

A-18

**TOWNSHIP OF MARLBORO  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION  
MONMOUTH COUNTY, NEW JERSEY  
USE VARIANCE RELIEF WITH  
PRELIMINARY AND FINAL SITE  
PLAN APPROVAL**

**Approved: April 12, 2016  
Memorialized: April 26, 2016**

**MATTER OF: SFC Enterprises, LLC**

**APPLICATION NO.: 16-6569**

**WHEREAS**, an application for use variance relief along with preliminary and final site plan approval has been made to the Marlboro Township Zoning Board of Adjustment (hereinafter referred to as the "Board") by SFC Enterprises, 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 Monmouth County Route 520 (Newman-Springs Road), which is currently owned by 479 Route 520 Associates, LLC in the OPT-2 (Office Professional Transitional) Zone; and

**WHEREAS**, a public hearing was held before the Board on April 12, 2016 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            Petition on Appeal**

- A - 2 Denial**
- A - 3 Indemnification and Hold Harmless Agreement**
- A - 4 Disclosure Statement**
- A - 5 Tax Collector's Certification**
- A - 6 W-9**
- A - 7 Affidavit of Service**
- A - 8 Affirmation of Local Pay to Play Ordinance**
- A - 9 Owner's Affidavit of Authorization and Consent**
- A - 10 Check List for Bulk & Use Variances**
- A - 11 Notice To Adjoining Property Owners**
- A - 12 Conflict & Contribution Disclosure**
- A - 13 List of Property Owners within 200 feet**
- A - 14 Certified White Receipts and Green Cards**
- A - 15 Affidavit of Publication**
- A-16 As-Built prepared by Crest Engineering Assoc. Inc., dated 4/16/07, revised 2/12/16, consisting of 2 pages.**
- A - 17 Architectural Plans prepared by Robert W. Adler, dated 3/16/16, consisting of 7 pages.**
- A -18 Amended Preliminary & Final Site Plan prepared by Jason L. Fichter, PE, PP, CFM,CME, dated 2/5/16 consisting of 17 pages.**
- A - 19 Boundary and Topographic Survey prepared by Errol Melnick P.E. dated 4/6/06, consisting of 1 page.**
- A - 20 Operations & Maintenance Manual Stormwater Management Facilities prepared by Jason L. Fichter, PE, PP, CFM,CME, dated 2/5/16.**
- A - 21 Stormwater Management Report Facilities prepared by Jason L. Fichter, PE, PP, CFM,CME, dated 2/5/16.**

- A - 22      **Resolution ZB 06-6266 Memorialized 1/8/08.**
- A - 23      **Revised Operations & Maintenance Manual Stormwater Management Facilities prepared by Jason L. Fichter, PE, PP, CFM,CME, dated 3/15/16.**
- A - 24      **Revised Stormwater Management Report Facilities prepared by Jason L. Fichter, PE, PP, CFM,CME, dated 3/15/16.**
- A - 25      **Review letter prepared by John Borden, Fire Sub-Code Official dated 3/14/16, consisting of 1 pages.**
- A - 26      **Faxed Traffic review letter prepared for ZB 06-6266, prepared by Mark Kataryniak, P.E., P.T.O.E. of Birdsall Engineering, Inc. dated 3/19/07, consisting of 4 pages, with attached Evidence List from ZB 06-6266, consisting of 5 pages.**
- A - 27      **Traffic Impact Analysis prepared for ZB 06-6266, prepared by Michael J. Hanna, P.E., of Kenderian Zilinski Asso. dated 5/18/07, consisting of 57 pages.**
- A - 28      **Preliminary & Final Site Plan prepared by Stephen P. Atkins, PE, dated 5/2/06 consisting of 2 pages.**
- A - 29      **Engineering & Planning Review letter prepared by Laura Neumann, P.E., P.P., CME Associates dated 4/7/16, consisting of 7 pages.**
- A - 30      **Technical Engineering review letter prepared by Laura Neumann, P.E., P.P., CME Associates dated 4/7/16, consisting of 6 pages.**
- A - 31      **Engineering review letter prepared by Joseph A. Giddings, CSE, of CME Associates, Consultant to the Environmental Commission, dated 4/6/16, consisting of 3 pages.**
- A - 32      **Review letter prepared by Roshelle Rosen of Environmental Commission, dated 4/6/16, consisting of 1 page.**
- A - 33      **Review letter prepared by Michael Angelastro, P.E. dated 4/8/16, consisting of 2 pages.**
- A - 34      **Review letter prepared by Sgt. Stephen Levy of Traffic & Safety, dated 3/13/16, consisting of 1 page.**

- A -35      **Color rendering of Amended Preliminary & Final Site Plan prepared by Jason L. Fichter, PE, PP, CFM, CME, dated 4/12/16, consisting of 1 page.**
- A -36      **Color rendering of a Site Plan of the approved single building, prepared by Kenderian & Zilinski, dated consisting of 1 page.**
- A -37      **Architectural Plans prepared by Robert W. Adler, dated 3/16/16, Revised 4/6/16, consisting of 9 pages.**
- A -38      **Color rendering of front elevation of proposed building, consisting of 1 page.**
- A -39      **Color rendering of side elevation of proposed building, consisting of 1 page.**
- A -40      **Color rendering of front elevation of both proposed building, consisting of 1 page.**

**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 site contains 5.1 acres with 325 feet of frontage along the southerly side of Monmouth County Route 520 (Newman-Springs Road) opposite the Osprey Court intersection within the OPT (Office Professional Transitional) Zone. The site is currently improved with a residential dwelling with a rear deck and patio, as well as an accessory shed as well as a commercial building which also contains a rear deck and patio area. Access to the subject site is provided to the dwelling via a paved drive along Route 520 near the westerly side property line and to the spa building by a paved drive near the easterly side property line leading to a paved parking area for eleven (11) vehicles. The applicant was previously granted use variance relief along with preliminary and final site plan approval in a Resolution dated January 8, 2008 permitting retention of the existing spa, as well as the construction of a 35,261 square foot medical office building with an associated two hundred-fifteen (215) parking spaces.

2. The Applicant is now seeking an amended use variance along with preliminary and final site plan approval to construct two (2) medical office buildings, one two-story building which will be 24,000 square feet (98 feet x 125 feet, with a 12,045 square foot footprint), as well as a one-story 11,261 square foot building (92 feet x 125 feet). The Applicant is also proposing to maintain the existing spa and add a pharmacy to sell medicine and medical supplies only. The existing dwelling would still be razed. Access and parking are proposed to be shared by all buildings on-site with a paved drive along Route 520 providing a full movement entry and exit. The subject site will contain two hundred twelve (212) parking spaces. All proposed buildings are to be serviced by municipal water and sanitary sewer systems and a surface area infiltration basin is proposed along the rear of the site for stormwater management purposes. Two (2) generator units along the westerly side property line, refuse enclosures, site identification and building monument mounted signage, and landscape/lighting improvements are also proposed. The Applicant is further proposing phased construction whereby the one-story medical office building (11,261 square feet), associated parking for forty-one (41) vehicles and a refuse enclosure area are proposed as Phase 2 construction.

3. Counsel for the Applicant, Salvatore Alfieri, Esq. stated that the project had previously received use variance relief along with preliminary and final site plan approval for a single building which is now proposed to be split into two separate buildings.

4. Testimony was then taken from the Applicant's Engineer and Planner, Jason Fichter, P.E., P.P. Mr. Fichter stated that the Applicant was proposing to retain the exact same square footage as had been previously approved but rather split it into two different buildings. He further stated that spa would remain on-site. He stated that the medical office building identified as "Building 1" would be constructed on the first phase and that "Building 2" would be built only as needed. He did note, however, that the split buildings would have a greater impervious coverage

than is currently approved for the site. He added that the existing monument sign would remain and that directional signs would be placed on-site. He further testified that the proposed basin could accommodate the run-off increase from the additional impervious coverage. In response to questions from the Board, Mr. Fichter stated that the Applicant would comply with the Environmental Commission Report, as well as a report from John Borden from the Township Fire Bureau. He also noted that all lease agreements would designate employee parking for the spots located furthest in the parking lot. He noted that all deliveries would be performed by box sized trucks. He also noted that a path for emergency and sanitation vehicles would be depicted on the plan subject to review and approval by the Board Engineer.

5. Testimony was then taken from a representative of the Applicant, Salvatore Cannizzaro. Mr. Cannizzaro stated that the application was seeking approval for two generators but that the actual construction of the generators may take place over time.

6. Testimony was then taken from the Applicant's Architect, Robert Adler, Jr., AIA. Mr. Adler stated that the proposed buildings be constructed using a synthetic stucco and that there would be façade signage on the building. He further stipulated that basements would be prohibited in the buildings.

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

8. 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 use variance relief pursuant to N.J.S.A. 40:58D-70d(1).

The Board finds the Applicant is proposing a greater number of principal uses (3) than are permitted as well as relief to permit the spa which is prohibited. Under the Municipal Land Use Law, a Board of Adjustment, when considering a "d" variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that

the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

The Board finds the following variance relief was previously granted in the January 8, 2008 Resolution:

- a. **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 proposed on-site.
- b. **Section 220-83** – Use variance, whereby a spa use is not a permitted, accessory or conditional use within an OPT-2 Zone District.
- c. **Section 220-97C(6)** – No parking shall be allowed within 30 feet of the outer walls of any structure.
- d. **Section 220-97A(5)** – Parking areas may not be located in any required front yard area.
- e. **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 proposed along the easterly side property line abutting an R-30/20 Residential District.
- f. **Section 220-152.1A** – 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 proposed.

The following non-conformities also exist:

- a. **Section 220-83C (Table II)** - The maximum percentage of permitted impervious lot coverage is 50%; 56.4% is indicated as proposed. We note that an impervious coverage is not to exceed 53.9% was previously approved with the January 8, 2008 Resolution of Approval.



- b. **Section 220-99D(1) and -99D(9)** – Signage on the site is proposed to include a monument style identification sign, three (3) directional signs and a total of eight (8) building renovated signs. This maximum size permitted for the side signs on the medical office building is 3 square feet and two (2) side signs having an area of 46 square feet and 50 square feet, respectively, are proposed.

The Board finds that the Applicant has satisfied the positive criteria. The Board finds that its rationale for granting variance relief contained in its January 8, 2008 Resolution remains the same today. The Board is specifically mindful the fact that the Applicant is not producing any additional square footage, but is rather splitting a single building into two (2) separate buildings. The Board therefore, finds there is no difference in the operation of the site or its intensity of use with two (2) buildings from the previously approved one (1) building. The Board also continues to find that the goals of planning as enumerated in Section 2 of the Municipal Land Use Law are being advanced through the creation of medical and commercial opportunities which will benefit all New Jersey residents. The Board also finds that the negative criteria continues to be satisfied. As previously stated, the only difference in this application as to the one that was previously approved, is that one building is now becoming two (2) buildings but that the same square footage is being used. The Applicant, however, testified that additional impervious coverage will be created. The Applicant has provided a plan which will accommodate this additional impervious coverage through the planned detention basins. The Board therefore, finds there is no substantial detriment to the Zone Plan or Zoning Ordinance and that use variance relief pursuant to N.J.S.A. 40:55D-70d(1) is appropriate in this instance. The Board further finds that all bulk variances are subsumed within the granting of use variance relief. Puleio v. North Brunswick Zoning Board, 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005).

The Board finds that preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 as well as final site plan approval pursuant to N.J.S.A. 40:55D-50 are appropriate at this time. The

Board finds that preliminary and final site plan approval were previously granted and the only difference is that the single building will be two (2) buildings with the exact same square footage.

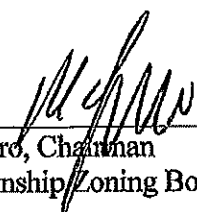
**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Marlboro on this 26<sup>th</sup> of April, 2016, that the action of the Board taken on April 12, 2016, granting Application No. 15-6569 of SFC Enterprises, LLC use variance relief pursuant to N.J.S.A. 40:55D-70d(1) and preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50 are hereby memorialized as follows:

The application is granted subject to the following conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application which are to be revised based on the Board's determination as follows:
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the reports of the Board's professionals.
3. The Applicant shall comply with all recommendations contained in the report of the Township Fire Bureau authored by John Borden.
4. The Applicant shall comply with all recommendations contained in the report issued by the Environmental Commission.
5. The proposed pharmacy on the site is permitted to sell medicine and medical supplies only.
6. Any lease for this site must designate parking spaces for employees in the farthest areas of the parking lot.
7. All deliveries shall be accomplished using box-sized trucks.
8. A vehicle path for emergency and sanitation vehicles must be depicted on the plan and provided to the Board Engineer for review and approval.
9. Basements for the two (2) proposed buildings are prohibited.

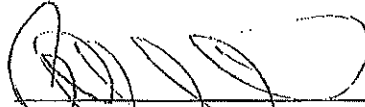
10. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
11. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Marlboro, County of Monmouth, State of New Jersey 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.

  
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Michael Shapiro, Chairman  
Marlboro Township/Zoning Board of Adjustment

ON MOTION OF: **Chairman Shapiro**  
SECONDED BY: **Mr. Zwerin**  
ROLL CALL: **Solon, Zwerin, Weilheimer, Chairman Shapiro,  
DiGrande, Adler, Nappi**  
YES: **7**  
NO: **0**  
ABSTAINED: **0**  
ABSENT: **2 {Levin, Virdl}**  
DATED: **April 12, 2016**

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 April 26, 2016.



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Alan Zwerin, Secretary  
Marlboro Township Zoning Board of Adjustment

1075967\_1 MAR-218B SFC Enterprises, LLC Resolution for Use Variance Relief and Preliminary and Final Site Plan 4.26.16