

**TOWNSHIP OF MARLBORO
ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
BIFURCATED PRELIMINARY AND FINAL
MAJOR SUBDIVISION APPROVAL**

**Approved: May 28, 2019
Memorialized: July 9, 2019**

MATTER OF: BUCKDALE, LLC

APPLICATION NO.: ZB 18-6683

WHEREAS, an application for bifurcated preliminary and final major subdivision approval has been made to the Marlboro Township Zoning Board of Adjustment (hereinafter referred to as the "Board") by Buckdale, LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 355, Lot 6 (24 School Road East), Lots 7 and 8 (Buckley Road), and Lot 11 (19 South Main Street) as depicted on the Tax Map of the Township of Marlboro (hereinafter "Township"), and more commonly known as 55 Willow Lane in the C-2 (Neighborhood Commercial) Zone; and

WHEREAS, a public hearing was held before the Board on May 28, 2019 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, the following exhibits were marked into evidence:

- A - 1 Application for Hearing
- A - 2 Petition on Appeal

- A - 3 Denial
- A - 4 Indemnification and Hold Harmless Agreement
- A - 5 Disclosure Statement
- A - 6 Tax Collector's Certification
- A - 7 Affidavit of Service
- A - 8 Affirmation of Local Pay to Play Ordinance
- A - 9 Conflict & Contribution Disclosure
- A - 10 Owner's Affidavit of Authorization and Consent
- A - 11 Notice to Adjoining Property Owners
- A - 12 List of Property Owners within 200 feet
- A - 13 Certified White Receipts and Green Cards
- A - 14 Affidavit of Publication
- A - 15 Check List for Bulk & Use variances
- A - 16 W-9
- A - 17 Preliminary & Final Major Subdivision Plan prepared by Carolyn A. Feigin, P.E. dated 3/13/19 dated 3/8/18, consisting of 16 pages
- A - 18 Environmental Impact Report prepared by DW Smith Associates, LLC, dated 12/19/18 consisting of 80 pages
- A - 19 ZB 18-6648 Resolution approved 9/4/18, memorialized 12/11/18 consisting of 11 pages
- A - 21 Review letter prepared by Chris Weltner, Fire Official, dated 5/28/19 consisting of 1 page.
- A - 23 Review letter prepared by Laura Neumann, P.E., P.P., CME Associates, dated 5/17/19 consisting of 14 pages

NOW, THEREFORE, does the Marlboro Township Zoning Board of Adjustment make the following findings of fact and conclusions of law with regard to this application:

1. The subject properties contain 11.3 acres and collectively constitute a corner tract within the C-2 Zone District with road frontages as follows: approximately 100 feet along School Road East, approximately 1,173 feet along Buckley Road to the east, approximately 175 feet along NJ State Highway Route 18 to the south and 316 feet along NJ State Highway Route 79 to the west. The subject property is currently improved with two (2) existing dwellings and associated accessory buildings/structures associated with the residential/agricultural use of the properties. Access is provided via both NJ State Highway Route 79 as well as Buckley Road. A slope and drainage easement, approximately 13 feet wide, is located on-site along the Buckley Road site frontage.

2. The Applicant was previously granted bifurcated use variance relief on December 11, 2018 permitting the removal of all existing site improvements and for the construction of a single-family residential and townhouse development consisting of 26 single-family residential lots and 19 townhome lots. Nine (9) affordable townhouse units were included within the nineteen (19) overall townhouse units. Access was approved via two (2) full-movement drives along the Buckley Road site frontage with interior cul-de-sac roadways. Access was prohibited from School Road East, Route 18 and Route 79. All units were approved with individual driveways and 21 on-street parking spaces were also provided near the proposed townhouse units. Two (2) areas for stormwater management were depicted along the Buckley Road site frontage and perimeter/buffer landscaping was also depicted along the site property lines. Many of the indicated single-family dwelling footprints were depicted with zero setback along a side property line with a 10-foot separation distance between adjoining dwellings.

3. The Applicant has now entered into a Settlement Agreement with the Township dated March 20, 2019. The Settlement Agreement contemplates the subject property being

developed as an inclusionary community which contains a maximum of 45 units, including a 20% set aside for low and moderate income units.

4. The Applicant is now seeking bifurcated preliminary and final major subdivision approval permitting the removal of all existing site improvements and constructing a single-family residential development consisting of 26 single-family residential lots and 19 townhouse lots which are inclusive of 9 low and moderate income affordable townhouse units.

5. Access is proposed via two full movement drives along the Buckley Road site frontage with interior cul-de-sac roadways with access being prohibited from School Road East, Route 18 and Route 79. An emergency access, however, is proposed along Route 79. All units, with the exception of the affordable units, were initially proposed with individual driveways. Twenty-one (21) off-street parking spaces are also provided near the townhouse units. Two proposed lots are proposed for stormwater management and are located along the Buckley Road site frontage. Perimeter buffer landscaping is also proposed along the property lines. Municipal water and sanitary sewer service are proposed to service all units.

6. Counsel for the Applicant, Salvatore Alfieri, Esq., explained that the Applicant had previously received bifurcated use variance relief permitting the proposed development. He further stated that the development was intended to assist the Municipality in satisfying its constitutionally mandated affordable housing obligations. Mr. Alfieri further noted that the Applicant and Township had entered into a Settlement Agreement and that the proposed development was consistent with the Settlement Agreement.

7. The Applicant's engineer, Carolyn Feigin, P.E., stated that the Applicant was proposing to construct an inclusionary development on a tract of land containing 11.3 acres within the C-2 Zone. She noted that the Applicant had previously received bifurcated use variance relief permitting the use. She further stated that the Applicant was proposing to

construct 26 single-family detached homes. Ms. Feigin further testified that each proposed single-family lot would contain at least 4,000 sq. ft. which complied with the terms of the Settlement Agreement. She further stated that the Applicant was proposing 19 townhouse units which would be located within four (4) separate buildings. Ms. Feigin stated that each townhouse building would be on a lot of at least 3,458 sq. ft. which also complied with the lot area requirements of the Settlement Agreement. She explained that 9 of the townhouse units would be deed restricted for low and moderate income housing.

8. Ms. Feigin also testified that the development would be serviced by two entrances located off Buckley Road as well as two cul-de-sacs. The cul-de-sac located off of Route 79 would also have an emergency access.

9. Ms. Feigin further stated that all Residential Site Improvements Standards (RSIS) requirements would be satisfied. This included the use of a 24 ft. wide cartway as well as cul-de-sac bulb. She also noted that all RSIS parking requirements had been satisfied wherein 124 spaces are required, 127 spaces are being provided.

10. In response to questions from the Board, Ms. Feigin stated that all UHAC regulations would be satisfied concerning the bedroom distribution of the affordable housing units. She testified that there would be two one-bedroom units, five two-bedroom units, as well as two three-bedroom units. Ms. Feigin also stipulated that a Developer's Agreement would be executed which would delineate the distribution of low, very low and moderate income unit splits.

11. Ms. Feigin also testified that the following bulk variance relief was necessary:

- a. **Section 220-35C(4)** – No paved terrace or driveway shall be permitted closer than 5 feet to any side or rear property line; lots 6.02, 6.12, 6.13, 7.02, 7.04, 8.02, 8.15 and 8.17 appear to propose driveways within 5 feet of a side property line which should be verified with the Board.

- b. **Section 220-34D(24)(e)** – The maximum grade for laws more than 5 feet from a building shall be 25% (4:1); 33% (3.1) is proposed along the stormwater basins.
- c. **Section 220-95A** – Open fences not to exceed 3 feet in height are permitted within a front yard area; a 4 foot high split rail fence with wire mesh is proposed within front yard areas for the stormwater basin Lot 8.01 and along the retaining wall on Lot 6.01.
- d. **Section 220-97B** - Each off street parking space shall measure not less than 10 feet by 20 feet; 9 feet by 18 feet on-street parking spaces appear proposed.
- e. **Section 220-164** – The light intensity provided at ground level shall be a minimum of 0.3 footcandles anywhere in the areas to be illuminated; lighting levels below 0.3 footcandles are proposed near the center point of the Road B cul-de-sac bulb.
- f. **Section 220-165B** – Side lot lines shall not deviate more than 10 degrees from either the right angle of a straight street or the radial of a curved street; side lot lines between Lots 6.02/6.03, 7.01/7.02, 7.02/7.03, 7.03/7.04, 7.04/7.05, 7.05/7.06, 7.01/7.06, 8.02/8.03 and 8.17/8.18 appear to not comply.
- g. **Section 220-165C** -Each lot must front upon an approved public street at least 50 feet in width; Roads A, B and C to be dedicated as public right-of-way proposed a 40 foot wide right-of-way width.
- h. **Section 220-169A** – Detached single-family dwellings shall have a minimum two-car garage, minimum 400 s.f. and shall provide a minimum 20 foot wide driveway; the proposed single-family dwellings propose an apparent one-car garage with an 18 foot wide driveway.
- i. **Section 220-169H(1)** – Circulation aisle width of 25 feet minimum required along 90 degree parking; a 24 foot wide cart way width is proposed for Road A along the proposed parking areas.

12. Ms. Feigin then testified that the Applicant would comply with all recommendations contained in the technical report issued by the Board Engineer and Planner.

13. In response to further questions, Ms. Feigin testified that the Applicant would work with the Board Planner/Engineer to provide additional buffer area on the proposed cul-de-sac at the Route 79 right-of-way as well as confirm the adequacy of the buffers along the southerly stormwater basins. She further stated that the Applicant would comply with all recommendations contained in the May 28, 2019 report from the Township Fire Bureau. Ms. Feigin also stated that a

traffic report had been submitted to the Applicant which identified the peak hours as being between 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. She stated that less than 60 trips would be generated during the peak hour which was acceptable and could be accommodated in the subject area. She also stated that one lot would be dedicated to the Township as open space which could be used as a tot lot or a sports court.

14. The Applicant's Planner, Christine Cofone, P.P., AICP, testified that the Applicant had previously received bifurcated use variance relief for the subject development. Ms. Cofone stated that she was now testifying in order to confirm that the negative criteria remained satisfied with regard to the request for preliminary and final major subdivision approval. Ms. Cofone testified that the development was essentially identical to what had been contemplated at the time use variance relief had been granted. She noted that some relief appeared necessary due to inconsistencies between the Township's Ordinance and the RSIS. In discussions with the Board, the Applicant then agreed to provide driveways for all units thereby eliminating the need for any dumpsters. The Applicant specifically stated that there would be at least a one-car garage for every unit. Ms. Cofone further reiterated that the subject development was intended to be consistent with the Settlement Agreement with the Township and to provide units and credits towards the Township's affordable housing obligations.

15. There were no members of the public expressing an interest in this application.

16. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Marlboro Township Zoning Board of Adjustment, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and

having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Marlboro; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant may be granted bifurcated preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 and final major subdivision approval pursuant to N.J.S.A. 40:55D-50.

The Board recognizes that bifurcated use variance relief was previously granted on this site which found the subject parcels to be particularly suitable for the proposed inclusionary development. The Board is also aware that this development is now proceeding pursuant to a Settlement Agreement with the Township and is intended to help the municipality satisfy its constitutionally mandated affordable housing obligations.

The Municipal Land Use Law provides that a developer may elect to submit a separate application requesting variance relief and that a subsequent application for any required approval of a subdivision, site plan or conditional use may subsequently be filed. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Board of Adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance N.J.S.A. 40:55D-76b. An Applicant is therefore essentially required to reprove the negative criteria in a bifurcated application.

The Board finds that the Applicant has proposed a preliminary and final major subdivision which complies with the requirements of the Settlement Agreement which has been executed with the Township. The Board further finds that the proposed preliminary and final major subdivision is essentially consistent with the concept which was provided at the time of the grant of bifurcated use variance relief. The Board further acknowledges that the Applicant

has agreed to provide a driveway and at least a one-car garage for all units thereby eliminating any potential stigma associated with the affordable housing units. This has also eliminated the need for a dumpster on the subject property. The Board finds that the proposed use continues to satisfy the negative criteria and that there is no substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The Board once again recognizes that the subject site is being developed pursuant to the terms of the Settlement Agreement and is necessary for the Township to comply with the constitutionally mandated affordable housing requirements which have been imposed by the New Jersey Supreme Court in the Mt. Laurel Doctrine.

The Board further finds that all bulk variances are subsumed within the granting of bifurcated preliminary and final major subdivision approval. Puleio v. North Brunswick Zoning Board, 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005).

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Marlboro on this 9th day of July 2019, that the action of the Board taken on May 28, 2019, granting Application No. ZB 18-6648 of Buckdale, LLC bifurcated preliminary major subdivision approval pursuant to N.J.S.A. 40:55D-48 with final major subdivision approval pursuant to N.J.S.A. 40:55D-50 is hereby memorialized as follows:


The application is granted subject to the following conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application which are to be revised based on the Board's determination as follows:
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the reports of the Board's professionals.

3. The Applicant shall execute a Developers Agreement with the Township which delineates the required low, very low and moderate income splits of the affordable housing units.
4. The proposed lighting shall comply with all Ordinance requirements.
5. The Applicant shall comply with all RSIS requirements.
6. All units shall have a driveway and at least a one-car garage.
7. There shall be no dumpsters located on site.
8. The Applicant shall work with the Board Engineer/Planner to provide additional buffer area along the proposed cul-de-sac at the Route 79 right-of-way.
9. The Applicant shall work the Board Engineer/Planner to confirm the adequacy of any existing buffer areas including those along the southerly stormwater basin.
10. The Applicant shall comply with all recommendations contained in the May 28, 2019 Fire Bureau Report.
11. The Applicant shall dedicate a lot to the Township for recreational use which may include a tot lot or sports court.
12. All conditions of the prior bifurcated use variance approval remain in full force except as may be modified herein.
13. The Applicant shall comply with the Map Filing Law.
14. The Applicant shall provide a certificate that taxes are paid to date of approval.
15. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
16. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Marlboro, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the

Applicant' expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Michael Shapiro, Chairman
Marlboro Township Zoning Board of Adjustment

ON MOTION OF: Michael Shapiro, Chairman

SECONDED BY: Mr. Solon

ROLL CALL: Mr. Solon, Mr. Viridi, Mr. Zwerin, Mr. Weilheimer, Chairman Shapiro,
Mr. Powers, & Mr. Yozzo

YES: (5) Mr. Solon, Mr. Weilheimer, Chairman Shapiro, Ms. DiGrande, &
Mr. Powers

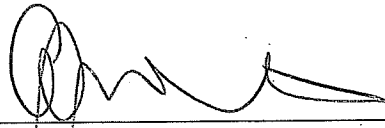
NO: (0)

ABSTAINED: (0)

ABSENT: (3) Mr. Viridi, Mr. Zwerin, & Mr. Yozzo

DATED: May 28, 2019

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Marlboro Township Zoning Board of Adjustment, Monmouth County, New Jersey, at a public meeting held on June 25, 2019.



Alan Zwerin, Secretary
Marlboro Township Zoning Board of Adjustment