

**PLANNING BOARD
TOWNSHIP OF BERKELEY HEIGHTS**

Application No.: M-1-20
Elite Properties at Berkeley Heights, LLC

RESOLUTION APPROVING APPLICATION

WHEREAS, pursuant to the applicable provisions of the Municipal Land Use Procedures Ordinance of the Township of Berkeley Heights (the “Ordinance”), an application was submitted to the Township of Berkeley Heights Planning Board (the “Board”), by Elite Properties at Berkeley Heights, LLC (the “Applicant” or “Elite”), seeking minor subdivision and preliminary and final major site plan approval, and required variance/exception/deviation relief from the Former Mondelli Property Redevelopment Plan, dated September 2019 (the “Redevelopment Plan”) and related provisions of the Ordinance, for the subdivision of the Former Mondelli Property into two lots, one of which will be used as a public park (Proposed Lot 3.01) and the other of which will be improved with a 10-unit inclusionary, multifamily residential development (Proposed Lot 3.02) (the “Application”), relating to property identified on the Township of Berkeley Heights (the “Township”) Tax Map as Block 614, Lot 3, and more commonly known as 182 Plainfield Avenue (the “Property”); and

WHEREAS, in accordance with the recommendation of the Board, the Township Council, by Resolution 139-2020, adopted on May 12, 2020, designated the Property, as a non-condemnation area in need of redevelopment; and

WHEREAS, on May 26, 2020, the Township Council, by Ordinance No. 6-2020, adopted the Redevelopment Plan, in accordance with the requirements of the Local Redevelopment and Housing Law; and

WHEREAS, on May 26, 2020, by Resolution No. 151-2020, the Township entered into a Redevelopment Agreement with Elite regarding the Property (the “Redevelopment Agreement”); and

WHEREAS, on May 26, 2020, the Township Council, by Resolution No. 152-2020, in accordance with Section 6.3.i of the Redevelopment Plan, adopted the findings and recommendations of the Township Planner, Keenan Hughes, A.I.C.P., P.P., of Phillips Preiss Grygiel Leheny Hughes, LLC, thereby finding the proposed redevelopment project consistent with the Redevelopment Plan and the Redevelopment Agreement; and

WHEREAS, the Applicant proposes to subdivide the Property into a public park and developable lot to be improved with an inclusionary, multifamily rental development with a permitted density of ten (10) units; and

WHEREAS, this project will include an affordable housing set aside of 15% or two (2) affordable rental units. This shall include one (1) – two bedroom unit and one (1) – three bedroom unit in accordance with, and subject to, the Memorandum of Understanding between the Township and the Applicant, dated May 30, 2018; and

WHEREAS, the application reviewed by the Board consisted of the following:

- A completed copy of the Township of Berkeley Heights Planning Board Application for Site Plan Approval (#M-1-20), and associated checklists, dated July 2, 2020;
- A completed copy of the Township of Berkeley Heights Application for Minor Subdivision Approval (#M-1-20), dated June 9, 2020;
- Township of Berkeley Heights, Application for Sanitary Sewer Capacity Allotment, dated June 1, 2020;
- A signed and sealed set of engineering plans, consisting of eight (8) sheets, entitled “Minor Subdivision, Preliminary and Final Site Plan, Mondelli Park, Lot 3, Block 614, Township of Berkeley Heights, Union

County, NJ” prepared by W. Leland Titus, P.E., of Titus Surveying & Engineering, P.C., dated January 24, 2020, last revised June 30, 2020;

- Landscape Plan entitled “Mondelli Park Landscape Plan, Plainfield Avenue, Berkeley Heights, NJ,” prepared by High Tech Landscapes, Inc., Revision 4, last revised July 2, 2020;
- Architectural Plan entitled “Berkeley Crossing II Plainfield Ave. Berkeley Heights, N.J. Block: 614 Lot: 3,” prepared by John Saracco Architect L.L.C., dated 4/29/2020;
- Report entitled “Drainage Calculations Mondelli Park Lot 3, Block 614, Township of Berkeley Heights Union County, New Jersey,” prepared by Titus Surveying and Engineering, P.C., dated February 3, 2020;
- Mondelli Property Redevelopment Plan, prepared by Phillips Preiss Grygiel Leheny Hughes LLC, dated September 2019;
- A signed and sealed set Architectural Plans, consisting of six (6) sheets, entitled “Berkeley Crossing II Plainfield Avenue, Berkeley Heights, NJ, Block 614, Lot 3,” prepared by John Saracco Architect L.L.C., dated April 29, 2020; and
- “Resolution of the Township of Berkeley Heights, in the County of Union, New Jersey, Finding the Proposed Redevelopment Project for the Property Known as Block 614, Lot 3 on the Tax Map of the Township Consistent with the Redevelopment Plan and Redevelopment Agreement in Accordance with the Requirements of the Redevelopment Plan and the Redevelopment Agreement,” adopted May 26, 2020; and

WHEREAS, the Applicant properly published a newspaper notice of the hearing and duly notified property owners within 200 feet of the perimeter of the Property of the scheduling of such hearing, pursuant to Section 4.3.1 of the Ordinance and N.J.S.A 40:55D-12; and

WHEREAS, on July 15, 2020, a public hearing was held on the application, the Board finding that notice was proper and that the Board had jurisdiction over the Application; and

WHEREAS, the Applicant seeks the following variances/exceptions/deviations from the Redevelopment Plan and the Redevelopment Agreement:

1. Section 3.3, which requires that the public park shall consist of a minimum of 11,000 square feet, whereas the proposed public park consists of 10,450 square feet;
2. Section 3.5.1, which requires that each residential unit provide a private balcony, subject to the standards at 19.4.6.B.10b of the Ordinance, which provides each dwelling unit located above the ground floor level shall be provided with a private outdoor patio or balcony area consisting of a minimum of sixty four (64) square feet with the minimum length of any individual dimension of such area not less than six (6) feet, whereas the proposed balconies are 60 square feet;
3. Section 3.5.1, which permits an exterior steel staircase from the second floor on the east elevation of the building, provided it provides direct access to external pedestrian walkways that lead to the public park, whereas no pedestrian walkway leading to the public park is proposed; and
4. Section 3.5.2, which requires internal pedestrian walkways along the eastern and western facades of the building the provide access to the public park, whereas no pedestrian walkway is proposed; and

WHEREAS, during the course of the public hearing the following exhibits were marked into evidence and considered by the Board:

- **Exhibit A-1**: Landscaping Plan, Revision 5, prepared by High Tech Landscapes, Inc.;
- **Exhibit A-2**: Lighting Cut Sheet for the proposed decorative wall sconces; and
- **Exhibit A-3**: Lighting Cut Sheet for the proposed non-decorative wall sconces; and

WHEREAS, after reviewing the plans, reports, submissions, and evidence presented, the Board hereby makes the following findings:

FINDINGS

1. The Property is a triangular lot totaling 28,954 square feet located at 182 Plainfield Avenue. The Property has 220.29 feet of frontage along Plainfield Avenue, while its northern property line totaling 311.9 linear feet borders NJ Transit rail tracks. The Property was

formerly utilized as a residence and a nursery and landscaping business, which ceased operations in 2015. The seven (7) structures that formerly existed on the Property have since been demolished. The Property is currently vacant, with overgrown vegetation and trees, as well as fencing along the property lines.

2. The Property is in a central location of Downtown Berkeley Heights, and is across the street from the Veterans Memorial Park and the Municipal Complex. The Berkeley Heights Train Station and Peppertown Park are located on the opposite side of the train tracks. A townhouse development is located adjacent to the east of the Property. Additional townhouse and multifamily developments are located in the vicinity farther to the east and south, while commercial and mixed-use developments are located to the north and west along the downtown corridors.

3. The Applicant proposes to subdivide the Property into two lots: Proposed Lot 3.01, which will occupy 10,450 square feet in the northwestern portion of the existing parcel and transformed into a public park; and Proposed Lot 3.02, which will occupy 17,415 square feet in the southeastern portion of the existing parcel and will be improved as a 10-unit inclusionary multifamily development. Proposed Lot 3.01 will have 130.89 feet of frontage along Plainfield Avenue, while Proposed Lot 3.02 will have 85.48 feet of frontage along Plainfield Avenue.

4. In the main area of Proposed Lot 3.01, the Applicant proposes a semi-circular pedestrian walkway network with entrance at both ends of the Plainfield Avenue frontage and connected to a frame gazebo at the center. The walkways will feature pavers and will be lined with benches, bike racks, and bollard lights. A masonry block wall will be installed along the Plainfield Avenue frontage between the two paver entries. New landscaping will be provided around the perimeter of the park, as well as by the gazebo and adjacent residential building

entrances. There will be a 10-foot wide light-and-air easement along the proposed new lot line subdividing the two portions of the Property. Proposed Lot 3.01 will be encumbered by a blanket easement to allow the owner of Proposed Lot 3.02 to install and maintain underground storm water management facilities on Proposed Lot 3.01.

5. The proposed Berkeley Crossing II residential development will feature a three-story building with ten (10) dwelling units, twenty (20) indoor parking spaces and two (2) surface parking spaces. The ground floor of the building will include an enclosed garage with two rows of parking accessed from a two-way driveway on Plainfield Avenue. One parking space will be reserved as an ADA-accessible space. The first floor will also include a residential lobby that faces Plainfield Avenue and connects to brick paver walks that provide access to Plainfield Avenue and the public park. Mechanical rooms, the trash room, and HVAC equipment will also be located on the first floor. The upper stories will accommodate five (5) dwelling units each and include a total of one (1) one-bedroom unit, eight (8) two-bedroom units and one (1) three-bedroom unit. One (1) two-bedroom unit and one (1) three-bedroom unit on the second floor will be set-aside as affordable to very low and moderate income households. New landscaping will be provided along the western building façade facing the public park, as well as along the eastern property line to form a buffer area.

6. The base of the building façade will be constructed predominantly of stone veneer, with additional brick to articulate the changes in façade plane along the northern and western elevations that face Plainfield Avenue and the public park. The lobby entrance on the western elevation will be further articulated via wood columns. The upper-story facades will feature a mix of HardiePlank siding and HardiePanel board and batten siding. The roof will consist of asphalt shingles, and the roofline will be embellished with aluminum gutters and

leaders and Azek soffit and fascia. All windows will be double-hung, and the garage entrance will be installed with paneled doors in similar architectural style as the windows and the lobby entrance. All units will include a balcony enclosed by metal railing, and HVAC louvers will be provided near the balconies in the same style as the siding used to screen the equipment. Steel stairs are provided from the second story on the eastern side of the building.

7. In addition, several off-site improvements are proposed. Six (6) foot tall metal fences and landscaped buffer areas will be provided along the entire northern lot line to provide separation and screening from the train tracks. There will also be streetscape improvements to Plainfield Avenue, including the installation of new granite block curbs and street lampposts in accordance with Downtown design specifications. A five (5) foot strip of land along Plainfield Avenue at the southeast edge of the Property will be dedicated to the County.

8. Because the Property is located within the Redevelopment Area, it is subject to the standards set forth in the Redevelopment Plan. The proposed redevelopment project has formally gained a consistency determination from the Township Council by Resolution dated May 26, 2020. The consistency review determined that the proposed project is substantially consistent with both the Redevelopment Plan and the Redevelopment Agreement.

9. The Board Engineer, Thomas R. Solfaro, P.E., C.M.E., and the Board Planner, Keenan Hughes, P.P., A.I.C.P., both were duly sworn according to law.

10. Robert F. Simon, Esq., of Herold Law, P.A., entered his appearance on behalf of Elite. Mr. Simon provided an overview of the history of the Property, the Applicant's proposal, and the requested relief.

11. W. Leland Titus, P.E., P.P., having an address of 618 Somerset Street, North Plainfield, New Jersey, was duly sworn according to law, provided his qualifications, and was

accepted by the Board as an expert in the fields of civil engineering and professional planning. Mr. Titus provided an overview of the existing and proposed conditions. He explained that the Property would be subdivided into Proposed Lot 3.01 and Proposed Lot 3.02. Proposed Lot 3.01 will be used as a public park and will have a gazebo with walkways, benches, and a bike rack. Proposed Lot 3.02 will be used for a ten (10) unit apartment building with underground parking.

12. Mr. Titus testified that the Applicant's proposal is substantially compliant with the Redevelopment Plan, except for the size of the proposed park, which is proposed to be 10,450 square feet, whereas 11,000 square feet is required, resulting in a deficient lot area of 550 square feet. He explained that the deficient lot area is a function of the dedication of a 5-foot wide strip of land (totaling 1,092 square feet) along Plainfield Avenue that is to be dedicated to the County. Mr. Titus testified that the Township intends to enter into an agreement with the owner of the adjacent property to the north, New Jersey Transit Corporation ("NJ Transit"), for a license to use an approximately 3,000 square foot strip of land to the rear of Proposed Lots 3.01 and 3.02. He explained that, although the Applicant will not own this strip of land, the Applicant can install additional landscape and fencing on it, thereby effectively increasing the amount of land devoted to park improvements. Mr. Titus confirmed that the park, as well as any related site improvements necessary for stormwater management, will be constructed by Elite.

13. Mr. Titus testified that the park amenities will include a walkway constructed of the pavers used in other areas of the Downtown, a gazebo having a diameter of approximately 20 feet, four (4) benches, and a bicycle rack. He advised that there will not be an interconnection between the park and the exterior stairs at the rear of the multifamily residential development. Mr. Titus testified that the Applicant will reconstruct the existing sidewalk along Plainfield Avenue as same is currently in poor condition or virtually nonexistent.

14. On discussion of the proposed stormwater management measures, and whether the Applicant could comply with the recommendations set forth in the June 22, 2020 Review Memo from the Environmental Commission, Mr. Titus advised that a bio-retention swale with an underdrain is not possible, nor are pervious pavers, because the soils on the Property are not conducive to percolation. On discussion of the onsite circulation and parking, Mr. Titus testified that there is a central driveway that leads into the multifamily housing development with two parking spaces at the immediate entrance, and two-way traffic into the underground parking area. On questioning as to whether he had any concerns about the safety of the ingress and egress, Mr. Titus testified that he did not. He opined that there may be less parking demand given the location of the Property immediately adjacent to the railroad station.

15. As to the grading of the Property, Mr. Titus testified that the topography is such that there will be no ponding. He explained that the proposed stormwater management measures include the connection of all roof leaders to an inlet on the westerly side of the multifamily residential building. Mr. Titus further explained that the inlet connects to various other inlets and depressions, and ultimately discharges to Plainfield Avenue, where it is directed into a swale/seasonal ditch along the railroad tracks. Mr. Titus recognized that the Applicant's proposal will require approval from the Somerset-Union Soil Conservation, and stipulated on behalf of the Applicant, as a condition of approval, to obtaining same.

16. As to the June 28, 2020 Fire Department Recommendations, the Applicant stipulated, as a condition of approval, to working in good faith with the Deputy Chief/Fire Official to address the concerns set forth therein.

17. As to the July 13, 2020 Review Letter prepared by the Board Engineer, Mr. Solfaro, the Applicant stipulated, as a condition of approval, to complying with the comments

and recommendations set forth therein unless as otherwise stated during the hearing via the testimony and evidence presented by the Applicant's witnesses.

18. On questioning as to whether the Applicant would comply with the requests of the Environmental Commission regarding solar panels and pervious pavers, Mr. Titus testified that he did not believe pervious pavers could be used given the soil conditions, but stipulated, on behalf of the Applicant, to conducting perc testing and, if the testing reveals that pervious pavers would function, the Applicant would use such pavers. On questioning as to what entity will be responsible for the maintenance of drainage structures at the park, Mr. Titus testified that Elite or the ultimate owner of Proposed Lot 3.02 will maintain the improvements on both proposed lots. On discussion of the proposed exterior materials being used, the Applicant stipulated to working in good faith with the Downtown Beautification Committee as to same.

19. Anthony Carrara, L.L.A., of High Tech Landscapes, Inc., having a business address of 10 Culnen Drive, Branchburg, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of landscape architecture. Mr. Carrara introduced into evidence, as Exhibit A-1, a landscaping plan he prepared.

20. Referencing Exhibit A-1, Mr. Carrara testified that the landscaping includes October Glory Maples, which are bright red in color and will be approximately 30 feet wide and 30 feet high, and Knockout Roses along the wall adjacent to the park. The gazebo will be surrounded by Winter Gem Boxwoods, 'Karl Foerster' Feather Reed Grass, and pink or blue Hydrangeas. Mr. Carrara testified that, along the rear property lines, adjacent to the railroad tracks, Elegant Arborvitae will be planted. He further testified that in the area between the park and the multifamily residential development, 'Cherokee Princess' Flowering Dogwoods will be

planted. As to the proposed landscaping around the multifamily residential development, Mr. Carrara testified that there will be Skip Laurels and Green Luster Hollies, both of which are evergreens, as well as Oakleaf Hydrangeas. He further testified that along the easterly portion of the Property, Leatherleaf Viburnums, Norway Spruces, and Douglas Firs will be planted.

21. On questioning, Mr. Carrara testified that there will be an underground irrigation system in the park. On questioning as to the proposed landscaping along the property line along the railroad tracks, Mr. Carrara testified that the Applicant could modify the proposed plant material, such that at least 50% of the proposed plantings will consist of native species. He explained that the Applicant is limited because certain plantings are not appropriate near the powerlines and railroad tracks, but that the Applicant will work with the Township to identify appropriate landscaping for this area. He further testified that, if the Board prefers, the Applicant can replace the proposed 'Karl Foerster' Feather Reed Grass with a suitable planting. On discussion of the proposed planting of Douglas Firs and Norway Spruces approximately five feet on center, Mr. Carrara testified that the plantings could be either trees or shrubs and depending on which the Township prefers, the spacing can be modified. On further discussion, the Applicant stipulated, as a condition of approval, to planting the proposed Firs and Spruces approximately 15 feet on center.

22. Members of the public questioned who will maintain the plantings (the Applicant), whether there are alternative plantings that can be proposed (the Applicant is open to suggestions from the Environmental Commission and/or the Township Planner), and whether the existing trees on the Property will be removed (most of them will be removed). Members of the public also questioned the proposed onsite circulation and the proposed ingress/egress. Mr. Titus

testified that delivery trucks can either park along Plainfield Avenue or utilize the two parking spaces immediately adjacent to the entrance to the multifamily residential development.

23. John Saracco, R.A., having a business address of P.O. Box 245, Boonton, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of architecture. Referencing the Architectural Plans he prepared, dated April 29, 2020, Mr. Saracco provided an overview of the Applicant's proposal.

24. Referencing Sheet PB-100, a rendering of the Applicant's proposal, Mr. Saracco testified that the multifamily residential development is oriented such that the shorter portion of the building fronts on Plainfield Avenue and the longer portion of the building faces the railroad tracks. He opined that the proposed improvements will serve as a transition between the residential portion of the Township and the Downtown area. Mr. Saracco advised that the architectural style proposed is consistent with a transition lot and will include gabled roofs and cornices.

25. Referencing Sheet PB-200, First Floor Plans, Mr. Saracco testified that the first floor consists of the enclosed parking area, the lobby, mailroom, and an elevator. He explained that the parking area includes an Americans with Disabilities Act ("ADA") compliant van parking space, which is immediately adjacent to the elevator. Mr. Saracco further testified that the first floor will also include a trash room with trash chutes, a mechanical room, and fire egress stairs at the rear of the building. He explained that the mechanical room could be reduced in size to accommodate bicycle storage, and stipulated to same.

26. Referencing PB-201, Second Floor Plan, Mr. Saracco testified that the first and second floor layouts are similar. He explained that there are two sets of fire egress stairs (one at each end of the building) connected by a corridor. Mr. Saracco described the proposed units as

including a 60 square foot balcony and individual HVAC systems and laundry facilities. He explained that the market rate units have two full bathrooms, while the proposed affordable units only have one bathroom.

27. Referencing PB-202, Third Floor Plan, Mr. Saracco testified that the third floor consists entirely of market rate units and that said units include all of the amenities described for the Second Floor units.

28. Referencing PB-203, Roof Plan, Mr. Saracco testified that there are three gables that will face the park and two gables that will face Plainfield Avenue. He explained that the roof has a 3:12 pitch. Referencing the proposed elevations, Mr. Saracco testified that the residential building will have a stone base along the parking area, brick and HardiePlank siding, balconies within the gables, and a board and batten finish. He further testified that the garage will have two garage doors to give the building a more residential feel and that to the left of the garage entrance, is the main entrance to a small portico and the lobby.

29. On discussion of the proposed material colors, Mr. Saracco testified that the Applicant would work with the Downtown Beautification Committee to select appropriate colors. On discussion of green infrastructure, Mr. Saracco testified that the Applicant will construct the building with certain LEED elements, although the Applicant is not seeking LEED Certification for this project. He explained that the LEED standards require access to quality transit, bicycle facilities, a reduced parking footprint (here, located predominantly below the building), electric vehicle charging stations, open space, rainwater management, and reduced energy and water usage. He testified that within the units, air quality standards will be enhanced using positive pressure, low emitting materials, thermal controls for each unit, and LED lighting fixtures. Mr. Saracco explained that solar panels are inappropriate for this building because the

roof pitch is low and the gables reduce the amount of flat space available to be used for the panels.

30. As to the overall aesthetics of the building, Mr. Saracco testified that the Applicant will use the Downtown Design and Residential Standards to provide a nice transition between the residential portion of the Township and the Downtown area. He opined that the double hung windows, stone foundation, Azek soffit and fascia and the proposed board and batten siding will be aesthetically pleasing and will comply with the requirements set forth in the Redevelopment Plan. As to the proposed lighting, Mr. Saracco introduced into evidence, as Exhibit A-2, a lighting cut sheet depicting the proposed decorative sconces, and, as Exhibit A-3, a lighting cut sheet depicting the non-decorative wall sconces. He explained that the decorative sconces would be used on the front of the building and on each side of the entry and garage doors and the nondecorative sconces will be used at the egress door/emergency stairs. Mr. Saracco advised that the Applicant's proposed elevations are consistent with the Redevelopment Plan and stipulated that the proposed park will be completed by the time the Applicant seeks a Certificate of Occupancy for the residential building. He confirmed that the Applicant would comply with the comments and recommendations set forth in Mr. Solfaro's Review Letter dated July 13, 2020 unless as otherwise stated during the hearing via the testimony and evidence presented by the Applicant's witnesses.

31. On questioning, Mr. Saracco testified that the garage doors will remain closed until someone is entering or exiting the parking area. On discussion of whether both of the parking spaces immediately adjacent to the lobby of the multifamily residential development should be designated for deliveries only, Mr. Titus opined that such a designation would be

appropriate for one of the two parking spaces. Elite stipulated to working in good faith with the Board Planner regarding the associated signage for same.

32. Mr. Titus provided planning testimony in support of the Applicant's requests for relief. He testified that, pursuant to Section 6.3.iii of the Redevelopment Plan, the standards of proof for granting the requested deviations from the Redevelopment Plan are essentially the same standards set forth in N.J.S.A. 40:55D-70(c). Mr. Titus opined that the requested relief for the deficient lot size of the proposed park (10,450 v. 11,000 square feet), the dimensions of the balconies (60 square feet v. 64 square feet), the lack of internal pedestrian walkways along the eastern and western façades providing access to the park, and the absence of a direct walkway from the exterior staircase from the second floor on the easterly elevation that leads to the park, could be granted because the Applicant's proposal advances the purposes set forth in N.J.S.A. 40:55D-2, including the promotion of the general welfare, the provision of light, air, and open space, the promotion of appropriate population densities and sufficient space in appropriate locations, the promotion of a desirable visual environment, and the coordination of various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land. Mr. Titus further opined that the Applicant had also demonstrated that the benefits of the Applicant's proposal, including that the proposal will be a substantial improvement over the existing condition, creates a public park, and produces two affordable units, substantially outweigh the detriments associate therewith, particularly given the conditions stipulated to by the Applicant, including the installation and maintenance of significant landscaping, compliance with the recommendations of the Downtown Beautification Committee, and the Township's execution of a license agreement with NJ Transit regarding the use of its right-of-way for park purposes.

33. Mr. Titus contended that the Applicant also had demonstrated that the Applicant's proposal would not result in substantial detriment to the public good or substantial impairment of the intent and purpose of the Redevelopment Plan. In this regard, he explained that the proposed uses are permitted uses that will be consistent with the existing neighborhood and the proposal will be an improvement over the existing conditions. Mr. Titus opined that the proposal would not impair the intent and purpose of the Redevelopment Plan, because the requested deviations are modest in nature and the overall proposal is consistent with same. He further opined that granting the requested deviations will result in a better planning alternative than if the Applicant strictly complied with the provisions of the Redevelopment Plan.

34. On questioning as to whether the Applicant had details for the proposed park lighting and street furniture, Mr. Titus testified that such detail decisions had not yet been made. The Applicant stipulated, as a condition of approval, to working in good faith with the Downtown Beautification Committee, as well as the Board Planner, to propose appropriate lighting fixtures and street furniture. Mr. Simon noted that there will be a maintenance agreement between Elite and the Township.

35. Bill Lopez, having an address of 4 Cottage Court, was duly sworn according to law. Mr. Lopez expressed his concern that there will be significant traffic on Plainfield Avenue and opposed delivery trucks parking on Plainfield Avenue while making deliveries. He expressed further concern that the proposal is located in a high volume area and could create a dangerous situation for pedestrians in the area.

36. Yanzhi Hu, having an address of 5 Cottage Court, was duly sworn according to law. Mr. Hu expressed concern about the impact the proposal would have on existing traffic,

particularly since a traffic study was not required by the Township. He expressed further concern that the proposal could have an impact on property values in the neighborhood.

37. On questioning by the Board as to how snow removal will be handled, Mr. Saracco testified that the Applicant would have the obligation to maintain common areas, sidewalks, and walkways and that same would be contained in a maintenance agreement between the Township and Elite. He advised that the Township would have no obligation as to any snow removal. Mr. Solfaro advised that the Applicant will have to provide performance bonds and maintenance bonds in accordance with Ordinance requirements that will ensure that the Applicant fulfills its obligations to the Township.

38. The Applicant offered no further witnesses and the hearing was concluded. The Board Attorney summarized the application, the relief requested and the conditions stipulated to by the Applicant, and the Board voted to approve the application subject to the conditions stipulated to at the hearing.

WHEREAS, the Board took action on the Application at the July 15, 2020 meeting and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW, THEREFORE, the Township of Berkeley Heights Planning Board, after carefully considering the plans, reports, submissions and evidence provided, by a vote of 5 to 0, makes the following conclusions:

1. The Board has jurisdiction over the Application.
2. The Applicant's Experts and the Board's Experts were credible and accepted by the Board.
3. The requested variance/exception/deviation relief can be granted pursuant to Section 6.3.iii of the Redevelopment Plan, which provides:

The Planning Board may grant deviations from the regulations contained within this Redevelopment Plan under Chapter 3, where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reasons of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, the strict application of any bulk regulation adopted pursuant to this Redevelopment Plan would result in peculiar difficulties to, or exceptional and undue hardship upon, the Redeveloper. The Planning Board may also grant such relief in an application relating to a specific piece of property where the purposes of this Redevelopment Plan would be advanced by a deviation from the strict requirements of this Redevelopment Plan and the benefits of the deviation would outweigh any detriments. No relief may be granted under the terms of this section unless such deviation or relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Redevelopment Plan.

- a. As to the deviation for the nonconforming lot area of the public park, the Board recognizes, based on the unrefuted expert testimony of Elite's professional planner, that the reduction in lot area is a function of the Applicant dedicating a portion of the Property to the County. The Board further recognizes that forcing the Applicant to obtain additional property would constitute an exceptional and undue hardship upon it as the Redeveloper of the Property. Additionally, the Board recognizes that Elite has stipulated to working, in good faith, with the Township as to the Township's anticipated execution of a license agreement with the owner of the lot to the rear of the Property, NJ Transit, such that Elite will be permitted to use an approximately 3,000 square foot swath of land for plantings and other park improvements. The Board finds that Elite's proposal will advance the purposes of the Redevelopment Plan in that the proposal will transform the Property into a more productive use as a public park and residential development and create a vibrant park with both active and passive recreation. On balance, the Board concludes, based on all of its findings as set forth above, that granting the benefits of granting the requested relief outweigh any detriments associated therewith, particularly given the stipulated to conditions. The Board further concludes, based on all of its findings as set forth above, that the relief may be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Redevelopment Plan as same is consistent therewith and advances the goals set forth therein.
- b. As to the deviation for the size of the private balconies for each residential unit (60 square feet whereas 64 feet is required), the Board finds, based on the unrefuted expert testimony of Elite's professional planner, that Elite has demonstrated that its proposal will advance the purposes of the Redevelopment Plan in that the proposal will provide new housing stock and new housing unit types in the downtown area consistent with site and building design standards set forth in the Municipal Land Use Procedures

Ordinance, to foster high-quality development and improve the aesthetics of the Redevelopment Area. The Board further finds that, notwithstanding the modestly deficient size of the balconies, the benefits of granting the requested relief outweigh any detriments associated therewith, particularly given the stipulated to conditions. The Board further concludes that the relief may be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Redevelopment Plan as same is consistent therewith and advances the goals set forth therein.

- c. As to the deviations for an exterior steel staircase without direct access to external pedestrian walkways that lead to the park and for no pedestrian walkways along the eastern and western facades of the building that provide access to the park, the Board finds, based on the unrefuted expert testimony of Elite’s professional planner, that Elite has demonstrated that its proposal will provide residential development to benefit the residents of the Township, allow for an appropriate density near the train station and in the downtown corridor to foster a strong residential base to support transit and downtown businesses and facilitate the provision of on-site and off-site improvements to ensure safe and efficient access for both motorized and non-motorized transportation users to and from the Property. In this regard, the Board recognizes that the park is easily accessible from the multifamily residential development given the aesthetically pleasing pathway connecting the lobby of the residential development to the park and sidewalks. The Board further finds that, notwithstanding the absence of additional walkways leading to the park, the benefits of granting the requested relief outweigh any detriments associated therewith, particularly given the stipulated to conditions. The Board further concludes that the relief may be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Redevelopment Plan as same is consistent therewith and advances the goals set forth therein.

- 4. The requested preliminary and final site plan and minor subdivision approval can be granted pursuant to Section 6.3.ii of the Redevelopment Plan, which provides:

All development applications and site plan shall be prepared and submitted to the Planning Board in accordance with Part 10 – Site Plan Review and Approval of the Municipal Land Use Procedures Ordinance. Any subdivision of lots or parcels of land within the Redevelopment Area shall be in accordance with the requirements of this Redevelopment Plan and, where applicable, Part 9 – Subdivision of Land of the Municipal Land Use Procedures Ordinance.

The Board finds that Elite’s request for preliminary and final site plan and minor subdivision approval substantially complies with the Municipal Land Use Procedures Ordinance and the Redevelopment Plan adopted by the Township for the Property and can be granted subject to the conditions stipulated to at the hearing and set forth below.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Berkeley Heights, on this _____ day of August, 2020, confirming the action taken by the Board on July 15, 2020, approving the application seeking subdivision and preliminary and final major site plan approval with deviations from the Redevelopment Plan, and same is hereby granted based upon the plans, reports, submissions and evidence provided, subject to the following conditions:

1. The Applicant shall comply with the recommendations and requirements set forth in the July 13, 2020 Report of Neglia Engineering Associates (attached hereto), to the satisfaction of the Township Engineer, and same is incorporated as if set forth at length herein, unless as otherwise stated during the hearing via the testimony and evidence presented by the Applicant's witnesses;
2. The Applicant shall comply with the recommendations and requirements set forth in the July 10, 2020 Report of Keenan Hughes, P.P., (attached hereto), to the satisfaction of the Planning Board Planner, and same is incorporated as if set forth at length herein, unless as otherwise stated during the hearing via the testimony and evidence presented by the Applicant's witnesses;
3. The Applicant shall comply with all requirements of the Redevelopment Agreement between the Township of Berkeley Heights and the Applicant and/or its agents and assigns, dated May 26, 2020, specifically including, but not limited to, all requirements and agreements set forth therein regarding affordable housing obligations;
4. The Applicant shall work, in good faith, with the Downtown Beautification Committee to address the recommendations set forth in the July 15, 2020, Downtown Beautification Committee Report;
5. The Applicant and/or its agents and assigns shall install landscaping and fencing, if, as anticipated, a license agreement is entered into between the Township and NJ Transit, regarding the usage of NJ Transit's right-of-way located to the rear of the Property;
6. The Applicant shall conduct percolation testing to ascertain whether the soil can accommodate the use of pervious pavers in the areas identified above and, if such testing reveals that the soils can accommodate such pervious pavers, then same shall be used instead of impervious pavers, all to be subject to the review and approval of the Township Engineering Department;

7. The Applicant shall provide an underground irrigation system for plant bed areas and same shall be subject to the review and approval of the Township Engineering Department;
8. The Applicant shall revise the landscaping plan such that at least half of the “seasonal color” plants shall be native species, same to be subject to the review and input by the Environmental Commission and approval of the Township Planner and Township Engineering Department;
9. The Applicant shall revise the landscaping plan to replace the proposed ‘Karl Foerster’ Feather Reed Grass and Maples with more appropriate plantings, same to be subject to the review and input by the Environmental Commission and approval of the Township Planner and Township Engineering Department;
10. The Applicant shall plant the proposed Douglas Firs and Norway Spruces fifteen (15) feet on center and shall revise the plans accordingly;
11. The Applicant shall remove and replace, at its sole expense, any landscaping that fails to thrive for a period of two years after planting, same to be subject to the review and approval of the Township Planner and/or Engineering Department;
12. The Applicant shall designate one of the parking spaces immediately adjacent to the entrance to the multifamily residential development for deliveries only and shall work with the Board Planner to provide appropriate signage and/or striping;
13. The Applicant shall submit lighting details for the park lighting, as well as for the proposed street furniture (bicycle rack, benches, etc.), and same shall be subject to review and approval of Township Engineer and the Township Planner;
14. The Applicant shall ensure that the proposed gazebo in the park is ADA accessible and same shall be subject to the review and approval of the Township Engineering Department;
15. The Applicant shall install sprinklers in the multifamily residential development and associated parking area, same to be subject to the review and approval of the Fire Official;
16. The Applicant shall install a central station fire alarm with smoke detectors in the common hallways of the multifamily residential development, same to be subject to the review and approval of the Fire Official;
17. The Applicant shall install an emergency generator that provides power for egress lighting and the fire alarm, same to be subject to the review and approval of the Fire Official;

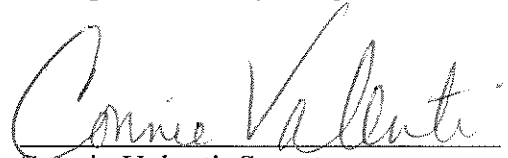
18. The Applicant shall use Fire Department Connections that are Siamese with National Standard thread on the front side of the multifamily residential development, same to be subject to the review and approval of the Fire Official;
19. The Applicant shall install Electric Green Exit Signs, same to be subject to the review and approval of the Fire Official;
20. The Applicant shall install Green Photoluminescent Exit Signs at floor level on all exit doors, same to be subject to the review and approval of the Fire Official;
21. The elevator in the multifamily residential development shall be large enough to accommodate an ambulance stretcher, same to be subject to the review and approval of the Fire Official;
22. The Applicant shall install a Knox box at the exterior of the front of the multifamily residential development, same to be subject to the review and approval of the Fire Official;
23. The Applicant shall relocate the proposed fire hydrant to the front of the park portion of the Property (Proposed Lot 3.01), same to be subject to the review and approval of the Fire Official;
24. The Applicant shall install a fire alarm annunciator panel in the lobby of the multifamily residential development, same to be subject to the review and approval of the Fire Official;
25. The Applicant shall confirm, to the satisfaction of the Board Engineer, that site circulation is adequate for emergency vehicle access;
26. The Applicant shall submit samples of materials and colors to the Township Planner, same to be subject to their review and approval;
27. No satellite dishes shall be permitted on the exterior of the buildings;
28. The Applicant's Landscape Architect shall work, in good faith, with the Board Planner to meet the applicable streetscape design standards;
29. The Applicant shall pay all taxes, fees and required escrow deposits that may be due and owing prior to the issuance of building permits;
30. The Applicant's Engineer shall submit a construction cost estimate, same to be subject to the review and approval of the Board Engineer, to be used in establishing performance guarantee and inspection fees per N.J.S.A. 40:55D-53;
31. The Applicant shall enter into a Developer's Agreement with the Township which shall set forth the respective obligations of the Developer and the Township with

regard to this approval, including, but not limited to, performance fees, inspection fees and maintenance fees required pursuant to N.J.S.A. 40:55D-53;

32. The Applicant shall submit revised site plans addressing the conditions of approval and the recommendations and requirements of the Board and the Board's professionals, and same shall be subject to the review and approval of the Board Engineer and Board Planner;
33. Tree removal and replacement shall be conducted in accordance with the Landscape Plan. Tree removal and replacement permits shall be filed with the tree inspector along with the submission of building permits;
34. Road opening permits shall be obtained prior to any construction within the road way;
35. The developer shall obtain soil moving permits before any construction on the Property;
36. The architectural details of the building shall be constructed in accordance with the plans presented to the Board;
37. The Board shall maintain jurisdiction to hear any disputes that may arise as to compliance with the conditions of this approval;
38. The Applicant shall comply with any and all other outside agency permit and approval requirements in accordance with the law;
39. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
40. The aforementioned approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County, and State.
41. Pursuant to Section 10.1.5.B of the Ordinance, any final Site Plan approval given by the Planning Board shall be valid for a period of two (2) years from the date of final approval. If, after two (2) years a Certificate of Occupancy has not been granted, or if any of the conditions have not been met, as specified in the approved Site Plan, a new application for preliminary Site Plan approval will be required, where both the new application and review procedures and standards for approval shall conform to the requirements of the then existing ordinances, unless the Applicant receives one or more extensions of final approval pursuant to N.J.S.A. 40:55D-52.

BE AND THE SAME IS HEREBY GRANTED

I hereby certify that the above Resolution is a true copy of the Resolution adopted on August 19, 2020 by the Planning Board of the Township of Berkeley Heights.



Connie Valenti, Secretary

Roll Call Vote

On 7/15/2020: 5 – 0

Motion to Approve: Ms. Greenwald

Second: Mr. Cunningham

Ayes: Mr. Einbinder, Mr. Johnson, Ms. Poage,
Ms. Greenwald, and Mr. Cunningham

Nays: None

Abstentions: None