

**BEFORE THE BOARD OF COMMISSIONERS OF  
ABINGTON TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Applicant, Baederwood Residential Partners, L.P. (“BRP”), by its attorneys, Kaplin Stewart Meloff Reiter & Stein, P.C., hereby submits the following proposed findings of fact and conclusions of law in support of its Application for Conditional Use Approval.

**PROPOSED FINDINGS OF FACT**

1. BRP is an affiliate of Brandolini Companies (“**Brandolini**”)(Exhibit A-4, FF. #2).
2. BRP is the current owner of 8.423 acres (“**Rear Parcel**”) of the overall 18.88 acre tract of land (“**Site**”) located adjacent to Fairway Valley Road in Abington Township on which the Baederwood Shopping Center is located (Exhibit A-4, FF. #3).
3. BRP, through an affiliated entity, has owned the Rear Parcel since 2005 (Exhibit A-4, FF. #4).
4. Two of the three parcels (“**Shopping Center Parcels**”) are currently developed with an existing strip shopping center, a free-standing Whole Foods supermarket, and associated parking (“**Existing Shopping Center**”) (Exhibit A-4, FF. #5).
5. BSC Jenkintown Limited Partnership (“**BSC**”) owns the two parcels within the Site on which the Existing Shopping Center is currently located (Exhibit A-4, FF. #7).
6. The Rear Parcel is undeveloped (Exhibit A-4, FF. #8).

7. On or about February 4, 2016, BRP filed a Conditional Use Application (“**CU Application**”) for the development of a 244 unit apartment building (Use H-1) on the Rear Parcel (“**Proposed Apartment Development**”)(Exhibit A-1).

8. At the time the CU Application was filed, the three parcels that comprise the Site were located in the Fairway Transit Zoning District (“**FTD District**”) and subject to Ordinance 2000, adopted by the Township in 2011 (“**FTD Ordinance**”), and were the only parcels within the Township located in the FTD District (Exhibit A-2, Exhibit A-4, FF. #10).

9. The Site constitutes a “non-conforming site” under the FTD Ordinance, in that the existing development located on the Site does not comply with the use, dimensional, special development, or design requirements of the FTD Ordinance (Exhibit A-4, FF. #11).

10. On July 18, 2016, Mark Penecale, the Township Planning and Zoning Officer issued a zoning determination (“**Penecale Determination**”) in which he reviewed the CU Application and concluded that in order to develop the Proposed Apartment Development, BRP would have to bring the Existing Shopping Center into compliance with certain FTD Ordinance provisions (“**Specified FTD Compliance Items**”) or obtain variances therefrom (Exhibit A-3, Exhibit A-4, FF. #19).

11. Specifically, the Penecale Determination (Exhibit A-3) required that:

**Item 1.** Crosswalks must be installed between all existing buildings located on the Shopping Center Parcels;

**Item 2.** Bicycle racks must be added throughout the Shopping Center Parcels;

**Item 3.** Landscaping must be installed on the Shopping Center Parcels along all residential land uses, including Rydal East and Rydal West (across the Fairway);

**Item 4.** Three of the four existing curb cuts on the Shopping Center Parcels must be eliminated;

**Item 5.** Existing loading and service areas on the Shopping Center Parcels must be screened from view from all streets and adjacent properties;

**Item 6.** Existing parking areas on the Shopping Center Parcels must be landscaped;

**Item 7.** Sidewalks, landscaping, benches, trash cans, planters and bicycle racks must be added on the Shopping Center Parcels along the Fairway;

**Item 8.** Sidewalks must be added along onsite access drives;

**Item 9.** The design standards contained in Section 504.C.2.g, h, i, j and k must be adhered to;

**Item 10.** The location of public open spaces must be plotted on the Conditional Use Plan;

**Item 11.** New light standards must be added throughout the parking areas on the Shopping Center Parcels; and

**Item 12.** The design standards contained in Section 504.8.F must be adhered to.

12. All of the Specified FTD Compliance Items listed in the Penecale Determination related only to the Existing Shopping Center and not to the Proposed Apartment Development (Exhibit A-3, Exhibit A-4, FF. #21).

13. On June 12, 2017, BRP submitted an application for variances from all of the Specified FTD Compliance Items contained in the Zoning Officer's Determination ("**Initial Variance Application**") (Exhibit A-4, FF. #26).

14. Following the submission of the Initial Variance Application, BRP worked with BSC to obtain its approval to modify the Conditional Use Plan to bring the Existing Shopping Center into compliance with certain of the Specified FTD Compliance Items set forth in the Penecale Determination (Exhibit A-4, FF. #27).

15. After receiving BSC's approval, BRP modified the Conditional Use Plan to bring the Existing Shopping Center into compliance with certain of the Specified Compliance Items contained in the Penecale Determination ("**Amended CU Plan**") (Exhibit A-4, FF. #28, Exhibit A-5).

16. The Amended CU Plan reduced the size of the existing parking stalls within the Existing Shopping Center from 10' x 18' to 9' x 18' and brought the Existing Shopping Center into compliance with the following Specified Compliance Items of the Penecale Determination (Exhibit A-5; N.T. 11/19/18, pp. 20-24):

- Item 1. Provides the required crosswalks from building to building and sidewalk to the street and to adjoining properties;
- Item 2. Provides the required bicycle racks;
- Item 5. Provides the required screening of all loading and service areas;
- Item 6. Provides the required parking lot landscaping;
- Item 7. Provides the required landscaping benches, trash cans, planters and bike racks;
- Item 9. Complies with the design standards set forth in Section 504.8.C.2.g, h, l, j and k of the FTD Ordinance;
- Item 12. Complies with the design standards set forth in Section 504.8.F of the FTD Ordinance.

17. On September 14, 2017, BRP submitted an Amended Variance Application to the Township, based on the Amended CU Plan, together with BSC's Consent and Joinder in the Amended Variance Application (Exhibit A-4, FF. #29).

18. On March 26, 2018, the Township Zoning Hearing Board issued an Opinion and Order granting BRP the following variances:

- A partial variance from Section 902.1.A of the FTD Ordinance to allow the existing parking spaces within the Existing Shopping Center to be 9 feet by 18 feet;
- A variance from Section 504.6.H of the FTD Ordinance to allow the four existing curb cuts within the Existing Shopping Center to remain;
- A partial variance from Section 504.8.E.2 to allow the existing parking standards within the Existing Shopping Center to remain;
- A variance from Section 504.8.C.2.d's requirement that street trees be planted along all of the other access drives other than the main access drive;
- A variance from Section 504.8.C.2.f's requirement for sidewalks and verge along secondary access drives;
- A variance from Section 504.8.G.3.c's requirement for a landscape screen along the eastern property line contiguous to Rydal Park or the western property line abutting the Noble Town Center;
- A variance from Section 504.8.B.2.b's requirement for a 5-foot wide landscaped area with a 3-foot high wall or hedge between the existing sidewalk and parking lot on the Whole Foods Parcel.

19. The Conditional Use Application for the Proposed Apartment Development was submitted to the Township prior to the enactment of the new Zoning Ordinance which eliminated the FTD District.

20. On March 29, 2018, BRP submitted an Amended CU Plan to the Township, together with an updated Traffic Impact Study and a point-by-point response to the Penecale Determination (Exhibit A-5, Exhibit A-11).

21. Section 504.7 of the FTD Ordinance allows for increased building height, impervious coverage, nonresidential floor area and residential density based upon achievement of specific bonus points (Exhibit A-2).

22. Pursuant to Section 504.7 of the FTD Ordinance, eight (8) bonus points are required to achieve the residential density and building height depicted on the Amended CU Plan (N.T. 11/19/18, p. 31).

23. BRP proposes to achieve the residential density and building height depicted on the Amended CU Plan by utilizing the following bonus points:

- One (1) bonus point by providing landscaping amenities such as a gazebo in the open space in front of the Proposed Apartment Building, and in two open space areas behind the Existing Shopping Center and by providing a plaza area containing public art in front of the Existing Shopping Center (N.T. 11/19/18, pp. 32-33);
- Two (2) bonus points by utilizing decorative masonry for more than 50% of all proposed building facades (Exhibit A-12; (N.T. 11/19/18, pp. 33, 66-68);
- Two (2) bonus points by utilizing a parking structure for 100% of the required minimum parking spaces (491 parking spaces) for the Proposed Apartment Development and making at least 15% available for public use (Exhibit A-12; N.T. 11/19/18, pp. 33-34);
- Three (3) bonus points by installing sustainable stormwater management features, including rain water capture and re-use for irrigation of the site (N.T. 11/19/18, p. 34);
- Three (3) bonus points for making off-site traffic improvements to the Fairway (N.T. 11/19/18, p. 34).

24. Following the Zoning Hearing Board's grant of the variances and BRP's submission of the Amended CU Plan to the Township, BRP representatives met with Township Staff to discuss the

Township's concerns about the existing access configuration for the Existing Shopping Center and potential modifications to address those concerns (N.T. 11/19/18, pp. 25, 75-76).

25. As a result of those discussions BRP prepared a Concept Plan depicting proposed modifications to address those concerns ("**Concept Plan**") (Exhibit A-6).

26. The Concept Plan depicts the following modifications to the existing access configuration for the Existing Shopping Center ("**Requested Access Modifications**"):

- Conversion of the westernmost access driveway from a right-in/right-out driveway to a full movement, signalized driveway and creation of a longer driveway throat within the Existing Shopping Center so that there are no direct access points from the parking areas into that access driveway (N.T. 11/19/18, pp. 26, 77-78);
- Conversion of the second driveway ("**Main Access**") from a full-movement driveway to a right-in/right-out driveway, the creation of a T-intersection within the site so that incoming traffic from the Main Access must turn left or right and the addition of striping for thirteen parking spaces adjacent to the existing single row of parking spaces located between the Main Access and strip of retail stores located at the rear of the Existing Shopping Center ("**Main Access Modifications**") (N.T. 11/19/18, pp. 26, 78; 92);
- Provision of dedicated left turn lanes from the Fairway into the two westernmost access driveways on both the north and south side of each intersection ((N.T. 11/19/18, p. 87).
- Installation of a traffic signal at the full-access driveway on the Fairway which serves as the Whole Foods main access (N.T. 11/19/18, pp. 27, 78);
- Conversion of the existing easternmost full-access driveway access to a right-in/right-out access by the extension of the median in the Fairway (N.T. 11/19/18, pp. 27, 79);
- Creation of a potential future connection point from the Site to the Noble Town Center (N.T. 11/19/18, p. 29);
- Elimination of two existing mid-block crosswalks across the Fairway and creation of ADA accessible crosswalks at signalized intersections along the Fairway and throughout the Site (N.T. 11/19/18, pp. 53-54, 83).

27. BRP's updated Traffic Impact Study dated August 24, 2018 (Exhibit A-11) demonstrated that the revised access improvements depicted on the Concept Plan materially improves the safety of the accesses as well as overall safety along the Fairway for vehicular traffic and pedestrians (N.T. 11/19/18, pp. 84-86).

28. The Requested Access Modifications to the Existing Shopping Center require the approval of BSC.

29. BSC has consented to all of the Requested Access Modifications with the exception of the proposed Main Access Modifications.

30. Without BSC's consent, BRP is unable to make the Main Access Modifications.

31. BRP is willing to construct all of the Requested Access Modifications with the exception of the Main Access Modifications in connection with the Construction of the Proposed Apartments.

### **PROPOSED CONCLUSIONS OF LAW**

32. Since the FTD zoning and FTD Ordinance were in effect at the time the Conditional Use Application was filed, the FTD Zoning and FTD Ordinance govern the development of the Proposed Apartments on the Site.

33. Pursuant to Section 504.3.D of the FTD Ordinance, a "transit oriented development" ("TOD") is a use permitted by conditional use on sites larger than one (1) acre.

34. Section 706.C of the FTD Ordinance requires that a TOD contain a mixture of office, commercial, residential and community uses and Section 504.4.B requires a minimum of 20% residential floor area.



35. Residential development is necessary to bring the Site into conformity with the use regulations of the FTD Ordinance.

36. The FTD Ordinance allows the further development of the Site with apartments.

37. The Proposed Apartments will bring the Site into compliance with the use requirements of the FTD Ordinance

38. The evidence demonstrates that the Proposed Apartment Development, as depicted on the Amended CU Plan, complies with all of the density, dimensional requirements, special development regulations and design standards of the FTD Ordinance (Exhibit A-4, FF. #22; Exhibit A-5; N.T. 11/19/18, pp. 18-19, 31).

39. The evidence demonstrates that the Proposed Apartment Development, as depicted on the Amended CU Plan, complies with all of the conditional use standards contained in Section 504.3.C of the FTD Ordinance (N.T. 11/19/18, pp. 35-36).

40. The evidence demonstrates that the Proposed Apartment Development, as depicted on the Amended CU Plan, complies with all of the conditional use standards contained in Section 504.3.C of the FTD Ordinance (N.T. 11/19/18, pp. 35-36).

41. The evidence demonstrates that the Proposed Apartment Development is entitled to eight (8) bonus points to achieve the residential density and building height depicted on the Amended CU Plan, as depicted on the Amended CU Plan.

42. No evidence was presented which would demonstrate that the proposed Apartments would have a greater detrimental impact to the public health, safety and welfare than would be typical of an apartment building of the size and dimensions permitted by the FTD Ordinance.

43. BRP has met its burden and is entitled to the grant of conditional use approval for the Proposed Apartment Development.

**ORDER OF THE BOARD**

The Conditional Use Application submitted by Baederwood Residential Partner, L.P. is hereby approved subject to the following conditions:

1. Development shall be substantially as depicted on the Amended Conditional Use Plan submitted as Exhibit A-4, subject to modifications necessary to comply with the Township Subdivision and Land Development Ordinance.

2. All further plans shall incorporate the Requested Access Modifications depicted on the Concept Plan submitted as Exhibit A-6, with the exception of the Main Access Modifications.

**KAPLIN STEWART MELOFF REITER & STEIN, P.C.**

By:   
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