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

**Approved: September 26, 2017
Memorialized: October 24, 2017**

MATTER OF: SFC Enterprises, LLC

APPLICATION NO.: ZB 17-6627

WHEREAS, an application for use variance relief along with amended 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 September 26, 2017 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 Amended Preliminary & Final Major Site Plan prepared by Insite Engineering, LLC, dated 2/5/16, revised 8/8/17, consisting of 21 pages.
- A - 17 Architectural Plans prepared by RWA & Associates, dated 8/11/17, consisting of 6 pages.
- A -18 Stormwater Management Report Facilities prepared by Insite Engineering, LLC, dated 2/5/16, revised 8/8/17.
- A - 19 Review letter prepared by Laura Neumann, P.E., P.P., CME Associates dated 9/9/17, consisting of 7 pages.
- A -20 Review letter prepared by Michael Angelastro, Ph.D., P.E., PTOE., Remington & Vernick Engineers, dated 9/25/17, consisting of 2 pages.
- A -21 Photo of Building A.

A -22 Photo of Building A.

A -23 Colored site plan sheet.

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 subject property currently contains a commercial building indicated as a spa facility with a rear deck and patio area. The subject property is under construction with a previously approved two-story medical office building and associated parking, access and infrastructure improvements.

2. The applicant was previously granted Use Variance relief with Preliminary and Final Site Plan Approval per Resolution dated January 3, 2008 to retain the existing spa facility and to construct a 35,261 s.f. medical office building with an associated minimum two hundred-fifteen (215) parking spaces on the subject property. The Applicant was subsequently granted Amended Preliminary and Final Site Plan Approval per Resolution dated April 26, 2016 to construct two (2) medical office buildings, including a 24,000 s.f. two-story building and an 11,261 s.f. one-story building (92 feet by 125 feet).

3. The Applicant is now seeking an amended use variance along with amended preliminary and final site plan approval to add a 11,456 square foot second floor atop the one-story 11,261 square foot building, maintaining the same footprint. With the proposed second floor addition, a total of 46,912 s.f. of medical office area is proposed compared to the previously approved 35,621 s.f.

4. Roadway access will remain as previously approved. Parking in the vicinity of the building will be reconfigured to provide for two hundred twenty-four (224) parking spaces, an increase of twelve (12) spaces compared to the most recent approval.

5. All buildings will continue to be serviced by municipal water and sanitary sewer systems, as well as the previously approved surface area infiltration basin along the rear of the site for stormwater management purposes.

6. 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 the two separate buildings.

7. 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 building envelope for Building A, but to add the second floor, which would serve as an ambulatory surgery center. The first floor, which was originally intended for the ambulatory surgery center, would be used instead for examination rooms and medical office space. He testified that the additional square footage would have negligible traffic impact, but confirmed that this determination remained subject to county review and approval. As to the impact on parking, Mr. Fichter testified that only 179 parking spaces are required by code for the existing and proposed uses, but that a total of 224 parking spaces (202 plus 22 banked) were proposed. Fichter further confirmed that this number of spaces would remain sufficient even in the event that 100% of the development was utilized for medical office (i.e., meaning, in the event the ambulatory surgery center, which generates less parking demand, was converted for medical office use, which generates a greater parking demand under the ordinance). Moreover, Mr. Fichter testified that the proposed basin was designed to accommodate the run-off increase attributable to the construction of the banked parking spaces. With respect to the planning justifications for the relief being sought, Mr. Fichter opined that the

proposed development would further purposes of zoning A, B, C, G and I, and would neither result in any substantial detriment to the public good, nor create any substantial impairment to the zoning plan or zoning ordinance.

8. In response to the Board's questions and concerns, Mr. Fichter agreed that the applicant would work with the Board's traffic expert to identify additional on-site signage to aide vehicular circulation within the site. Mr. Fichter further agreed that the applicant would also work with the Board's traffic expert by relocating some of the designated ADA parking spaces closer to Building B where such spaces could be better utilized.

9. Testimony was then taken from a representative of the Applicant, Salvatore Cannizzaro, who stated that improved economic conditions, together with highly successful leasing efforts, generated much greater demand for medical office and medical related uses than he forecast when obtaining the prior approvals.

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

11. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Marlboro Township Zoning Board of Adjustment, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Marlboro; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant may be granted use variance relief pursuant to N.J.S.A. 40:58D-70d(1) as well as

amended preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50.

The Board finds the Applicant's proposal to add a second floor to a previously approved building in order to allow additional medical office space and examination rooms to compliment the proposed ambulatory surgery center requires use variance relief. 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 that the Applicant has satisfied the positive criteria. The Board finds that its rationale for granting variance relief contained in its earlier resolutions remains the same today. The Board is specifically mindful of the fact that the Applicant is not proposing to expand the building footprint, but only to add a second floor over the existing approved building. The Board finds that the site improvements and infrastructure, both as previously approved and to be provided by the Applicant, is capable of accommodating the additional square footage to be provided by the additional building floor. 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. The same building envelope is being used and is not being expanded. The Applicant, however, testified that additional impervious coverage will be created in the even the banked parking spaces are constructed. Nevertheless, 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.) cert. den. 184 N.J. 212 (2005).

The Board finds that amended 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 story building will be provided a second floor with a complimentary and related medical use.

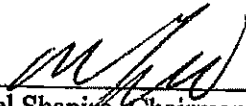
NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Marlboro on this 24th of October , 2017, that the action of the Board taken on September 26, 2017 granting Application No. ZB 17-6627 of SFC Enterprises, LLC use variance relief pursuant to N.J.S.A. 40:55D-70d(1) and amended 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: (a) on-site way finding signage is to be added to improve vehicular circulation; and (b) the location of certain ADA parking spaces should be shifted closer to Building B, with the applicant working with the Board's traffic expert on both revisions.
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. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all prior approval conditions.
4. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.

5. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Marlboro, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Michael Shapiro, Chairman
Marlboro Township Zoning Board of Adjustment

ON MOTION OF: **Chairman Shapiro**

SECONDED BY: **Dr. Adler**

ROLL CALL: **Solon, Verdi, Zwerin, Wellheimer, Chairman Shapiro, DiGrande, Adler, & Powers**

YES: **8) Solon, Verdi, Zwerin, Wellheimer, Chairman Shapiro, DiGrande, Adler, & Powers**

NO: **0}**

ABSTAINED: **0}**

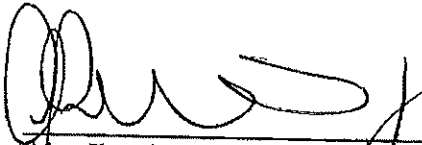
RECUSED: **0}**

ABSENT: **0}**

DATED: **September 26, 2017**

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 October 24, 2017.

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Alan Zwerin, Secretary
Marlboro Township Zoning Board of Adjustment

1306200_1 MAR-272E SFC Enterprises, LLC Resolution for Use Variance and Amended P&F Site Plan Approval 10.24.17