

Application Nos. BA-3040-PMS-D-6/17;
BA-3079; and BA-3040-FMS-8/19
456 NJ State Highway 35, Brick, NJ
Block 36, Lot 10
Zone: B-2 (General Business) and
R-7.5 (Single Family Residential)

**RESOLUTION PURSUANT TO SETTLEMENT AGREEMENT
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NOS. BA-3040-PMS-D-6/17;
BA-3079 AND BA-3040-FMS-8/19
OCTOBER 21, 2020**

WHEREAS, RTS IV, LLC (“RTS”) is the owner of a property located at 456 NJ State Highway Route 35 North, Brick Township, Ocean County, New Jersey, which property is designated on the Municipal Tax Map as Block 36, Lot 12 (hereinafter the “Property”); and

WHEREAS, RTS submitted an application to the Zoning Board seeking density variance relief pursuant to N.J.S.A. 40:55D-70(d)(5) and preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 in order to subdivide the subject Property into seven (7) lots for single-family residential use with an additional two (2) common lots, one which would contain a clamshell road and the other which would be used as a beach community lot (hereinafter the “Application”); and

WHEREAS, JSTAR filed a Complaint in Superior Court while the Application was pending before the Zoning Board captioned as JSTAR, LLC v. Brick Township Zoning Board of Adjustment and RTS IV, LLC, a/k/a Joseph R. Prestifilippo, Jr., Docket No. OCN-L-389-18; and

WHEREAS, the Zoning Board approved the Application which decision was memorialized in a Resolution dated August 21, 2019 (R-40-19); and

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JSTAR, LLC v. Brick Township Zoning Board of Adjustment,
RTS IV, LLC, a/k/a Joseph R. Prestifilippo, Jr., John Does (1-10),
Being Fictitious Names of Persons and Entities Who Are or May
Be Liable to the Plaintiff), Docket Nos.: OCN-L-389-18,
OCN-L-2553-19; A-00858-18T2

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WHEREAS, JSTAR filed a Complaint in lieu of prerogative writs to challenge the approval which was captioned as JSTAR, LLC v. Brick Township Zoning Board of Adjustment, RTS IV, LLC a/k/a Joseph R. Prestifilippo Jr.; John Does (1-10), ABC Corp. (1-10), Docket No. OCN-L-2553-19 (hereinafter “the Approval Litigation”); and

WHEREAS, RTS then filed an Application seeking Final Major Subdivision Approval (hereinafter the “Final Major Subdivision Application”) with the Zoning Board pursuant to N.J.S.A. 40:55D-50. The application was approved on January 29, 2020 which decision was memorialized in a Resolution dated February 19, 2020 (R-9-20); and

WHEREAS, JSTAR thereafter filed an Amended Complaint in Docket No. OCN-L-2553-19 challenging the final major subdivision approval; and

WHEREAS, all parties have now entered into a Settlement Agreement resolving all issues in all litigation; and

WHEREAS, the Settlement Agreement requires a remand hearing to the Zoning Board; and

WHEREAS, the scope of the remand hearing is limited to entering proof into evidence that the Zoning Board’s 2018 annual meeting notice was published in two newspapers and that all special meetings associated with the grant of density variance relief pursuant to N.J.S.A. 40:55D-70d(5) and preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 memorialized in a Resolution dated August 21, 2019 (R-40-19) were properly noticed.

NOW, THEREFORE, the Board makes the following Findings of Fact, based on evidence presented at its public hearing at which time a record was made:

1. The Applicant, RTS IV, LLC was represented by John J. Jackson, III, Esq.
2. The Objector, JSTAR, LLC was represented by Robert C. Shea, II, Esq.
3. The Brick Township Zoning Board of Adjustment (“Zoning Board”) held public hearings on the RTS IV, LLC application (“RTS Application”) on January 17, 2018, January 31, 2018, February 28, 2018, March 14, 2018, April 25, 2018, June 27, 2018, September 19, 2018, October 3, 2018, October 17, 2018, November 28, 2018, February 13, 2019, April 10, 2019, April 29, 2019, and June 5, 2019. The public hearings held on January 31, 2018, February 28, 2018, March 14, 2018, April 25, 2018, June 27, 2018, April 10, 2019 and April 29, 2019 were conducted at special meetings of the Zoning Board.
4. The Zoning Board held a special meeting and heard the RTS Application on January 31, 2018. Notice of the Zoning Board’s January 31, 2018 special meeting was published in the Asbury Park Press on January 25, 2018 and The Ocean Star on January 26, 2018.
5. The Zoning Board held a special meeting on February 21, 2018 at which time it re-adopted its schedule of 2018 meeting dates (Resolution No. R-5-18). Notice of the Zoning Board’s February 21, 2018 special meeting was published in the Asbury Park Press on February 14, 2018 and in The Ocean Star on February 16, 2018.

6. Notice of the Zoning Board's schedule of 2018 meeting dates was then published in the Asbury Park Press on February 27, 2018 and in The Ocean Star on March 2, 2018.

7. The Zoning Board held a special meeting on February 28, 2018 and continued to hear the RTS Application. Notice of the Zoning Board's February 28, 2018 special meeting was published in the Asbury Park Press on February 14, 2018 and in The Ocean Star on February 16, 2018.

8. The Zoning Board held a special meeting on March 14, 2018 and continued to hear the RTS Application. Notice of the Zoning Board's March 14, 2018 special meeting was published in the Asbury Park Press on March 8, 2018 and in The Ocean Star on March 9, 2018.

9. The Zoning Board held a special meeting on April 25, 2018 and continued to hear the RTS Application. Notice of the Zoning Board's April 25, 2018 special meeting was published in the Asbury Park Press on April 19, 2018 and in The Ocean Star on April 20, 2018.

10. The Zoning Board held a special meeting on June 27, 2018 and continued to hear the RTS Application. Notice of the Zoning Board's June 27, 2018 special meeting was published in the Asbury Park Press on June 23, 2018 and in The Ocean Star on June 22, 2018.

11. The Zoning Board held a special meeting on April 10, 2019 and continued to hear the RTS Application. Notice of the Zoning Board's April 10, 2019 Special Meeting was published in the Asbury Park Press on April 6, 2019 and in The Ocean Star on April 5, 2019.

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12. The Zoning Board held a special meeting on April 29, 2019 and continued to hear the RTS Application. Notice of the Zoning Board's April 29, 2019 special meeting was published in the Asbury Park Press on April 26, 2019 and in The Ocean Star on April 26, 2019.

13. Mr. Jackson and Mr. Shea both agreed that the above list of Notices was accurate.

14. The Zoning Board subsequently voted to reapprove Application No. BA-3040-PMS-D-6/17 granting RTS density variance relief pursuant to N.J.S.A. 40:55D-70d(5) with preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 and Application No. BA-3040-FMS-8/19 granting final major subdivision approval to RTS pursuant to N.J.S.A. 40:55D-50 subject to all terms and conditions set forth in the respective original memorialized resolutions for those matters.

NOW, THEREFORE, BE IT RESOLVED, by the Brick Township Zoning Board of Adjustment on this 21st day of October, 2020, that the action of the Board taken on October 7, 2020 reapproving Application Nos. BA-3040-PMS-D-6/17 granting density variance relief pursuant to N.J.S.A. 40:55D-70d(5) and preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 and Application No. BA-3040-FMS-8/19 granting final major subdivision approval pursuant to N.J.S.A. 40:55D-50 is hereby memorialized subject to the following conditions:

1. The Zoning Board Settlement Agreement is subject to all terms and conditions contained within the Settlement Agreement executed by RTS and JSTAR.

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2. The Parties have conferred and have agreed to settle the above-referenced actions in accordance with the terms and conditions set forth herein.
3. The Zoning Board's reapproval of Application Nos. BA-3040-PMS-D-6/17 and BA-3040-FMS-8/19 is subject to all the terms and conditions set forth in the respective original Resolutions (R-40-19 and R-9-20) for said applications.