manufactured housing unit, the type and size of proposed / existing foundation, and the proposed number of off-street parking spaces on Interior Lot 774. The submitted plan did not provide this information or indicate whether this interior lot provided the required minimum number of off-street parking spaces in accordance with the dimensional and construction standards of the NJ Residential Site Improvement Standards (N.J.A.C. 5:21-4.14, or RSIS) RSIS requires single-family detached dwellings with 1 to 3 bedrooms to provide for 2 off-street parking spaces and 3 spaces for 4 or more bedrooms or if the number of bedrooms is not provided. **If the interior lot cannot accommodate these RSIS requirements, a *de minimus* exception is required.**

The Applicant must provide testimony to justify the requested *de minimus* exception:

- a. Is consistent with the intent of the site improvements act;
  - b. Is reasonable, limited, and not unduly burdensome;
  - c. Meets the needs of public health and safety; and
  - d. Takes into account existing infrastructure and possible surrounding future development.
3. The Applicant should provide testimony for the “b” variance justifying that:
    - a. The proposed double-wide (32’) “manufactured housing unit” on a permanent foundation is similar to or has the same general characteristics as the prior single-wide (16’) “mobile home” on a non-permanent foundation, and, therefore, should be treated as such by the Zoning Officer; and
    - b. The proposed development is a “continuation” of and not an “expansion” of the pre-existing, non-conforming use.

The testimony should include the following principles for governing the interpretation of zoning ordinances:

- a. Establishing the fundamental purpose(s) for which the Township ordinances, MLUL, or both legislation were enacted and the sense of the objective of the legislation, nature of the subject matter, the context of its setting, and history of the legislation;
  - b. Identifying whether and how the specific provisions of the legislation take precedence over the other;
  - c. Explaining that the Township and State legislation dealing with the same subject matter should be read / construed together, *pari materia*, as forming one legislative action; and
  - d. Clarifying whether and how the legislation is prospective or retrospective, and using the Gibbons criteria for determining whether the regulations should be applied retrospectively.
4. **As indicated on page 2, if the Board does not grant the requested “b” variance, the proposed development will require a “d(1) use variance, “d(2) use variance, or both.** For use variances it is the Applicant’s burden of proof to present “positive” and “negative” criteria to justify the variance.

The Applicant must prove to the satisfaction of the Board that there are “special reasons” to exercise its jurisdiction to grant the requested relief, demonstrating that the site is particularly suited to the proposed use and that the proposed use will advance the purposes of the Municipal Land Use Law and the Township’s Master Plan and Zoning Ordinance. Additionally, the Applicant must show that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the Township’s Zone Plan and Zoning Ordinance. Testimony should be provided.

We reserve the right to further comments as additional information becomes available. Should you or the Applicant have any questions, please feel free to contact the undersigned.

Sincerely yours,



Rakesh R. Darji, PE, CME, PP  
Zoning Board Engineer



Edward Fox, AICP, PP  
Zoning Board Planner

RRD / EF

cc: Richards Mobile Home Court, LLC, Applicant via email [rmhc.llc@gmail.com](mailto:rmhc.llc@gmail.com)  
Christopher J. Hanlon, Esq., Applicant’s Attorney via email [chanlon@hnlawfirm.com](mailto:chanlon@hnlawfirm.com)  
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