

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LONG HILL
MORRIS COUNTY, NEW JERSEY**

**JONATHAN ROCKER
44 PLAINFIELD ROAD
STIRLING, NEW JERSEY 07980
BLOCK 10515, LOT 7
APPLICATION NO.: 2020-02Z**

**Hearing Dates: November 3, 2020
 February 2, 2021
 February 16, 2021
Board Action: February 16, 2021
Memorialization: April 6, 2021**

WHEREAS, Jonathan Rocker (the “Applicant”) is the developer of property located at 44 Plainfield Road in Stirling, identified as Block 10515, Lot 7 (the “Property”) on the Long Hill Township Tax Map; and

WHEREAS, the Property is located in the B-D Downtown Valley Commercial Zone District (the “B-D Zone”) and is currently improved with a dilapidated building that once contained a retail pet supply store and a residential dwelling unit, an accessory garage and parking areas used as a landscaper’s storage yard; and

WHEREAS, the Applicant applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with a bifurcated Application requesting relief, as more fully set forth below, in order to construct a building comprising retail space on the first floor and twenty four residential units on the second and third floors, together with parking and other building and site amenities on the Property in a zone that does not permit residential uses of any type; and

WHEREAS, the Applicant requested relief from the Board in the form of a use variance and a bulk variance (the “Relief Requested”), as follows:

Use variance from Section 122.6.a and Section 123.1 of the Township of Long Hill Land Use Ordinance, 1996 (the “Ordinance”) for the construction of a building containing twenty four residential apartments, a use not permitted in the B-D zone, in accordance with N.J.S.A. 40:55D-70d(1);

Bulk variance from Section 131 of the Ordinance for exceeding the permitted number of stories for the proposed apartment building in the B-D zoning district where two (2) stories are permitted and three (3) stories are proposed, in accordance with N.J.S.A. 40:55D-70c; and

WHEREAS, the Applicant submitted the following plans and documents in support of

the Application, which plans and documents were made a part of the record before the Board, as follows:

Application Packet dated March 30, 2020;

Plan entitled, "Block 10515, Lot 7 (Tax Map Sheet 5), Township of Long Hill Morris County, New Jersey", prepared by Page-Mueller Engineering Consultants, PC, dated March 25, 2020;

Boundary and Topographic Survey, prepared by Murphy & Hollows Associates, LLC, dated November 27, 2017, last revised on August 20, 2018;

Wetlands Location Map, prepared by Murphy & Hollows Associates, LLC, dated June 13, 2019, last revised on November 19, 2019;

Architectural Plan entitled, "Village Plaza at Long Hill, Lot 7 Block 10515, 44 Plainfield Road, Long Hill, New Jersey", prepared by Architecture Plus, dated March 25, 2020; and

WHEREAS, the Applicant gave notice of the hearing and the Board found that the Applicant met all jurisdictional requirements enabling the Board to hear and act on the Application on the Hearing Dates; and

WHEREAS, the Board considered the following report from its Planner:

Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated October 29, 2020; and

WHEREAS, during the public hearing on the Application on the Hearing Dates, the Applicant, represented by attorney Jeffrey B. Lehrer, Esq. was given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, several members of the public appeared to ask questions about and to speak with regard to the Application, as more fully set forth on the record; and

WHEREAS, two attorneys appeared on behalf of interested parties to object to the Application, as follows:

Jordan S. Friedman, Esq. appeared on behalf of Terence Golden and Sterling Flowers, LLC;

Rosemary Stone-Daugherty, Esq. appeared on behalf of Linda Parisi; and

WHEREAS, Ms. Stone-Daugherty introduced the following exhibits during the Hearings in support of objector, Linda Parisi:

Exhibit O-1: Fourteen (14) Photographs, dated December 28, 2020;
Exhibit O-2: Seven (7) various Maps, undated; and

WHEREAS, the objectors presented testimony to the Board as more fully set forth on the record, as follows:

1. Linda Parisi was sworn and testified describing her property in relation to the proposed development. Ms. Parisi's property is adjacent to the Property, to the south. Ms. Parisi testified that Plainfield Road is a busy street and opined that the proposed development is too large for the Property. Ms. Parisi testified with regard to her concerns which include noise, light, and the effect of the proposed development on the value of her property. Ms. Parisi also indicated that she is a real estate agent and testified opining that the proposed development will have a negative effect on the values of neighboring properties.
2. Alexander Daugherty was sworn, provided his qualifications and was accepted by the Board as a licensed professional planner. Mr. Daugherty testified describing the site and surrounding area. Mr. Daugherty indicated that the site was cleared of trees at some point since 2018. Mr. Daugherty noted the proximity of the Property to Ms. Parisi's property and indicated that there are wetlands on the Property. Mr. Daugherty opined that the development does not comport with the business corridor development intended for Plainfield Road. Mr. Daugherty further opined that the Property is not particularly suited to the proposed use but then stated that the site could accommodate some residential units.

WHEREAS, the Applicant introduced the following exhibit during the Hearings in support of its Application:

Exhibit A-1: Aerial Photograph of the Property; and

WHEREAS, the Applicant presented testimony from the following individuals:

1. Catherine Mueller, PE, Applicant's Engineer;
2. Rocco Campanella, AIA, Applicant's Architect;
3. Douglas Polyniak, PE, Applicant's Traffic Engineer;
4. Elizabeth McManus, PP, Applicant's Planner;
5. Jonathan Rocker, Applicant and Principal of Jonathan Rocker Development Company;
6. Brian Krawitz, Applicant's Principal; and

WHEREAS, the Applicant introduced the Application and presented testimony to the Board as more fully set forth on the record, as follows:

1. Catherine Mueller was sworn, provided her qualifications and was accepted by the Board as a licensed professional engineer. Ms. Mueller testified regarding the existing conditions of the Property. The Property contains a dilapidated one and a half story building with associated parking and storage areas that will be removed. The Property is rectangular in shape running east to west along Plainfield Road. Ms. Mueller described the surrounding properties. With regard to environmental constraints, Ms. Mueller indicated that a Letter of Interpretation from the New Jersey Department of Environmental Protection confirmed the

presence of wetlands on the Property. Ms. Mueller stated that the Property is not in a flood hazard area. Ms. Mueller testified that the development will be constructed outside of the previously undisturbed wetlands.

Ms. Mueller testified describing the proposed development. The first floor of the proposed building will contain 2,399 square feet of retail space. The second and third floors of the proposed building will contain 24 residential units. The driveway will be aligned with the driveway to the Valley Mall. A sidewalk will be provided along the frontage of the Property and in front of the two neighboring properties to the north, up to the sidewalk in front of the PNC Bank property. A pad will be provided to the north of the site for a school bus stop. Parking will be provided both under the building and outside of the building. Ms. Mueller testified that the Applicant will provide 60 spaces on the Property, 12 spaces for the retail use, per the Ordinance, and 48 spaces for the residential apartments, per the State Residential Site Improvement Standards. The dumpster pad will be located behind the proposed building.

Ms. Mueller described the parking, indicating that the residential apartments will be assigned parking spaces in the garage. The parking spaces will be doubled stacked, equivalent to the configuration of space in a single residential garage. Ms. Mueller noted that residents will be able to walk from the Property to other uses and to the school bus pad site. With regard to screening, Ms. Mueller testified that buffering will be provided with fencing and landscaping. With regard to recreation, Ms. Mueller indicated that the area to the north of the building could accommodate a 30 foot private, fenced green space for the residents of the proposed development. Access to the fenced, recreation area will be provided through the common area in the building on the first floor. Ms. Mueller acknowledged that the Applicant will comply with the Ordinance's buffering requirements.

2. Rocco Campanella was sworn, provided his qualifications and was accepted by the Board as a licensed architect. Mr. Campanella testified describing the architectural plans. The first floor level will contain the retail space, common and utility space, an entrance on the east side, and the elevator. The second and third floors will each contain 12 residential units. The units will comprise one one-bedroom unit, one three-bedroom unit and 10 two-bedroom units on each floor. The three affordable units will be located on the second floor and will occupy the one-bedroom unit, the three-bedroom unit and one of the two-bedroom units.

Mr. Campanella testified with regard to the exterior of the building. The exterior is in compliance with the Township's requirements. The materials will be the same on all sides of the proposed building. The architecture will contain gables and hipped roofs, in accordance with the Township's vision for a "village" look. The exterior will consist of brick, stone and siding in earth tones. Mr. Campanella opined that the size and scale of the proposed building is appropriate for the Property. With regard to parking, the accessible spaces will be located outside of the garage near the walkway.

With regard to the proposed sign, Mr. Campanella testified that the proposed monument sign will be 4 feet tall by 4 feet wide and will contain 16 square feet per side. The sign will mimic the architectural finishes on the building and will provide enough space for the retail users' signage.

3. Douglas Polyniak was sworn, provided his qualifications and was accepted by the Board as a licensed professional traffic engineer. Mr. Polyniak testified with regard to traffic generation and impact. Mr. Polyniak explained the traffic analysis undertaken indicating that a reference manual, the Institute of Traffic Engineers Trip Generation Manual, was used to ascertain peak trip generation. Mr. Polyniak stated that both the residential and commercial components were simultaneously taken into account when ascertaining the peak trips generated to and from the site. With regard to the commercial component, Mr. Polyniak indicated that his analysis included a more intense retail use rather than the lower intensity commercial uses proposed by the Applicant. Mr. Polyniak's analysis concluded that the morning peak hours between 7 and 9 am would produce 4 trips entering and 10 trips exiting the site. The evening peak hours between 4 and 6:30 pm would generate 26 trips entering and 25 exiting and the Saturday peak hours between 10 am and 2 pm would generate 26 trips entering and 24 trips exiting. Mr. Polyniak concluded that the proposed development of the Property would generate less traffic than the permitted uses such as a convenience store, a restaurant, a medical office, a daycare center, or a larger retail center. Mr. Polyniak indicated that traffic counts were performed along Plainfield Road in 2019, before the pandemic. Peak hour volumes have been approximately 50% lower during the pandemic. Mr. Polyniak opined that the peak hour volumes will likely not increase to prepandemic levels after the pandemic is over due to society's newfound reliance on online shopping and telecommuting for work.

With regard to parking, Mr. Polyniak reiterated that the parking spaces for the residential units will be assigned to each apartment. Mr. Polyniak stated that the ingress and egress to and from the Property will not conflict with the Valley Mall entrance and that the proposed driveway will function safely and efficiently. The school bus pad will not conflict with traffic on Plainfield Road. The interior circulation meets the design standards with regard to drive aisles. The drive aisles will be able to accommodate emergency vehicles. Pedestrians will have an opportunity to access the cross walk on Valley Road via the sidewalk proposed by the Applicant and approved by the County.

4. Elizabeth McManus was sworn, provided her qualifications and was accepted by the Board as a licensed professional planner. Ms. McManus conducted an analysis of the site and testified describing the Property and the surrounding area. The uses surrounding the Property on the north and south are residential and commercial uses are located across the street, to the east and further to the north. The Property is also surrounded by zoning districts other than the B-D zone. Ms. McManus described the uses permitted by the B-D zone and the adjacent zoning districts.

Ms. McManus described the relief requested. The Applicant's proposal requires a use variance in accordance with N.J.S.A. 40:55D-70d(1). With regard to the positive criteria, Ms. McManus testified that the site is suitable for the proposed use because of the Property's unique location in close proximity to goods and services. The proposed sidewalk will provide contiguous access to other uses. The proposed location places residents in convenient distance within places of businesses. In addition, the site is surrounded by a mix of uses similar to the Applicant's proposal. Ms. McManus indicated that the proposed development could serve as a transition from residential uses in the south to a more intense, commercial area toward the north and east. The residential uses located

in the R-5 zoning district in the south is the most intense residential district in the Township. The Property's proposed mix of uses could serve as both a transition and an opportunity to support the adjacent commercial and retail uses.

Ms. McManus testified that the Applicant's proposal meets several purposes of the Municipal Land Use Law. The proposal meets purpose "a" in that it advances the general welfare. Purpose "e" is also advanced in that the use allows for walkability and provides for density in a location where alternative modes of transportation may be used and recreational opportunities are in close proximity. Ms. McManus further testified that purpose "g" is promoted by locating the proposed use amidst the existing commercial uses and by providing a location for affordable units.

With regard to the negative criteria, Ms. McManus stated that the proposed use will not create any substantial detriments. With regard to the first prong of the negative criteria, Ms. McManus testified that the proposed use will not cause any substantial detriment to the public good. The proposed building is not oversized for the Property and the proposed development will meet all bulk standards with the exception of the additional story. The building architecture will be similar in character to other permitted uses in the zone and will not be indicative of a residential use. The first floor of the building will be consistent with the uses permitted in the B-D zoning district and overall, the proposed building will conform in appearance with that which is required in the zoning district.

With regard to the second prong of the negative criteria, Ms. McManus testified that the Property's size and location at the edge of the zoning district will not undermine the intent or integrity of the B-D district. With regard to the Master Plan, Ms. McManus testified that the Applicant's proposal is an opportunity to implement the Master Plan's vision of a vibrant walkable pedestrian area. The Applicant's addition of the sidewalk will promote the pedestrian accessibility anticipated by the Master Plan. In addition, the Applicant's proposal will contribute to the economic sustainability of the area by providing consumers from the residential portion of the development that will utilize the goods and services provided by surrounding commercial uses. Ms. McManus stated that the provision of affordable housing will assist the Township in providing for affordable housing in the future. With regard to the bulk variance for the extra story, Ms. McManus indicated that the proposal promotes purpose "i" in that it promotes a desirable visual environment.

With regard to the enhanced quality of proof, Ms. McManus testified indicating that the Property is uniquely situated and is too small to support its own zone district. In addition, Ms. McManus noted that trends observed during the last six years demonstrate that people are moving to locations closer to downtown centers in order to take advantage of increased walkability and access to recreational opportunities. Ms. McManus further observed that it is not unusual to see new multi-family residential development being constructed near commercial centers and stated that it is her belief that this trend is likely to continue.

5. Jonathan Rocker was sworn and testified outlining his experience as a builder. Mr. Rocker also described the manner in which he found and purchased the Property and informal meetings that he attended with Planning Board representatives in which residential development was discussed. Mr. Rocker further testified with regard to the rationale for

the number of units stating that twenty four units is needed in order for the development to be economically feasible.

6. Brian Krawitz was sworn and testified with regard to the tree removal indicating that the Applicant did not remove the trees. Mr. Krawitz also testified with regard to the size of the proposed residential units and answered additional questions from Board members and members of the public.

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The Property is comprised of an approximately 1.87 acre lot, designated as Block 10515, Lot 7 on the Long Hill Township Tax Map. The Property is located in the B-D Downtown Valley Commercial Zone District and is located on the west side of Plainfield Road. The Property is currently improved with a dilapidated structure that once housed a retail pet supply store and a residential unit. The Property also contains a storage garage and two graveled parking areas that were used for storage of landscaper vehicles and equipment. The Property is proximate to a single-family residential dwelling to its south; warehouse, commercial and flex type uses further to its west; other single-family residential dwellings located on lots fronting on Metzler Place further to its south; and some residential dwellings followed by commercial properties to its north leading toward the Valley Road corridor. The properties to its east, across the street, consist of a driveway leading to the “Valley Mall”, a large commercial strip type mall, the “Goddard School”, a childcare provider set back from Plainfield Road just south of the Valley Mall driveway, and “Cilento”, a restaurant and tavern, north of the Valley Mall driveway.

2. The Applicant seeks to raze the existing structures on the Property and to construct a three (3) story, elevated building containing approximately 2,400 square feet of retail/commercial space on the first floor and twenty-four (24) apartment units on the second and third floors, and parking for sixty cars; twelve spaces are proposed outdoors and 48 spaces are proposed in a garage to be constructed under the proposed building. The Applicant proposes to deed restrict three (3) of the twenty-four (24) units as affordable rental units in a configuration and manner that is in accordance with applicable State regulations regarding affordable housing units available to moderate, low and very low income individuals and families. The proposed development is proposed to be a rental development, in that all units, both residential and commercial, will leased to residents and users rather than owned.

3. The Applicant previously applied to the Board with a proposal to build a thirty (30) unit residential apartment building without any retail or commercial component. The Board denied the Applicant’s request in a resolution dated December 4, 2018. The Applicant posited, at that time, that residential apartment buildings containing residential units on any floors above the first floor had merely been omitted from the principal uses permitted in the B-D Zone. The Applicant’s opinion was predicated, partially, on Subsection 122.6(d) of the Ordinance which states that detached single family dwellings and any other residential uses on the first floor are expressly prohibited. These uses appear under the title “Prohibited Uses” therefore, according to the Applicant, those uses must have been specifically disfavored by the legislative body. The Applicant further reasoned that since residential uses on the first floor are expressly prohibited, then uses on second and third floors are impliedly permitted. The Board rejected the Applicant’s reasoning at that time and currently maintains its interpretation that all residential units are prohibited in the B-D Zone.

4. The Applicant recognized and the Board finds, as stated above, that the B-D Zone does not permit residential apartment units in the zoning district therefore the Applicant applied to the Board for use variance relief in accordance with N.J.S.A. 40:55D-70d(1). The B-D Zone further prohibits the construction of any structure that exceeds 35' and/or two (2) stories in height therefore the Applicant applied for variance relief in accordance with N.J.S.A. 40:55D-70c for exceeding the number of permitted stories with the proposed three (3) story building. The Applicant applied to the Board with a bifurcated application seeking the Relief Requested, as specified herein and above, only. The Applicant expressed an intent to file a subsequent application for preliminary and final site plan approval, with any other ancillary relief, at a later date in the event the Board granted approval of the Relief Requested.

5. All threshold and jurisdictional requirements of the Application were met and the Board proceeded to hear the Application on the Hearing Dates and to render its determination which is memorialized herein.

6. Since the Applicant's proposed use is not permitted in the B-D Zone, the Applicant applied for a use variance, as aforesaid. An applicant seeking a use variance has the burden of proving that it has satisfied the positive and negative statutory criteria to support an approval of such a variance. In order to satisfy the positive criteria an applicant must prove, and the Board must specifically find, that either: the proposed use inherently serves the public good; the owner of the property would suffer an "undue hardship" if required to use the property in the manner permitted by the zoning ordinance; or the use would serve the general welfare because the site is particularly suitable for the proposed use. See, Saddle Brook Realty, LLC v. Twp. Of Saddle Brook Zoning Board of Adjustment, 388 N.J. Super 67, 76 (App Div 2006). Here, the Applicant did not maintain that the use was inherently beneficial or that the owner would suffer undue hardship therefore the Applicant's request must be evaluated under the site suitability test of the positive criteria. The Applicant indicated that its proposed use serves the general welfare because it satisfies zoning purpose "a" of the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-2 and further satisfies purposes "e", "g", and "i" of the MLUL.

The site suitability test focuses on (1) why the location of the site within the municipality is particularly suited to the use despite the zoning and (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use. See, Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 280 (1967). It is not enough to merely demonstrate that the proposed use promotes one or more of the purposes of zoning listed in the MLUL at N.J.S.A. 40:55D-2, an Applicant must demonstrate that the site is peculiarly fitted or particularly suitable for the proposed use. See, Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519 (1977). New Jersey Courts have found that "peculiar suitability special reasons exist where, generally, the use is one that would fill a need in the general community, where there is no other viable location, and where the property itself is particularly well fitted for the use either in terms of its location, topography or shape." Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. super 200, 210 (App Div 1999).

In order to satisfy the negative criteria, an applicant must demonstrate that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. The applicant for a use variance

must establish the negative criteria with an enhanced quality of proof. See, Medici, 107 N.J. 1, 21 (1987). The Applicant's proofs and the Board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district. Id. at 21-22.

7. An applicant requesting a bulk variance under subsection "c" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria, as well. The positive criteria in bulk variance cases may be established by the Applicant's showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created. The positive criteria may also be established by a showing that the application for variance would advance the purposes of the Municipal Land Use Law and the benefits of the deviation would substantially outweigh any detriment in accordance with N.J.S.A. 40:55D-70c(2). In order to establish the positive criteria for a c(2) variance, an applicant must show that the proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the Municipal Land Use Law, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

In order to satisfy the negative criteria for a "c" variance, an applicant must also show that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The requirement that the grant of the variance not substantially impair the intent and the purpose of the zone plan and zoning ordinance focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate. Unlike use variances, reconciliation of a bulk or dimensional variance with the zone plan and zoning depends on whether the grounds offered to support the variance, either under subsection c(1) or c(2), adequately justify the board's action in granting an exception from the ordinance's requirements.

8. During the Hearing before the Board, the Board considered testimony from both the Applicant's experts and one of the objector's experts. The Board recognizes that it is the Board's obligation to consider only competent evidence in rendering its decision. Tomko v. Vissers, 21 N.J. 226, 238 (1956). Board decisions must be supported by sufficient evidence in the record, and that standard is not met if the decision is based on an expert's "net opinion". Gallenthin Realty v. Bor. of Paulsboro, 191 N.J. 344, 373 (2004). The "net opinion" rule prohibits admission into evidence of an expert's conclusions if they are not supported by factual evidence or other data. Polzo v. County of Essex, 196 N.J. 569, 583 (2008). If the expert provides no explanation for his or her conclusions, those conclusions are deemed to be "net opinions" and must be excluded. Id. The Board acknowledges that the experts presented by the Applicant and the planner presented by the objector are qualified to provide guidance and give opinions in their respective fields. However, the Board was not satisfied that Linda Parisi was appropriately qualified as an expert in property valuation. The fact that Ms. Parisi may hold a license to sell real estate for a period of years does not indicate that she is an expert in real property valuation. The Board finds that Ms. Parisi was not properly or sufficiently qualified to render an opinion relative to property values

and rejects the testimony regarding the effect of the proposed development on the value of the Property as unqualified opinion. In addition, even if Ms. Parisi had been qualified as an expert in property valuation, the testimony given with regard to value did not identify the factual basis for her conclusion, she did not explain her methodology, and she failed to establish the reliability of the factual basis and the methodology. See, Koruba v. American Honda Motor Co., 396 N.J. Super. 517, 526 (App. Div. 2007). Thus, the Board did not consider the “net opinion” that the proposed development will have a deleterious effect on the value of neighboring property in rendering its decision.

9. With regard to the Applicant’s request for the aforesaid use variance, the Board agrees that the Applicant’s proposal advances several goals of the MLUL including serving the general welfare because the site is particularly suitable for the proposed use. The Board accepts the Applicant’s Planner’s opinion that the proposed use provides an opportunity to support the well-being of the neighborhood and specifically the businesses in that particular location. In addition, the Board notes that the provision of rental units, including the three affordable units, creates a variety of housing opportunities and assists the Township in complying with its constitutional obligation of providing a realistic opportunity for the development of affordable housing. The proposed development will allow for walkability and, as a result, less reliance on auto transport and a healthier community, in a manner that will not deleteriously impact the environmentally sensitive wetlands present on the Property. The Board is satisfied that, pursuant to the Letter of Interpretation obtained by the Applicant, the proposed development will not encroach into the environmentally sensitive area.

The Board is further satisfied that the proposed residential and commercial development, subject to the conditions imposed herein and agreed to by the Applicant, will have a less impactful effect on the environmentally sensitive area than some of the other permitted uses in the B-D Zone such as larger retail shopping uses, supermarkets and convenience stores that generate a great deal of activity and refuse. The Board agrees with the Applicant’s Planner and finds that the location of the proposed development is appropriate for a mixed use. The Property is located in close proximity to adjacent residential neighbors, as demonstrated in a photo array provided by the objector’s planner. Creating a purely commercial enterprise comprising any one of the permitted uses would be negatively impactful to the neighboring residential property owners. Some uses, for example, restaurants or banquet halls with permitted outdoor dining and entertainment, would have an especially deleterious effect on the quiet enjoyment of the neighboring residences. The Board agrees with both the Applicant’s and objector’s planners who each indicated that the Property could accommodate residential development due to the location of the Property between the purely residential uses to its south and the more intense commercial uses to its east and further north. The development of the Property with residential units in addition to some commercial space, partially in keeping with the B-D Zone, provides a reasonable transition and tempers the impact of the B-D Zone on the adjoining residential neighbors by providing a development that is likely to produce less traffic, less noise, less activity and less environmental impact than a permitted, purely commercial, use. The Board finds that the Property is uniquely suited to the proposed use for the foregoing reasons and finds that the Property is well fitted for the use because of its location on the edge of the zoning district where it meets an existing and developed, purely residential zoning district.

With regard to the first prong of the negative criteria, the Board is satisfied that the proposed use will not cause substantial detriment to the public good. This statutory prong focuses on the proposed use's effect on surrounding properties. See, Medici v. BPR Co., 107 N.J. 1, 22-23 n. 12 (1987). The Board finds that the benefits of incorporating a lower impact mixed use at the edge of the B-D Zone, where it meets a purely residential zone, outweigh the detriments of incorporating residential apartments into a commercial zone. The residential aspect of the proposed development will produce less activity than a purely commercial use and lessen this impact on the adjacent residential neighborhood. At the same time, this residential component will bring patrons into the area to support the local commercial and retail uses. On balance, the Board does not find that any potential detriment to surrounding neighbors is substantial.

With regard to the second prong of the negative criteria, the Board finds that the proposed mixed use development will not cause substantial detriment to the zone plan or the zoning ordinance. The overall intent of the Master Plan is to generally protect the Township's semi-rural and residential nature. More specifically and contrary to the preservation of rural and residential characteristics, the intent of the B-D Zone is to create "a place where people will come to stroll, shop, work, attend cultural and entertainment events, enjoy food and drink, and conduct civic and other business activities. Downtown should be planned to strengthen its role as an economically sustainable commercial center that provides many of the goods and services that Township residents need on a daily basis and also be a magnet to people from the surrounding region." Downtown Valley Commercial District Plan Element September 2015, pages 2-3. The Property comprises a small area relative to the whole of the B-D Zone, borders a residential zone, and is proposed to contain uses that are permitted in the zone in a portion of the development. The Board finds that the Applicant's proposed mixed use presents an opportunity to maintain the Township's overall residential character while supporting a commercial center. The Applicant's proposal will provide patrons, as well as additional commercial uses, to the commercial center. In addition, the Applicant's proposal to provide additional sidewalks will allow for pedestrian movement throughout the center. Overall, the Board finds that the Applicant's proposal will not cause substantial detriment to the Township's intention of creating a vibrant commercial center.

The omission of mixed use developments from the list of permitted uses in the B-D Zone can be reconciled by the fact that the Master Plan was last examined in 2015. A current draft of a master plan that has been made available to the public suggests that the Planning Board may consider recommending that residential uses be added to the B-D Zone. Although the Board recognizes that the draft has not been adopted or implemented, the Board finds that the Planning Board's consideration of such a recommendation is instructive. The Board believes, based upon the aforesaid draft and the Applicant's Planner's testimony, that current trends indicate that residential units near or in commercial centers are sought after and beneficial to the functioning and success of those commercial centers. This may not have been the case during the time the Master Plan was last examined by the Planning Board. The Board notes that current events have had a palpably negative effect on some neighborhood retail and commercial establishments. The establishment of residential units in closer proximity to those establishments will serve to support economic viability by providing automatic patrons. The Board finds that the addition of these residential units supports rather than detracts from the Master Plan's stated goal of planning the downtown in a manner that contributes to strengthening its economic sustainability. Overall, the Board is satisfied that the addition of the residential uses in the location of the Property for the aforesaid reasons will not cause substantial detriment to the zone plan or the zoning ordinance.

10. As to the bulk variance for the third story, the Board notes that the Applicant's proposal which requires a use variance gives rise to the need for the bulk variance. In such a circumstance, the bulk variance is subsumed under the relief requested for the use variance. See, Price v. Himeji, LLC, 214 N.J. 263, 301 (2013). Since the Board is satisfied that the Applicant is entitled to the requested use variance for the number and type of units proposed, the Board believes that the bulk variance can also be granted for the reasons supporting the approval of the use variance. The Board is further satisfied that the benefits of the desirable visual environment created by the addition of the third story substantially outweigh any detriments. For the foregoing reasons, the Board believes that the bulk variance for the additional story may be granted without substantial detriment to the public good, the zone plan and the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Board of Adjustment does hereby GRANT the Relief Requested as noted above, subject to the following:


1. The Applicants are required to comply with the following conditions:
 - a. The Applicant shall comply with the Applicant's representations to and agreements with the Board during the hearing on this Application.
 - b. The Applicant shall be required to apply for and obtain preliminary and final site plan approval from the Board before any permits shall issue for the development of the Property in the manner approved herein.
 - c. The Applicant shall limit the proposed commercial uses on the first floor of the proposed building to low intensity uses, to the reasonable satisfaction of the Board.
2. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, or the requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the Applicants in any approvals, as memorialized in resolutions adopted by the Township of Long Hill Board of Adjustment or Planning Board except as specifically stated in this Resolution.
3. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.
4. All fees and escrows assessed by the Township of Long Hill for this Application and the Hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property.
5. In accordance with the adopted ordinance provisions and the current requirements of the Township of Long Hill, to the extent applicable, the Applicant shall be required to contribute to the Township's "Affordable Housing Trust Fund" and/or otherwise address the impact of the subject application for development upon the affordable housing obligations of the Township, in a manner deemed acceptable by the Township Committee and in accordance with COAH's "Third


Round Substantive Rules" and/or in accordance with enacted legislation and/or in accordance with direction from the Courts.

6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicants and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent or received by the Applicant.

BE IT FURTHER RESOLVED, that this Resolution, adopted on April 6, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Johnson, Malloy, Pesce, Rosenberg, Gerecht; No: Aroneo, Grosskopf; Recused: Gianakis; Not Eligible: Hain; Absent: None.

ATTEST:


 Debra Coonce,
 Board Secretary


 Edwin F. Gerecht, Jr.,
 Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT	X				
VICE CHAIRMAN JOHNSON	2 ND				
ARONEO			X		
GIANAKIS			X		
GROSSKOPF			X		
MALLOY	M				
ROSENBERG					X
PESCE – ALT 1					X
HAIN – ALT 2			X		

I hereby certify this to be a true copy of the Resolution adopted on April 6, 2021.

A handwritten signature in cursive script that reads "D Coonce". The signature is written in black ink and is positioned above a horizontal line.

Debra Coonce,
Board Secretary

STATE OF NEW JERSEY

SS.

MORRIS COUNTY

I, Debra Coonce, being of full age, being duly sworn upon her oath, certifies: that a notice of which the annexed is a true copy, was published in the Echoes Sentinel which is a newspaper published in Morris County, New Jersey; on the 15th day of April, 2021 in said newspaper.

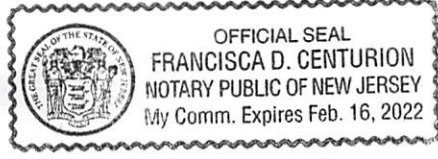
DW

Sworn and subscribed before me this

19th day of April, 2021

[Signature]

Notary Public of New Jersey



Long Hill Township

Public Notice
NOTICE OF DECISION OF THE township of LONG HILL
zoning board of adjustment

Public notice is hereby given that the following action was taken by the Township of Long Hill Zoning Board of Adjustment at its meeting on April 6, 2021:

Resolution of Approval Memorialized
Use Variance
Block 10515 / Lot 7 / Zone B-D
44 Plainfield Road
Application No. 2020-02Z
Jonathan Rocker

Resolution of Approval Memorialized
Bulk Variances
Block 13001 / Lot 3 / Zone R-3
62 Central Avenue
Application No. 2020-08Z
Walter Thievon

Resolution of Approval Memorialized
Bulk Variances
Block 13204 / Lot 20 / Zone R-2
58 Delaware Avenue
Application No. 2020-09Z
Patrick Dwyer

Resolution of Approval Memorialized
Bulk Variances
Block 13801 / Lot 69 / Zone R-2
44 Magna Drive
Application No. 2020-12Z
Sean & Kristen Conner

All documents relating to this application may be examined by the public by appointment in the Planning & Zoning Office in the Township of Long Hill Municipal Building located at 915 Valley Road, Gillette, NJ. Office Hours are as follows: Monday, Tuesday & Thursday - 8:30 AM to 4:30 PM, Wednesday - 8:30 AM to 6:30 PM and Friday - 8:30 AM to 2:30 PM.

Debra Coonce
Zoning Board of Adjustment Secretary
Planning & Zoning Coordinator
Township of Long Hill

P.F.\$48.45 04/15/21