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**TOWNSHIP OF MARLBORO
ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
FLOOR AREA RATIO VARIANCE RELIEF WITH
AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL
AND ANCILLARY BULK VARIANCE RELIEF**

**Approved: October 13, 2020
Memorialized: December 8, 2020**

MATTER OF: 479 Route 520 Associates, LLC

APPLICATION NO.: ZB 20-6713

WHEREAS, an application for floor area ratio variance relief with amended preliminary and final site plan approval with ancillary bulk variance relief has been made to the Marlboro Township Zoning Board of Adjustment (hereinafter referred to as the "Board") by 479 Route 520, LLC (hereinafter referred to as the "Applicant") on lands known and designated as Block 213, Lot 8.01 as depicted on the Tax Map of the Township of Marlboro (hereinafter "Township"), and more specifically located at 479 Route 520 (Newman Springs Road) in the OPT-2 (Office Professional Transitional) Zone; and

WHEREAS, a virtual public hearing was held before the Board on October 13, 2020 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 Variance Application
- A - 4 Zoning Officer's Denial
- A - 5 Indemnification and Hold Harmless Agreement
- A - 6 Disclosure Statement
- A - 7 Tax Collector's Certification
- 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 USE Variances
- A - 16 W-9
- A - 17 Completeness Checklist for Bulk Variance
- A - 18 ZB Memorializing Resolution ZB#16-6569 dated April 26, 2016
- A - 19 ZB Memorializing Resolution ZB#17-6627 dated October 24, 2017
- A - 20 Stormwater Management report updated 7-1-20 by INSITE Engineering
- A - 21 Amended Preliminary & Final Major Site Plan dated 7-1-20 by INSITE Engineering
- A - 22 Topographic and Utility Survey dated 5-14-20 by INSITE Engineering
- A - 23 Engineering & Planning Review 1 dated 8-17-20
- A - 24 Architectural Plans dated 8-19-20 10 pages

A - 25 Township Fire Official Report dated 10-7-20

A - 26 Traffic Engineer Report by Remington and Vernick dated 10-8-20

A - 27 Proposed Lower, Second and Third levels Plans dated 10-1-20

A - 28 Proposed Elevations 4 pages dated 10-1-20

A - 29 Colored Drawings of Building C and Colored Proposed Elevations dated 10-1-20
7 pages

A-30 Amended Preliminary & Final Site Plan Aerial Exhibit

A-31 Site Layout Exhibit

A-32 Site Layout Plan

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 Property contains 5.1 acres with 325 feet of frontage along the southerly side of Monmouth County Route 520 (Newman Springs Road) opposite and east of the Osprey Court intersection within the OPT-2 Zone District. The subject Property is improved with two (2) two-story medical office buildings (each approximately 24,000 s.f. total) with parking for 202 vehicles throughout the site. The subject Property is also improved with a two-story building formerly utilized as a spa facility which is to be removed with this current application. Access is provided by a full-movement driveway along the Route 520 site frontage. All buildings are serviced by municipal water and sanitary sewer systems and a surface basin is provided along the rear of the site for stormwater management purposes. A site identification sign along Route 520, two (2) emergency generator units, refuse enclosure area and landscape/lighting improvements also exist onsite.

2. The Applicant is seeking floor area ratio variance relief and amended preliminary and final site plan approval along with ancillary bulk variance relief to remove the existing two-story spa

facility building in order to construct a 12,576 s.f. three-story medical office building (52 feet by 82 feet; 4,203 footprint). Twenty-two (22) additional parking spaces are proposed to provide a total of 224 parking spaces throughout the subject Property and no revision to existing site access or interior site circulation is proposed. Existing water and sanitary sewer connections are to be utilized for the proposed building and minimal revisions to existing stormwater management, including basin outlet structure modification and trench drain connection to an existing drainage system along Route 520 are proposed. Landscape and lighting improvements at the proposed building are also proposed.

3. The Applicant was previously granted approvals in Resolutions dated April 26, 2016 (16-6569) and October 24, 2017 (17-6627) to permit the existing site improvements. These Resolutions granted the following variances and/or design waiver relief:

- a. **Section 220-83** – Use Variance for expansion of an existing non-conforming use as well as exceeding permitted floor area ratio.
- b. **Section 220-97C(6)** – No parking shall be allowed within 30 feet of the outer walls of any structure. Said requirement has since been rescinded and would no longer be applicable.
- c. **Section 220-97A(5)** – Parking areas may not be located in any required front yard area.
- d. **Section 220-97E(1)** – Off-street parking areas which abut a residential or institutional use on any side shall be setback a minimum of 25 feet from the property line, whereas, 10 feet is provided along the easterly side property line abutting an R-30/20 Residential District.
- e. **Section 220-152.1(A)** – Materials used in the construction of storm sewers shall be constructed of reinforced concrete, ductile iron and/or corrugated aluminum or steel, whereas, polyethylene pipe is provided.
- f. **Section 220-171** – No more than one (1) principal use shall be permitted on one (1) lot; two (2) principal uses, medical office and spa, are provided onsite. Said variance would no longer appear applicable as the spa use is to be eliminated and replaced with permitted medical office use.

4. Counsel for the Applicant, Salvatore Alfieri, Esq., stated that the subject Property was already developed and that the Applicant was seeking to raze an existing structure and construct a new three (3) story medical building.

5. The Applicant's Engineer and Planner, Jason Fichter, PE, PP, first testified in his capacity as an Engineer. He stated that the subject Property had received multiple prior approvals. Mr. Fichter testified that a site plan approval had been granted in 2008 with amended approval permitting two buildings being granted in 2016. A 2017 approval permitted a second story on one of the buildings. He explained that the Applicant was now seeking approval to raze the existing third building on the subject Property which had previously been tenanted by a spa, and is now vacant, into a medical building. The new building would contain 12,579 s.f. with three (3) stories. He noted that the building would actually appear as if it had two (2) stories due to the topographic characteristics of the subject Property.

6. Mr. Fichter further testified that all public utilities were available. He also explained that the existing outlet structure would be slightly modified in order to comply with all stormwater management requirements. Mr. Fichter then testified that the subject Property had 202 parking spaces with an additional 22 banked spaces. He stated that the previously banked spaces would now be constructed for a total of 224 parking spaces. Mr. Fichter then confirmed that all ADA parking requirements would be satisfied. He also stated that all existing site lighting would remain the same and that the proposed new building would be surrounded by landscaping. Mr. Fichter further stipulated that the Applicant would satisfy all recommendations of the Environmental Commission.

7. Testimony was then taken from Salvatore Cannoizzaro who identified himself as a principal of the Applicant. He explained that the existing "Building A" was fully tenanted with medical uses. He also stated that "Building B" was partially tenanted with medical uses and was

partially vacant. Mr. Cannoizzaro then explained that the third existing building had once been occupied by a spa use but had now been vacant for 1 ½ years despite active efforts to lease the space. He described the spa building as being out of character with the other existing structures and fundamentally lacking any appeal or further usefulness. In response to questions from the Board, he stated that he was not proposing a generator on the subject Property.

8. The Applicant's architect, Michael Savarese, AIA, testified that the proposed new building would have a footprint of 12,176 s.f. and contain two (2) stories with a partially submerged lower level. He explained that the Applicant was employing a green design which would be LEED certifiable.

9. Mr. Fichter then addressed the Board in his capacity as a professional planner and explained that the Applicant required floor area ratio variance relief to permit the razing of the existing spa building and construction of the new medical office building. The permitted FAR is 0.20 with 0.21 currently existing and .026 is proposed. He testified that the new visually appealing building would represent an aesthetic upgrade to the subject Property and was merely replacing an existing outdated building which represented something of an eyesore for the subject Property. He also explained that the spa use was not permitted and that the proposal was in closer conformance with zone requirements. Mr. Fichter further did not believe that the proposed improvements would result in a substantial detriment to the zone plan or the zoning ordinance.

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

11. 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 floor area ratio variance relief pursuant to N.J.S.A. 40:58D-70d(4).

Variance relief from floor area ratio requirements may only be granted by boards of adjustment under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(4) and not by planning boards. Commercial Realty v. First Atlantic, 122 N.J. 546, 561 (1991). Any application to increase the permitted floor area ratio is therefore cognizable only under subsection d(4) of the statute and relief can be granted only upon the showing of special reasons. The New Jersey Supreme Court has held that in establishing special reasons for a floor area ratio (FAR) variance, Coventry Square v. Westwood Bd. of Adjustment, 138 N.J. 285, (1994) which established the standard for conditional use variance relief controls. Therefore, an applicant for a FAR d(4) variance need not show that the site is particularly suited for more intensive development. Rather, such an applicant must show that the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance. Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412, 416-417 (App. Div. 1999). The negative criteria is still applicable.

The Board finds the Applicant has satisfied the positive criteria with regard to its request for variance relief from floor area ratio requirements. The purpose of the FAR restrictions is to control intensity of development on the subject Property. The Board finds that the proposed development involves the razing of an existing older unsightly building which has so little utility that it has not been able to be leased for a prolonged period of time. The proposed new building is visually attractive and also would not intensify the level of development which already currently exists on the subject Property. The problems which the FAR restrictions were meant to address

therefore are still properly addressed and the subject Property remains suitable for the proposed development despite its deviation from FAR standards. The positive criteria has therefore been satisfied.

The Board also finds that the negative criteria has been satisfied. The proposed new building would be much more visually attractive than the existing spa building which has vested rights and is entitled to remain on the subject Property. The intensity of development also remains roughly the same and does not result in perceptible increased traffic or dangerous internal circulation. The Board therefore finds there is no substantial detriment to the zone plan, the zoning ordinance or the public welfare. The negative criteria has therefore been satisfied. The Board finds that the positive criteria substantially outweighs the negative criteria and FAR variance relief pursuant to N.J.S.A. 40:55D-70d(4) may be granted in this instance.

The Applicant also requires the following bulk variance relief:

- a. **Section 220-83C (Table II)** – The maximum permitted impervious lot coverage is 50%; approximately 61.7% is proposed. Approximately 59.9% currently exists.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional

and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds that the Applicant has satisfied the positive criteria. The Board relies upon the positive criteria analysis above associated with the FAR variance pursuant to N.J.S.A. 40:55D-70d(4). The Board adds that the aesthetic upgrades to the subject Property advance the goals of planning enumerated in N.J.S.A. 40:55D-2. The Board therefore finds that the positive criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The aesthetic upgrades and modernization of the subject Property benefit the entire community and do not result in any perceptible increase to the intensity of development, additional noise or traffic beyond that which is contemplated by the Ordinance. The deviations therefore do not result on a substantial detriment to the zone plan, zoning ordinance or public welfare. The negative criteria has therefore been

satisfied. The Board concludes that the positive criteria substantially outweighs the negative criteria and variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

With the exception of the above relief, the Board finds that the Applicant has satisfied all other zoning, design standards and site plan ordinance requirements. Amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 are therefore appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Marlboro on this 8th of December 2020, that the action of the Board taken on October 13, 2020, granting Application No. ZB 20-6713 of 479 Route 520 Associates, LLC FAR variance relief pursuant to N.J.S.A. 40:55D-70d(4) with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) along with amended preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 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. All recommendations of the Township Environmental Commission shall be satisfied.
4. 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.
5. 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's 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: Chairman Shapiro

SECONDED BY: Ms. DiGrande

ROLL CALL: Ms. DiGrande, Mr. Levin, Mr. Weilheimer, Mr. Viridi, Mr. Yozzo, Mr. Zwerin and Chairman Shapiro

YES: 7

NO: 0

ABSTAINED:

ABSENT:

DATED: December 8, 2020

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 December 8, 2020.



Alan Zwerin, Secretary
Marlboro Township Zoning Board of Adjustment