

**MINUTES OF THE PLANNING BOARD
OF THE BOROUGH OF SADDLE RIVER - SPECIAL MEETING
September 21, 2020**

Zoom Information:

[https://saddleriver-org.zoom.us/j/6993671433?](https://saddleriver-org.zoom.us/j/6993671433?pwd=cVdEcZlZK2J3SSswaTBubnJ1bU00dz09)
pwd=cVdEcZlZK2J3SSswaTBubnJ1bU00dz09
Meeting ID: 699 367 1433
Passcode: 09/11/20
By Phone:(929) 205-6099

PUBLIC NOTICE

Clerk to Read - "Notice of this meeting in compliance with the Open Public Meetings Act, Chapter 231 of the Laws of 1975 has been given by posting a notice of the scheduled dates of all the special meetings of the Planning Board of the Borough of Saddle River on the bulletin board, in the Municipal Building and in the office of the Clerk and by e-mailing notice thereof to the Record and the Herald News on Friday September 11, 2020. This Special Meeting is for the purpose of considering the application of The Michaels Development Company I, LP for Site Plan, with variance relief, to develop the Choctaw and East Allendale Sites (located in the Affordable Housing District 3) with a multi-family affordable housing development. Members of the public who wish to participate in the meeting may do so via zoom meeting."

PLEDGE OF ALLEGIANCE

All participated.

ROLL CALL:

The Clerk took roll call, the following members were present or absent:

Present: Council Member Hekemian, Chairman Jeff Liva, Members: Gerald Bedrin, Carol Boyajian, Nicholas Lonzisero

Absent: Mayor Kurpis, Members: Jerry Decrosta, Doug Holden, Peter Ponzini, , Jordan Richin

Professionals Present: Borough Engineer Martin Spence, Borough Landscape Engineer Scott Levy, Planning Board Attorney Tom DiBiasi, Borough Planner Joe Burgis

PUBLIC HEARING(S):

2 and 3 Choctaw Trail and 20 East Allendale Road
2 and 3 Choctaw Trail and 20 East Allendale Road
Michaels Development Company I, LP
See attached

Borough Engineer Spence stated page 10 item 6D should read soil district certification, Bergen County should be removed.

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BOROUGH OF SADDLE RIVER PLANNING BOARD
THE MICHAELS DEVELOPMENT COMPANY I, LP

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BLOCK 1601, LOTS 10 and 11; BLOCK 1605, LOT 1
2 and 3 Choctaw Trail; 20 East Allendale Road

PRELIMINARY MAJOR SITE PLAN, WAIVERS / EXCEPTIONS AND RSIS EXCEPTION
TO ALLOW FOR CONSTRUCTION OF A 100% AFFORDABLE HOUSING PROJECT,
INCLUDING CONSTRUCTION OF RELATED SITE IMPROVEMENTS

RESOLUTION NO. 2020-22

WHEREAS, The Michaels Development Company I, LP (the “**Applicant**”), is the designated developer, pursuant to Borough Council Resolution Number 131-20 approved on July 20, 2020, of property approximately 6.044-acres in size in the Borough of Saddle River (the “**Borough**”) shown on the Borough tax maps as Block 1601, Lots 10 and 11, Block 1605, Lot 1 (the “**Property**”);

WHEREAS, the Property has frontage on Choctaw Trail, East Allendale Road and Route 17, and is situated in the AH-3 Affordable Housing Zone District;

WHEREAS, the AH-3 Affordable Housing Zone District, adopted by Ordinance No. 2020-1000 on September 10, 2020 (the “**AH-3 Zone Ordinance**”) permits multifamily housing, and the Applicant submitted an application dated September 4, 2020[1] to the Borough of Saddle River Planning Board (the “**Board**”), with the consent of the Borough, the owner of the Property, which application seeks preliminary major site plan approval with waivers / exceptions and an RSIS exception (all approvals and relief sought being referred to as the “**Application**”) to allow for the construction of a 100% affordable housing project consisting of a total of five (5) multifamily residential buildings containing a total of one-hundred-eleven (111) units and related site improvements such as stormwater facilities, landscaping, and parking on the Property (the “**Affordable Housing Project**”);

WHEREAS, the Board has exclusive subject matter jurisdiction over the Application by virtue of N.J.S.A. 40:55D-20, -46 and -51 as well as N.J.A.C. 5:21-3.1;

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WHEREAS, a number of documents were submitted by the Applicant with regard to the Application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the Application in accordance with N.J.S.A. 40:55D-10b:

1. “Preliminary Site Plan Application for Saddle River Residential Development Block 1605 Lot 1, Block 1601 Lots 10 & 11” prepared by Patricia Ruskan, PE of Paulus, Sokolowski and Sartor, LLC (PS&S), dated September 4, 2020, consisting of sixteen (16) sheets (the “**Preliminary Plans**”);
2. Architectural plans prepared by James Haley of Urban Practice titled “Choctaw Trail + Allendale Road,” dated September 4, 2020, consisting of three (3) sheets (the “**Preliminary Architectural Plans**”);

3. Traffic & Parking Assessment Report prepared by Stonefield Engineering and Design, LLC, dated September 4, 2020 (the “**Traffic Report**”),

4. Stormwater Management Report prepared by PS&S, dated September 4, 2020 (the “**Stormwater Management Report**”);

WHEREAS, the Board held a duly noticed public hearing on the Application on September 17, 2020, thereby conferring procedural jurisdiction over the Application with the Board, during which hearing the Applicant was represented by Katharine A. Coffey, Esq. and the Board was represented by Thomas DiBiasi, Esq.;

WHEREAS, the following individuals testified during the hearing on the Application, were subject to cross examination, and the testimony is part of the record in this matter:

1. Patricia Ruskan, PE (Applicant’s civil engineering expert),
2. James Haley, AIA (Applicant’s architectural design expert),
3. Matthew Seckler, PE, PTOE (Applicant’s traffic engineering expert),
4. Martin Spence, PE (Board’s civil engineering expert), and
5. Joseph Burgis, PP (Board’s planning consultant);

WHEREAS, the following members of the public provided comments during the hearing on the Application:

1. Martin Oud, 10 Hawthorne Terrace,
2. Vince Behl 33 E. Allendale Road, and
3. Michael Licata, 22 E. Allendale Road;

WHEREAS, the following exhibits were submitted into the record as evidence during the hearing, are on file with the Board, and are part of the record in this matter:

- A-1 Aerial Exhibit prepared by PS&S,
- A-2 Colored Landscaping Plan prepared by PS&S,
- A-3 Typical Elevations prepared by Urban Practice,
- A-4 Choctaw Trail Elevation prepared by Urban Practice,
- A-5 E. Allendale Elevation prepared by Urban Practice,
- A-6 Preliminary Site Plans, and
- A-7 Preliminary Architectural Plans;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS

1 . **The Property, Zoning and Existing Conditions.** As set forth above, the Property consists of three lots (Block 1601, Lots 10 and 11, Block 1605, Lot 1) totaling approximately 6.044-acres and has frontage on Choctaw Trail, East Allendale Road and Route 17. The Property is situated in the AH-3 Affordable Housing Zone District. Each lot comprising the Property contains a single-family house and related site improvements. The Property is surrounded by single-family residential development on the north, east, and south and by Route 17 to the west. Lots 10 and 11 contain varied topographic features with moderate slopes and wetlands in the southwesterly part of the lots and in the northwest corner of the lots.

2 . **The Application and Proposed Affordable Housing Project.** The Application seeks preliminary site plan approval with a request for waivers / exceptions from the Soil Relocation Ordinance and a de minimis exception from RSIS to allow construction of the Affordable Housing Project, which is a 100% affordable housing project consisting of a total of five (5) multifamily residential buildings containing 111 units, with all of the units being affordable units, and related site improvements such as stormwater facilities, landscaping, and parking. The specifics of the Affordable Housing Project, and the specific exceptions that have been requested, are as follows:

a . **Specifics of the Affordable Housing Project.** The proposed Affordable Housing Project will consist of four buildings located on Lots 10 and 11 containing eighty-eight (88) two-bedroom and three-bedroom units and one building located on Lot 1 containing twenty-two (22) one-bedroom and one (1) two-bedroom units. Three of the four buildings located on Lots 10 and 11 will contain twenty-four (24) units, and one building will contain sixteen (16) units and community space. The site improvements include 140 parking spaces[2] to service the residential development, one ground mounted identification sign at the entrance of the development on Lot 1 and one ground mounted identification sign at the entrance of Lots 10 and 11, tot lot for use by residents, retaining walls with fence for fall protection, and a stormwater management system. The stormwater management system will include inlets in the parking area, inlets throughout the green spaces, three subsurface detention basins, storm sewer systems and water quality manufactured treatment devices.

b . **Specific Relief Requested.** The specific relief requested is as follows. First, the Applicant requests a de minimis exception from the RSIS requirements to permit 140 parking spaces, where 221 parking spaces are required. Second, the Applicant requests three waivers / exceptions from Borough Ordinance Section 183-6: (1) to permit retaining walls in excess of four feet in height, (2) to permit steep slope disturbance and (3) to permit slopes adjacent to the property boundary to exceed one foot vertically for every five feet horizontally. Third, the Applicant requests preliminary site plan approval.

3 . **Difference Between Preliminary and Final Site Plan Review and Approval and Finding that the Preliminary Plans and Documents are Sufficient for Purposes of Preliminary Site Plan Review and Approval.** In order to construct the Affordable Housing Project, the Application requires both preliminary and final site plan approval. The Applicant has applied for preliminary site plan approval only at this time and has indicated that if it obtains preliminary approval, it will subsequently apply for final approval. As set forth in the legal conclusions below, the MLUL provides that the plans submitted for preliminary approval need only be in "tentative form" for "discussion purposes" whereas the plans submitted for final approval need to be "detailed." The Board finds that the Preliminary Plans, the Preliminary Architectural Plans, and the other documents listed above which have been submitted for approval are sufficient for purposes of

preliminary site plan review and approval.

4 . **Findings as to the Exception from the RSIS to Permit Less Parking Spaces than Required by the RSIS.** The Preliminary Plans deviate from the RSIS requirement established in N.J.A.C. 5:21-4.14 (Table 4.4). The RSIS requirements supersede all site plan ordinance requirements for residential development.^[3] However, section 4.14(c) specifically permits a municipality to accept an alternative parking standard if the applicant demonstrates that said standard better reflects the local conditions. Factors affecting minimum number of parking spaces include household characteristics and availability of mass transportation. Borough Ordinance Section 210-97(j) sets forth such an alternative parking standard, which the Application complies with. As set forth above, the Applicant requested an exception from the RSIS to permit 140 parking spaces, where 221 parking spaces are required by RSIS and 138 parking spaces are required by Borough Ordinance. As a threshold matter, the Board finds that the requested exception qualifies as a de minimis exception under N.J.A.C. 5:21-3.1(f)(1). As to the merits of the requested exception, the Board finds that the number of proposed parking spaces complies with the alternative parking standard accepted by the Borough based on local conditions and housing characteristics. The proposed number of parking spaces is sufficient to service the Affordable Housing Project based on testimony from the Applicant's traffic engineer regarding nearby mass transportation and housing characteristics associated with affordable housing units. The Board further finds that granting the requested exception is reasonable and within the intent of the RSIS standards provided that the conditions set forth below are imposed and complied with. Finally, the Board finds that the literal enforcement of the RSIS requirements at issue is impracticable because it would require the Applicant to reduce the number of affordable housing units that can be provided on the site and increase the impervious coverage on the site to accommodate the centerline radius requirement for no reason other than strict compliance with the RSIS requirements.

5 . **Findings as to Waivers / Exceptions from the Soil Relocation Ordinance.** Borough Ordinance, Chapter 183, Soil Relocation, contains requirements related to soil relocation applications, which are submitted to and reviewed by the Board. Pursuant to Section 183-11, the Board can recommend waivers from the requirements of the Soil Relocation Ordinance to the governing body for approval. In this instance, Ordinance Section 210-99 states that an application for development in the AH-3 Zone serves as an application for a zoning permit, including those permits related to retaining walls and soil relocation. As such, the requested waivers are subsumed in the Application. The Applicant is requesting waivers (1) to permit retaining walls in excess of four feet in height, (2) to permit steep slope disturbance and (3) to permit slopes adjacent to the property boundary to exceed one foot vertically for every five feet horizontally. The Board finds that the waivers / exceptions are subsumed in the Application and should be granted because the literal enforcement of the requirements is impracticable due to the existing topography and grade of the site. The Board further finds that the retaining wall height is required to safely retain and stabilize the soil and the steep slopes need to be disturbed to be able to build the Affordable Housing Project.

6 . **Findings as to Preliminary Site Plan Review.** The Board's findings as to preliminary site plan review are as follows:

a . **Ordinance Compliance in General.** With the exception of (a) the de minimis exception from the RSIS requirements to permit 140 parking spaces, where 138 parking spaces are required and the waivers / exceptions from Borough Ordinance Section 183-6: (1) to permit retaining walls in excess of four feet in height, (2) to permit steep slope disturbance and (3) to permit slopes adjacent to the property boundary to exceed one foot vertically for every five feet horizontally, for which the

Board concluded that exception and waivers should be granted, the Board finds that the Preliminary Plans, Preliminary Architectural Plans, Traffic Report and Stormwater Management Report will comply with all other applicable zoning ordinance regulations, site plan ordinance requirements, and RSIS requirements provided, however, that the conditions set forth below are imposed and complied with.

b . **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the Project.

c . **Ultimate Finding.** For all of the foregoing reasons, the Board's ultimate finding is that preliminary site plan approval is warranted provided that the conditions set forth below are imposed and complied with.

B. LEGAL CONCLUSIONS

1 . **The RSIS Parking Space Exception.** The Board's conclusions as to the RSIS parking exception are as follows:

a . **Standards Applicable to the RSIS Exception.** In accordance with N.J.A.C. 5:21-3.1(a), the Board has the power to grant "such de minimis exceptions from the requirements of the [RSIS]: (a) as may be reasonable, and within the general purpose and intent of the standards," but if and only (b) "if the literal enforcement of one or more provisions of the standards is impracticable, or will exact undue hardship because of peculiar conditions pertaining to the development in question." N.J.A.C. 5:21-3.1(g) further provides that the grant of a request for a de minimis exception "shall be based on a finding that the requested exception meets the following [four] criteria:" (a) It is consistent with the intent of the Act establishing the RSIS; (b) It is reasonable, limited, and not unduly burdensome; (c) It meets the needs of public health and safety; and (d) It takes into account existing infrastructures and possible surrounding future development. While not containing a definition of "de minimis", N.J.A.C. 5:21-3.1(f) provides four examples of de minimis exceptions, which include reducing the minimum number of parking spaces and others. As noted in Cox and Koenig, New Jersey Land Use Administration (Gann 2016), §23-8(c), "de minimis exceptions are limited exceptions of minor nature." Where an applicant wishes to deviate from other requirements of the RSIS which cannot be considered a minor design variation as characterized in the examples set forth in the regulation, an applicant must seek a waiver from the RSIS from the Site Improvement Advisory Board. Id. Further, N.J.A.C. 5:21-4.14(C) specifically permits a municipality to accept an alternative parking standard if the applicant demonstrates that said standard better reflects the local conditions. Factors affecting minimum number of parking spaces include household characteristics and availability of mass transportation.

b . **Conclusions to Grant the RSIS Parking Space Exception.** As set forth in the factual findings above, the Board found, and it now also concludes, that the requested exception for the number of parking spaces qualifies as a de minimis exception under N.J.A.C. 5:21-3.1(f)(1). As also set forth in the factual findings above, granting the exception is reasonable and within the intent of the RSIS standards provided that the conditions set forth below are imposed and complied with. Finally, the Board found that the literal enforcement of the RSIS requirements at issue is impracticable because it would require the Applicant to reduce the number of affordable housing units that can be provided on the site to accommodate additional parking spaces for no reason other

than strict compliance with the RSIS requirements, and would require more blacktop paved surfaces on the site. As such, the Board concludes that it can and should grant the RSIS exception subject to the conditions set forth below.

2. **The Waivers / Exceptions from Ordinance Chapter 183.** The Board's conclusions as to the requested waivers from Ordinance Section 183-6 are as follows:

a . **Standards Applicable to Waivers from Soil Relocation Ordinance Requirements.** Ordinance Section 183-11 sets forth the following standard for the Board to recommend waivers from the requirements: "waiver from the requirements for soil relocation as may be reasonable and within the general purpose and intent of this chapter, if the literal enforcement of one or more provisions of this chapter are impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." This standard is almost identical to the standard for the grant of an exception from site plan ordinance requirements pursuant to N.J.S.A. 40:55D-51, which provides that a planning board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for . . . site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." Pursuant to Ordinance Section 201-99(3), these waivers / exceptions are subsumed in the Board's review of the Application.

b . **Conclusions as to Grant of the Waivers.** As set forth in the factual findings above, the Board found that granting the requested waivers is subsumed in its review of the Application. The Board finds that the literal enforcement of the requirements at issue is impracticable due to the existing topography and grade of the site. The Board further finds that the retaining wall height is required to safely retain and stabilize the soil and the steep slopes need to be disturbed to be able to build the Affordable Housing Project. As such, the Board concludes that it can and should grant the waivers / exceptions subject to the conditions set forth below.

3 . **Preliminary Site Plan Review.** The Board's conclusions as to preliminary site plan review are as follows:

a . **Standards Applicable to Preliminary Site Plan Review.** N.J.S.A. 40:55D-46b, which contains the standard the Board must utilize in reviewing the Application for preliminary site plan approval, provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. As such, if the Application complies with all ordinance provisions, the Board must grant approval. However, there are two exceptions:

(1) The first exception is where an application does not comply with all ordinance provisions but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance provisions and grant approval if the application complies with all such remaining provisions.

(2) The second exception is where an application does not comply with all ordinance provisions but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application is revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance provisions prior

to the Board granting approval.

b . **While Preliminary Site Plans are Allowed to be in Tentative Form, They Must Sufficiently Address Matters Vital to the Public Health and Welfare.** While N.J.S.A. 40:55D-46a allows the site plans and engineering documents required to be submitted for preliminary site plan review to be in “tentative form for discussion purposes for preliminary approval,” the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan.

[4] The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the preliminary site plan review process, preliminary approval must be denied. Id.

c . **Conclusions to Grant of Preliminary Site Plan Approval.** As set forth in the factual findings above, with the exception of (a) the de minimis exception from the RSIS requirements to permit 140 parking spaces, where 221 parking spaces are required and the waivers, pursuant to Borough Ordinance Section 183-6: (1) to permit retaining walls in excess of four feet in height, (2) to permit steep slope disturbance and (3) to permit slopes adjacent to the property boundary to exceed one foot vertically for every five feet horizontally, for which the Board concluded an exception and waivers should be recommended, the Board found that the Preliminary Plans, Preliminary Architectural Plans, Traffic Report and Stormwater Management Report will comply with all other applicable zoning ordinance regulations, site plan ordinance requirements, and RSIS requirements provided, however, that the conditions set forth below are imposed and complied with. The Board’s ultimate finding was that preliminary site plan approval is warranted but subject to the conditions set forth below being imposed and complied with. As such, the Board concludes that preliminary site plan approval can and should be granted subject to the conditions set forth below.

4 . **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Borough of Randolph, 137 N.J. 216, 232-233 (1994). See *also*, Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those

issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2020), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan approval on review and approval of changes to the plans by board experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The conditions set forth below have been imposed on all of the foregoing bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON SEPTEMBER 17, 2020 AS FOLLOWS:

C. RELIEF GRANTED

1 . **Exception from RSIS Requirement for Number of Parking Spaces.** Subject to the conditions set forth below, an exception is granted from the RSIS requirement to provide 140 parking spaces where 221 parking spaces are required by RSIS.

2 . **Waivers / Exceptions Related to Retaining Wall Height and Steep Slopes.** Subject to the conditions set forth below, the Board grants the waivers / exceptions to permit retaining wall heights in excess of four feet, disturbance of steep slopes and slopes adjacent to the property boundary to exceed one foot vertically for every five feet horizontally as shown on the Preliminary Plans. Such waivers are subsumed in the Board's review of the Application pursuant to Ordinance Section 210-99(3).

3 . **Preliminary Site Plan Approval.** Subject to the conditions set forth below, preliminary site plan approval is granted to the Preliminary Plans, Preliminary Architectural Plans, Traffic Report and Stormwater Management Report as referenced above.

D. CONDITIONS

1 . **Revisions to Preliminary Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the comments emanating in the following letters and/or memos prepared by the following Board professionals and/or as discussed by the Board on the record during the hearing on the Application, and to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Borough Engineer and Borough Planner, with the revisions being made at the time of the Applicant's Application for Final Site Plan Approval. Any dispute(s) concerning satisfaction of any conditions related to the revisions of the site plans and documents may be brought to the Board for resolution by written letter application submitted by the Applicant without the necessity for public notice but on written notice to the Borough Engineer and Borough Planner. The required revisions are contained within the following, subject to modification as presented through testimony:

a. Memo to the Board from Martin Spence, PE, of Spence Engineering dated September 16, 2020; and

b. Memo to the Board from Joseph Burgis, PP, AICP of Burgis Associates, Inc. dated September 15, 2020.

2 . **Subject to Final Site Plan Review and Approval.** The approvals granted herein are subject to the applicant applying for and obtaining final site plan approval. The within site plan approval is a preliminary site plan approval only. No construction permits shall issue and no site work shall commence prior to the applicant obtaining final site plan approval.

3. **Issues to be Reviewed and Approved at the time of Final Site Plan Review.** In addition to all issues normally and usually reviewed and approved at the time of final site plan review, all issues identified above in the body of the within resolution as being subject to review and approval at the time of final site plan review shall be reviewed and approved by the Board at the time of final site plan review.

4 . **Performance Bond.** A performance bond shall be maintained by the Applicant to cover costs of improvements as set forth in N.J.S.A. 40:55D-53.

5 . **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Borough which are proposed on the Preliminary Site Plans shall, in addition to being identified on said plans, be contained in separate documents to be prepared by the Applicant and reviewed and approved by the Borough Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Borough Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Borough Clerk for maintenance with other title documents of the Borough.

6. **Outside Agency Approvals and Permits.** The within approvals shall be conditioned upon the Applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

a. Sewerage Authority;

b. Saddle River Water Utility;

c. Bergen County Planning Board unconditional approval to construct any and all aspects of the proposed development within its jurisdiction;

d. Soil Conservation Service certification / approval of the soil erosion and sediment control plan; and

e. NJDEP approval of any and all aspects of the proposed development within its jurisdiction.

7. **Subject to Other Approvals and Laws.** The within approvals and the use of the Property are conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the Property and/or use of the Property. The within approval and the use of the Property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of

the Property and/or use of the Property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

8 . **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to review of any and all compliance documents by any of the Board or Borough professionals, and prior to signing the Preliminary Plans. The Applicant shall submit payment of \$5,000.00 for Borough Engineer review fees, \$4,500.00 for legal costs and \$1,000.00 for Borough Landscape Architect review fees. Failure to abide by this condition shall result in the within approvals automatically terminating and becoming null and void.

[1] Though the Application was submitted in advance of the adoption of Ordinance No. 2020-1000, the Appellate Division of the Superior Court in Jai Sai Ram LLC v. Planning/Zoning Bd. Of the Borough of South Toms River, 446 N.J. Super. 338 (App. Div. 2016), *certif. denied* by Jai Sai Ram LLC v. Planning/Zoning Bd. Of the Borough of South Toms River, 228 N.J. 69 (2016), held that the amendment to N.J.S.A. 40:55D-10.5, enacting the Time of Application Rule, was meant only to protect developers from municipalities changing the applicable zoning to the detriment of the development while an application or appeal was pending. The Jai Sai Ram court held that a land use amendment which is beneficial to an application for development that is pending must be applied. As such, in this case, the is subject to the zoning regulations set forth in Ordinance No. 2020-1000.

[2] The Preliminary Plans as submitted by the Applicant proposed 144 parking spaces. The Applicant agreed during the hearing to reduce the number of parking spaces to 140 by removing four parking spaces on Lots 10 and 11 to provide better circulation and locations of trash enclosures at the recommendation of the Board's Engineer.

[3] N.J.S.A. 40:55D-40.5 provides that the RSIS requirements "shall supersede any site improvement standards incorporated within the development ordinances of any municipality" This includes zoning ordinance regulations and site plan ordinance requirements.

[4] N.J.S.A. 40:55D-46b also provides that, if any architectural plans are required to be submitted in the preliminary site plan review process, "preliminary plans and elevations shall be sufficient." For preliminary site plan review, neither the site plans, engineering plans or architectural plans need to be "detailed" or in "final" form as is required for final site plan review and approval pursuant to N.J.S.A. 40:55D-50a.

Motion to approve R20-22 Resolution for TMO Preliminary Site Plan Waiver RSIS Approval

Offered by Gerald Bedrin

Seconded by Carol Boyajian

Passed Absent: Holden, Kurpis, Ponzini, Richin

CLOSED SESSION:

None.

ADJOURNMENT:

Motion to adjourn: Offered by Gerald Bedrin

Seconded by Carol Boyajian

Passed Unanimously

Respectfully submitted,

Vanessa Nienhouse
Municipal Clerk
Planning Board Secretary