

22-15

**BOROUGH OF SAYREVILLE**  
**STANDARD DEVELOPMENT APPLICATION**

(Page 1 of 3)

**GENERAL INSTRUCTIONS:** To the extent possible, Applicant shall complete every question. When completed, this application shall be submitted to the Planning Board Secretary (if an application to the Planning Board) or the Zoning Officer (if an application to the Board of Adjustment). The proper application and escrow fees must be accompany the application. Do not advertise for a public hearing until you are advised to do so by the Board.

Indicate to which Board application is being made:

☐ Planning Board      ☒ Board of Adjustment

Indicate all approvals and variances being sought:

<input type="checkbox"/> Informal Review	<input type="checkbox"/> Prelim. Major Site Plan	<input type="checkbox"/> Interpretation
<input type="checkbox"/> Bulk Variance(s)	<input checked="" type="checkbox"/> Final Major Site Plan	<input type="checkbox"/> Fill or Soil Removal Permit
<input type="checkbox"/> Use Variance	<input type="checkbox"/> Prelim. Major Subdivision	<input type="checkbox"/> Waiver of Site Plan Requirements
<input type="checkbox"/> Conditional Use Variance	<input type="checkbox"/> Final major Subdivision	
<input type="checkbox"/> Minor Site Plan	<input type="checkbox"/> Appeals from Decision of Admin. Officer (attach the denial/decision)	
<input type="checkbox"/> Minor Site Subdivision		

**1. APPLICANT:**

Name Nick Pengue		Address PO Box 360		
City Millstone	State NJ	Zip 08535	Fax	Telephone 732-735-3822

**2. PROPERTY OWNER (If other than applicant)**

Name BKD, LLC		Address 1979 Highway 9 North		
City South Amboy	State NJ	Zip 08879	Fax	Telephone 732-727-7266

**3. APPLICANT'S ATTORNEY (If applicable)**

Name Kenneth L. Pape/Heilbrunn Pape		Address 516 State Highway 33		
City Millstone	State NJ	Zip 08535	Fax 732-679-6554	Telephone 732-679-8844

**TO BE COMPLETED BY BOROUGH STAFF ONLY**

Date Filed:		Application No.
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BOROUGH OF SAYREVILLE			
Standard Development Application - (Page 2 of 3)			
4. SUBJECT PROPERTY (attach additional sheets if necessary)			
Street Address Route 35		Block(s) and Lot(s) Numbers Block 426, Lot 249 (formerly Lots 1.01 & 2.01)	
Site Acreage (and Square Footage) 8.29 acres / 361,112 +/- sf	Zone District(s) B-3	Tax Sheet Nos. 121 & 127	
Present Use: Unoccupied night club			
Proposed Development Name and Nature of Use Residential mix of townhouses			
Number of Buildings 7	Sq. Ft. of New Bldg(s)	Height 46.17 (max)	% of Lot to be covered by Buildings 8.4%
% of Lot to be Covered by Pavement 22.8%	Number of Parking Spaces and Dimensions 110	Dimensions of Loading Area(s) N/A	
Exterior Construction Material/Design Conventional Residential Development			
Total Cost of Building and Site Improvements	Number of Lots Before Subdivision N/A	Number of Lots After Subdivision N/A	Are Any New Streets or Utility Extensions Proposed? Yes. As shown on plans.
Number of Existing Trees, Two Inch Caliper or Greater, to be Removed? See Tree Save Plan	Are Any Structures to be Removed? Yes		Number of Proposed Signs and Dimensions 1 as shown on plans
Is Soil Removal or Fill Proposed? Specify Total in Cubic Yards As shown on plans	Is the Property Within 200 ft. of an Adjacent Municipality? If so, Which? No		
5. Are there any existing or proposed deed restrictions or covenants? Please Detail.  There will be a homeowners association.			
6. HISTORY OF PAST APPROVALS <input type="checkbox"/> Check here if none			
	APPROVED	DENIED	DATE
Subdivision			
Site Plan	ZBA 20-02		10/28/20
Variance(s)	ZBA 19-01		6/29/19
Building Permit			

## BOROUGH OF SAYREVILLE

Standard Development Application - (Page 2 of 3)

## 7. NAMES OF PLAN PREPARERS

Engineer's Name Crest Engineering Associates, Inc.		Address 100 Rike Drive		
City Millstone	State NJ	Zip 08535	Telephone 609-448-5550	License #
Surveyor's Name		Address		
City	State	Zip	Telephone	License #
Landscape Architect or Architect's Name JDR Consultants		Address 9 Terry Avenue		
City South River	State NJ	Zip	Telephone 732-613-8600	License #

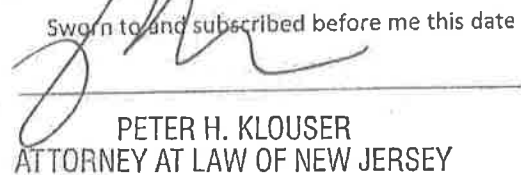
## 8. FEES SUBMITTED

Application Fees	
Variance Fees	
Escrow Fees	
Total Fees	

## CERTIFICATION

I certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized Borough officials to inspect my property in conjunction with this application.

  
Signature of Applicant  
Nick Pengue

Sworn to and subscribed before me this date  
  
PETER H. KLOUSER  
ATTORNEY AT LAW OF NEW JERSEY

BKD, LLC

By: \_\_\_\_\_ Notary Public  
Property Owner Authorizing Application if  
Other Than Applicant  
Demetri Rexinis

**BOROUGH OF SAYREVILLE**

Standard Development Application - (Page 2 of 3)

**7. NAMES OF PLAN PREPARERS**

Engineer's Name Crest Engineering Associates, Inc.		Address 100 Rike Drive		
City Millstone	State NJ	Zip 08535	Telephone 609-448-5550	License #
Surveyor's Name		Address		
City	State	Zip	Telephone	License #
Landscape Architect or Architect's Name JDR Consultants		Address 9 Terry Avenue		
City South River	State NJ	Zip	Telephone 732-613-8600	License #

**8. FEES SUBMITTED**


Application Fees	
Variance Fees	
Escrow Fees	
Total Fees	

**CERTIFICATION**

I certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized Borough officials to inspect my property in conjunction with this application.

Sworn to and subscribed before me this date

Signature of Applicant  
Nick Pengue

By  BKD, LLC  
Property Owner Authorizing Application if  
Other Than Applicant  
Demetri Rexinis

  
Notary Public

PETER H. KLOUSER  
ATTORNEY AT LAW OF NEW JERSEY

STATEMENT OF POLITICAL CONTRIBUTIONS


The undersigned is the managing member of BKD, LLC and individually does hereby certify that neither the Company nor the undersigned individually has made any political contribution to any political party, political action committee or individual politician of the borough of Sayreville at any time.

Dated:

  
Demetri Rexinis, Individually

Dated:

By:

BKD, LLC  
  
Demetri Rexinis, Managing Member

ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF SAYREVILLE

RESOLUTION

BKD, LLC  
1979 Highway 35  
Block 426, Lots 1.01 and 2.01

Case No.: ZBA 19-01

**WHEREAS**, BKD, LLC, (the "**Applicant**") has applied to the Borough of Sayreville Zoning Board of Adjustment for a Use Variance pursuant to N.J.S.A. 40:55D-70(d)(1) to construct 44 townhouses (the "**Application**") on the property located at 1979 Highway 35, Block 426, Lots 1.01 and 2.01 on the Borough of Sayreville Tax Map (the "**Property**"); and

**WHEREAS**, a public hearing was held on said Application by the Board of Adjustment on May 22, 2019; and the public was given the opportunity to be heard; and

**WHEREAS**, the Applicant published a proper newspaper hearing notice of the hearing and notified the Property owners within 200 feet of the subject Property of the Board's scheduled hearing pursuant to N.J.S.A. 40:55D-12; and

**WHEREAS**, on May 22, 2019 the Board granted the requested Use Variance, subject to certain conditions set forth below, including returning to this Board for Site Plan approval and any other variances and/or design exceptions; and

**WHEREAS**, the Board, after carefully considering the evidence presented to it by the Applicant, the Application and the documents filed by the Applicant, and the comments of the public and Board Professionals, if any, and has made the following findings of fact:

1. The Property is approximately 8.29 acres in area with frontage on the west side of southbound Highway 35. A significant amount of the Property is undeveloped wooded land that is partially encumbered by wetlands. The developed portion of the Property is set close to Highway 35 and consists of two paved areas at different elevations. The portion of the Property where the nightclub building, and primary parking lot sit is at roughly the same grade as the highway. A paved overflow parking area is located to the southeast of the club at a lower grade. The two paved areas are separated

by a steeply sloped wooded area and connected by a driveway and walkway with stairs. The Property is located in the B-3 Highway Business district of the Borough. The properties to the north and east along Highway 35, and on the opposite side of the highway are also in the B-3 district. The residential neighborhood along St. Peter Drive and Dominik Court to the west is in the R-10 residential zone. The vacant wooded property to the south are in the P "PRIME" Zone.

2. The Applicant was represented by Kenneth L. Pape, Esq. The Applicant presented the testimony of its Site Engineer Peter Strong, its Architect Sang-Yee Rummier, its Traffic Engineer John Rea, and, its Planner Allison Coffin all of whom were accepted as experts in their respective fields.

3. The Applicant has submitted, and the Board has relied upon:

- A. Use Variance Plan, consisting of four (4) sheets, prepared by Peter Strong, PE of Crest Engineering, dated November 12, 2018 and revised through May 3, 2019.
- B. Traffic Impact Analysis prepared by McDonough & Rea Associates, Inc. dated December 12, 2018.
- C. Concept Plans and Elevation, consisting of two (2) sheets, prepared by Minno Wasko, dated January 5, 2019 and revised through May 10, 2019.
- D. Borough of Sayreville Development Application, dated December 14, 2018.
- E. The Exhibits presented during the hearing.

4. In addition, the Board heard the testimony of the Board's Planner, John Barree and received his report dated May 17, 2019, and, heard the testimony of the Board's Engineer, Jay B. Cornell and received his report dated May 22, 2019.

5. The Applicant seeks approval to demolish the former nightclub, most recently known as the Ikon Lounge, located at 1979 Highway 35 and to construct a new forty-four (44) unit residential townhouse development. The proposed development will consist of forty-four (44) two-bedroom units in twenty-two (22) stacked townhouses and twenty-two (22) traditional townhouses. A total of 110 parking spaces are proposed, including visitor spaces, which complies with the Residential Site Improvement Standard ("RSIS") requirements.

6. The Applicant presented a somewhat detailed Use Variance Plan and related plans (collectively, the "**Plans**") to the Board to illustrate that the proposed 44 unit townhouse development can be accommodated on the Property. As the Property has significant wetlands and associated buffers, and steep topography in places, the development is situated on the front approximately one-half of the Property along Route 35. Also due to the topography, it was not feasible to have the entrance to the Property align with the jug handle traffic light on Route 35 and instead a right-in, right-out only access is provided on the northern end of the Property. The road for the project is a C-shape with a cul-de-sac at the end, all of which are compliant with RSIS. The Applicant has provided 110 parking spaces located at each townhouse unit, through a combination of garage and driveway parking spaces, and along on the road with two (2) parking areas and parallel parking area. Both the number and location of parking spaces complies with RSIS requirements. During the hearing the Applicant proposed to modify the area of the on-street parallel parking spaces to recess them mostly off of the roadway, as depicted in Exhibit A-4 marked at the hearing. The Board preferred this design and the Applicant agreed as a condition of approval to incorporate the design as depicted in Exhibit A-4 into the Site Plan.

7. The Applicant provided testimony that the access to the Property would be safe and efficient. Additionally, the proposed townhouse use would not have any negative impact on traffic and will create approximately half of the peak hour traffic created by the prior nightclub use.

8. The Applicant also agreed as conditions of approval, that: (i) there shall be no more than 44 townhouse units, (ii) each unit shall contain no more than two (2) bedrooms, (iii) all wetlands and related buffers shall be placed into a conservation easement, (iv) the stormwater management system shall be privately owned and maintained, (v) the road shall be privately owned and maintained, and (iv) the Applicant shall request the Township enforce Title 39 motor vehicle laws on the road.

9. The Applicant agreed as a condition of approval to comply with the Board's Planner, John Barree report dated May 17, 2019, and, the Board's Engineer, Jay B. Cornell report dated May 22, 2019. It is noted in these reports, and as discussed on the record, that the Plans as submitted for this Application require more than just a Use



Variance pursuant to N.J.S.A. 40:55D-70(d)(1). The Applicant clarified that it is only requesting the d(1) Use Variance at this time and will request any other variances and/or design exceptions as may be needed at the time of its Site Plan application.

10. As further set forth and detailed in the record, the Applicant submits, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that they have met the positive and negative criteria and have shown special reasons for the Use Variance, for the townhouse use pursuant to N.J.S.A. 40:55D-70(d)(1). As the Property has significant wetlands and associated buffers, and steep topography in places, it is not well-suited for the permitted uses in the B-3 Zone. Additionally, the townhouse use on the Property, provides a more appropriate use for this Property, specifically adjoining the residential uses to the west on Fairview Avenue. The townhouse use will have less, if no, negative impacts on adjoining properties and this area of the Borough. Further, the townhouse use promotes a number of purposes of the Municipal Land Use Law and the Master Plan. Finally, the Applicant has demonstrated that on balance the townhouse use will not have a substantial detriment to the public good or a substantial detriment to the zone plan and ordinances. As detailed herein and upon the record there is no substantial detriment to the public good. The Applicant also demonstrated that the use does not adversely affect the B-3 Zone. The Applicant further submits that the Use Variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Borough's Master Plan and Zoning Ordinances. Finally, on balance, the Applicant submits that there are substantial positive aspects to this Application which far outweigh the minimal if not non-existent negative impacts.

**WHEREAS**, the Board has made the following ultimate findings and conclusions based upon the foregoing findings and fact:

- A. The Board finds from the testimony presented, and with the conditions agreed upon by the Applicant, that the Applicant has satisfied the positive and negative criteria requirements and has shown special reasons for the Use Variance for the Application pursuant to N.J.S.A. 40:55D-70(d)(1), and the Board adopts the Applicant's testimony, specifically that of their Planner in this regard.

**WHEREAS**, at the conclusion of the hearing on May 22, 2019, the Board has taken action by voting on said Application in accordance with N.J.S.A. 40:55D-10(g) of the

Municipal Land Use Law and has directed that a resolution memorializing such action be prepared.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment on May 22, 2019, on the basis of the evidence presented to it, the foregoing findings of fact and ultimate findings and conclusions, that the Board does hereby grant the Use Variance, applied for by the Applicant, with the agreed upon and imposed conditions, and subject to the following conditions:

1. The granting of the Use Variance with conditions shall not be construed to eliminate satisfaction of any other requirements of the zoning ordinance and/or other requirements of the agencies, boards and authorities of the Borough of Sayreville, County of Middlesex or State of New Jersey.
2. The Applicant shall return to this Board for Site Plan approval in accordance with the conditions of this approval, and for any and all other variances and/or design exceptions that may be required.
3. The Use Variance (the "**Approvals**") granted herein are limited in size, scope and intensity to the facts, details and circumstances contained in the Applicant's submissions as supplemented by the exhibits and testimony presented at the hearing and as contained in this Resolution. Any increase in the size, location, intensity or similar expansion of these Approvals are not approved herein and shall be submitted to the Zoning Officer for determination if additional approvals and/or relief is required.
4. Any and all fees properly due and owing the Municipal Board of Adjustment and/or the Borough for this Application shall be paid in advance of building permits being issued.
5. All real estate taxes and related charges shall be paid in full prior to applying for building permits.
6. Applicant shall comply with representations and agreements as well as all reports from the Board Professionals except as otherwise indicated herein this Resolution.
7. Pursuant to Ordinance Section 26-12.8, all variances granted herein shall expire unless such construction or alteration shall have been actually

commenced on each and every structure permitted by said variance, or unless such specified use has actually been commenced, within two (2) years from the date of publication of the notice of the decision of the Board granting the variance.

8. Applicant, after adoption of this memorializing Resolution, shall publish a notice of these approvals in the official newspaper in accordance with the Municipal Land Use Law, and shall provide a copy of the affidavit of publication to the Board Secretary.

**NOW, THEREFORE BE IT FURTHER RESOLVED that:**

1. All conditions contained in this Resolution and in 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 may result in the automatic revocation of the within approval and may terminate the right of the Applicant to obtain or continue work or occupancy under any construction permits, Certificates of Occupancy or any other governmental authorizations necessary in order to continue development and use of the project.

2. The development of this Property shall be implemented in accordance with the plans submitted and as approved. 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 revised and approved plans and exhibits approved for this Application, whether such change is voluntarily undertaken or required by any other regulatory agency, Applicant shall resubmit any such changes to this Board for review and determination unless the Board Professionals agree the changes can be approved administratively.

**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 Borough of Sayreville on June 26, 2019.



JOAN KEMBLE  
Board Secretary

RECORD OF VOTE OF APPROVAL					
M/S		AYE	NAY	ABSENT	NV/A/R
	Ronald Green (Chairperson)	X			
S	William Henry (Vice Chair)	X			
M	Thomas Kuczynski	X			
	John Corrigan	X			
	Phil Emma			X	
	David Sivilli	X			
	Anthony Esposito, Alternate #1	X			
	Robert Foley, Alternate #2	X			

M = Motion, S = Second

"X" Indicates vote

NV = Not Voting, A = Abstain, R = Recusal

RECORD OF VOTE ON MEMORIALIZING RESOLUTION					
M/S		AYE	NAY	ABSENT	NV/A/R
	Ronald Green (Chairperson)	X			
	William Henry (Vice Chair)	X			
M	Thomas Kuczynski	X			
S	John Corrigan	X			
	Phil Emma			X	
	David Sivilli			X	
	Anthony Esposito, Alternate #1	X			
	Robert Foley, Alternate #2	X			

M = Motion, S = Second

"X" Indicates vote

NV = Not Voting, A = Abstain, R = Recusal

ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF SAYREVILLE

RESOLUTION

BKD, LLC  
1979 Highway 35  
Block 426, Lots 1.01 and 2.01

Case No.: ZBA 20-02

**WHEREAS**, BKD, LLC, (the "**Applicant**") has previously applied for and was granted a Use Variance pursuant to N.J.S.A. 40:55D-70(d)(1) by the Borough of Sayreville Zoning Board of Adjustment to construct 44 townhouses (the "**Project**") on the property located at 1979 Highway 35, Block 426, Lots 1.01 and 2.01 on the Borough of Sayreville Tax Map (the "**Property**") by written Resolution adopted on June 26, 2019 under Case No.: ZBA 19-01 (the "**Use Variance Approval**"); and

**WHEREAS**, the Applicant now applies to the Borough of Sayreville Zoning Board of Adjustment for Preliminary Site Plan approval and a Height Variance pursuant to N.J.S.A. 40:55D-70(d)(6) for the Project (the "**Application**"); and

**WHEREAS**, a public hearing was held on said Application by the Board of Adjustment on September 23, 2020; and the public was given the opportunity to be heard; and

**WHEREAS**, the Applicant published a proper newspaper hearing notice of the hearing and notified the Property owners within 200 feet of the subject Property of the Board's scheduled hearing pursuant to N.J.S.A. 40:55D-12 of the Municipal Land Use Law; and

**WHEREAS**, due to a declared state of emergency and public health emergency, upon order of Governor Phil Murphy pursuant to Executive Orders, guidelines from the CDC and in an effort to prevent further spread of SARS-CoV-2, commonly known as the novel coronavirus disease 2019 (COVID-19), the meeting was held by electronic means, and the Board provided notice of the meeting by electronic means, and such meeting was held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. and the same was included in the Applicant's notice; and

**WHEREAS**, the meeting was held by electronic means consisted of video conferencing and telephonic conferencing, with a limited number of Board Members attending in-person, and with the Board Secretary, the Board's professionals, the Applicant and its professionals attending in-person; and the remainder of the Board Members and the public participated by video conferencing and/or telephonic conferencing; and

**WHEREAS**, additionally the application, plans and other documents supporting this Application were made available for public inspection at least ten (10) days before the meeting through the "Meetings" page on the Borough website, at: <http://www.sayreville.com> and could be reviewed by appointment the Board Secretary which details were included in the Board's notice of the meeting by electronic means in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. and the same was included in the Applicant's notice; and

**WHEREAS**, on September 23, 2020 the Board granted the requested Preliminary Site Plan approval and a Height Variance pursuant to N.J.S.A. 40:55D-70(d)(6) for the Project, subject to certain conditions set forth below, including returning to this Board for Final Site Plan approval and any other variances and/or design exceptions; and

**WHEREAS**, the Board, after carefully considering the evidence presented to it by the Applicant, the Application and the documents filed by the Applicant, and the comments of the public and Board Professionals, if any, and has made the following findings of fact:

1. The Property is approximately 8.29 acres in area with frontage on the west side of southbound Highway 35. A significant amount of the Property is undeveloped wooded land that is partially encumbered by wetlands. The developed portion of the Property is set close to Highway 35 and consists of two paved areas at different elevations. The portion of the Property where the nightclub building, and primary parking lot sit is at roughly the same grade as the highway. A paved overflow parking area is located to the southeast of the club at a lower grade. The two paved areas are separated by a steeply sloped wooded area and connected by a driveway and walkway with stairs. The Property is located in the B-3 Highway Business district of the Borough.

The properties to the north and east along Highway 35, and on the opposite side of the highway are also in the B-3 district. The residential neighborhood along St. Peter Drive and Dominik Court to the west is in the R-10 residential zone. The vacant wooded property to the south is in the P "PRIME" Zone.

2. The Applicant was represented by Kenneth L. Pape, Esq. The Applicant presented the testimony of its Site Engineer Peter Strong, its Architect Sang-Yee Rummler, its Traffic Engineer John Rea, and, its Planner Allison Coffin all of whom were accepted as experts in their respective fields.

3. The Applicant has submitted, and the Board has relied upon:

- A. Preliminary Site Plan, consisting of fourteen (14) sheets, prepared by Peter Strong, PE of Crest Engineering, dated November 22, 2019, revised through March 6, 2020.
- B. Architectural concept plans consisting of four (4) sheets, prepared by Sang Yee Rummler, RA of Minno Wasko, dated November 22, 2019, revised through March 11, 2020.
- C. Traffic Impact Analysis prepared by McDonough & Rea Associates, Inc. dated December 12, 2018 and revised November 15, 2019.
- D. Borough of Sayreville Development Application dated January 3, 2020.
- E. The Exhibits presented during the hearing.

4. In addition, the Board heard the testimony of the Board's Planner, John Barree and received his report dated September 16, 2020, and, heard the testimony of the Board's Engineer, Jay B. Cornell and received his report dated September 23, 2020.

5. The Applicant by Resolution adopted on June 26, 2019 received a Use Variance approval to demolish the former nightclub, most recently known as the Ikon Lounge, located at 1979 Highway 35 and to construct a new forty-four (44) unit residential townhouse development. The proposed development will consist of forty-four (44) two-bedroom units in twenty-two (22) stacked townhouses and twenty-two (22) traditional townhouses. A total of 110 parking spaces are proposed, including visitor spaces, which exceeds the Residential Site Improvement Standard ("RSIS") requirement of 101 spaces.

6. The Applicant now requests Preliminary Site Plan approval and a Height Variance pursuant to N.J.S.A. 40:55D-70(d)(6) for the Project. The Site Plan presented did not vary from the detailed Use Variance Plan and related plans submitted as part of the Use Variance application. The Site Plan illustrated that the proposed 44 unit townhouse development can be accommodated on the Property. As the Property has significant wetlands and associated buffers, and steep topography in places, the development is situated on the front approximately one-half of the Property along Route 35. Also due to the topography, it was not feasible to have the entrance to the Property align with the jug handle traffic light on Route 35 and instead a right-in, right-out only access is provided on the northern end of the Property. The road for the project is a C-shape with a cul-de-sac at the end, all of which are compliant with RSIS. The Applicant has provided 110 parking spaces located at each townhouse unit, through a combination of garage and driveway parking spaces, and along on the road with two (2) parking areas and parallel parking area. Both the number and location of parking spaces complies with RSIS requirements. The Applicant provided testimony that the access to the Property and on-site traffic circulation would be safe and efficient. Additionally, the proposed townhouse use would not have any negative impact on traffic.

7. The Applicant presented Exhibit A-5 which is a preliminary design of the passive recreation area to be located between Buildings C and D. The Applicant agreed as a condition of approval to present a fully designed recreation area at the time of Final Site Plan. The Applicant also advised that they would most likely be selling this Project, or have a developer construct the Project, and therefore had not included a sign identifying the name of the development. Therefore, no site identification sign was submitted or approved by the Board, and if any identification sign or like signage is requested, it shall be presented at the time of Final Site Plan.

8. The Applicant also confirmed its agreed as conditions of the Use Variance Approval, that: (i) there shall be no more than 44 townhouse units, (ii) each unit shall contain no more than two (2) bedrooms, (iii) all wetlands and related buffers shall be placed into a conservation easement, (iv) the stormwater management system shall be privately owned and maintained, (v) the road shall be privately owned and maintained,



and (iv) the Applicant shall request the Township enforce Title 39 motor vehicle laws on the road. The Applicant also offered as condition of approval, which the Board accepted and imposes as a condition herein, that the master deed for the Property shall specify that each unit shall contain no more than two (2) bedrooms.

9. The Application also requires a Height Variance pursuant to N.J.S.A. 40:55D-70(d)(6). The permitted height in the Zone is 35 feet and the building heights ranging from 40 feet to 53 feet, as follows:

Building A	40 feet to 41 feet
Building B	40 feet
Building C	53 feet
Building D	48 feet
Building E	47 feet to 48 feet
Building F	40 feet to 41 feet
Building G	40 feet to 41 feet

The first building on the right as you enter the site from Route 35 is Building A and then they are lettered in a counter-clockwise fashion first on the northern side of the roadway around the site, as depicted on Exhibit A-2. As each building height exceeds the 35 foot maximum by 10 feet or 10%, (d)6 Height Variances are required. As detailed by the Applicant on the record, the heights are required due to the topography of the site and the limited buildable area due to the topography of the Property, wetlands and related buffers.

10. The Applicant also requires an exception from Residential Site Improvement Standard ("RSIS") standards for the minimum geometrics of street design and vertical curve design of the road. Pursuant to N.J.A.C. 5:21-4.20(b) the roadway must be designed to permit a minimum of 25 mile per hour traffic. Due to the limited buildable area of the Property as a result of the topography of the Property, wetlands and related buffers, the Applicant cannot meet this standard. The specific difficulty is the design and geometry of the curve in the road. The Applicant has designed a 15 mile per hour roadway, which incorporates a speed table at the beginning of the roadway, which is located between buildings A and B, and appropriate signage has been provided for the same. A speed table is a slightly raised area of the roadway,

similar to an elongated speed hump, which is usually constructed of a different material and/or colors to draw attention. By motorists slowing down for the speed hump it creates a traffic calming and traffic safety measure, which results in motorists slowing down to the posted 15 miles per hour proceeding down the road and around the curve.

11. The Applicant agreed as a condition of approval to comply with the Board's Planner, John Barree report dated September 16, 2020, and, the Board's Engineer, Jay B. Cornell report dated September 23, 2020.

12. As further set forth and detailed in the record, the Applicant submits, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that they have met the positive and negative criteria and have shown special reasons for the Height Variance, pursuant to N.J.S.A. 40:55D-70(d)(6). Additionally, the Applicant submits that the reasons for granting the Use Variance Approval are equally applicable to the Height Variance. The Property has significant wetlands and associated buffers, and steep topography in places, which limit the buildable area of the Property, and even the buildable area contains substantial slopes. Further, the use of the Property and proposed height advances the purposes of the Municipal Land Use Law contained in N.J.S.A. 40:55D-2 (a), (b), (e), (g) and (i).

In regard to the negative criteria, the Applicant submits that there are no substantial negative impacts from the proposed heights due to the design of the buildings and their location from neighboring uses and Highway 35, and with the conditions agreed upon. Specifically, due to the topography the buildings are not overly visible from neighboring properties and Highway 35, and the tallest building, building C is furthest from Highway 35 and substantially below its elevation due to the topography of the Property. Additionally, the Height Variance supports the townhouse use on the Property, provides a more appropriate use for this Property, specifically adjoining the residential uses to the west on Fairview Avenue. The Height Variance was not requested to increase the density or add additional floors or increase the size of the townhouses, the variance is necessitated by the topography of the Property and the townhouse use. The townhouse use will have little, if no, negative impacts on adjoining properties and this area of the Borough. Further, the townhouse use promotes a number of purposes of the Municipal Land Use Law and the Master Plan. Finally, the

Applicant has demonstrated that on balance the townhouse use will not have a substantial detriment to the public good or a substantial detriment to the zone plan and ordinances. As detailed herein and upon the record there is no substantial detriment to the public good. The Applicant also demonstrated that the heights will not adversely affect the B-3 Zone. The Applicant further submits that the Height Variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Borough's Master Plan and Zoning Ordinances. Finally, on balance, the Applicant submits that there are substantial positive aspects to this Application which far outweigh the minimal if not non-existent negative impacts.

13. The Applicant submits, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Preliminary Site Plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable Township Ordinances, and advances sound land use principals and that Preliminary Site Plan approval is justified and should be granted.

14. The Board also grants a RSIS de minimis exception per N.J.A.C. 5:21-3.1 from the 25 mile per hour roadway design standard in N.J.A.C. 5:21-4.20(b) whereas a 15 mile per hour roadway design is provided. As noted in the preceding paragraph, the limited buildable area of the Property as a result of the topography of the Property, wetlands and related buffers thwarts strict compliance with the 25 mile per hour roadway design requirement and that strict compliance would result in practical difficulties. The Board finds that the inclusion of the speed table, appropriate signage for the 15 mile per hour speed limit and having Title 39 enforced on the Property ameliorates the exception. The Board also finds that the exception is de minimis, and: (1) is consistent with the intent of the Site Improvement Act; (2) is reasonable, limited, and not unduly burdensome; (3) meets the needs of public health and safety; and (4) takes into account existing infrastructure and possible surrounding future development. As a condition of this de minimis exception, the Applicant shall within 30 days of the adoption of this Resolution, submit a copy of this Resolution and any other documentation that Applicant deems necessary or desirable to the New Jersey Department of Community Affairs, Division of Codes and Standards in satisfaction of N.J.A.C. 5:21-3.1(d) with a copy to the Board for its records.

**WHEREAS**, the Board has made the following ultimate findings and conclusions based upon the foregoing findings and fact:

- A. The Board finds that the reasons for granting the Use Variance pursuant to N.J.S.A. 40:55D-70(d)(1), the Height Variance pursuant to N.J.S.A. 40:55D-70(d)(6), as set forth in the Use Variance Approval apply equally to this Application and are incorporated herein by reference.
- B. The Board finds from the testimony presented, and with the conditions agreed upon by the Applicant, that the Applicant has satisfied the positive and negative criteria requirements and has shown special reasons for the Height Variance for the Application pursuant to N.J.S.A. 40:55D-70(d)(6), and the Board adopts the Applicant's testimony, specifically that of their Planner in this regard.
- C. The Use Variance and Height Variance are limited to their use and extent as testified to and agreed upon by the Applicant and the conditions agreed upon by the Applicant and imposed herein, specifically the height of each building is limited to the height listed in Paragraph 9, above.
- D. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Preliminary Site Plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable Township Ordinances, and advances sound land use principals and grants Preliminary Site Plan approval, and the Board adopts the Applicant's testimony, specifically that of their Planner and Engineer in this regard.
- E. The Applicant shall incorporate the details of the conditions imposed herein and shall return to this Board for Final Site Plan approval and Bulk Variance and/or Design Waivers as may be required.
- F. The Board also grants a RSIS de minimis exception per N.J.A.C. 5:21-3.1 from the 25 mile per hour roadway design standard in N.J.A.C. 5:21-4.20(b) whereas a 15 mile per hour roadway design is provided, subject to the conditions agreed upon by the Applicant and imposed herein.

**WHEREAS**, at the conclusion of the hearing on September 23, 2020, the Board has taken action by voting on said Application in accordance with N.J.S.A. 40:55D-10(g) of the Municipal Land Use Law and has directed that a resolution memorializing such action be prepared.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment on September 23, 2020, on the basis of the evidence presented to it, the foregoing findings of fact and ultimate findings and conclusions, that the Board does hereby grant the Use Variance, applied for by the Applicant, with the agreed upon and imposed conditions, and subject to the following conditions:

1. The granting of the Height Variance with conditions shall not be construed to eliminate satisfaction of any other requirements of the zoning ordinance and/or other requirements of the agencies, boards and authorities of the Borough of Sayreville, County of Middlesex or State of New Jersey.
2. The Applicant shall return to this Board for Final Site Plan approval in accordance with the conditions of this approval, and for any and all other variances and/or design exceptions that may be required.
3. The Height Variance (the "**Approvals**") granted herein are limited in size, scope and intensity to the facts, details and circumstances contained in the Applicant's submissions as supplemented by the exhibits and testimony presented at the hearing and as contained in this Resolution, specifically the height of each building is limited to the height listed in Paragraph 9, above. Any increase in the size, location, intensity or similar expansion of these Approvals are not approved herein and shall be submitted to the Zoning Officer for determination if additional approvals and/or relief is required.
4. The master deed for the Property shall be submitted to the Board Attorney for review and approval prior to its recording to ensure that it specifies that each unit shall contain no more than two (2) bedrooms, and that such limitation cannot be removed from the master deed without prior approval by the Zoning Board.

5. Any and all fees properly due and owing the Municipal Board of Adjustment and/or the Borough for this Application shall be paid in advance of building permits being issued.
6. All real estate taxes and related charges shall be paid in full prior to applying for building permits.
7. Applicant shall comply with representations and agreements as well as all reports from the Board Professionals except as otherwise indicated herein this Resolution.
8. Pursuant to Ordinance Section 26-12.8, all variances granted herein shall expire unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such specified use has actually been commenced, within two (2) years from the date of publication of the notice of the decision of the Board granting the variance.

**NOW, THEREFORE BE IT FURTHER RESOLVED** that:

1. All conditions contained in this Resolution and in 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 may result in the automatic revocation of the within approval and may terminate the right of the Applicant to obtain or continue work or occupancy under any construction permits, Certificates of Occupancy or any other governmental authorizations necessary in order to continue development and use of the project.

2. The development of this Property shall be implemented in accordance with the plans submitted and as approved. 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 revised and approved plans and exhibits approved for this Application, whether such change is voluntarily undertaken or required by any other regulatory agency, Applicant shall resubmit any such changes to this Board for review and determination unless the Board Professionals agree the changes can be approved administratively.

**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 Borough of Sayreville on October 28, 2020.



JOAN KEMBLE  
Board Secretary

RECORD OF VOTE OF APPROVAL					
M/S		AYE	NAY	ABSENT	NV/A/R
	Ronald Green (Chairperson)	X			
M	William Henry (Vice Chair)	X			
	Thomas Kuczynski	X			
S	John Corrigan	X			
	Phil Emma	X			
	David Sivilli	X			
	Robert Foley	X			
	Anthony Esposito, Alternate #1	X			

**M = Motion, S = Second**  
"X" Indicates vote

**NV = Not Voting, A = Abstain, R = Recusal**

RECORD OF VOTE ON MEMORIALIZING RESOLUTION					
M/S		AYE	NAY	ABSENT	NV/A/R
M	Ronald Green (Chairperson)	X			
S	William Henry (Vice Chair)	X			
	Thomas Kuczynski	X			
	John Corrigan			X	
	Phil Emma	X			
	David Sivilli	X			
	Robert Foley	X			
	Anthony Esposito, Alternate #1	X			

**M = Motion, S = Second**  
"X" Indicates vote

**NV = Not Voting, A = Abstain, R = Recusal**