

**BOROUGH OF DEMAREST  
PLANNING BOARD**

**IN THE MATTER OF THE APPLICATION OF 95 COUNTY DEMAREST LLC  
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL FOR AN INCLUSIONARY  
TOWNHOUSE DEVELOPMENT AT PREMISES KNOWN AS  
95 COUNTY ROAD, LOT 5 IN BLOCK 145,  
BOROUGH OF DEMAREST, NEW JERSEY**

BE IT RESOLVED, by the Planning Board of the Borough of Demarest that the following procedural history and resolution of related issues, findings of fact and conclusions of law are hereby adopted in reference to this matter.

**PROCEDURAL HISTORY AND RESOLUTION OF RELATED ISSUES:**

This Application arose out of Mt. Laurel litigation between the Borough and the Applicant's predecessor in title, Carol E. Avery and Quentin D. Avery. A detailed recitation of the settlement of the original litigation, and the adoption of an ordinance providing for a site plan application for a conforming project is contained in Exhibit "A" entered as part of the record in this matter. The Settlement Agreement provided for Planning Board and New Jersey Department of Environmental Protection ("NJDEP") review. Following the Settlement Agreement dated April 10, 2019 (referred to as "Settlement Agreement"), between the Borough of Demarest and the owners of the property Carol E. Avery and Quentin D. Avery in accordance with In Re N.J.A.C. 5:96 and 97, 221 NJ 1, (2015)(Mt. Laurel 4) in the matter of the Borough of Demarest, County of Bergen, Docket No.: BER-L-6301-15, the Applicant submitted an application purporting to contain no variances and proposing to construct six (6) market-rate townhouses and two (2) affordable units in accordance with the Settlement Agreement *supra*.

The initial Application for the matter presently before the Planning Board was dated June 22, 2022. The Application was for Preliminary and Final Site Plan Approval. It was filed with the Planning Board and was declared administratively complete. The first hearing on this matter was held on November 2, 2022, on a regular Board meeting date. Richard J. Abrahamsen, Esq. presented the application on behalf of the Applicant.

The Applicant provided Proof of Publication and an Affidavit of Service which were accepted by the Board (Exhibit "B").

At the time of the settlement of the original Mt. Laurel litigation, the Borough and the Applicant agreed to certain orders and standards to be applied to this property (as Ordinance No. 1066-19 entitled " Residential, Multifamily Zone" which included the permitted principal uses for townhomes and two (2) flats, with bulk standards including *inter alia* maximum building coverage at twenty (20%); maximum and impervious coverage at fifty (50%) percent and maximum density at four (4) units per acre.

### FINDINGS OF FACT

The Procedural History and Resolution of Related Issues set forth above is incorporated into the Findings of Fact by Reference.

As noted above, the matter was heard on five (5) public meetings on November 2, 2022, December 7, 2022, January 4, 2023, March 1, 2023, and March 22, 2023, and upon proper notice, certified by evidence of Proof of Service to property owners within a 200-foot radius of the subject property and Proof of Publication in an official newspaper of the Borough; and

**WHEREAS**, Richard J. Abrahamsen, Esq. appeared before the Board on behalf of the Applicant for the first three (3) hearings and subsequently Antimo Del Vecchio, Esq. of the firm Beattie Padovano LLC appeared before the Board at the March 1, 2023, and March 22, 2023 hearings on behalf of the Applicants; and

**WHEREAS**, the only interdepartmental communications and advisory reports of municipal departments and agencies were:

1. Planning Board Application Package dated June 22, 2022; and
2. Cover letter from Richard J. Abrahamsen, Esq., transmitting application; and
3. Settlement Agreement between the Borough of Demarest and Carol E. and Quentin D. Avery dated April 10, 2019.
4. Site and Architectural Plans prepared by Michael J. Hubschman, P.E., P.P. of Hubschman Engineering, PA. as follows:

- Plans entitled "Proposed Townhouses No. 95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated March 23, 2022, revised through December 21, 2022, consisting of nine (9) sheets. It should be noted Robert J. Mueller, PLS has also signed Sheets 1, 2, and 8. Additionally, Sheet 7 has been revised through February 15, 2023.
- Plans entitled "New Townhouses 95 County Rd, Demarest", prepared by Rapaport & Associates, Inc., dated January 24, 2022, revised through December 19, 2022, consisting of nine (9) sheets.
- Plan entitled "Traffic Circulation Plan", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated September 22, 2022, consisting of one (1) sheet.
- Survey entitled "Topographic/Location Survey", prepared by Robert J. Mueller, PLS and Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated February 8, 2021, consisting of one (1) sheet.
- Document included with the application entitled "Schedule A", unknown author, no date, consisting of one (1) page.
- Document entitled "Stormwater Management Report", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, no date, consisting of one (1) page.
- Stormwater Management Report, prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, unknown original date, revised through August 11, 2022.
- Letter entitled "95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated August 16, 2022, consisting of three (3) pages.
- Letter entitled "95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated October 12, 2022, consisting of three (3) pages.

- Letter entitled "95 County Road, LLC Application", prepared by Richard J. Abrahamsen, Esq. of AbrahamsenGrant, LLC, dated October 27, 2022, consisting of two (2) pages.
  - Letter entitled "95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated November 22, 2022, consisting of two (2) pages.
  - Letter entitled "95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated December 21, 2022, consisting of two (2) pages.
  - Letter entitled "95 County Road", prepared by Michael J. Hubschman, PE, PP of Hubschman Engineering, PA, dated February 15, 2023, consisting of two (2) pages.
  - Letter entitled "95 County Demarest, LLC", prepared by Daniel L. Steinhagen, Esq. of Beattie Padovano, LLC, dated February 16, 2023, consisting of three (3) pages.
5. Engineering Plans prepared by Michael J. Hubschman, P.E., P.P. of Hubschman Engineering as follows:
- Site plans consisting of ten (10) sheets, prepared, and signed by Michael J. Hubschman P.E. & P.P., and Robert J. Mueller, P.L.S. of Hubschman Engineering, P.A., dated May 10, 2022; Last revised December 21, 2022;
  - Stormwater Management Report consisting of 67 sheets, prepared, and signed by Michael J. Hubschman P.E. & P.P., of Hubschman Engineering, P.A., last revised December 21, 2022 (Revision 5);
6. Review memoranda of Darlene A. Green, P.P., A.I.C.P., of Colliers Engineering & Design, Planning Board's Planner, dated September 22, 2022, October 5, 2022, October 25, 2022, December 2, 2022, December 21, 2022, and February 27, 2023; and
7. Review memoranda of Craig Zimmermann P.E., Board Engineer, of Colliers Engineering & Design, Planning Board's Engineer, dated September 6, 2022, December 5, 2022, December 29, 2022, and February 24, 2023;

8. Stormwater Design Review Letter of Craig Zimmermann P.E., Board Engineer, of Colliers Engineering & Design, Planning Board's Engineer, dated February 24, 2023;
9. Correspondence from the Demarest Volunteer Ambulance Corps. (undated);
10. Correspondence from the Demarest Fire Department dated February 18, 2023;
11. Correspondence from the Demarest Police Department dated October 20, 2022, November 28, 2022, and December 21, 2022.

**WHEREAS**, admitted into evidence were the following exhibits:

- **A1**—Site Plan set prepared by Hubschman Engineering dated October 11, 2022 consisting of eight (8) pages;
- **A2**—Site Plan set prepared by Hubschman Engineering revised November 22, 2022;
- **A3**—Revised Architectural Plan set prepared by Hubschman Engineering; and
- **A4**—Revised Site Plan set prepared by Hubschman Engineering; and
- **M1 and M2**—two (2) photographs showing flooding towards Carlotta Way;

**WHEREAS**, the subject Application involves the following zoning data:

<b>ZONE: R-MF</b>	<b>REQUIRED</b>	<b>PROVIDED</b>
Minimum Lot Area	87,120.00 sq. ft.	92,924.61 sq. ft.
Minimum Frontage	150.00 ft.	150.00 ft.
Minimum Front Yard	35.00 ft.	38.12 ft.
Minimum Side Yard	15.00 ft.	15.00 ft.
Minimum Rear Yard	50.00 ft.	389.64 ft.
Maximum Building Coverage	20%	12.95%
Maximum Improved Coverage	50%	26.67%
Maximum Building Height	2 Story/30 ft.	2 Story/28.56 ft. and 2 Story/27.64 ft.
Maximum Density	4 Units/AC	3.756 Units/AC
Minimum Parking	18 Spaces	28 Spaces

The subject property is located on the southwest side of County Road in the Residential Multifamily (R-MF) District. The site is developed with an existing two-family dwelling, detached barn, driveways, and associated improvements. The property is surrounded by residential uses.

Yard and bulk requirements for the R-MF District can be found in Section 175-12C. and are as follows:

- Minimum Lot Area - 2 acres
- Minimum Lot Width - 150 feet
- Minimum Front Yard Setback - 35 feet
- Minimum Side Yard Setback - 15 feet
- Minimum Rear Yard Setback - 50 feet
- Maximum Building Coverage - 20%
- Maximum Impervious Coverage - 50%
- Maximum Building Height - 2 stories/30 feet
- Maximum Density - 4 units per acre

**WHEREAS**, testimony in support of the application was given under oath by Applicant's Engineer, Michael Hubschman, P.E., P.P. of Hubschman Engineering PA; Applicant's Architect, Uri Rapaport, AIA of Rapaport & Associates Inc.

**WHEREAS**, testimony was also given under oath by the Planning Board's Engineer, Nick Chelius, P.E. and Planner, Darlene A. Green, P.P., AICP, both of Colliers Engineering & Design; and

**WHEREAS**, reports were supplied by the Applicant's Engineer and the Board's Engineer and Planner, providing technical comments in the above referenced review and which confirmed that this is a variance free application; and

**WHEREAS**, the Planning Board considered the testimony and evidence presented, the following are the findings of fact and conclusions of the Board:

**THE SITE:**

1. The subject parcel consists of 92,924.61 square feet fronting the westside of County Road and is located in the residential, multifamily district (R-MF). The westerly portion of the site is encumbered by wetlands with associated 300-foot Riparian Zone. The property is also encumbered by an existing drainage easement. The proposed improvements are all located outside of environmentally sensitive areas

with the exception of the outfall structure and associated pipe for the proposed infiltration basin. The site is currently occupied with an existing two (2) family dwelling and barn which is to be demolished.

2. The site sits along County Road where the Applicant proposes to construct a private roadway labeled as Roadway "A" on the site plan which connects to County Road in the northeasterly corner of the site. A portion of the 2.13-acre tract that is proposed for townhouse construction is 0.52 acres, as the remainder of the site is not being developed due to New Jersey Department of Environmental Protection ("NJDEP") environmental constraints.
3. The Board heard the Applicant's testimony and found the subject project to be consistent with the intent and purpose of the Borough's Zoning Ordinance affecting the subject property, Ordinance No. 1066-19, and that no variances are required from the Planning Board for the development as proposed. The Residential, Multifamily Zone Ordinance permits the townhouse project as detailed including two (2) buildings aggregating six (6) townhouse units and two (2) flats.
4. The property consists of 2.13 acres. The portion of the 2.13-acre tract that is proposed for townhouse construction is approximately one-third (1/3) of the acreage, as the remainder of the site to the southwest lies within the Riparian Zone of Cresskill Brook and includes a 300-foot Riparian Zone and a 150-foot trout brook area setback, so that less than one-half (1/2) of the site is buildable.
5. A true and accurate copy of Ordinance No. 1066-19 is annexed hereto as Exhibit "A".
6. In accordance with Ordinance No. 1066-19, Applicant is required to provide two (2) affordable housing rental units in accordance with the Settlement Agreement. The terms and conditions of said Settlement Agreement are incorporated as if set forth at length herein and are a condition of this approval.

#### **OTHER SITE PLAN CONSIDERATIONS:**

7. The proposed townhouse development complies with the impervious coverage requirements of Ordinance 1066-19. Specifically, the impervious coverage is permitted at fifty (50%) percent and the Applicant's project is 25.94% impervious coverage.

8. **Stormwater management.** The proposed total area of disturbance is 0.92 acres and is subject to the associated NJDEP Stormwater Management Requirements as a Major Development because there is over 1/4 acre of new impervious coverage. The stormwater management system has been designed by Hubschman Engineering, PA and is as set forth in the plans submitted to the Board's Engineer's Office, which plans have been reviewed by the Board engineer for compliance.
9. No additional increase in water runoff shall be experienced by adjacent properties as a result of this project. Drainage calculations have been submitted to the Board's Engineer's Office and have been reviewed, with remaining outstanding items outlined in the Engineer's review letter dated February 24, 2023.
10. **Sanitary Sewer Flow.** The Applicant has caused a sewer study to be conducted, which analysis was provided by the Applicant and reviewed by the Board Engineer who determined that the Borough's sanitary sewer system has sufficient capacity to handle the development.

#### NOVEMBER 2, 2022 HEARING

11. At the hearing on November 2, 2022, the Board heard the Applicant's Engineer, Michael Hubschman, P.P., P.E. of Hubschman Engineering, 263 South Washington Avenue, Bergenfield, New Jersey 07621 who was sworn in and qualified as an expert in engineering and testified to the site plan and all engineering plans and reports submitted. Mr. Hubschman also testified that the proposed development satisfies the RSIS Standards for parking where eighteen (18) spaces are required, and thirty (30) spaces are provided.
12. Mr. Hubschman described his Site Plan Set, marked as Exhibit "A-1" consisting of eight (8) sheets, dated October 11, 2022. He described the topographic features of the property to the Board, noting that the area is surrounded by NJDEP protected wetlands, transition areas, riparian zones, and a stream. The project design must accommodate drainage facilities to prevent stormwater runoff onto adjacent properties.
13. He described the development proposal as aggregating eight (8) units within two (2) buildings. Building "A" will contain two (2) affordable housing units in accordance with the Borough's Ordinance and Settlement Agreement. The

remainder of Building "A" and Building "B" will contain six (6) townhouse market-rate townhouse units.

14. Mr. Hubschman described that the two (2) buildings will have different types and sizes of units, with Building "A" having two (2) "flats" together with two (2) townhouse units, and Building "B" containing four (4) townhouse units. He testified that all of the buildings are in compliance with the Ordinance for the zone.
15. Mr. Hubschman described the road layout within the site. He described the road grade as moderate. The initial road design was configured as a 'L' shape, with access from County Road and connecting to driveways at the front of the buildings.
16. Mr. Hubschman testified that all buildings will conform to the Ordinance in terms of bulk issues including respecting a wetlands transition line that exists to the rear of Building "B".
17. Mr. Hubschman testified as to drainage and stormwater controls and soil conditions, indicating that the site plan, at page 6 reflects drainage system details including a Filterra unit for pre-treatment and an infiltration basin at the rear of the development, which stormwater improvements will require periodic maintenance to function properly. At this time members of the Board questioned the location of the Infiltration Basin and Mr. Hubschman indicated that he would consider moving the structure back from where it intrudes into the side-yard.
18. Mr. Hubschman reviewed the landscaping plan indicating that the project required the removal of twenty-eight (28) trees in the building area. He noted that the application for development includes a waiver for certain tree replacement where the Applicant proposes to remove thirty (30) major trees which generates a requirement for forty-six (46) major replacement trees. The Applicant proposes twelve (12) major trees and (69) minor trees.
19. With respect to the Lighting Plan, Mr. Hubschman testified that there would be no light spillage onto neighboring properties.
20. Mr. Hubschman reviewed the interior roadway of the development. In answer to the Board's questions, he indicated that the internal roadway was proposed to be twenty-four (24') feet wide and would be maintained by the homeowner association. He also described a Snow Storage Area Plan which he indicated was

based on a six (6") inch snowfall. The Plan provides for storage of snow on the site with the intention that the storage would not interfere with required parking of residents' vehicles. Parking totals provide for thirty (30) parking spaces with an ADA compliant space included. No sidewalks will be included on the internal roadway plan.

21. At the conclusion of Mr. Hubschman's testimony there were questions from the public and the Board regarding the Landscape Plan, the adequacy of drainage and seepage pit facilities, together with a request that the infiltration basin be moved from the side-yard which is an existing variance condition.
22. The Board also asked for clarification of whether there are basement units depicted in all of the buildings, to which Mr. Hubschman and Attorney Abrahamsen indicated would be further clarified at a subsequent hearing.

#### DECEMBER 7, 2022 HEARING

23. At the hearing on December 7, 2022, Attorney Abrahamsen indicated that the Applicant would move the catch basin so there will not be a variance condition with respect to the side-yard intrusion. At that time, Mr. Abrahamsen presented the testimony of Applicant's Engineer, Michael Hubschman, P.P., P.E., who was previously sworn. Mr. Hubschman indicated that the Applicant had made five (5) major changes to the plans including moving the catch basin from the side-yard, adding a split rail fence in accordance with NJDEP regulations to indicate the wetlands transition area, widening of the interior roadway from twenty-four (24') feet to twenty-six (26') feet, a relocation of the buildings to allow for the wetlands transition area, and elimination of parking spaces #5 and #6 to provide for a turn-around at the end of the interior roadway and a changeover of proposed decks to patios.
24. Mr. Hubschman described for the Board additional site issues with respect to adding two (2) fire hydrants to the site and indicating that the interior roadway, which was now a straight run, did not require a turn-around in accordance with RSIS , which provides that an interior roadway less than 300 feet in length does not require a turn-around.
25. In response to Board questions, Mr. Hubschman indicated that it is intended that the homeowner association will provide private carting services for trash.

26. At the conclusion of Mr. Hubschman's testimony, the Board opened the meeting to the public for questions and general comments. There were no additional questions or comments from the public.
27. At that time, the Applicant presented the testimony of Uri Rapaport of Rapaport & Associates, Inc. with offices located at 75 Sherwood Road, Tenafly, New Jersey 07670. Mr. Rapaport was sworn in and confirmed by the Board to be an expert architect.
28. Mr. Rapaport described his plans dated January 24, 2022. Building "A" is to include one (1) affordable housing units comprised of two (2) bedroom and one (1) affordable housing unit comprised of three (3) bedrooms. Building "A" faces County Road and reflects the required "traditional" appearance that is depicted in the building plans appended to the Settlement Agreement.
29. Mr. Rapaport described that Unit #1 will be ADA compliant and that an ADA parking space will be proximate to Unit #1.
30. Mr. Rapaport described that the market-rate units are intended to have four (4) bedrooms with parking compliant with the RSIS standard where eighteen (18) spaces are required, and twenty-eight (28) spaces are provided for in the current plans. He indicated that the affordable housing units do not have a basement and that there is a space for a storage unit, but this is not intended to be a "sleeping room".
31. Mr. Rapaport described the exterior building design as "traditional" and that the siding material for the buildings resembles wood and lends itself to the intended traditional look of the buildings.
32. In answer to Board questions, Mr. Rapaport indicated that changes would not be permitted to the units by residents and that there could be no change to either the exterior or interior of the units without returning to the Planning Board for approval. At the conclusion of Mr. Rapaport's testimony, there were no further questions from the Board or the public.
33. Mr. Abrahamsen presented further testimony from Mr. Hubschman, the Applicant's engineer who provided further testimony about site plan changes including the requested waiver referenced on the tree replacement schedule and he described for the Board that the infiltration basin had been moved further east

in response to Board comments. He also offered the testimony as to the Lighting Plan and responded to the Board Engineer's questions regarding the nature of the lighting (LED) and indicated that he would provide the footcandle measurements and temperature/color choice of the lighting to the Board Engineer.

34. In response to Board questions, Mr. Hubschman indicated that in accordance with the Ordinance there would be a deed restriction prohibiting the conversion of garages to living space.
35. At that time there were a number of questions for Mr. Hubschman concerning drainage and flooding concerns affecting the nearby Cresskill Brook, which several neighbors indicated is an existing flooding hazard to their adjoining properties.
36. The Board commented at this time about concerns over flooding and maintenance of the infiltration facility by the homeowner association. The Board also questioned the density of the project and addressed an ambiguity in the architectural plans regarding whether basement bedrooms in Building "A" are prohibited.
37. Mr. Abrahamsen indicated that he would return to the Board for an additional hearing with revised plans to reflect that the development plans were fully compliant with the Settlement Agreement and the Zoning Ordinance and would address the concerns of the Board regarding the basements and other concerns.
38. At that time, the hearing was concluded, and the meeting was adjourned to be continued on January 4, 2023.

#### **JANUARY 4, 2023 HEARING:**

39. At the public hearing held on January 4, 2023, the Applicant's Attorney, Richard J. Abrahamsen, advised the Board that there was a further revision to the engineering plan and the architectural plan that was provided to the Board. Mr. Abrahamsen opened the meeting and indicated that the Applicant was proposing six (6) minor revisions to the Engineering Plan and a revision to the Landscaping Plan that was provided to the Board in revised plans. At that time, Mr. Abrahamsen introduced the Applicant's Engineer, Michael Hubschman, P.P., P.E. of Hubschman Engineering who remained qualified and under oath from the previous hearings. Mr. Hubschman described certain changes to the Site Plan to

respond to the Board Engineer's comment letters as well as the Board's comments from the previous hearing.

40. Mr. Hubschman testified that the revised Engineering Plans included (i) moving the small scale infiltration basin 15 ½ feet from the property line on the westside; (ii) revising the originally proposed split rail fence along the wetlands transition area to a four (4) foot black decorative aluminum fence as typically used for swimming pools; (iii) repositioning of Building "A"; (iv) eliminating window rails for the rear basement windows; and (v) eliminating window rails on the side of the building.
41. Finally, Mr. Hubschman indicated that the general Landscaping Plan had been revised to reflect that a tree in front of the transformer on the site would need to be removed. In addition, the plan reflects that four (4) additional seepage pits would be added to the site to capture the roof runoff of Building 'A', while increasing water storage on the site. Runoff from Building 'B' flows to the infiltration basin in the rear of the Building.
42. Mr. Hubschman described for the Board the total storage on the site has been increased to accommodate additional rainwater and that the drainage system is designed to mitigate against any further runoff from the site by reducing the flow rate from the site.
43. In answer to Board questions, Mr. Hubschman described that the basin and two (2) Filterra units have maintenance and inspection requirements for sediment buildup and collection from roof leaders that would be required to maintain proper function, which maintenance would be the responsibility of the homeowner association.
44. A number of Board members and neighbors questioned Mr. Hubschman regarding the efficacy of the drainage system, potential problems from stormwater runoff to neighboring properties and Cresskill Brook; the functioning of the drainage system with respect to soil conditions at the site and continuing concerns about the sufficiency of the volume of runoff that would be contained by the stormwater facilities.
45. At the conclusion of Mr. Hubschman's testimony, there were no further questions from the Board or from members of the public.

46. At that time, Mr. Abrahamsen returned Mr. Rapaport for additional testimony on the architectural plans for the project.
47. Mr. Rapaport remained qualified and under oath from the previous hearing and addressed the Board's questions regarding use of basements for the affordable housing units (there is no basement for Unit #1). He indicated that the plans show a notation regarding the prohibition for a storage unit to be used as a sleeping area.
48. He further testified that the kitchen and hallway of one of the affordable housing units meet ADA requirements. The basement windows have been eliminated at the front elevation along County Road. There were considerable comments regarding the number of bedrooms in total with the Board and Mr. Abrahamsen entering into a colloquy regarding whether the Settlement Agreement binds the Planning Board and the Applicant with respect to the number of bedrooms in the market-rate units, and what conditions would be agreed to between the Applicant and the Board if the application were to achieve an affirmative vote.
49. At the conclusion of Mr. Rapoport's testimony, there were additional questions from the public and the Board regarding the ADA compliant unit, the status of the wetlands and NJDEP restrictions that would prevent disturbance of the area, and further comments regarding the Landscaping Plan and the preservation of certain trees.
50. At the conclusion of Mr. Hubschman's presentation and the testimony of witnesses Messrs. Hubschman and Rapaport, there were no further questions from the Board or from members of the public.
51. At that time, Board Chairperson Hayden requested closing comments from Mr. Abrahamsen. The hearing concluded with the meeting to be adjourned and counsel for the Applicant, Mr. Abrahamsen, and Counsel for the Board Mr. Bern to review possible conditions of approval should the Board consider an approving vote of the project at the next adjourned meeting date which was set at March 1, 2023.

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**MARCH 1, 2023 HEARING:**

52. At the public hearing held on March 1, 2023, the Applicant's new attorney, Antimo A. Del Vecchio, of the firm Beattie Padovano, LLC with offices located at 200 Market Street, Suite 401, Montvale, New Jersey 07645 appeared on behalf of

the Applicant. Mr. Del Vecchio advised the Board that he is replacing Mr. Abrahamsen as counsel for the Applicant. He referred to correspondence previously forwarded to the Board on February 16, 2023, from Daniel L. Steinhagen, Esq. of Beattie Padovano taking issue with the Board's legal authority to question the configuration of the market rate units and bedroom counts. The Steinhagen correspondence and Mr. Del Vecchio asserted that the Ordinance imposes no restriction on the bedroom count for the six (6) market rate units, and that pursuant to N.J.A.C. 5:93-10.2(c) prohibits the Board from regulating the number of bedrooms in a dwelling, particularly so in an inclusionary development. Mr. Del Vecchio described that imposing a limit on the bedroom count would be an improper cost-generating feature and is therefore unlawful.

53. Following Mr. Del Vecchio's statement, he asked the Board to consider that, as a compromise, the Applicant would be willing to accept as a condition of approval that there be no emergency egress windows in the basement of the market rate units, and hence would not be used as bedrooms or sleeping quarters, which addressed a concern of the Board.
54. At that time, Mr. Del Vecchio presented the Applicant's Engineer Michael Hubschman, P.P., P.E., who remained qualified and under oath from the previous hearing. Mr. Hubschman testified regarding additional changes to the Landscape Plan. The Applicant will place additional trees in the Transition Area and will make changes to conform to the Board Planner's and the Board Engineer's review letters. He stipulated that there will be no bedrooms in the basements of the units. In answer to other Board concerns, Mr. Hubschman stated that excess snow will be removed from the site by the homeowner association's private hauler, as needed.
55. At that time Mr. Hubschman addressed the memo from the Borough of Demarest Fire Department dated February 18, 2023, which reviewed the plans and requested four (4) changes. Mr. Hubschman indicated that the first request as to no parking on the street for access by fire apparatus was acceptable. As to Building "B" access, Mr. Hubschman indicated that the NJDEP mandated the location of the fence along the transition area averaging line but that the Applicant would agree to put a gate in to permit access to the rear of the property by fire-fighters. With respect to a walkway, the Applicant would install a walkway if the Board required it to access the rear of the building unless same interferes with the NJDEP required wetlands area. Mr. Hubschman added that the third request regarding fencing was not necessary as no fencing is proposed on the northside of the development

facing County Road. Finally, Mr. Hubschman indicated that in accordance with the Residential Site Improvement Standards ("RSIS") where the roadway in a multifamily court is less than three hundred (300') feet, a turn-around is not required. The roadway on this site is less than three hundred (300') feet.

56. At the conclusion of Mr. Hubschman's testimony there were questions from the Board regarding the revised plans showing no egress windows and no occupiable basement rooms. Mr. Hubschman reiterated that the footprint of the buildings was not changing notwithstanding that the Applicant intended to have four (4) and not three (3) bedrooms in the market-rate units. He indicated that the style and dimensions of the buildings would remain as previously depicted in Mr. Rapaport's architectural plans. He indicated that he would present a comparison of the footprints to evidence that the footprint was not changing.
57. The public was given a chance to question Mr. Hubschman and also to make any comments prior to the hearing being closed. Board members discussed a number of conditions and recognized the concerns of neighboring property owners regarding storm water and flooding issues. The Board recognized the concern and suggested that they would add conditions to any approval.
58. After Mr. Hubschman addressed questions and concerns of the Board, Mr. Del Vecchio provided a brief summation of the application indicating that the plan was a conforming plan that complied with the zoning ordinance. Mr. Del Vecchio indicated that the Applicant was amenable to most of the conditions that had been articulated by the Board and stipulated to by Mr. Abrahamsen during the course of the hearings except for a limitation as to the number of bedrooms in the market-rate units which was previously discussed at the outset of Mr. Del Vecchio's presentation and in the correspondence from Mr. Steinhagen *supra*. Mr. Del Vecchio stipulated that he would extend the time for the Board's consideration and vote on the application provided that the Board authorized its Counsel, Douglas Bern to draft a resolution including conditions that had been previously stipulated to by Mr. Abrahamsen and considered by the Board during the course of the hearings.
59. The Board voted affirmatively to authorize Mr. Bern to draft a resolution and set a Special Meeting date to present the resolution and reconvene was set for March 22, 2023.

60. At the conclusion of Mr. Del Vecchio's brief summation, the Chairwoman called for a motion and a second and the Board voted to authorize Mr. Bern to draft a resolution approving the project for consideration by the Board at the Special Meeting set forth March 22, 2023.

**FINDINGS OF FACT AND CONCLUSIONS:**

Upon hearing the testimony produced on behalf of the Applicant, and studying the exhibits and materials submitted and for the reasons set forth on the record and in this Resolution, the Planning Board finds that the Preliminary and Final Site Plan Application presently before the Board is in substantial compliance with the ordinances and regulations of the Borough of Demarest and should be approved subject to the conditions listed below. For the reasons set forth in this Resolution and otherwise contained within the record of the public hearings on this matter and by a vote of six (6) to two (2), the Board approves the Application of 95 County Demarest LLC for Preliminary and Final Site Plan Approval.

**NOW THEREFORE BE IT RESOLVED**, by the Planning Board of the Borough of Demarest, that the development application of Block 145, Lot 5 be, and the same is hereby, approved for the foregoing reasons, subject to the specific and general conditions hereinafter set forth.

This approval and the above listed relief are granted subject to compliance with the following conditions:

**CONDITIONS SPECIFIC TO THE APPLICATION:**

1. Applicant shall comply with all terms of the Settlement Agreement and attached Conceptual Plan.
2. Subject to the approval of the County Planning Board and compliance with all conditions of that approval.
3. The Applicant shall comply with Ordinance No. 1066-19 which details the permitted uses and conditions of aspects of the development.
4. Applicant shall form a homeowners' association or condominium association (either "Association") to include all the owners of the units to be constructed and the Association shall be responsible for the proper care and maintenance of all

improvements constructed on the property including landscaping, stormwater management, septic systems, access road, access road lighting, fencing and retaining walls and the exterior of all units.

5. Applicant shall submit to the Planning Board Attorney the proposed Master Deed and related Association documents for review prior to filing. Such documents shall include provisions requiring the Association Board to establish sufficient annual reserves for the repair, replacement, and maintenance of the on-site storm water maintenance facilities. The amount of the annual reserve deposit shall be established in the required Master Deed.
6. The Association documents including the Master Deed or other Deed restrictions shall include provisions granting the Borough the right but not the obligation to perform any required repair, replacement or maintenance of the on-site stormwater system in the event that the Association fails to perform (or fails to commence and thereafter diligently perform) any such repair, replacement or maintenance in a timely fashion (within 24 hours in the event of an emergency or seven (7) days in the event of a non-emergency) and to thereafter impose a lien upon all units in the condominium for any amount expended by the Borough for such repair, replacement or maintenance by resolution setting forth the amount of such lien and to thereafter recover such sums as if a municipal tax or public offering statements or other advertising materials shall include notice of this provision.
7. The site shall be fully irrigated.
8. Garbage shall be stored inside of each garage.
9. The affordable units shall be family rental units.
10. The two (2) affordable units shall contain language in the lease that indicates that the storage room cannot be used as a sleeping space. A copy of said lease shall be provided to the Board's professionals for review and approval.
11. The two (2) affordable units shall have at least a 30-year deed restriction, which shall be submitted at least 160 days prior to the issuance of any Certificate of Occupancy. Said deed restriction shall list the unit address, income level, and number of bedrooms and bathrooms. The deed restriction shall be reviewed by the Board Attorney and Planner prior to being recorded.

12. The Applicant shall be responsible for retaining a qualified Administrative Agent, who has been pre-approved by the Borough in accordance with Term #10 of the Avery Settlement Agreement.
13. Affirmative marketing for the affordable units shall commence at least 120 days before any Certificate of Occupancy for any affordable unit is issued. The Developer is allowed to complete 25% of the market rate units prior to the completion of the first affordable unit.
14. All necessary steps shall be taken to make the two (2) affordable units creditworthy pursuant to applicable law for purpose of addressing the Borough's affordable housing obligation.
15. The submission of a Master Deed and Public Offering Statement (as applicable) shall be submitted to the Board Attorney and Planner for review and approval at least 160 days prior to the issuance of any (market or affordable) Certificate of Occupancy.
16. The Applicant shall comply with all outstanding comments and conditions contained in the Board Planner's review letter # 7 dated February 27, 2023.
17. Any landscaping damage as a result of snowplowing and/or storage that is damaged or killed shall be promptly replaced on an ongoing basis.
18. Snow shall be removed from the internal roadway within a reasonable time (not to exceed 24 hours after cessation of the snowfall) and shall not be stockpiled so as not to interfere with safe and efficient vehicular movement on-site, and to the extent it cannot be stock piled, it shall then be removed from the site.
19. Pervious pavers should be used as shown on the Site Plan in order to reduce stormwater runoff.
20. Applicant shall submit an Operation and Maintenance Manual to the Borough for review and approval which shall include a listing and timing of all periodic maintenance for all on-site storm water management facilities. This shall be monitored by the Borough Engineer or the Borough's designee for a period of one (1) year to ensure that all stormwater facilities are functioning as designed and

approved. Once approved, the manual shall be recorded in the office of the Bergen County Clerk.

21. Applicant shall provide two (2) fire hydrants on the property as indicated on the plans in locations to be approved by the Demarest Fire Department.
22. No fencing shall be permitted other than what is shown on the approved plans which shall be permitted without further approval to the extent required by the Borough's Ordinances.
23. Applicant shall comply with all plan revision requirements set forth in the review letter from Craig Zimmerman of Colliers Engineering & Design.
24. After completion of the construction, the site shall be monitored by the Borough Engineer or the Borough's designee to be the person responsible for the monitoring for a period of one (1) year to ensure that all stormwater facilities are functioning as designed and approved.
25. All drainage will be verified by the Borough Engineer after rough grading.
26. Any soil imported to the site shall be certified clean pursuant to NJDEP direct contact standards.
27. For fire and emergency apparatus access and maneuverability, the entire street shall be designated as a 'fire zone' with no street parking permitted at any time. The Applicant shall place signs indicating no parking at any time on the internal road.
28. The Applicant shall install access gates that can accommodate fire and emergency personnel and vehicles in the fence on the transition area averaging line, in locations to be approved by the Demarest Fire Department.
29. The proposed landscaping on the transition area averaging line shall be redesigned in order to accommodate the gates.
30. The Applicant shall install a pervious type of walkway on the side of Building "B" (rear building) so the Fire Department can access the rear of the building with their equipment.

31. The Applicant shall comply with the Building Code with regard to the design of the staircases for each of the Buildings to ensure that the staircases are wide enough to accommodate EMT's carrying a patient down the stairs.
32. The Applicant shall comply with all outstanding comments and conditions contained in the Board Engineer's review letter dated: February 24, 2023, Stormwater Design Review.
33. The Applicant shall comply with all outstanding comments and conditions contained in the Board Engineer's review letter dated December 29<sup>th</sup>, 2022, Engineering Review #3.
34. The Applicant shall come before the Board if engineering and architectural revisions necessitate a major change of any type.
35. The Applicant shall submit new architectural plans with all required revisions.
  - a. Document entitled "New Townhouses 95 County Rd. Demarest" last revised 12/19/22, sheets 8 & 9, Building A Cellar Floor Plan & Building B Cellar Floor Plan; remove basement bedrooms and egress windows in all basement units.
  - b. The Applicant shall eliminate all exterior basement egress windows and railing.
  - c. The Applicant shall remove the reference to egress window wells on Unit No. 5 on Sheet 7.
36. The Applicant promptly shall submit a comparison plan to the Board comparing the footprint of the Virgona & Virgona Plans with the footprint of the Rapaport & Associates Plans.
37. The Applicant shall co-ordinate tree removal and new tree plantings on the County Road right of way with the Demarest Police Chief remarks. See Board Planner's Review #7 page 8, #11 & the Police Chief's remarks.
  - a. The three October Glory Red Maple trees should be moved south, out of the right of way, onto the yard of Building A. (Discussed during the March 1, 2023 hearing)
38. The Applicant shall submit a revised Tree Removal Plan (Sheet 8) to address the issues in the Board Planner's Review Letter # 7. See Landscaping Section; #18 & 19.

39. The Applicant should consider removing old shrubs, and in some cases trees (with homeowner permission) and planting all new shrubs, and trees, instead of new plantings in between the old shrubs. In most cases the old shrubs and trees have not been maintained and both old and new plantings will suffer if planted too close. See Board Planner's Review Letter #7, Landscaping #9, paragraph 3, # 10, #13, #16, paragraph 3.
40. The Applicant shall relocate the Green Giant arborvitae. See Landscaping Plan page 10, # 20.
41. The Applicant and the Borough shall enter into a Developer's Agreement in standard Borough form, but which shall include, *inter alia*, all items set forth as conditions in this resolution to be included therein. The Planning Board shall be provided the opportunity to review same and provide comments prior to execution.
42. The Applicant shall provide easements on-site to allow for entry, by the Borough or its designee, for any necessary repair, replacement, or maintenance of any onsite storm water facilities in the event they are not repaired, replaced, or maintained by the association. The Borough shall not be obligated for such repair, replacement, or maintenance.
43. Payment of all fees and obligations incurred by the Applicant to the Borough, including any escrow deficiencies, must be made within thirty days of notice of such deficiency and, in any event prior to the signing of the plans by the Planning Board officers if any deficiency exists at the time of the adoption of the Resolution of Memorialization.
44. The association shall enter into an annual agreement with a firm qualified to perform any necessary repair, replacement (including replacement of filter medium) related to the on-site storm water management system. Copies of this contract shall be approved by the Borough and kept on file in the Borough Clerk's office.
45. The maintenance contractor for the stormwater management system shall file not less than annual reports with the Borough outlining any scheduled and/or emergency work performed during the reporting period. Not less than once per year, such contractor shall provide a report to the Borough Engineer on the current state and condition of such system and its components. Any emergency calls shall

be reported to the Borough Engineer within twelve (12) hours of the incident triggering the emergency.

46. Provision shall be made via signage, striping and language in the documents to assure that no parking takes place in the cartway into the site. No vehicles may park in any manner to interfere with potential access of any emergency vehicle into the site. Applicant shall apply to the Borough to have Title 39 applied to the site. The condominium documents shall include provisions preventing the conversion of any garage space in such a manner as to preclude the parking of two motor vehicles in such garage.
47. The installation of improvements shall be subject to inspection by the Borough Engineer. No certificate of occupancy shall be issued unless all construction and conditions conform to the site development plan as approved. A foundation location as-built survey is to be submitted to, and accepted by, the Borough Engineer prior to framing. At the completion of framing, an as-built height survey shall be submitted to, and accepted by, the Borough Engineer before any exterior finishes and fenestration are installed, At the completion of all construction, of the structures, all appurtenances, and the approved site improvements, a final as-built survey shall be submitted to, and accepted by, the Borough Engineer before any Certificate of Occupancy is issued by the Borough.
48. Applicant shall post all performance and maintenance bonds required by municipal ordinance and the Municipal Land Use Law. Such bonds shall be released subject to the approval of the Borough Engineer and Borough Council. All improvements shall be completed in a timely fashion so as not to leave the site in an unfinished, unsafe, or unsightly condition as determined by the Borough Council and if this is not done, the performance bonds may be used by the Borough to restore the site to an acceptable and safe condition. The issuance of occupancy permits shall be conditioned upon the completion of improvements specified in the site plan as approved and may be issued as Temporary Certificate of Occupancy as permitted by Borough ordinance.
49. All improvements shall be completed in accordance with all applicable design standards of the municipal ordinances and substantially in accordance with the provisions of RSIS or as reflected on the approved plans unless otherwise specifically provided in this resolution.

50. If at any time after approval the escrow funds on deposit for purposes of inspection or other activities required by ordinance shall be depleted, sufficient additional funds shall be deposited before any further inspections are conducted.
51. Failure to comply with any of the conditions of site plan approval subsequent to receipt of a building permit shall be construed as a violation of Borough Code and this approval and shall be grounds for revocation of any building permit. Written notice of revocation sent by certified mail by the Building Inspector, requiring compliance with the conditions of site plan approval within a period of time not less than five days, shall effectively revoke any building permit if compliance shall not be made within the time limit set forth. No certificate of occupancy shall issue until all conditions of site plan approval are met.
52. At the time of the installation of any proposed curtain drain the Applicant shall confirm to the satisfaction of the Borough Engineer that such drain collects and handles all underground flow and percolating water in the manner described by Applicant's engineer and the volume of such flow will not adversely impact the proposed storm water management facilities or structures adjacent to same.
53. The Applicant shall publish a brief notice of this decision in the official newspaper of the Borough of Demarest in the time and manner provided by law.

#### **GENERAL CONDITIONS:**


1. All fees, costs, bonds, and escrows shall be paid when due or becoming due. Any monies are to be paid within twenty (20) days of said request by the Board's Secretary.
2. All representations made by Applicant, or its Agents shall be deemed conditions of this approval and any misrepresentations by Applicant's contrary to the representations made before the Board shall be deemed a violation of this approval.
3. The action of the Board in approving this application shall not relieve the Applicant of responsibility for any damages caused by this project, nor does the Board, and the Borough or its reviewing professionals and agencies, accept any responsibility for design of the proposed improvement or for any damages that may be caused by this development.

4. Applicant shall comply with all applicable federal, state, regional, county, and local rules, regulations, and requirements.
5. This approval is conditioned upon the truthfulness of the testimony of the Applicant and Applicant's witnesses. In the event that said testimony is found to be willfully false, this approval may be voidable and may be nullified by the Planning Board.

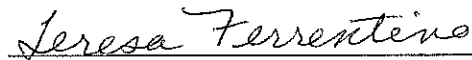
This Application was approved by the Borough of Demarest Planning Board at a special meeting held on March 22, 2023 upon motion of Councilwoman Fox, and seconded by Mr. Alevrontas upon roll call as follows:

Ayes: 6      Alevrontas, Bernstein, Fox, Rifkind, Tabacchi, Hayden  
Nays: 0      Keane, Schooler  
Absent: 2      Verp, Parlamis  
Abstain:

This Resolution was adopted on the 22nd day of March 2023 by a vote of Six (6) ayes and two (2) nays as set forth herein.

  
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MARIAN HAYDEN, Chairwoman  
Demarest Planning Board

**BE IT, FURTHER RESOLVED**, that a copy of this Resolution be forwarded to the Applicant, Borough Clerk, Construction Code Official and Zoning Officer of the Borough of Demarest. I do certify that this is a true and correct copy of the Resolution as adopted by the Planning Board of the Borough of Demarest, County of Bergen, and State of New Jersey in the within Application.

  
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TERESA FERRENTINO, Board Secretary

**DATE APPLICATION APPROVED: MARCH 22, 2023**  
**DATE RESOLUTION APPROVED: MARCH 22, 2023**