

April 15, 2021

Ms. Geraldine Entrup  
Administrative Officer, Planning Board  
Township of Mahwah  
475 Corporate Drive  
Mahwah, NJ 07430

Re: **Review Letter #1**  
Fyke Brook Estates, LLC  
1 Fyke Road  
Preliminary and Final Site Plan and Soil Movement Application  
Block 21, Lots 21, 22, and 23  
Docket No. 621  
**Project No. MWP-088**

Dear Ms. Entrup,

We are in receipt of the above-referenced Application. According to the Addendum to the Application, the Applicant seeks Preliminary and Final Site Plan and Soil Movement approval to develop a 40-unit residential development consisting of eight buildings. The Application requires bulk variances, which are detailed in Section D.

We have reviewed the following documents submitted by the Applicant in support of this Application:

1. Plans entitled "Preliminary and Final Major Site Plan Fyke Brook Estates", prepared by Joseph F. Vince, PE, PLS, PP of Schwanewede / Hals Engineering, dated July 31, 2020, revised through February 9, 2021, consisting of 18 sheets. It should be noted that Sheets 6 and 7 were revised through December 23, 2020.
2. Plans entitled "Proposed New Multifamily Development for Fyke Brook Estates", prepared by Matthew G. Evans, RA, PP of Evans Architects AIA, dated September 9, 2020, revised through January 8, 2021, consisting of 14 sheets.
3. Plans entitled "Existing Drainage Area Map" and "Proposed Drainage Area Map", prepared by David A. Hals, PE, PLS, PP and Joseph F. Vince, PE, PLS, PP of Schwanewede / Hals Engineering, dated July 31, 2020, revised through February 9, 2021, consisting of 2 sheets.
4. Development Application, dated February 12, 2021.
5. Document entitled "Schedule to Application", unknown author, no date, consisting of 1 page.
6. Document entitled "Addendum to Application", unknown author, no date, consisting of 2 pages.
7. Soil Movement Permit Application, dated February 19, 2021.
8. Tree Preservation Application, no date.
9. Historic Preservation Commission Application, dated February 17, 2021.

10. Highlands Exemption Determination Application, dated February 12, 2021.
11. Planning Board Application Submission Checklist, dated February 19, 2021.
12. Planning Board Determination of Completeness Checklist Site Plan, no date
13. Zoning Officer Application Review Report, dated March 19, 2021.
14. Fire Prevention Application Review Report, dated April 9, 2021.
15. Chief of Police Application Review Report, dated March 22, 2021.
16. Board of Health Application Review Report, dated March 22, 2021.
17. Department of Public Works Application Review Report, dated April 7, 2021.
18. Construction Official Application Review Report, dated April 8, 2021.
19. Historic Preservation Application Review Report, dated April 6, 2021.
20. Stormwater Operations and Maintenance Manual, prepared by David A. Hals, PE, PLS, PP of Schwanewede / Hals Engineering, dated July 22, 2020.
21. Drainage Calculations, prepared by Joseph F. Vince, PE, PLS, PP, CME of Schwanewede / Hals Engineering, dated July 22, 2020, revised through October 13, 2020.
22. On-Site Soil Testing Report, prepared by David A. Hals, PE, PLS, PP of Schwanewede / Hals Engineering, dated October 19, 2020, revised through February 9, 2021.
23. Letter entitled "N.J.D.E.P. Application", prepared by David A. Hals, PE, PLS, PP of Schwanewede / Hals Engineering, dated February 16, 2021, consisting of 3 pages.
24. Letter entitled "Proposed Site Development Fyke Brook Estates, LLC", prepared by Michael Varner, Principal Planner of the County of Bergen Department of Planning and Engineering, dated March 26, 2021, consisting of 1 page.

#### **A. Site Description**

The subject site is a 5.294-acre property located between Fyke Road and Seminary Drive and designated as Block 21, Lots 21, 22, and 23 on the Mahwah Tax Map. The site is in the MF-1 (Multi-family-1) Zone and is currently developed with a single-family dwelling and barn/storage building. The site is surrounded by single-family dwellings. See the image on the following page for the general location of the site.<sup>1</sup>



The Board should note that the subject property was included in the Township's 2018 affordable housing settlement agreements with Fair Share Housing Center ("FSHC") and John Merrill, the property owner, as a mechanism to address Unmet Need. A total of seven affordable units were anticipated to be generated by the site. As a result of the settlement agreement, Mahwah adopted the Multi-family-1 (MF-1) Zone on August 8, 2019 via Ordinance No. 1880.

**B. Prior Approvals**

The Applicant has not provided any Resolutions demonstrating previous site plan and/or subdivision approvals.

**C. Proposed Project**

The Applicant proposes to construct a 40-unit residential development comprised of eight buildings, including eight affordable units. All 32 market-rate units will be three-bedroom units. There will be one one-bedroom affordable unit, five two-bedroom affordable units, and two three-bedroom affordable units. The affordable units will be located in Buildings 2, 4, and 5. Other site improvements include internal roads, driveways, walkways, surface parking, decks and/or patios, walls, lighting, landscaping, stormwater management facilities, grading, and trash facilities.

**D. Variances & Waivers**

The Application requires the following "C" variances. It should be noted that the Applicant has not requested any variances.

1. Section 24-3.4d.3. – Variance for retaining wall setback. The Ordinance requires retaining walls up to three feet in height to be setback at least two feet from a side or rear lot line and retaining walls exceeding three feet to be setback at least five feet from a side or rear lot line.

The Applicant proposes a four-foot-tall retaining wall approximately 3.5 feet from the northern lot line and a four-foot-tall retaining wall less than one foot from the southern property line.

2. Section 24-4.27f.2. – Variance for parking space size. The Ordinance requires all parking spaces to measure no less than nine feet wide by 18 feet long.

The Applicant proposes three eight-foot-wide by 23-foot-long parallel parking spaces. (Note that the Ordinance did not envision parallel parking.)

3. Section 24-4.27h.3. - Variance for buffer width. The Ordinance requires a ten-foot-wide buffer adjacent to any existing single-family property. The only improvements permitted within buffers are utilities and driveways.

The Applicant proposes walls within the ten-foot buffer along the northern, southern, and eastern property lines. Additionally, the Applicant proposes the northern-most dumpster within the buffer along the western property line.

4. Section 24-4.27h.4. – Variance for buffer area contents. The Ordinance requires buffer areas to contain a combination of shade trees, evergreen trees, ornamental trees, and shrubs. Existing shade and evergreen trees may be counted in fulfilling the required buffer plantings.

The Applicant only proposes evergreen trees within the northern, southern, and western buffer.

5. Section 24-4.27h.7. – Variance for foundations plantings. The Ordinance requires foundation plantings around all buildings. The plantings shall include species that provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed architectural design of the buildings. Foundation plantings shall incorporate evergreen shrubs and groupings of small trees in order to provide human scale to building facades and winter interest.

The Applicant does not propose foundation plantings along all buildings. For example, the southern side of Building 7 is devoid of any landscaping, the western sides of Buildings 5 and 6 do not have any landscaping, and no landscaping is provided along the rear facades of any building. It should be noted that where landscaping is located adjacent to buildings, only evergreen shrubs are provided.

6. Section 24-4.27h.8. – Variance for dumpster screening. The Ordinance requires outdoor dumpsters to be fully enclosed and screened with a solid enclosure a minimum of six feet tall.

The Applicant proposes the four dumpsters to be enclosed by a five-foot-tall stockade fence, according to the Dumpster Area detail on Sheet 17 of the Site Plans.

The Application does not require any waivers.

### **E. Comments**

Based on our review of the above-referenced materials, we offer the following comments:

#### **General**

1. The Applicant's professionals must provide testimony to support the granting of variances required by the Application. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. The "Schedule to Application" document indicates that there is a private right-of-way that extends south to Seminary Drive across Block 21.03, Lot 1. No deeds or filed maps have been submitted demonstrating this private right-of-way exists.
3. The Applicant has not requested any variances in the Application or on the Site Plans. In fact, page 2 of the Addendum to Application document states "The application does not require any variances and is in compliance with Ordinance 1880". However, our review of the Application found at least six variances are required. The Application may also require additional variances and/or waivers depending on additional information submitted. The Applicant shall submit a revised Site Plan identifying all variances detailed in Section D of this letter.

#### **Use**

4. According to Sheet A-3.1 of the Architectural Plans, the Applicant proposes two affordable units within Building 2, a one-bedroom unit on the first floor and a two-bedroom unit on the third floor. The first floor illustrates a 249-square-foot storage room with a half bath and the second floor illustrates a 1,025-square-foot storage area with a half bath and a kitchen. The intended use of these areas is unclear give they contain bathrooms and a kitchen. Additionally, is it unclear who is permitted to use these areas. Testimony shall be provided.
5. The Applicant proposes four dumpster areas. However, it is unclear if recycling containers will also be within the enclosures. Additional information shall be provided.

#### **Affordable Housing**

6. The 2018 Merrill Settlement Agreement, dated July 13, 2018, required Mr. Merrill to submit a survey confirming the existing disturbed/impervious area of the property within 30 days of

the execution of the Settlement. A copy of that survey should be provided to the Board to compare to the submitted Site Plan.

7. The 2018 Merrill Settlement Agreement requires “Merrill shall cease all pre-existing, non-conforming uses of the Property once he secures all governmental approvals to permit the proposed residential development or no later than March 30, 2020, whichever is sooner.” Testimony shall be provided regarding this agreement term. Or if an extension was granted by the governing body, said paperwork shall be submitted.
8. The Board should note that the MF-1 Zone requires a 20% affordable housing set-aside. The Applicant proposes 40 units, which requires eight affordable units. The Applicant proposes eight affordable units.
9. The Applicant has not indicated if the affordable units will be for sale or rentals. This information shall be provided.
10. Section 24-4.27e.1 requires the affordable units to comply with the low- and moderate-income split required by UHAC. Additionally, 13% of units are required to be available for very-low income households. The Applicant has not provided any information regarding the income split of the proposed affordable units. This information shall be provided to ensure compliance.
11. The three-bedroom affordable units may contain up to six people due to the occupancy standards and preferences. Therefore, the unit should provide at least 1.5 bathrooms. The plans should be amended to address this.
12. The square footage of Bedroom 3 is unclear. The HMFA rules require all affordable bedrooms to contain at least 100 square feet. This information shall be provided.
13. It is unclear if any fees will be charged, such as a homeowner’s association fee or parking fee, to the residents of the development? Depending on the information provided, the allowable rent and/or sale price of an affordable unit may be impacted. Testimony shall be provided.
14. The Applicant shall provide testimony regarding compliance with section 24-8.2i.2., which details the requirements for accessible units.
15. Section 24-8.2i.3(a) states “in inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.”. The Board should review the site layout and make a determination if it complies with this Ordinance requirement.
16. If the Board is inclined to approve this Application, the following should be conditions of any potential approval:
  - a. The Applicant shall deed restrict the eight affordable units for at least 30 years. The deed restriction shall indicate the unit number or address, number of bedrooms, and income designation. Said deed restriction shall be submitted to the Township at

least 160 days prior to the issuance of any Certificate of Occupancy for review by the Township's professionals.

- b. The affordable units shall comply with UHAC, applicable affordable housing regulations, the Fair Housing Act, any applicable order of the Court, and other applicable laws.
- c. The site shall comply with Section 24-8.2h, which provides the construction phasing schedule.
- d. The Applicant shall be responsible for retaining a qualified Administrative Agent, which shall be approved by the Township, and paid for by the developer/HOA.
- e. All necessary steps shall be taken to make the eight affordable units creditworthy pursuant to applicable law.
- f. If the site has a Public Offering Statement or master deed(s), said documents shall be submitted to the Township at least 160 days prior to the issuance of any Certificate of Occupancy for review and approval by the Township's professionals.
- g. Affirmative marketing for the affordable units shall commence at least 120 days before any Certificate of Occupancy is issued.

### Site Plan

17. The Building Height Calculations on Sheet 3 provide various heights for the eight buildings, ranging from 22.5 feet (Building 4) to 28.1 feet (Building 7), calculated from the average grade to the midpoint of the roof. However, the Architectural Plans indicate Buildings 1- 6 and 8 are 34 feet, one inch tall from the proposed grade to the midpoint of the roof. Building 7 is indicated to be 29.5 feet tall. The affordable units in Building 4 and 5 are indicated to be 33.5 feet tall. The Applicant shall clarify the discrepancies between the building heights calculated on the Site Plans and Architectural Plans. The Board should note that the building heights illustrated on the Architectural Plans are below the 38-foot maximum building height of the MF-1 Zone.
18. The Site Plans illustrate decks or patios at the rear of each market-rate townhouse unit. However, based on the Architectural Plans, it appears that some units may have a deck and a patio – one over the other. Testimony shall be provided clarifying this.
19. Sheet 3 illustrates rectangular features that are different than the deck/patio along the rear of Building 4. It is unclear what these features are, testimony shall be provided.
20. The proposed A/C units of Units 14, 18, 19, and 31 overlap with what appear to be patios. However, if this was a deck, no conflict would exist. The Applicant shall provide testimony to clarify the proposed features.

21. A six-foot-tall PVC fence is noted along the western property line. However, since the fence is illustrated on the property line, we cannot determine where the fence starts and ends. Sheet 2 shall be revised to clearly illustrate the extent of the proposed fence so we can evaluate it against the Ordinance.
22. A concrete pad is illustrated to the south of the northernmost dumpster area on Sheet 3. However, no label identifies this improvement. This feature shall be labeled or removed from the plans.
23. Sheet 6 illustrates a black square south of the northernmost dumpster area that is labeled sanitary lift station with back-up generator. No information has been provided on this structure. It is unclear if it is housed within a building, what its setback from the property line is, etc. Testimony shall be provided, which may trigger variances and/or waivers.
24. The Utility Plan on Sheet 7 illustrates a transformer adjacent and/or overlapping with the driveway of Unit 35 in Building 7. The Applicant should review to ensure there is no conflict.
25. The Utility Plan on Sheet 7 illustrates a transformer conflicting with a streetlight between Unit 5 and 10. This conflict shall be eliminated.

### Architectural

26. The Rear Elevation of Building 4 on Sheet A-7 of the Architectural Plans illustrates most of the first-floor level below the grade. Building 4 contains a two-bedroom affordable unit on the first floor. It is unclear if window wells and egress ladders are proposed. Testimony shall be provided.
27. The Applicant is encouraged to bring a sample board of the proposed building materials to assist the Board in visualizing the proposed buildings.

### Circulation and Parking

28. Section 22-6.2a. requires two parking spaces per unit. However, RSIS, technically supersedes this provision. Three-bedroom townhomes require 2.4 parking spaces. The one-bedroom affordable units requires 1.8 spaces, the two-bedroom units requires two spaces, and the three-bedroom units requires 2.1 spaces. The Applicant has calculated all the three-bedroom units at 2.4 parking spaces, to which we take no exception. A total of 95 spaces are required.
29. RSIS describes garage and driveway combinations and how many spaces they constitute. A one-car garage and driveway combination count as two parking spaces provided the driveway measures a minimum of 18 feet in length between the face of the garage door and the right-of-way. A two-car garage and driveway combination count as 3.5 parking spaces, provided a minimum parking width of 20 feet is provided and a length of 18 feet is maintained.



Sheet 3 does not dimension every driveway width, but Units 2, 37, and 40 are noted to be only 18 feet in width. The Applicant has indicated that the one car garage and two-space driveway count as three spaces, but it appears the driveways do not meet the required width. Testimony shall be provided.

30. Sheet 3 indicates 20 visitor spaces are required and 23 visitor spaces are provided. However, the eight affordable units' only have six driveway parking spaces in front of their respective units, and they require 18.1 spaces per the Applicant's calculations. Testimony shall be provided regarding this.
31. It appears that the Applicant is relying on the garage within each market-rate unit to meet the minimum parking requirement. If that is the case, the Board should consider requiring a deed restriction to ensure the garage spaces remain available to store a vehicle at all times. Otherwise, if the garages are converted to living space or used for general storage, the site may experience a parking shortage.
32. Section 22-6.2b.2. does not permit off-street parking to be located in a required front yard, except where the required front yard exceeds 30 feet. It is unclear which lot line the Applicant is considering the front yard. Testimony shall be provided. If it is along the Fyke Road private right-of-way, a waiver may be triggered.
33. The Applicant should provide a turning template of a garbage truck and a fire truck to determine if adequate circulation is provided throughout the site. It should be noted that Section 22-6.2c.3.(b) requires reasonable access to be provided for circulation of emergency, delivery, and solid waste vehicles.
34. It is unclear if any of the parking spaces will be assigned. How will the driveway parking spaces for the affordable units be designated? Testimony shall be provided.
35. The Board may wish to hear testimony on snow storage as many operators pile snow in parking spaces, which reduces the number of available spaces.

### Lighting

36. The light pole detail on Sheet 12 of the Site Plans is blurry and illegible. Therefore, we are unable to verify the proposed height of the light fixture. The detail shall be revised.
37. Section 22-6.4a.3 limits the apex angle of lights to 150 degrees. It is unclear if the proposed fixture complies with this requirement. Additional information shall be provided.
38. Section 22-6.4a.10 provides light intensity requirements for site plans, which includes the following:
  - a. Parking lots: an average of 1.5 footcandles throughout.
  - b. Street intersections: 3 footcandles.
  - c. Maximum of property lines: 1 footcandle.

d. In residential areas: 0.6 footcandles.

The Applicant only provides Isolux lines, not a footcandle grid so this office is unable to fully review the lighting plan for compliance. The Applicant shall revise the lighting plan to provide the information above and illustrate a footcandle grid. Depending on the information provided, waivers may be required.

39. We defer to the Board Engineer regarding the type of lighting, lumens, etc.

### Landscaping

40. The Applicant is encouraged to revise the landscape plan to provide additional buffer and foundation plantings, which could eliminate the associated variances.
41. The Plant List indicates 43 Japanese Boxwoods are proposed, while only 40 are illustrated on the Landscape Plan. This discrepancy shall be eliminated.
42. There are multiple shade trees within approximately two feet of the curb. It is unclear if this is adequate space to allow for the growth of the shade trees. Testimony shall be provided.
43. The Applicant proposes 16 Green Giant Arborvitae trees between the northern retaining wall and the property line, which is approximately 3.5 feet wide. This does not appear to be enough space to allow these evergreen trees to grow without damaging the wall, the tree itself, and/or encroaching on the adjacent property. The Applicant should consider increasing the wall setback to allow the proper growth of these trees.
44. The Norway Spruce trees adjacent to the parallel parking spaces conflict with the proposed transformer and light fixtures. Additionally, some of the trees encroach into the parallel spaces. These conflicts shall be eliminated.
45. The proposed Sugar Maple shade tree to the south of Building 7 may conflict with the proposed light fixture as it grows. The Applicant may want to consider shifting the tree or the light fixture.

### Details

46. Sheet 3 indicates the dumpsters will be enclosed with a solid enclosure a minimum of six feet in height. However, the Dumpster Area detail on Sheet 17 indicates a five-foot-tall stockade fence is proposed around the dumpsters. This discrepancy shall be eliminated.
47. Sheet 18 provides a detail of a block wall section four feet and under in height. However, no detail for the walls greater than four feet tall was provided. This information shall be submitted.
48. Walls up to six feet in height are proposed. No fall protection is indicated or noted in the wall detail. We defer to the Board Engineer regarding fall protection.

49. Sheet 18 contains the detail for the PVC Fence, but a color is not specified. Testimony shall be provided.
50. The Applicant has not provided details of the proposed parking lot striping or the do not enter sign at Seminary Drive. These details shall be provided.
51. No information has been provided on signage. Does the Applicant propose any signage? Testimony shall be provided.

Should you have any questions with regard to the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Sincerely,

Colliers Engineering & Design



Debbie Alaimo Lawlor, FAICP, PP  
Discipline Leader, Planning Services

cc: Mary Jo Wood, Recording Secretary (via email [mwood@mahwahtwp.org](mailto:mwood@mahwahtwp.org))  
Michael J. Kelly, Board Engineer (via email [mkelly@boswellengineering.com](mailto:mkelly@boswellengineering.com))  
Peter Scandariato, Board Attorney (via email [pscandariato@phillipsnizer.com](mailto:pscandariato@phillipsnizer.com))  
Bruce E. Whitaker, Applicant's Attorney (via email [mcwhitlaw@optonline.net](mailto:mcwhitlaw@optonline.net))  
Matthew Evans, Applicant's Architect (via email [matt@evansarchitects.com](mailto:matt@evansarchitects.com))

R:\Projects\MWP\MWP-088\Correspondence\OUT\210415\_dag\_fyke\_brook\_estates\_r1.docx

---

<sup>1</sup> Image sourced from Google Earth, dated October 13, 2020