

EDISON TOWNSHIP ZONING BOARD OF ADJUSTMENT

RESOLUTION

CASE NUMBER Z13-2021

July 26, 2022

WHEREAS, MARKIM DEVELOPERS, LLC (the “Applicant”), whose address is 910 Amboy Avenue, Edison, New Jersey 08830, has made application to the Zoning Board of Adjustment of the Township of Edison (the “Board”) for a use variance, a floor area ratio (“FAR”) variance, bulk variances and preliminary and final site plan approval to construct a multi-family residential development on premises known as 222 Plainfield Road and shown on the Edison Township Tax Maps as Block 557, Lot 16.22, formerly Lot 16-B-2 (the “Application”); and

WHEREAS, the Applicant initially submitted an application for approval of 23 three-bedroom multi-family townhouse-style units, without an age restriction, with the units located in 4 buildings, containing between 4 and 7 units each, which buildings were up to 140 feet in length, and had a height of 3 stories and 35’10”; and

WHEREAS, In November 2021, the Applicant submitted revised plans and amended the Application, to include age-restricting the residential units and reducing the height of the buildings to 33’10;” and

WHEREAS, the Applicant, in April 2022, submitted further revised plans and amended the Application to provide for eight (8) two-story duplex buildings, at a height of 32.92 feet, containing a total of sixteen (16) two-bedroom age-restricted residential units; and

WHEREAS, the Applicant requested variances from the Township Zoning Ordinances (“Ordinance”) as follows: a) A use variance from Ordinance §37-46.2 to permit multi-family residential use in the G-C Zone, in which the only permitted use is a golf course contained within a country club; b) A bulk variance from Ordinance §§37-46.5, 37-63 and Attachment 1 thereto,

with regard to minimum lot area whereas the minimum lot area required at the time of the filing of the Application was 100 acres and the proposed and existing lot size is 2.016 acres; c) A bulk variance from Ordinance §§37-46.5, 37-63 and Attachment 1 thereto, whereas the lot depth required is 500 feet and proposed is 266.0 feet and which is existing; d) A bulk variance from Ordinance §§37-46.5, 37-63 and Attachment 1 thereto, whereas the minimum rear yard setback of 60 feet is required and proposed are a rear yard setback of 23.7 feet for one of the duplex buildings that abuts the golf course and to setbacks of 17.7 feet for two other duplex buildings that abut the golf course; e) A bulk variance from Ordinance §§37-46.5, 37-63 and Attachment 1 thereto, whereas required maximum lot coverage by building is 5% and proposed is 22.3%; f) A variance from Ordinance §§37-46.5, 37-63 and Attachment 1 thereto whereas the maximum permitted FAR is 0.05 for the G-C District and proposed is 0.48 for the plans presented on June 28, 2022 with an expected further reduction of the proposed FAR based upon the Applicant's agreement to eliminate one of the duplex buildings resulting in a reduction from 16 to 14 units; g) A variance from Ordinance §37-46.1 et seq., to the extent required, with regard to maximum permitted residential density as residential uses are not permitted in the G-C Zone; and h) A bulk variance from Ordinance §37-46.7, with regard to signage necessary to identify the development.

WHEREAS, public hearings were held on June 29, 2021, February 15, 2022 and June 28, 2022, at which time the Applicant presented its application and the public was provided an opportunity to be heard; and

WHEREAS, the Applicant did properly publish newspaper notices of all three hearings and notified property owners within 200 feet of the subject property of such hearing dates, pursuant to N.J.S.A. 40:55D-12 of the Municipal Land Use Law ("MLUL"); and

WHEREAS, at the June 28, 2022 public hearing, the Board considered the Applicant's further amended application for the sixteen (16) two-bedroom age-restricted residential units in eight (8) two-story duplex buildings; and

WHEREAS, at the conclusion of the June 28, 2022 public hearing, the Board unanimously voted to approve the application, subject to conditions that include the elimination of one of the eight duplex buildings and the reduction in the total number of units to fourteen units; and

WHEREAS, the Board, after reviewing the evidence presented by the Applicant, including testimony and exhibits, and having heard both lay and expert testimony exhibits presented by the interested public, hereby makes the following findings of fact and conclusions:

FINDINGS AND CONCLUSIONS AT THE HEARINGS OF

JUNE 29, 2021, FEBRUARY 15, 2022 and JUNE 28, 2022

1. This application involves property located at 222 Plainfield Road and designated as Block 557, Lot 16.22, formerly Lot 16-B-2 (the "Property"). The Property contains 2.016 acres, and is located within the G-C Golf Course - Natural Preservation Zone. The Applicant is the Contract Purchaser of the Property.

2. The Applicant was represented by Steven J. Tripp, Esq. of the law firm of Wilentz, Goldman & Spitzer P.A.

3. The Applicant submitted plans and supporting documents in connection with the latest revisions of the Application as follows:

a. Floor Plans as prepared by Roger C. Winkle, AIA and dated April 26, 2022 consisting of A1 to A3; and

- b. Preliminary and Final Site Plan as prepared by Matthew R. Wilder, P.E. dated April 14, 2021 and last revised on April 11, 2022 consisting of 9 sheets; and
- c. A Traffic Impact Statement from Elizabeth Dolan, P.E. of Dean & Dolan Consulting Engineers, LLC and last revised May 17, 2022; and
- d. A letter from Elizabeth Dolan, P.E. of Dean and Dolan Consulting Engineers, LLC dated June 8, 2022 as to trip generation; and
- e. Memorandum of Fiscal Impact from Paul Phillips, PP, AICP of Phillips Preiss Planning and Real Estate Consultants dated April 20, 2022; and
- f. Freehold Soil Conservation District Certification Letter dated September 1, 2021; and
- g. DEP-5G3 Authorization to Discharge Construction Activity Stormwater(GP) dated September 30, 2021; and
- h. Facility Extension Plan prepared by Middlesex Water Company dated September 15, 2021; and
- i. DEP Treatment Works Approval dated January 27, 2022; and
- j. Soil Log, prepared by WSB Engineering Group, P.A; and
- k. Engineers Cost Estimate prepared by WSB Engineering Group, P.A.; and
- l. Color Renderings.

Applicant also submitted an application with attachments and amended applications prior to the last revision related to the amended application. The Board also reviewed all such prior submissions in relation to the first two hearing dates and as referenced hereto as Attachment #1.

4. During the course of the hearings, the Applicant introduced and presented the following exhibits:

- a. A1 - Google aerial map; and
- b. A2 - Colorized landscape plan (sheet 2 of 10), prepared by Morgan Engineering; and
- c. A3 - Architectural rendering (angle from the south corner of the property); and
- d. A4 - Architectural rendering with sunset view (angle towards the north of the property); and
- e. A5 - Architectural rendering (front elevation view); and
- f. A6 - Architectural rendering (rear elevation view); and
- g. A7 - Aerial of subject site, prepared by Phillips Preiss Grygiel Leheny Hughes LLC, dated June 2021; and
- h. A8 – Colorized Rendering from Morgan Engineering dated December 13, 2021; and
- i. A9 – four photo renderings of the proposed structures.

5. Members of the public, who appeared in opposition to the Application on February 15, 2022 and June 28, 2022, introduced and presented exhibits as follows:

- a. O1 on 2/15/22: Planning Evaluation from Peter Steck, P.P. dated February 15, 2022;
- b. O2 on 2/15/22: Traffic Impact Analysis from Kenneth Hausman, P.E. dated September 13, 2021;
- c. O3 on 2/15/22: Photographs of a backyard provided by Amit Patel.;

- d. O1 on 6/28/22: Figure 2 on Page 6 of the Traffic Analysis by Kenneth J. Hausman, PE dated June 28, 2022;
 - e. O2 on 6/28/22: Figure 3 on Page 7 of the Traffic Impact Analysis by Kenneth J. Hausman, PE dated June 28, 2022;
 - f. O3 on 6/28/22: Deed of Easement dated July 7, 1989;
 - g. O4 on 6/28/22: Deed of Easement dated October 28, 2022;
 - h. O5 on 6/28/22: Google Map of the Property site;
 - i. O6 on 6/28/22: Aerial of Kaczmar Court.
6. The Board also considered reports issued by its consultants and experts as follows:
- a. Memorandum of Review by Hank Bignell, PP, last revised date of June 10, 2022;
- and
- b. Memorandum of Review by Charles, Carley, PE, PP and CME, last revised on May 20, 2022.
- 7 The Board also had the benefit of the Township Departments as follows:
- a. Letter of Office Michael Winters dated June 3, 2022;
 - b. Letter of Chief Brian Latham dated May 4, 2022; and
 - c. Letter from Director Jay Elliot of the Department of Health and Human Services dated May 6, 2022.
8. During the course of the public hearings, the Applicant presented the testimony of Mark Roshanski, a principal of the Applicant; Frank Baer, PE and Matthew Wilder, PE, licensed professional engineers; Betsy Dolan, PE, a licensed traffic engineer; and Paul Phillips, PP, a licensed professional planner.

9. During the public hearings, members of the public who objected to the Application provided testimony and asked questions, and also presented the testimony of Kenneth Hausman, PE, a licensed traffic engineer and Peter Steck, PP, a licensed professional planner.

10. Pursuant to §37-46.2 of the Edison Township Zoning Ordinance, the only permitted use in the G-C Zone is a “golf course” contained within a “country club” as defined in that section. The minimum required lot area for the G-C Zone was 100 acres at the time the Application was filed and subsequently was increased to 115 acres by Zoning Ordinance Amendment adopted by the Edison Township Council. Pursuant to the “time of application” rule set forth in N.J.S.A. 40:55D-10.5, the subsequent requirement of 115 acres is not applicable to the consideration of this Application.

11. The Property is the site of a former Charlie Brown’s restaurant; the existing building that previously housed the restaurant is now vacant.

12. The Property is located on Plainfield Road (Middlesex County Route 531), which runs along the western property line. Adjacent to the north are the country club facilities of the Metuchen Country Club, including a clubhouse, pool and associated outdoor recreation area. Adjacent to the east is the Metuchen Country Club golf course. Adjacent to the south are 3 single-family homes, with frontage on Edgewood Road, located within the R-B Residential Zone.

13. The plans presented by the Applicant at the June 29, 2021 public hearing proposed 23 multi-family townhouse-style three-bedroom units in 4 buildings. Pursuant to the testimony of Mr. Baer and Mr. Roshanski, and as shown on the submitted plans, one building contained 4 units, two buildings contained 6 units and one building contained 7 units. The length

of the buildings ranged from approximately 80 feet to 140 feet. The buildings were 3-stories and 35'10" in height. Variances were required to permit a multi-family residential use in the G-C Zone, and also were required with regard to minimum lot area, minimum lot depth, minimum rear yard setback, maximum percentage of lot coverage by building, maximum building height in number of stories and in feet, and maximum FAR.

14. At the February 15, 2022 public hearing, the Applicant presented its first set of revised plans, the most significant change of which was to age-restrict the proposed three-bedroom townhouse units, so that at least one resident of all units would be 55 years of age and older. The plans also included revisions to landscaping, access and the architecture of the buildings, including height. The variances sought for these plans were similar to those sought for the plans presented at the June 29, 2021 public hearing, except that a variance for height in feet was no longer required.

15. The plans presented by the Applicant and considered by the Board at the June 28, 2022 public hearing contained significant revisions from the prior plans, and proposed lower density residential development, comprised of sixteen (16) age-restricted two-bedroom residential units in eight (8) two-story duplex buildings, each having a width of approximately 47 feet.

16. The plans presented to the Board on June 28, 2022 constituted a reduction in density of 30% over the prior 23-unit plan and included 32 total bedrooms, less than half of the 69 total bedrooms previously proposed.

17. During the June 28, 2022 public hearing, at the request of the Board, the Applicant agreed to reduce the number of units to 14, with the elimination of the duplex building in the southeast corner of the site adjacent to Block 557.B, Lot 16-B-1.

18. Pursuant to the architectural plans submitted with the Application, each unit will contain an unfinished basement; a first floor with a dining room, kitchen, dinette and family room; a second floor with 2 bedrooms and 2 bathrooms; and an attic level with an office. Based on the square footage of the attic level, it constitutes a “habitable attic” pursuant to §37-3.1 of the Edison Township Zoning Ordinance, and therefore, does not constitute a story. At the public hearing, the Applicant stipulated that the attic space would not be used as a bedroom. Each unit will have an elevator that will run from the basement level to the attic level.

19. The Applicant is providing parking as follows: Each of the 14 units will have an attached single-car garage and an adjacent single-car driveway, constituting two spaces per unit for a total of 28 spaces. The plans also include two (2) eight-space parking lots. The total number of parking spaces provided is 44. The New Jersey Residential Site Improvement Standards (RSIS) require 1.5 parking spaces for each 2-bedroom unit, for a total of 21 required spaces. The 44 spaces provided by the Applicant is more than twice the RSIS standard.

20. The Applicant has proposed a screening wall along Plainfield Road with one identification sign at the driveway entrance. The G-C Zone contains no standards for signage. The Applicant’s proposed sign is 24.5 square feet and complies with all bulk requirements for signs identifying residential developments in the Township’s residential zones.

21. Pursuant to the testimony of Mr. Wilder and Mr. Phillips, the plans presented to the Board at the June 28, 2022 public hearing required the following variances:

a) A use variance pursuant to N.J.S.A. 40:55D-70d(1) of the MLUL, from §37-46.2 to permit multi-family residential use in the G-C Zone, in which the only permitted use is a golf course contained within a country club.

b) A bulk variance pursuant to N.J.S.A. 40:55D-70c of the MLUL, from §§37-46.5, 37-63 and Attachment 1 thereto, with regard to minimum lot area. At the time the Application was filed, the required minimum lot area was 100 acres; pursuant to the “Time of Application Rule,” the 100-acre requirement applies to this application. Based on the testimony of Mr. Baer and Mr. Wilder, the existing lot size is 2.016 acres.

c) A bulk variance pursuant to N.J.S.A. 40:55D-70c of the MLUL, from §§37-46.5, 37-63 and Attachment 1 thereto, with regard to minimum required lot depth. A lot depth of 500 feet is required, and 266.0 feet is existing.

d) A bulk variance pursuant to N.J.S.A. 40:55D-70c of the MLUL, from §§37-46.5, 37-63 and Attachment 1 thereto, with regard to minimum rear yard setback of 60 feet. Variances are required to permit a rear yard setback of 23.7 feet for one of the duplex buildings that abuts the golf course, and to permit setbacks of 17.7 feet for two other duplex buildings that abut the golf course. The Applicant also sought a variance to permit a rear yard setback of 32 feet for the duplex building in the southeast corner of the Property. Since the Applicant agreed to a condition eliminating this building, that variance no longer is required.

e) A bulk variance pursuant to N.J.S.A. 40:55D-70c of the MLUL, from §§37-46.5, 37-63 and Attachment 1 thereto, with regard to the maximum lot coverage by building of 5%. Lot coverage of 22.3% is proposed.

f) A variance pursuant to N.J.S.A. 40:55D-70d(4) of the MLUL, from §§37-46.5, 37-63 and Attachment 1 thereto, with regard to maximum permitted FAR, which is 0.05 for the G-C District. The Applicant is proposing FAR of 0.48 for the plans presented on June 28, 2022. This proposed FAR is lower than the FAR of 0.66 for the 23 units proposed in the prior plans,

and will be reduced further based on the elimination of one of the duplex buildings and the reduction in the number of units from 16 to 14.

g) A variance pursuant to N.J.S.A. 40:55D-70d(5) of the MLUL, from §37-46.1 et seq., to the extent required, with regard to maximum permitted residential density, because residential uses are not permitted in the G-C Zone.

h) A bulk variance, pursuant to N.J.S.A. 40:55D-70c of the MLUL, from §37-46.7, with regard to signage.

22. During the public hearings, both Mr. Baer and Mr. Wilder testified as to the different plans presented by the Applicant as the development proposal evolved. As to stormwater, Mr. Wilder testified that the Applicant is significantly reducing the amount of impervious surfaces onsite by about 20%. The amount of stormwater runoff from the Property will be decreased and the amount of groundwater recharge will be increased. Mr. Wilder also confirmed that the Applicant will comply with any outstanding review comments of the Board's consulting engineer regarding stormwater.

23. As to landscaping and tree removal and replacement, Mr. Wilder indicated that the Applicant will agree to comply with the recommendations of the Board's consulting Planner, including minimum shrub height and provision of an irrigation system. Mr. Wilder also indicated that the Applicant will increase the caliper of some of the proposed trees to address the proposed deficiency, which would either reduce or eliminate the requirement of a contribution to the tree fund.

24. The Applicant presented the testimony of Elizabeth Dolan, PE, at each of the three public hearings. Ms. Dolan initially addressed the Applicant's proposal for 23 non-age restricted units, and then subsequently addressed the proposed 23 age-restricted units. Prior to

the June 28, 2022 public hearing, Ms. Dolan submitted a revised Traffic Impact Analysis, dated April 15, 2022, a subsequently revised analysis, dated May 17, 2022, and a supplemental analysis, by letter dated June 8, 2022. Ms. Dolan then testified extensively at the June 28, 2022 public hearing. Ms. Dolan testified that, pursuant to the Institute of Traffic Engineers (“ITE”) data, peak hour trip generation would be a total of 4 trips during the morning peak hour and 4 trips during the evening peak hour on a typical weekday, inclusive of entering and exiting traffic. Ms. Dolan also testified that she took traffic counts at 2 multi-family non-age restricted developments in Edison - - a 24 unit townhouse development on Oak Tree Road and an 8 unit townhouse development on Harding Avenue. Adjusting the Oak Tree Road numbers for the 16 proposed units would yield a total of 9 morning peak hour trips and 11 evening peak hour trips. Adjusting the Harding Avenue numbers would yield morning peak hour trips of 10 and evening peak hour trips of 6. Ms. Dolan indicated that the trip generation for the Applicant’s proposed age-restricted development of sixteen (16) units would be less than Harding or Oak Tree. Even assuming, however, trip generation based on the Oak Tree and Harding counts, the peak hour trip generation is of a very low magnitude and would not have any adverse impact on the adjoining road network, particularly Plainfield Road. Ms. Dolan also noted that the County had reviewed her reports as well, and concluded that, because the trip generation is so low, there was no need for any type of roadway improvements.

25. Ms. Dolan also looked at the anticipated trip generation based on ITE data for 6 or 8 single-family homes on the Property. For 8 single-family homes, there were 7 morning peak hour trips and 9 evening peak hour trips. For 6 single-family homes, there were 6 morning peak hour trips and 7 evening peak hour trips. Ms. Dolan concluded that the peak hour trip generation

for 6 or 8 single-family homes would be comparable to the peak hour trip generation for the Applicant's proposed 16 age-restricted units.

26. Paul Phillips, PP, testified at each of the three public hearings as to the statutory criteria for the grant of the variances necessary for each of the presented plans.

27. Mr. Phillips initially testified, at the June 29, 2021 public hearing, that he had been engaged by the Applicant while the plans were being developed and participated in the iteration of the plans. He indicated that he was engaged to analyze the variance relief required by the Application, and that in that regard, he inspected the Property; surveyed the adjacent area and land uses; reviewed the Township Zoning Ordinance and Zoning Map; and reviewed the Master Plan documentation and the Board's professional reports.

28. Mr. Phillips indicated that the Property constitutes a very unique situation, in that it is a 2-acre tract not part of the adjacent Metuchen Country Club, but located within the G-C Zone. Since the G-C zoning permits only golf courses on a minimum 100-acre lot (later increased to 115-acre minimum lot), the Property has been placed, from a zoning standpoint, into inutility.

29. Mr. Phillips testified extensively as to the Property's particular physical and locational characteristics. He noted that the Property is surrounded by an arterial roadway on one side; country club facilities and a golf course on two other sides; and the rear or side yards of no more than 2 or 3 single-family homes on Edgewood Road along the other property line. He also noted the Property's relatively shallow depth.

30. Mr. Phillips testified that the Property is particularly well-suited for the proposed residential development, which takes into consideration not only the Property's physical and locational characteristics, but also local demographics as well as market trends. Mr. Phillips

emphasized the location adjacent to the country club recreational facilities and the golf course, and that the Property shares a common lot boundary with no more than 2 or 3 single-family homes on Edgewood Road. These factors make the Property particularly well-suited for a small, self-contained multi-family development.

31. Mr. Phillips testified that the proposed development promotes the following purposes of the MLUL:

- a - - Guiding development in a manner that promotes the public welfare.

- e - - Promoting establishment of appropriate population concentrations.

- g - - Providing sufficient space for a variety of uses.

- i - - Promoting a desirable visual environment.

- l - - Encouraging senior citizen housing.

32. Mr. Phillips focused on the benefits associated with the proposed age-restricted units. He noted the changing demographics in Edison that are creating a growing demand for this type of housing. Mr. Phillips noted that based on the latest census information, adults aged 55 and older account for about 28% of Edison's population, and that segment of the population increased by 20% since 2010. Mr. Phillips also pointed to the very limited availability of market rate senior product in Edison, which consists mostly of rental projects. Mr. Phillips noted that the Township's Master Plan supports this provision of senior and active-adult housing. The 2003 Master Plan encourages the development of creative senior citizen housing options, including active-adult market rate housing to accommodate an aging population. The Master Plan also recommends amending the Zoning Ordinance, where appropriate, to permit as-of-right, a variety of senior citizen housing options. Mr. Phillips testified that although this project does not rise to the level of being an inherently beneficial use, it certainly is in the public interest to

provide this housing type within the community where appropriate, given the demographics and the policy directives of the Master Plan.

33. Mr. Phillips also addressed the positive criteria for the grant of the other variances associated with this Application. As to the FAR variance, Mr. Phillips noted that the 0.05 standard presumes a golf course use on a 100-acre tract, and is unrealistic in the context of an isolated 2-acre tract. Mr. Phillips also testified that FAR is a more appropriate tool for regulating the intensity of commercial uses, while density is a better standard for regulating the intensity of residential uses. With regard to density, Mr. Phillips noted that the zones in which townhouses are permitted allow a density of between 8 and 15 units per acre. The proposed 16 units constitutes a density of just under 8 units per acre. (The elimination of one of the duplex buildings further reduces the density to 7 units per acre.) Mr. Phillips further indicated that the standard of proof for an FAR or density variance is that the site can function properly and overcome any problems that might occur with a density or FAR in excess of the standard. He testified that the Applicant has met the burden, given the fact that the G-C Zone standard is meant for low intensity use on 100 acres and the proposed density is lower than what the Township permits for townhouses in other zones. Mr. Phillips, at the June 28, 2022 public hearing, noted that the FAR had been reduced from 0.66 for the 23 townhouse units to 0.48 for the 16 duplex units. (The FAR will be further reduced as a result of the elimination of one of the duplex buildings.)

34. At the June 28, 2022 public hearing, Mr. Phillips specifically addressed the Board's Planning consultant's reference to a density variance, which would be required because the Property is not zoned for a residential use. Mr. Phillips noted that based on the densities permitted in the townhouse zones of between 8 and 15 units per acre, the proposed development

is well within that standard. Therefore, if a density variance technically is required, it can be granted on that basis.

35. As to the bulk variances required pursuant to N.J.S.A. 40:55D-70c, Mr. Phillips testified that they are largely subsumed within the use variance sought by the Applicant. He noted that the G-C bulk standards are unduly restrictive as applied to a 2-acre site. With regard to lot coverage, the 22.3% proposed is in the middle of the lot coverage permitted for townhouses in other zones, which is between 20% and 25%. As to lot area and lot depth, the standards for the G-C Zone contemplate a 100-acre golf course site, and the Property's deficiencies are existing.

36. As to the variances from the rear yard setback requirement of 60 feet, Mr. Phillips noted that the requested variances were for three (3) buildings that back up to the open space lands of the golf course, and that the deviation allows the Applicant to place the homes as far back from Plainfield Road as possible. Mr. Phillips also noted that the one other deficient rear yard setback was to an undeveloped lot. (It should be noted that the rear yard setback variance for that building is no longer necessary, as the building will be eliminated as a condition of the approval.)

37. As to signage, Mr. Phillips noted that there are no sign standards for the G-C Zone. The 24.5 foot identification sign proposed for the screening wall on Plainfield Road complies with all requirements for a development sign within residential zones. Within this context, the proposed sign is more than reasonable and the Board has a legitimate basis to grant a variance.

38. Mr. Phillips addressed the negative criteria of N.J.S.A. 40:55D-70d and N.J.S.A. 40:55D-70c, which require the Applicant to demonstrate that the grant of the variances will not

result in substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.,

39. As to no substantial detriment to the public good, Mr. Phillips indicated the following. First, the proposed age-restricted two-story duplex units are compatible with the adjacent country club facilities golf course and the three single-family residential units on Edgewood Road that back up to the Property. Second, Mr. Phillips indicated that the proposed use was more compatible with the surrounding land uses than any commercial use or the historic restaurant use, which can be intensive and have long hours of operation. Third, Mr. Phillips also noted that, as addressed by Ms. Dolan, the proposed development is quite benign from a traffic standpoint. Fourth, Mr. Phillips additionally pointed out that there are multiple examples within the Township of single-family and multi-family uses being located side by side.

40. Mr. Phillips also testified that the grant of the use variance, FAR variance and the associated bulk variances, would not result in any substantial impairment to the intent and purpose of the zone plan and zoning ordinance. Mr. Phillips noted that the Master Plan designates the Property for commercial use, but this designation has never been acted upon by the governing body. Mr. Phillips opined that since the Property was historically an isolated commercial property, the Master Plan designation merely reflected that condition over the years. Another likely reason the Property was not rezoned commercial is the fact that there are no other adjacent commercial properties or zones in this area, and therefore it made little sense to spot zone the Property for commercial use. Mr. Phillips also noted that circumstances have changed since the last Master Plan, in that the Charlie Brown's restaurant is no longer in existence and no other restaurant or business entity has sought to occupy the site. Based on these particular circumstances and the governing body's inaction regarding the Master Plan designation, Mr.

Phillips concluded that the Applicant had met the enhanced burden of proof required by Medici v. BPR Co.

41. At the June 28, 2022 public hearing, Mr. Phillips specifically addressed the contentions of the members of the public who objected to the Application, and the opposing professional planner, Mr. Peter Steck, that the Property was better suited for single-family housing than multi-family housing. Mr. Phillips testified at length as to why the Property is much more suited for the proposed age-restricted duplex housing, which allows for flexibility in terms of layout and design, and which responds to four factors. First, the Property is located along an arterial roadway, and all things being equal, having single-family lots fronting on that roadway should be avoided. Mr. Phillips indicated that although single-family residential uses exist on Plainfield Road, those uses are historical and should be avoided in terms of any infill residential development. Second, Mr. Phillips noted that the Property abuts active country club facilities, including a pool and clubhouse, and it is not ideal to have larger single-family homes back up to such facilities. Third, Mr. Phillips noted that there are a very limited number of single-family residential lots sharing a common lot line, namely the few homes on Edgewood Road. Overall, the lot boundaries for the property are largely contiguous to either the country club facilities, the golf course or Plainfield Road. Fourth, Mr. Phillips noted the shallowness of the 2-acre lot, which has greater frontage on Plainfield Road than it has depth. Mr. Phillips noted that any cul-de-sac for single-family homes would be short, and that even the rearmost lots would be exposed to some extent to Plainfield Road. He noted that the other cul-de-sacs in the area have a greater depth and provide greater separation for the homes from Plainfield Road. He concluded that a small attached housing development, such as that proposed by the Applicant, is

a much better fit for this particular tract of land. He also noted that the proposed residential units will generate an equivalent population to 6 or 8 single-family homes.

42. During the public portion of the hearings, numerous residents, both within and beyond 200 feet of the Property, appeared to object to the Application, and testified and questioned the Applicant, the Applicant's expert witnesses and the Board's consultants. Several residents also presented the testimony of a licensed professional planner and a licensed engineer who testified as a traffic consultant. Issues raised included the impact of traffic generated by the proposed development on neighboring intersections and streets, including Plainfield Road, and the compatibility with and impact on existing single-family residential development. Objectors argued that the Board in essence would be setting a precedent for additional multi-family development that is inconsistent with their expectation that only single-family residences would be appropriate. Other objectors indicated that a restaurant should continue to occupy the site.

43. At the February 15, 2022 public hearing, several of the objectors presented the testimony of Peter Steck, PP, a licensed Professional Planner. Mr. Steck disagreed with Mr. Phillips' testimony, and indicated his opinion that the criteria for the grant of the variances had not been satisfied. Mr. Steck denied that the Property had been zoned into inutility, but then conceded that, based on the G-C zoning, the only use that could occupy the site without a use variance is the non-conforming restaurant use. Mr. Steck also contended that the Property was better suited for a single-family residential development, although he acknowledged that a use variance would be required for such development.

44. At the February 15, 2022 and June 28, 2022 public hearings, several objectors presented the testimony of Kenneth Hausman, PE, a licensed Professional Engineer, who addressed the issue of traffic. Mr. Hausman, at the February 15, 2022 hearing, questioned the

adequacy of Ms. Dolan's report and testimony. Subsequent to that hearing, Ms. Dolan submitted updated traffic impact analyses, dated April 15, 2022 and May 17, 2022, and a supplemental letter report, dated June 8, 2022. At the June 28, 2022 hearing, Mr. Hausman again questioned Ms. Dolan's conclusions, but conceded that he had not reviewed the data contained in the May 17, 2022 or June 8, 2022 reports, and also refused to comment on Ms. Dolan's testimony earlier that evening. Mr. Hausman also testified that the existing conditions on Plainfield Road are unsatisfactory, but conceded that any use of the Property will generate additional traffic.

45. During the course of the hearings, the Applicant addressed, to the Board's satisfaction, the concerns raised by the objectors and the testimony of the objectors' witnesses.

46. The Applicant agreed to comply with all outstanding plan review comments in the reports of the Board's Engineer and Professional Planner, as well as the other reports issued by the various Edison Township municipal departments.

47. The Applicant also agreed to comply with all conditions requested by the Board, including the elimination of the southeast duplex building and, subject to its legality, an agreement that anyone living in one of the units with a resident 55 years of age and older must be at least 19 years of age.

48. The plans presented to the Board at the June 28, 2022 public hearing constituted a substantial reduction in the density of approximately 30%, and a reduction of more than 50% in the number of proposed bedrooms over the prior plans. The proposed duplex units were of a significantly smaller scale and size than the previously proposed townhouse units, and will have less of a visual impact.

NOW, THEREFORE, based on the foregoing Findings of Fact, the Board Hereby makes the following ultimate findings and conclusions:

1. The Applicant has satisfied the positive criteria for the grant of the use variance by demonstrating special reasons, specifically showing that the Property is particularly suited for the proposed multi-family use, based on the extensive of the Applicant's expert witnesses, particularly that of Paul Phillips, PP, as set forth at length in the Findings of Fact. In this regard, the Board specifically finds that the Property, an isolated 2-acre lot, with a vacant restaurant building, has been zoned into inutility due to its location within the G-C Zone, in which a golf course located within a country club on a minimum 115-acre lot is the only permitted use. As to particular site suitability, the Board relies on, among other things, the physical and locational characteristics of the Property and the compatibility of the proposed age-restricted multi-family development in duplex units with surrounding land uses. The Board specifically finds that the site is better suited for the proposed development, subject to the conditions imposed by the Board, than single-family residential development. Again, these conclusions are based on the testimony, particularly that of Mr. Phillips, set forth at length in the Findings of Fact.
2. The Applicant has satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70d(3) and (4), with regard to FAR and, if necessary, permitted residential density, by showing that the site can accommodate the proposed FAR and density, for reasons set forth in the Findings of Fact, including the following: the FAR of 0.05 presumes a golf course on at least 100 acres and this is an isolated 2-acre site and the density of just under 7 units per acre, based on the 14 approved units on 2.016 acres, is less than the range of 8 to 15 units per acre for townhouses located in other zones within the Township.

3. The bulk variances as to lot area, lot depth, rear yard setback, maximum lot coverage by building and signage, are subsumed within the grant of the use variance, and in any event, satisfy the criteria of N.J.S.A. 40:55D-70c(2), because the grant of the variances advances the purposes of the MLUL and the benefits substantially outweigh any possible detriments. This conclusion is based on the extensive testimony of the Applicant's expert witnesses as set forth at length in the Findings of Fact.
4. The Applicant satisfied the negative criteria of N.J.S.A. 40:55D-70 by demonstrating that the grant of all the requested variances would result in no substantial detriment to the public good and no substantial impairment to the intent and purpose of the Zone Plan and Zoning Ordinance, for the reasons set forth at length in the Findings of Fact, including the compatibility of the proposed residential use with the surrounding land uses, the fact that the proposed residential use will have less of an impact than possible commercial uses, and will not have any appreciable impact beyond that of a single-family residential development; that the Property is an isolated lot within the G-C District and cannot be developed without the grant of a d variance and multiple bulk variances; and that the purposes of the Master Plan to promote active-adult and senior housing are advanced.
5. The site plan is well designed and complies with the requirements of the Edison Township Ordinances for site plan approval, as well as the requirements of the Residential Site Improvement Standards ("RSIS").

NOW, THEREFORE, BE IT RESOLVED that the application for preliminary and final site plan approval, and variances as to use, FAR, density and bulk requirements, as more specifically set forth herein, are hereby granted, subject to the following terms and conditions:

1. All conditions contained in this Resolution and on the record of the proceedings in this matter, including any agreements made by the Applicant, were essential to the Board's decision to grant the approvals set forth herein. A breach of any such condition or a failure by the Applicant to adhere to the terms of any agreement within the time required shall result in the automatic revocation of the within approval and shall terminate the right of the Applicant to obtain or continue work or occupying under any construction permits, Certificate of Occupancy or any other governmental authorization necessary in order to continue development and use of the project.

Specific conditions of approval, although not an exhaustive list are as follows:

- a. The Applicant shall comply with the report of Mr. Bignell, dated June 10, 2022, and the report of Mr. Carley, dated May 20, 2022, to the extent not addressed at the hearing;
- b. The Applicant shall eliminate the duplex building at the southeast corner of the Property adjacent to Lot 16-B-1, reducing the number of duplex buildings to 7 and the number of units to 14;
- c. The age-restriction for the units to be set forth as a deed restriction shall provide that anyone living in a unit with an age-qualified resident shall be a minimum of 19 years of age so long as legally permissible, otherwise the minimum age shall be 18 years of age;
- d. The age-restriction for the units will be at least one resident age 55 and older to be set forth as a deed restriction;
- e. Trash pick-up will be handled by a private hauler with pick-up to be after 7:00 a.m. Monday to Friday and after 9 a.m. on weekends;
- f. There will be a designated parking space for deliveries;
- g. The Deed will restrict and not permit the habitable attic to be used as a bedroom;

- h. There will be individual mailboxes if approved by the postmaster; and
 - i. Applicant shall comply with all agreements placed upon the record resulting in this Approval.
2. The Applicant shall obtain any and all necessary governmental permits and approvals prior to commencing construction;
3. The Applicant shall obtain all necessary zoning permits prior to applying for construction permits; and
4. The Board has found that the Applicant has demonstrated the positive and negative criteria under the “d” and “c” requirements, thereby satisfying the proofs necessary for the variance. The Board specifically found that the Applicant had presented evidence that the proposed development is appropriate for the site given that this is a location surrounded with a residential zone on one side, a county road on another side with homes of varying configurations and lot sizes, and a country club and golf course on two other sides. There is nothing that would fit this Property without a variance as it sits in the GC zone and the commercial use appears to be grandfathered with a vacant lot that was formerly occupied by a restaurant. The use proposed is one that advances the purpose of the Master Plan to provide for varying forms of senior housing to accommodate the aging population. The site improvements proposed will enhance and improve the lot providing for pedestrian walkways and will add minimal traffic counts based upon testimony provided. The Applicant’s willingness to work with the Board and the objections raised by the Board and the public to reduce the intensity of this Application permitted the Board to find upon a weighing all of the criteria that the Applicant met its proofs. The Board found there to be no substantial detriment to the public good.

5. The development of this property shall be implemented in accordance with the preliminary and final plans submitted and as approved subject to the conditions enumerated herein. In the event that the Applicant shall make or propose any changes to the project or structures on the property from those shown on the approved plans and exhibits approved for this Application, whether such changes are voluntary or undertaken or required by any other regulatory agency, Applicant shall resubmit any such changes to this Board for review and determination.

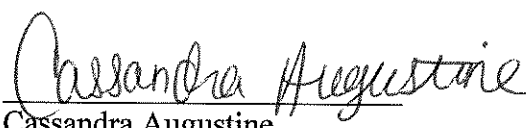
6. The Applicant shall bring all taxes, required donations to the Mt. Laurel Fund, if applicable, pursuant to the MLUL and escrow fees current prior to the issuance of any building permit subject to Final Site Plan Approval.

7. The Applicant shall secure such other approvals or permits as may be required from all agencies, boards or bodies having jurisdiction over the subject Application or having judgment over the subject property, if necessary.

8. The Applicant must comply with the provisions and/or requirements contained in the reports of the Townships' professionals, if any, unless otherwise set forth in this resolution.

BE AND THE SAME IS HEREBY GRANTED

I hereby certify that the above Resolution is a true copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Edison on July 26, 2022, granting the Applicant the requested relief for preliminary and final site plan approval with bulk and use variances enumerated herein, subject to the plans submitted as per all conditions set forth hereinabove, incorporating all findings and conclusions herein.


Cassandra Augustine
Zoning Board Secretary