

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING AN EXTENSION OF TIME IN WHICH
TO PERFECT A PREVIOUSLY GRANTED PRELIMINARY MAJOR
SUBDIVISION APPROVAL, REGARDING PROPERTY LOCATED AT BUCK
ROAD, CLAYTON-AURA ROAD AND FAIRVIEW ROAD, AND BEING
FURTHER SHOWN AS BLOCK 65, LOTS 4.02 & 5, BLOCK 170, LOTS 14 &
18, AND BLOCK 171, LOT 9, ON THE TAX MAPS OF THE TOWNSHIP OF
ELK,
APPLICATION NO. SD-16-02(EX)**

WHEREAS, Application No.: SD-16-02(EX) (the "Letter Application") had been filed with the Combined Planning/Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by Silvergate Associates, c/o The Quaker Group, 11013 Laurel Oak Road, Suite 110, Voorhees, N.J. 08043, by way of a letter dated June 21, 2019 by the Applicant's attorney, Emily K. Givens, Esq., Maley Givens, 1150 Haddon Avenue, Suite 210, Collingswood N.J. 08108 requesting an extension of time in which to perfect a previously approved Preliminary Major Subdivision approval pursuant to N.J.S.A. 40:55D-49(d) regarding property located on Buck Road, Clayton-Aura Road and Fairview Road (the "Subject Property"), and being further shown as Block 65, Lots 4.02 & 5, Block 170, Lots 14 & 18, and Block 171, Lot 9 on the Tax Maps of the Township of Elk (the "Township"); and

WHEREAS, Applicant's prior Application No.: SD-16-02 requesting Preliminary Major Subdivision Approval for the Subject Property, was heard by the Board and approved on July 20, 2016, with said approval being thereafter memorialized by the Board on August 17, 2016 by way of the Board's adoption of Resolution No. 2016-18; and

WHEREAS, pursuant to N.J.S.A. 50:55D-49, the MLUL confers certain rights protecting the Applicant as to any changes in zoning of the Subject Property for a period of three years after receiving Preliminary Major Subdivision approval which, in the instant matter, means that protection against changes in zoning as to the previously approved Preliminary Major Subdivision would expire on August 16, 2019; and

WHEREAS, the Applicant's attorney, M. James Maley, Jr., Esq., Maley and Givens, did appear at a meeting and public hearing held by the Board on the Applicant's Letter Application on August 21, 2019 to present the Applicant's case

Casey, Vice President of Development for the Quaker Group, the developer of the Silvergate project; and

WHEREAS, Mr. Casey was sworn and provided testimony on the Application;

NOW, THEREFORE BE IT RESOLVED by the Combined Planning / Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

1. The Applicant's Letter Application dated June 21, 2019 was complete, entered into the record, and properly before the Board.

2. The following documents were also submitted by the Applicant and entered into evidence by the Board: (a) Board Resolution No. 2016-18, granting Preliminary Major Subdivision approval to the Applicant, attached to which were the Board Planner's and Engineer's review letters regarding same; (b) Elk Township Resolution No. R-82-2016, which designated parts of the Applicant's properties as a non-condemnation Redevelopment Area; (c) Settlement Agreement dated 6/29/2017 between Silvergate Associates, Aura Development Group, LLC, CAN2, LLC, Canuso At Latham, LLC, and CAMCO Management, LLC; (d) Stipulation of Dismissal Without Prejudice, dated 6/29/17, between the above parties and New Jersey American Water Co., Inc.; (e) letter dated Sept. 23, 2008, with attached legal description, from Kenneth DiMuzio, Esq. to George Hubbs, Chairman, Elk Twp. MUA; (f) Memorandum of Understanding dated August 11, 2017 between Silvergate Associates and the Township of Elk; (g) Resolution of the Gloucester County Board of Chosen Freeholders authorizing a Developer's Agreement between the County of Gloucester and Silvergate Assoc., attached to which was a Developer's Agreement; (h) various additional memorandums, letters and other documents associated with the development of Silvergate.

3. Mr. Maley provided background information associated with the need for the Applicant to obtain an extension of time from changes in zoning based on the previously granted Preliminary Major Subdivision approval for Phases 5 & 6.

4. Mr. Casey provided extensive testimony with regard to the last 20 years of the Silvergate development, including but not limited to the hierarchy of phases to be developed, past litigation, water and sewer issues, the planned development of each phase, etc. Mr. Casey testified that the Applicant requested an additional 5-year period of protection from changes in zoning so that the overall project can proceed, with Phases 5 & 6 most likely being developed toward the end of the 5-year period.

5. The Board reviewed the facts associated with the Letter Application, the prior history associated with the development, and determined that the

Applicant acted with all due diligence and in good faith in attempting to satisfy all outstanding requirements regarding its previously granted Preliminary Major Subdivision approval, within the time limits imposed by law but, despite its due diligence, exercised in good faith, could not do so due to circumstances beyond its control. Accordingly, and in keeping with the provisions set forth in N.J.S.A. 40:55D-49(d), the Applicant's request for an extension of time of 5 years, beginning August 16, 2019, in which to perfect its previously granted Preliminary Major Subdivision approval for Phases 5 & 6, should be granted.

7. The hearing on the Application was opened to the public, at which time no member of the public present spoke either in favor of or opposed to the request.

CONCLUSION

The Board concluded that based on the representations made by Counsel for the Applicant and Mr. Casey, by way of Counsel's letter of June 21, 2019, and based on all of the Applicant's supporting documentation entered into the record regarding the past approvals granted, and the impediments experienced in trying to perfect its Preliminary Major Subdivision approval, it is apparent that the Applicant had promptly and diligently pursued all outside agency approvals and requirements, but was unable to perfect its Preliminary Major Subdivision approval within the time period permitted by law despite its best efforts, pursued in a timely manner. Accordingly, the Board finds that the Applicant shall be granted an extension of time equal to 5 years beginning August 16, 2019 in which to perfect its previously granted Preliminary Major Subdivision approval for Phases 5 & 6.

CONDITIONS

The Applicant shall remain obligated for any and all other conditions, understandings, approvals, agreements, and stipulations made by the Board, as were previously set forth in any and all prior resolutions of approval granted with respect to the Applicant and the proposed development of the Subject Property, that are not otherwise inconsistent with the approval granted herein.

WHEREUPON, a motion was made by Board member Clark, which was seconded by Board member McKeever, to grant the Applicant a 5-year extension of time in which to permit finalization of the requirements of the previously granted Preliminary Major Subdivision approval, said extension to run for 5 years from August 16, 2019, at a meeting following a public hearing held on the Applicant's request on August 21, 2019 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant approval: Afflerbach, Clark, Hughes, McKeever, Nicholson, Poisker, Schmidt, Shultz, White. There were no votes in the negative, and no abstentions, recusals, or absences. Board members Richardson (Alt. # 1) and Swanson (Alt. # 2) participated in the hearing but did not vote.

THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on September 18, 2019 as a memorialization of the approval granted in the above referenced matter by the Board at the Board's regularly scheduled meeting held on August 21, 2019 on the above referenced Application.

**COMBINED PLANNING/ZONING
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF ELK**

By: 
JEANNE WHITE, Chairperson

ATTEST:

By 
ANNA FOLEY, Secretary

CERTIFICATION

I hereby certify that the foregoing resolution is a true copy of a resolution adopted at a regularly scheduled meeting of the Elk Township Combined Planning/Zoning Board of Adjustment, County of Gloucester, State of New Jersey held on the 18th day of September 2019 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:00 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on August 21, 2019 on the above cited Application.


ANNA FOLEY, Secretary