

**RESOLUTION OF THE 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. 2021-13Z**

Hearing Dates:	February 1, 2022 February 15, 2022 May 17, 2022
Board Action:	May 17, 2022
Memorialization:	August 16, 2022

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

WHEREAS, the Property is located in the B-D Downtown Valley Commercial Zone District (the “B-D Zone”); and

WHEREAS, the Applicant previously filed a bifurcated application pursuant to N.J.S.A. 40:55D-76(b) and requested relief from the Board of Adjustment of the Township of Long Hill (the “Board”) in the form of a use variance and a bulk variance as follows:

1. In accordance with N.J.S.A. 40:55D-70d(1), Applicant requested a 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;
2. In accordance with N.J.S.A. 40:55D-70c, Applicant requested a 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 were proposed; and

WHEREAS, pursuant to N.J.S.A. 40:55D-76(b), regarding bifurcated applications, an applicant is permitted to proceed in the first instance with the use variance application to allow the Board to thoroughly review and consider the precise circumstances under which the Board will grant the use variance before proceeding in a second phase with site plan and/or subdivision approval and related relief; and

WHEREAS, by Resolution (Application No.: 2020-02Z) dated April 6, 2021, the Applicant, after three (3) Board hearing dates, received a “d(1)” use variance and a bulk variance to construct a building comprised of three (3) floors, with 2,399 square feet of commercial/retail space on the first floor and twenty-four (24) residential units on the second and third floors, together with parking and other building and site amenities on the Property; and

WHEREAS, the Applicant, in accordance with N.J.S.A. 40:55D-76(b), now seeks to obtain preliminary and final major site plan approval to construct a three-story mixed use building to include 1,900

sq. ft. of retail on the first floor and twenty-four (24) residential units on the second and third floors (the “Application”), together with the following required variance and design waivers:

1. A bulk variance for a building height of 38 ft. 5 in. tall, whereas the maximum permitted building height is 35 feet pursuant to Section 131 of the Ordinance;
2. A design waiver from the requirement that 5% of the interior portion of parking areas containing at least ten (10) stalls, excluding all perimeter landscaping and required buffer area, shall be landscaped, pursuant to Section 153.1.g.1 of the Ordinance, whereas $\pm 2\%$ of such are proposed to be landscaped;
3. A design waiver from the requirement that parking lots shall provide one shade tree for each 10 parking stalls, whereas thirty (30) exposed parking stalls are proposed and three (3) shade trees are required pursuant to Section 152.lg.2 of the Ordinance, but only one (1) shade tree in the parking area is proposed¹;
4. A design waiver from the requirement that retaining walls shall not exceed four (4) feet in height in the front yard or six (6) feet in height in the side and rear yards pursuant to Section 154.1.e.3, whereas the proposed refuse enclosure is proposed with a six (6) foot board-on-board fence on top of a four (4) feet high wall in the side yard; and

WHEREAS, public hearings on the Application, on notice as required, were held on February 1, February 15, and May 17, 2022, at which time interested citizens were afforded an opportunity to appear and be heard;

WHEREAS, the Applicant was represented by Jeffrey B. Lehrer, Esq., of DiFrancesco, Bateman, Kunzman, Davis, Lehrer, & Flaum, P.C.; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions;

1. The Applicant is the developer of the Site and makes the Application with the consent of the Property owner.
2. The Applicant, having received a “d(1)” use variance and bulk variance approval from the Board for the proposed mixed-use structure, now seeks, pursuant to N.J.S.A. 40:55D-76(b), preliminary and final major site plan approval, with associated bulk variance relief and design waivers.
3. The Board notes that, while the site plan in its totality is substantially consistent with the concept plan utilized for the use variance approval, the Applicant has made revisions to the plans that deviate from the prior testimony and concept plan submitted during the use variance hearing, and determined that such revisions do not require amended d(1) use and bulk variance approval.
4. The Property is located in the B-D Downtown Valley Commercial Zone of the Township of Long Hill on Plainfield Road (County Route 606) at the border between the B-D Zone and the R-5 Residential, PSO Planned Shopping Overlay, and VIO Downtown Valley Industrial Overlay Zones.

¹ The Applicant subsequently stipulated to providing three (3) shade trees in the parking lot, thus eliminating the need for the design waiver relief.

The Property is bordered by single-family residential properties to the north and south, and commercial uses (including a restaurant and a daycare center) to the east (across Plainfield Road) and to the west. The Property consists of one lot containing 1.87 acres (81,534 square feet). The existing lot is developed with a 1.5 story residential building and associated improvements, such as a paved driveway, gravel parking area, several accessory structures, and various walkways. The Property is impacted by Freshwater Wetlands and Freshwater Wetland Transition Areas within the western (rear) portion of the Property.

5. The Applicant received approval to construct a mixed-use building with 2,399 square feet of retail space and a garage on the ground floor and 24 multifamily units on two upper floors. On each residential floor, there would be 1 one-bedroom unit, 10 two-bedroom units, and 1 three-bedroom unit. There will also be amenity spaces on the ground floor, including a lobby, lounge, gym, utility area, trash room, and an elevator lobby.
6. The development will provide 60 parking spaces total, including 24 tandem spaces and 6 single-car spaces in the garage, and 30 additional surface parking spaces along the southern property line and to the rear of the building. The Applicant will construct a new driveway from Plainfield Avenue, as well as provide a 4-foot-wide concrete sidewalk along the Plainfield Road frontage that connect to pedestrian walkways leading to the retail space and residential entrance of the building. A 64 square foot concrete pad dedicated to school bus pick up will be provided adjacent to the sidewalk in the northeastern corner of the Site.
7. The Applicant's proposal is depicted and described on the following plans and reports:
 - Application Packet, last signed August 3, 2021, with all attachments, checklists and the Addendum;
 - Resolution, Application No.: 2020-02Z, memorialized by the Long Hill Township Zoning Board of Adjustment on April 6, 2021;
 - Morris County Planning Board Application Packet, last signed August 3, 2021;
 - Engineering Plans entitled, "Preliminary & Final Site Plan, Block 10515, Lot 7 (Tax Map 5), Township of Long Hill, Morris County, New Jersey," prepared by Page-Mueller Engineering Consultants, P.C., consisting of 10 sheets, dated August 3, 2021;
 - Architectural Plans and Elevations labeled "Village Plaza, 44 Plainfield Road, Block 10515, Lot 7," prepared by John Saracco Architect LLC, consisting of 4 sheets, dated July 30, 2021;
 - Boundary & Topographic Survey, entitled "Boundary & Topographic Survey of Lot 7 Block 10515 44 Plainfield Road", prepared by Murphy & Hollows Associates, dated November 27, 2017, last revised July 14, 2021;
 - "Freshwater Wetlands Letter of Interpretation: Line Verification, File No.: 1430-07-0005.1, Activity Number: FWW190001, Applicant: John Rocker, Block:10515 and Lot: 7, Long Hill Township, Morris County" letter from the New Jersey Department of Environmental Protection to John Rocker, dated January 13, 2020;

- Soil Erosion and Sediment Control Certification; dated July 22, 2021;
 - Stormwater Management Report, entitled “Stormwater Management Report for 44 Plainfield Road Block 10515, Lot 7”, prepared by Page-Mueller Engineering Consultants, P.C., dated August, 2021; and
 - Four color photos taken by Page-Mueller Engineering dated May 3, 2018; “PME #1501-040, Plainfield Road, Block 10515, Lot 7, Long Hill Township, Morris County, New Jersey Environmental Impact Statement” prepared by Cathy Mueller, PE, of Page- Mueller Engineering Consultants, P.C., dated August 3, 2021.
8. The Applicant received review letters and memoranda from the following:
- The Board Engineer, Samantha J. Anello, P.E., C.M.E., C.F.M., dated December 28, 2021 and the Board Planner, Elizabeth Leheny, AICP, PP, dated January 23, 2022.
9. The Board Engineer, Samantha J. Anello, P.E., C.M.E., C.F.M., and the Board Planner, Elizabeth Leheny, AICP, PP were both duly sworn according to law.
10. At the February 1, 2022 hearing, Mr. Lehrer, entered his appearance on behalf of the Applicant and provided an overview of the procedural posture of the Application. He explained that the Applicant had previously received a use variance approval and a bulk variance approval as part of a bifurcated application, and that the Applicant was now seeking preliminary and final major site plan approval with design waivers.
11. Mr. Lehrer emphasized that no variances were sought and that the main difference between the proposed site plan and the concept plan utilized in the use variance hearing was that the proposed retail space was reduced from 2,400 sq. ft. to 1,900 sq. ft. Mr. Lehrer stated, that in lieu of 2,400 sq. ft. of retail space, the Applicant proposed to reduce said retail space and add internal amenity space for the residential component of the proposed building.
12. Catherine A. Mueller, P.E., of Page-Mueller Engineering Consultants, P.C., having a business address of 5 Powderhorn Drive, Suite 4, Warren, New Jersey, was duly sworn according to law, provided her qualifications and was accepted by the Board as an expert in the field of civil engineering.
13. Ms. Mueller introduced the following exhibits into evidence:
- **Exhibit A-1**: Colorized Landscape Rendering Site Plan, dated January 28, 2022;
 - **Exhibit A-2**: Truck Turning Plan; and
 - **Exhibit A-3**: Porous Pavement Plan.
14. Ms. Mueller described Exhibit A-1 and explained the existing conditions and area in which the Property is located. Ms. Mueller opined that the Property is rectangular in shape, that there are wetlands located in the rear of the Property, and that the Applicant will apply for a redevelopment permit for the proposed encroachment within the wetlands buffer area. Ms. Mueller explained the existing vegetation on the Property and stipulated that the Applicant would supplement same. Ms.

Mueller emphasized that the Applicant is proposing the same number of parking spaces for the project, namely, sixty (60) total spaces, as was approved at the use variance phase, despite the reduction of proposed commercial/retail space.

15. Ms. Mueller oriented the Board as to the proposed ingress/egress to the Property (the “Driveway”). Ms. Mueller stated that there is one (1) proposed access route to the Property from Plainfield Road. Ms. Mueller further described the proposed parking for the Property and stated that the Applicant is proposing thirty-six (36) surface parking spaces along the southerly property line to the rear of the building, and twelve (12) tandem parking spaces, which can accommodate two (2) cars per tandem space, to be located in garages under the proposed building, for a total of sixty (60) parking spaces.
16. Ms. Mueller testified that each tandem space would be assigned to one (1) individual residential unit, thus twelve (12) of the twenty-four (24) proposed residential units would be assigned tandem parking spaces and the other twelve (12) units would be assigned on-grade parking spaces. Ms. Mueller stated that the Applicant proposes three (3) ADA parking spaces. She further explained that the Applicant intends to utilize a mixed-use/shared parking approach and that a loading space was not proposed for the Site. Ms. Mueller stated that Door Dash and similar food ordering and delivery platforms would be able to safely and efficiently park their vehicles near the proposed lobby entrance of the building. Ms. Mueller did not anticipate any queuing onto Plainfield Road as a result of these delivery vehicles parking near the proposed lobby entrance. Furthermore, Ms. Mueller stated that she has no concerns relating to fire and other emergency vehicle access to the Property.
17. Ms. Mueller continued by stating that the proposed building is fully compliant with all setback and other bulk zoning requirements in the B-D Zoning District, as set forth in the Ordinance, excluding the variance relief received during the use variance phase of the proceedings.
18. Ms. Mueller testified that the proposed refuse enclosure would be located in the back/rear corner of the Property, and that the refuse enclosure would be screened by a board-on-board fence. Ms. Mueller provided testimony regarding access to the refuse enclosure, and stated that a design waiver would be necessary to properly screen the refuse enclosure, indicating that in addition to a 6 ft. high retaining wall, an additional 4 ft. high fence is proposed to be constructed on top of said retaining wall, which would total 10 ft., whereas only a maximum of 6 ft. is permitted per the Ordinance. Moreover, Ms. Mueller stated that this design waiver would allow for less disturbance to the Property.
19. Ms. Mueller testified that a minimum of 15% of the proposed parking spaces will have electric vehicle charging stations. Ms. Mueller stated that the Applicant would provide three (3) make-ready electric vehicle spaces and that the other electric vehicles spaces would be phased-in in accordance with New Jersey Public Law 2021, c. 171. Additionally, she stated that at least one (1) of the proposed ADA spaces would have an electric vehicle charging station.
20. Ms. Mueller described the proposed school bus path located along Plainfield Road and provided testimony where school children would be picked up. She stated that the location was chosen to avoid traffic congestion and any conflict with the proposed driveway.
21. Ms. Mueller testified that that the proposed project, when compared to existing improvements, would have a minimal impact to impervious coverage, and that there would be an increase in impervious coverage by 3,112 ft.

22. Ms. Mueller provided testimony on the Applicant's proposed lighting plan. She stated that the proposed lights would have house-side shields and be contained, that the appropriate level of lighting foot candles would be located along the Property's southern boundary, and that the proposed lighting plan is fully compliant with the Township's Ordinance standards.
23. Ms. Mueller described Exhibit A-2 to show how the Site allows for the safe and efficient movement of garbage removal trucks. She stated that tractor trailers would not be accessing the Property and that box trucks would be utilized by the commercial/retail tenant(s).
24. Ms. Mueller provided testimony on the grading plan; she described the three drainage areas on the Property, and she stated that the grading on the Property is very modestly sloped. Ms. Mueller stated that the proposed project will require approximately 1,000 cubic yards of fill.
25. Referencing Exhibit A-3, Ms. Mueller further described the impervious coverage on the Property, and explained that the Property may include a porous pavement layout if the Township and/or the New Jersey Department of Environmental Protection (the "DEP") considers the Site to be a "major development." Ms. Mueller provided testimony regarding the appearance of porous pavement, and she opined that if the Township and/or the DEP determines the project to be a "major development," the porous pavement design, as depicted in Exhibit A-3, would be utilized, but that if the project was designated as a minor development, the Applicant would not utilize the porous pavement design. Ms. Mueller emphasized that whether the proposed project qualifies as a "major" or "minor" development has not been determined as of the time of the hearing.
26. Ms. Mueller provided testimony relating to the proposed utility plan and testified that currently, the Township Fire Marshall did not have any objection to this application and would reserve comment until the permitting process.
27. With regard to the proposed heating and/or cooling system, Ms. Mueller stated that a majority of residential units would be serviced with "Magic Packs," and that condensers would serve the remaining apartments, retail spaces, and common areas.
28. Mr. Lehrer addressed the Board's concerns and stated that the Applicant and the Township are in conversations to address potential water/sewer capacity issues. Mr. Lehrer explained that, pursuant to his conversations with various Township officials, it was his understanding that necessary sewer capacity would be available to the Applicant for the proposed project within the next few years.
29. Ms. Mueller described the proposed landscaping on the Property. She stated that there are a cluster of trees along the north and south perimeters of the Property. She detailed that the proposed project consists of sixty-four (64) trees and eighty-eight (88) shrubs. Ms. Mueller further discussed the proposed sidewalk along the Property's frontage adjacent to Plainfield Road. She stated that sidewalks are not proposed within the parking area.
30. Board Engineer Anello asked Ms. Mueller about the use of assigned parking spaces and the proposed sidewalk. Ms. Mueller responded that, at this time, only the tandem spaces would be assigned to residential tenants, and she stated that a perimeter sidewalk was not proposed since, in her opinion, it would not be utilized. Ms. Mueller opined that there is adequate space throughout the Property to safely accommodate pedestrian foot traffic, and that perimeter sidewalks are not necessary.

31. Board Planner Leheny asked Ms. Mueller about the materials and colors for the fence proposed along the north and south sides of the Property. Ms. Mueller responded by saying that the Applicant proposes a solid wood fence, but that the Applicant would work with the Board's professionals to come up with mutually agreeable material and color design features for said fence.
32. Board Member Aroneo expressed concerns about whether the Property had adequate parking. He asked whether there would be any mechanism in place to prevent those residents with assigned parking from parking in unassigned parking spaces. In response, Ms. Mueller stated that the proposed project would be privately held and managed, that there was a greater amount of parking proposed than required, and that the parking peaks for retail and residential use would be non-coincidental, meaning that spaces customarily utilized for retail use would be vacant during peak residential demand.
33. Board Member Aroneo also expressed concerns about outdoor recreation space and whether it would be accessible to non-residents. Mr. Aroneo expressed his desire for the Property to allow for pedestrian access to the nearby ballfields and grocery store, and he suggested that the Property include sidewalks along the entire frontage of the Property and a boardwalk or pathway, open to pedestrians, leading to the ballfields located to the rear of the Property. In response, Ms. Mueller stated that the Applicant would look into installing such a pathway and work with the Township, in good faith, to determine whether there was a need for same. Ms. Mueller stated that the area located to the north side of the building is not located in the wetlands and is only accessible to the proposed building's residents. Ms. Mueller further stated that the proposed amenity space, located in the interior of the proposed building, also would only be available to the building's residents.
34. Board Member Aroneo expressed his desire that benches be placed on the Property adjacent to Plainfield Road. The Applicant stipulated to same.
35. Board Member Aroneo asked about the number of shade trees proposed and why a design waiver was sought. Ms. Mueller responded that it was the consensus opinion among the Board's professionals and the Applicant's professionals that the required number of shade trades, per the Township's Ordinance, would cause a greater disturbance to the area, but that the Applicant would take it under advisement to eliminate this design waiver request.
36. Board Member Hain expressed concerns regarding traffic on Plainfield Road stemming from the nearby Goddard School.
37. Board Member Grosskopf expressed concerns regarding fire access to the Property, and he asked about the fire apparatus used on a project of similar size. Ms. Mueller responded that large fire trucks would set up on Plainfield Road to access the Property and that smaller fire trucks would have safe access to the Property's parking lot.
38. Vice Chairman Johnson expressed concerns regarding the absence of assigned parking for retail/commercial use. He also asked about the proposed length of the double yellow line located at the Property's proposed Driveway, and he suggested that it could be confusing to those trying to access the proposed ADA spaces. The Applicant stipulated to shortening the proposed double yellow line to eliminate said confusion.

39. Board Member Lindeman asked about the intensity of use of the proposed retail/commercial space. Ms. Mueller responded that the anticipated intensity of the proposed use of the retail/commercial space would be light in nature.
40. Jordan Friedman, Esq., objecting attorney from the law firm of Vastola & Sullivan, on behalf of Terrance Golden, owner of properties located at 24/26 Metzler Place and 4 Walnut Avenue, asked whether Ms. Mueller was familiar with the Freshwater Wetlands Letter of Interpretation (the “LOI”).
41. Mr. Friedman asked to submit an exhibit to the Board, identified as Exhibit O-1. Mr. Lehrer objected to the submission of said exhibit, arguing that it was already presented and addressed during the use variance application hearings. Board Secretary Coonce stated that since Mr. Friedman’s exhibit was not submitted to the Board far enough in advance, she did not have the technological capability to display the exhibit for the benefit of the Board. Mr. Friedman agreed to share the exhibit at the next hearing and he asked Ms. Mueller whether she was aware of any of the information in a complaint form that was shared with the DEP following the DEP’s issuance of the LOI. Ms. Mueller, in response, stated that she was unaware of same.
42. Ms. Linda Parisi, the adjacent property owner to the west of the Property, questioned the width of the drive aisle and whether it could be reduced to create a greater buffer between her property and the Applicant’s Property. She asked about buffering relating to the existing and proposed trees on the Property. Ms. Mueller responded by stating that the underbuilding parking requires a drive aisle of the proposed size and that it is her professional opinion that there is sufficient existing and proposed buffering between the Applicant’s Property and Ms. Parisi’s property.
43. At the February 15, 2022 hearing, Mr. Lehrer reintroduced the application and gave a brief summary of the history of the Property. To address the comments raised by Board Members and Board Professionals from the February 1st hearing, Mr. Lehrer highlighted the following proposed changes to the proposed project, all of which were reiterated by Ms. Mueller:
- The Applicant eliminated the design waiver initially sought relating to the number of shade trees in the parking lot and is now only seeking two (2) design waivers;
 - The Applicant extended the sidewalk located along Plainfield Road so as to extend it across the entire frontage of the Property;
 - The Applicant shortened the proposed double yellow line in the Site’s Driveway to eliminate confusion relating to the ADA spaces located in the southern portion of parking lot;
 - The Applicant numbered all of the proposed parking spaces to allow for the assignment of said spaces. The tandem spaces, numbered as 1-12, were proposed to be assigned to twelve (12) residential units, spaces numbered as 13-15 were proposed to be unassigned ADA spaces, spaces numbered 16-19 were proposed to be assigned to the future retail tenant/s, spaces 20-37 and 43-48 were proposed to be assigned to the remaining residential units, and spaces 38-42 were proposed to be unassigned for guests, all of which is to be enforced by the operator and manager of proposed building;
 - The Applicant added two (2) benches to the front of the Property; and

- The Applicant proposed a 5ft wide pedestrian easement located along the northerly Property line to accommodate a future pedestrian pathway to the rear of the Property. In conjunction with the newly proposed pedestrian easement, the Applicant moved the proposed fence along the northerly Property line to ensure that a future pedestrian pathway could be located outside the residential amenity space.
44. Ms. Mueller, who remained sworn, introduced the following exhibit into evidence and testified to the above-described proposed changes to the site plan:
- **Exhibit A-4**: Revised Site Plan, dated February 10, 2022.
45. With regard to the extension of the proposed sidewalk, Ms. Mueller noted that the sidewalk extension will be under the jurisdiction of the Morris County Planning Board (the “County Board”), and that the Applicant would extend the proposed sidewalk, as discussed and if permitted to do so by the County Board. Ms. Mueller also noted that the proposed parking spaces would be labeled with numbers on the ground stating that same would be less intrusive than signage.
46. Ms. Mueller addressed Board Engineer Anello’s questions regarding the size of the newly proposed pedestrian easement. She stated that it was her opinion that the easement size was adequate and that the Applicant would cooperate with its neighbor to the north of the Property if it were determined by the Township that a pathway should be constructed on the Property.
47. Board Member Giankis asked about maintenance of the pedestrian easement. Mr. Lehrer and Ms. Mueller responded that the Applicant would have to work maintenance responsibilities out with the Township should the Township decide to accept said easement.
48. Objecting attorney, Mr. Friedman, on behalf of Terrance Golden, asked how the amount of proposed fill to be brought to the Property was calculated. In response, Ms. Mueller testified that she calculated the proposed fill to be brought to the Property by utilizing a general cut/fill analysis performed on AutoCAD, and that she relied upon a Survey done in 2021.
49. Ms. Parisi asked about the impact of drainage to the wetlands. Ms. Mueller, in response, stated that three (3) drainage areas are proposed, and that she anticipates no negative impact to the wetlands.
50. Mr. John Saracco, R.A., of John Saracco Architect, LLC, having a business address of 108 Holmes Street, 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. Mr. Saracco introduced the following exhibits into evidence:
- **Exhibit A-5**: Architectural Rendering & Concept Plan from previous use variance application;
 - **Exhibit A-6**: Architectural Rendering from a project in Berkeley Heights; and
 - **Exhibit A-7**: Architectural Rendering from a project in Bedminster.
51. Referencing an architectural rendering identified as PB100, Mr. Saracco introduced the proposed architectural rendering to the Board. He stated that it was his intent to make a strong statement on Plainfield Road with the proposed two-style brick design and building lines at the commercial end

of the proposed building, while trying to lighten the building at the residential end. Mr. Saracco explained that the proposed rendering allowed for a commercial feel in the front and a residential feel in the back.

52. Mr. Saracco described the tandem garage layout and stated that the openings in the rear of the building in the parking area provided for natural ventilation. Mr. Saracco stated that each garage is 12 ft. by 40 ft., can comfortably accommodate two (2) vehicles, and that the garage use is exclusive for vehicular parking and is not intended for residential storage.
53. Mr. Saracco described the proposed portico over the residential entrance, and then he explained the proposed twenty-four (24) residential unit breakdown as follows:
 - Twenty (20) two-bedroom units;
 - Two (2) one-bedroom units; and
 - Two (2) three-bedroom units.
54. Mr. Saracco testified that the Applicant proposed a total of three (3) affordable units as follows:
 - One (1) one-bedroom affordable unit;
 - One (1) two-bedroom affordable unit; and
 - One (1) three-bedroom affordable unit.
55. Mr. Saracco described the typical residential unit layout, the retail entrances to the proposed building, the mail and parcel room, the elevator and stairwell locations, and the proposed amenity spaces, which consists of a storage room, gym, and lounge. Mr. Saracco stated that the proposed affordable units would have the same amenities and finishes as the market rate units.
56. Mr. Saracco testified that balconies were proposed for the residential units facing the north side of the Property, and he described the proposed roof plan, which consisted of essentially a flat roof with a minor pitch. Mr. Saracco stated that the proposed elevator bulkhead pokes up approximately 4 ft. above the roof, and that a number of AC condensers for the proposed amenity space and for the residential units not utilizing Magic Packs would be located on the roof. He explained that screening for the roof mounted AC condensers was unnecessary since they would not be seen from ground level. Mr. Saracco further explained that louvers would not be located on the front of the building facing Plainfield Road.
57. Mr. Saracco stated that there may be ground mounted AC condensers based upon retail tenant demand, to be located on the north side of the Property.
58. Mr. Lehrer asked Mr. Saracco about the proposed reduction in retail space. Mr. Saracco, in response, stated that the reduction was proposed to allow for more amenity space and building services for the residential tenants.
59. Board Chairman Gerecht noted that the proposed building aesthetics changed considerably from the use variance application and he asked why that was the case. Mr. Gerecht pointed to the absence of gables and peaks in the roof, for example. In response, Mr. Saracco opined that the prior building concept was noisier and that this proposed design was calmer, utilized a more subtle color pallet, and fit in better with the character of the neighborhood. Mr. Saracco further opined that the gable

and peak roof design displayed during the use variance application would not mitigate the appearance of a third floor, but rather would facilitate such an appearance.

60. Vice Chairman Johnson asked about visibility of roof condensers from the second floor of neighboring properties, and whether the proposed louvers were consistent with the master plan. Mr. Saracco, in response, stated that he did not conduct a study, but that he thinks the condensers would be visible. Regarding the louvers, Mr. Saracco stated that the overarching building material, the HardiPlank siding, the window design, and the balconies conform with a “semi-rural” architectural style. Mr. Saracco testified that the louvers are only 2 ft. by 3 ft., that they will be painted the same color as the siding, and that the louvers would quietly blend in with the siding.
61. In response to discussion about the height of the proposed mechanical equipment, Mr. Saracco stated that the proposed condensers are approximately 36-42 inches in height, and were fully compliant with the height modifications for mechanical equipment in accordance with Section 136.1B of the Township’s Ordinance. Mr. Saracco stated that the proposed roof parapet would naturally screen (although not necessary) the mechanical equipment to be located on the roof.
62. Mr. Saracco presented Exhibit A-5 to compare the proposed building design to the concept plan from the previous use variance phase of the application.
63. Board Planner Leheny suggested that the Applicant incorporate more pitched roofs to help make the proposed building look more residential.
64. Mr. Saracco presented Exhibit A-6 to compare the proposed building design to another building located in Berkeley Heights. Board Chairman Gerecht stated that the Exhibit A-6 exemplified a more residential look, noting the roof peaks. Mr. Saracco, in response, stated that the roof peaks would bring the proposed building above the Ordinance’s maximum height allowed of 35 ft. and require building height variance relief.
65. Mr. Saracco presented Exhibit A-7 to compare the proposed building design to another building located in Bedminster.
66. Board Chairman Gerecht asked whether a bathroom would be constructed on the first floor for residential use. Mr. Saracco, in response, stated that it was not necessary for a building of this size, but that the Applicant was open to adding said bathroom at the behest of the Board. Mr. Saracco then explained that the commercial spaces will have their own plumbing code requirements and that commercial tenants will independently install bathrooms during tenant fit-ups. Mr. Saracco stated that the proposed building would have sanitary lines underground and/or along columns in the commercial spaces.
67. Board Member Brennan asked about building security for residential tenants. In response, Mr. Saracco stated that all residential entry points will require key fob access, and that there would be security cameras and industry standard security measures implemented at the Site.
68. Mr. Douglas Polyniak, P.E., of Dolan & Dean Consulting Engineers, LLC, having a business address of 181 West High Street, Somerville, New Jersey was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of traffic engineering.

69. Mr. Polyniak, referencing his traffic report dated November 3, 2020, spoke about the “pre-Covid” traffic counts his team observed in 2019, as well as the more recently observed traffic counts at the Property. Mr. Polyniak summarized a queuing analysis and a “GAP” analysis generated from evening and morning traffic counts taken at the Property on Monday, February 7, 2022, from 4:00 PM – 6:00 PM and Tuesday, February 8, 2022, from 7:00 AM – 9:00 AM. Mr. Polyniak concluded that the proposed site layout allows for safe vehicular movement to, and from, the Property. Mr. Polyniak stated that GAP Analysis confirmed that there is more than enough substantial breaks in traffic to allow for vehicles to safely enter and exit the Site. Mr. Polyniak addressed the Board’s queuing concerns associated with the nearby Goddard School, and he concluded that access to the Property would not be impeded for any significant period of time. Mr. Polyniak testified that he had no concerns regarding loading and unloading at the Property, and he concluded that there is substantial maneuverability in the rear of the Site, as proposed, to allow for garbage disposal vehicles to access and attend to the Site.
70. Upon agreement by the Applicant, Jonathan Sowinski, P.E., of Mott MacDonald was sworn in to offer testimony on behalf of the Board as a traffic expert. Mr. Sowinski opined that, assuming there would be a low intensity use to occupy the commercial/retail space, he had no issues with the report or findings of Mr. Polyniak.
71. Board Member Gianakis inquired about a potential crosswalk at the Property. Mr. Lehrer responded that it is the Applicant’s position, based upon safety and traffic concerns, that a potential pedestrian crosswalk should be installed at the Valley Road signal and not at the Applicant’s Property. Mr. Lehrer noted that any such a crosswalk, and its location, would ultimately be determined by the County.
72. At the May 17, 2022 hearing, Mr. Lehrer reintroduced the application, outlined the procedural background from the use variance hearing, and acknowledged the Board’s concerns relating to the proposed architectural rendering presented at the February 15th hearing.
73. Mr. Saracco, who remained sworn, introduced the following exhibits into evidence:
- **Exhibit A-8**: Revised Architectural Rendering without Gables; and
 - **Exhibit A-9**: Revised Architectural Rendering with Gables.
74. Mr. Saracco explained how the Applicant’s newly proposed design incorporated comments from the Board and the Board’s Professionals from the February 15th hearing. Mr. Saracco discussed the architectural changes, such as the addition of mansard roofs, the introduction of dormers, and the addition of arch-topped windows to the building. Mr. Saracco emphasized that the proposed building footprint remained the same as originally submitted to the Board during the February 15th hearing.
75. Mr. Saracco testified that he was tasked to work with Board Planner Leheny to come up with design that likely would be supported by the Board. Based upon feedback from the Board at the last hearing and his discussion with Board Planner Leheny, Mr. Saracco stated that it was his intent to incorporate as much as possible of the concept plan (Exhibit A-5), relied upon by the Board in the use variance phase of the hearing, into his revised renderings (Exhibits A-8 and A-9).
76. Referencing Exhibit A-9, Mr. Saracco described how this design similarly incorporated comments from the Board and Board’s Professional, but that unlike the rendering in Exhibit A-8, this proposed design featured a gabled roof at the commercial side of the building. Mr. Saracco stated that, based

on his discussions with Board Planner Leheny, it was anticipated that the rendering depicted on Exhibit A-9 likely would be preferable to the Board, but that because of the addition of the roof gables, this proposal would require “c” variance relief relative to the height, since a maximum height of 35 ft. is allowed, and the gabled roof portion of the proposed building would bring the total building height up to just under 38 feet, 5 inches.

77. Board Planner Leheny recapped her meetings and discussions with Mr. Saracco and provided background to the Board on how the newly proposed architectural renderings came into existence. Board Planner Leheny echoed Mr. Saracco sentiments by stating that it was her intent to make the proposed building look more residential, more appropriate for this location, and more comparable to what was approved by the Board in the use variance phase of the application. She explained that the new design renderings utilized softer materials, she underscored the arch-topped windows, and she highlighted the newly designed roofs. Furthermore, Board Planner Leheny confirmed that the proposed roof in Exhibit A-9 would require “c” variance relief.
78. Board Planner Leheny emphasized that she did not give any approval to the Applicant on behalf of the Board.
79. Board Member Hain, referencing Exhibit A-9, asked about the proposed roofline and the impact of the proposed pitched roof to the residential units located on the third floor. Board Member Hain asked if the proposed pitched roof took away any interior space. In response, Mr. Saracco stated that the pitched roof would not alter the floor area of any residential unit, but stated that certain residential units abutting the pitched roof would no longer have a 9 ft. high ceiling to the edge of the unit wall. Mr. Saracco explained that 85% of a residential unit abutting the pitched roof would have a 9 ft. high ceiling, and that the other 15% of said unit would have a sufficient ceiling height, not to be less than approximately 6 ft.
80. In response to Board Chairman Gerecht’s question regarding notice, the Board was advised by its Attorney that Applicant’s notice, with its catchall language, was sufficient to confer upon the Board jurisdiction to grant the additional bulk variance relief.
81. In response to questions regarding ventilation in the proposed garages, Mr. Saracco stated that carbon monoxide detection and exhaust systems would be installed in each garage, and that the proposed garages would comply with the State Building Code.
82. Mr. Saracco again addressed questions regarding a bathroom on the first floor and stipulated that a bathroom could be located in a portion of the area currently delineated as the proposed storage area.
83. Board Member Aroneo asked Mr. Saracco which of the three (3) alternative renderings he preferred, and Mr. Saracco responded that the first rendering depicted on PB100 remained his preference, but he opined that all three (3) fit within the character of the neighborhood and were aesthetically pleasing options.
84. Mr. James Kyle, P.P., of Kyle + McManus Associates, having a business address of 2 East Broad Street, Hopewell, New Jersey was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning.
85. Mr. Kyle outlined the two (2) design waivers sought by the Applicant and noted that, pursuant to N.J.S.A. 40:55D-76(b), as part of the site plan portion of a bifurcated application, the Applicant is

required to re-establish the negative criteria for d(1) use variance relief. Referencing Meridian Quality Care, Inc. v. Bd. of Adjustment of The Twp. of Wall, 355 N.J. Super. 328 (App. Div. 2002), Mr. Kyle noted that the Applicant already was granted a use variance, thus the negative criteria already was satisfied and the use was already deemed permitted (including the reconciliation required under the Medici case).

86. In addressing the first prong of the negative criteria, Mr. Kyle opined that the proposed project is substantially similar to the concept plan presented to the Board at the use variance phase of the hearings. Mr. Kyle opined that the traffic data suggests that the Site will function safely and efficiently, so as to not cause substantial detriment from a traffic perspective. Mr. Kyle noted the significant buffering proposed along both the north and south of the Property. He emphasized that the proposed building complies with all of the setback requirements in the zone and he concluded that there is no evidence to suggest that there would be any substantial detrimental impact to neighboring properties. Mr. Kyle opined that the Applicant satisfied the first prong of the negative criteria.
87. Regarding the second prong of the negative criteria, Mr. Kyle opined that the intent and purpose of the zone plan is not undermined by the application. Mr. Kyle stated that the first floor of the proposed building is consistent with the uses permitted in the B-D zoning district. Mr. Kyle opined that the downtown master element envisions, or at least leans towards, a commercial corridor that is pedestrian oriented, and that the inclusion of residential uses will help support this vision. Mr. Kyle explained that it is important to have residents living in the downtown area to help support those businesses that make up the downtown, and that having residents in a mixed-use environment is not inconsistent with the downtown element of the master plan.
88. Mr. Kyle noted that, while the proposed project is not included in Township's affordable housing plan, it nevertheless will provide three (3) affordable units that can be allocated to the current, or next, affordable housing round, and that this provides a substantial benefit to the Township.
89. Addressing the vision statement of the downtown, Mr. Kyle opined that the proposed project will help provide an economically sustainable commercial center in the Township. Mr. Kyle testified that a mixed-use is appropriate for the downtown environment envisioned in masterplan and is reconcilable with master plan.
90. Mr. Kyle described the design waiver standard as one of reasonableness, and cited to Garofalo v. Burlington Twp., 212 N.J. Super. 458 (Law. Div. 1985) for same. Mr. Kyle stated that the design waivers sought must be reasonable given the facts at hand.
91. Mr. Kyle testified that the trash enclosure and fence must be located in the proposed corner of the Property, and that the trash enclosure should be screened. The proposed fence, at a total height of 10 ft. (including the retaining wall), is necessary to screen the trash enclosure, thus there is a practical difficulty in meeting the Township's 6 ft. maximum fence/wall height requirement.
92. In addressing the design wavier relating to landscaping within the parking area, Mr. Kyle stated that there is a limited area for the Applicant to include landscaping on islands within the parking lot, and that the landscaping has been pushed to the periphery of the Property. Mr. Kyle opined that it is reasonable to grant a design waiver, given the site layout and the Applicant's proposal to provide adequate landscaping on the Property in other locations. Mr. Kyle further testified that such a design waiver would prevent significant disturbance to the Property.

93. Mr. Kyle testified regarding the bulk variance relief sought for the building height exceedance. To address the positive criteria, Mr. Kyle referenced purposes (a) and (i), as articulated in Subsection 2 of the Municipal Land Use Law (“MLUL”), and stated that the proposed building has a general welfare benefit and promotes a desirable visual environment. Mr. Kyle opined that the proposed design promotes village and residential characteristics that are in tune with the character of the neighborhood. He further opined that there are no substantial detriments associated with the proposed project since, the underlying setbacks meet the setback requirements set forth in the Ordinance. Mr. Kyle also opined that the 3.4 ft. building height exceedance is de minimis in nature, particularly since it would only apply to a small portion of the building. Mr. Kyle stated that the height exceedance is only located at the front of the building, and that shading, shadowing, and the affordance of adequate light to the surrounding properties will not be negatively impacted as a result of the proposed building height. Furthermore, Mr. Kyle articulated that, in accordance with Pullen v. Twp. of S. Plainfield Planning Bd., 291 N.J. Super. 1 (App. Div. 1996), the benefit of the proposed project, in its entirety, substantially outweigh the relatively modest detriments associated with the height deviation.
94. In response to questions from the Board, Mr. Kyle testified that the proposed pedestrian easement does not qualify as a substantial change to what was originally proposed during the use variance phase of the hearings, and, if anything, it is a benefit that was ultimately recommended by the Board. Furthermore, Mr. Kyle stated that the proposed setbacks do not change as a result of the proposed pedestrian easement.
95. The Board discussed the pedestrian easement and whether it would be a condition of approval, recognizing that the Board does not have the authority to obligate other entities.
96. Mr. Jonathan Rocker, the Applicant, having a mailing address at P.O. Box 156, Liberty Corner, New Jersey was duly sworn according to law and testified as a fact witness.
97. Mr. Rocker provided to the Board his background and summarized the proposed project. Mr. Rocker explained his approach to working with the Board and the Board’s professionals and emphasized his strong effort to incorporate the Board’s feedback in his application.
98. Objecting attorney, Mr. Friedman, on behalf of Terrance Golden, introduced the following exhibits into evidence:
- **Exhibit O-1**: Freshwater Wetlands Letter of Interpretation; and
 - **Exhibit O-2**: OPRA Request & Complaint Response Form, dated November 20, 2020 and December 2, 2020, respectively.
99. Referencing Exhibit O-2, Mr. Friedman asked whether Mr. Rocker, or any representatives from Mr. Rocker’s company, ever brought the information outlined in Exhibit O-2 to the attention of the DEP and/or the Morris County Soil Conservation District regarding tree removal and fill work.
100. Mr. Lehrer objected to the question on the basis of relevance and stated that the question should be directed towards Applicant’s engineer, since the DEP application was prepared by her. Mr. Lehrer stated that the Board does not have jurisdiction over this matter, and that Mr. Golden had the opportunity to challenge the determination of the DEP in the LOI and chose not to do so.

101. Mr. Friedman responded by saying his client has concerns that there was an alleged violation relating to the unapproved movement of dirt and the cutting of trees on the Property, and the Board should be aware of this alleged violation when considering this application.
102. Mr. Rocker testified, with the consent of Mr. Friedman, that he and his engineer went to the Site to locate the alleged disturbed area, and they concluded that the alleged disturbance was outside of the limits of the wetlands area, that it does not impact the wetlands area, and that the change of gradation of the Property does not imply the importation of any fill or material to the Site.
103. The exhibits submitted by Mr. Friedman were accepted by the Board and Mr. Friedman acknowledged that all his questions were asked and answered.
104. Ms. Mueller, who remained sworn, introduced the following exhibit:
 - **Exhibit A-10**: Highlighted Debris Area on Site Plan.
105. Ms. Mueller testified that the visit to the Site referenced in Mr. Rocker’s testimony occurred in early 2022 to investigate Mr. Friedman’s allegations from the February 1st hearing. Ms. Mueller stated that there was an old material pile towards the rear of Property and that it was this portion of the Property that was disturbed. She stated that some trees were removed, but said the trees and disturbance were located outside of the wetlands area and the buffer area.
106. Mr. Friedman, referencing Exhibit O-2, asked whether Ms. Mueller had brought the information outlined in the Exhibit O-2 to the attention of the DEP and/or to the Morris County Soil Conservation District regarding tree removal and fill work. In response, Ms. Mueller stated that she had not.
107. Board Chairman Gerecht polled the Board as to which design they preferred. Four (4) out of the five (5) Board Members stated that they preferred the architectural rendering depicted in Exhibit A-9.

DECISION

108. **WHEREAS**, the Board, in reviewing the foregoing testimonial and documentary evidence, makes the following findings of fact and conclusions with regard to the application:

Bifurcated Application:

109. The Applicant previously received “d(1)” use variance and bulk variance approval as part of the first phase of the bifurcated use variance application to construct a building comprised of three (3) floors with retail space on the first floor and twenty-four (24) residential units on the second and third floors, together with parking and other building and site amenities on the Property. The Board recognizes that a bifurcated application is explicitly permitted pursuant to Section 76b of the MLUL.
110. N.J.S.A. 40:55D-76b (emphasis added) provides:

The board of adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the planning board, subdivision or site plan approval pursuant to article 6 of this act [40:55D-37 et seq.] or conditional use approval pursuant to section 54 of this act [40:55D-67], whenever the proposed development requires approval by the board of

adjustment of a variance pursuant to subsection d. of section 57 of this act (C. 40:55D-70). The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the board of adjustment. No such subsequent approval shall be granted unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The number of votes of board members required to grant any such subsequent approval shall be as otherwise provided in this act for the approval in question, and the special vote pursuant to the aforesaid subsection d. of section 57 shall not be required.

111. The Applicant, having obtained use variance approval, now seeks preliminary and final site plan approval, design waivers, and bulk variance relief. As set forth in Section 76(b), as part of this application, the Applicant must demonstrate that granting the requested relief will not result in substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance in accordance with the enhanced standards of proof required in Medici v. BPR Co., 107 N.J. 1 (1987). The Board finds that the Applicant has re-established the d(1) use variance negative criteria.

The d(1) Use Variance Negative Criteria Re-Established:

112. The final paragraph of N.J.S.A. 40:55D-70 (emphasis added) provides, in relevant part, as follows:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

113. Thus, the negative criteria consists of two elements, both of which a variance applicant must prove; that is, that the proposed development can be accomplished (1) without substantial detriment to the public good, and (2) without substantially impairing the intent and purpose of the zone plan and zoning ordinance.
114. Moreover, the negative criteria in a “d(1)” use variance case must be established with an enhanced quality of proof. “Proof of the negative criteria requires the applicant to demonstrate, in accordance with the enhanced quality of proof, both that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and the purpose of the zone plan and zoning ordinance[.]” Price v. Himeji, LLC, 214 N.J. 263, 286 (2013) (quotations and citations omitted). “[T]he Board must make ‘clear and specific findings’ that this showing has been made.” Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adjustment, 388 N.J. Super. 67, 79 (App. Div. 2006) (quoting Medici, 107 N.J. at 21).

The First Prong of the Negative Criteria – No Substantial Detriment:

115. The Board recognizes that the focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. In Medici, 107 N.J. at 22-23 n.12 (emphasis added), the Supreme Court explained the substantial detriment phrase as follows:

The first prong of the negative criteria [requires] that the variance can be granted “without substantial detriment to the public good.” In this respect the statutory focus is on the variance’s effect on the surrounding properties. The board of adjustment must evaluate the impact of the proposed use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.”

116. As to the “substantial detriment” prong of the negative criteria, the Board concurs with the undisputed expert testimony provided by the Applicant’s professional planner, Mr. Kyle, that the Applicant has demonstrated that the proposed mixed-use building will not result in substantial detriment to the character of the neighborhood, because the proposed design utilizes village and residential characteristics that are in tune with the character of the surrounding neighborhood given the condition stipulated to by the Applicant to utilize the design rendering in Exhibit A-9. The Board finds that the overall aesthetic concerns associated with the proposed building are sufficiently mitigated by this architectural design. Moreover, the Board finds that the representations and stipulations made by the Applicant during the course of the hearings will significantly mitigate against the detriment to the neighborhood. The Board finds that Applicant’s design, which provides for a substantial buffer area along the periphery of the Property, will significantly reduce negative visual and noise impacts, if any, to the neighboring properties. Based upon the undisputed expert traffic testimony presented by the Applicant’s traffic engineer, Mr. Polyniak, and the Board’s own traffic consultant, Mr. Sowinski, the Board accepts that the proposed site layout and the current traffic conditions on Plainfield Road allows for safe vehicular movement to, and from, the Site. The Board concludes that the Applicant demonstrated that the proposed project would not cause substantial detrimental impact to neighboring properties.

The Second Prong of the Negative Criteria – No Substantial Impairment:

117. The Board recognizes that the focus of the “substantial impairment” prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation by the zoning board of the governing body and planning board authority to zone by way of legislation, rather than by exception (i.e., variance). The Board finds that the location at the Site of the proposed mixed-use building will not substantially impair the intent and purpose of the Master Plan and Ordinance.
118. The Board concurs with the undisputed expert testimony of Mr. Kyle that the proposal will not substantially impair the intent of the Master Plan and Zoning Ordinance, because the proposed mixed-use building conforms well with the neighborhood, will help to provide an economically sustainable commercial center in the Township, and will enhance the aesthetics of the Property and surrounding areas, all while conforming to the majority of the Ordinance’s bulk requirements. Additionally, given the stipulated to conditions listed below, the proposal will not impair the goals and objectives relating to the development, character, and quality of the Township.
119. As to the “reconciliation” under Medici, the Board concurs with the undisputed expert planning testimony of Mr. Kyle that a mixed-use is appropriate and necessary for a downtown environment in the modern-day, that the economic goals envisioned in the master plan are furthered by the proposed mixed-use, and that, as such, the proposed mixed-use is reconcilable with the master plan.

The Bulk Variance Relief – Positive Criteria:

120. As to the requested bulk variance relief for building height exceedance, the Board finds that the Applicant has demonstrated an entitlement to the requested relief pursuant to N.J.S.A. 40:55D-70(c)(2). In this regard, the Board finds that the Applicant has demonstrated that the purposes of the MLUL will be advanced by the requested deviation from the zoning requirement and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith.
121. The Board concurs with the Applicant's planner, Mr. Kyle, who opined without refutation that the proposal advances the purposes enumerated in subsections (a) and (i) of Subsection 2 of the MLUL, specifically that it promotes the general welfare and a desirable visual environment. The Board further finds that the Applicant has demonstrated that the benefits associated with the proposal substantially outweigh the relatively modest detriments associated therewith. In this regard, the Board recognizes that the mixed-use proposal will provide future residents with the modern-day expected level of convenience and access to the downtown, and that the proposal will enhance business opportunities for the Township's local businesses. The Board finds that the Applicant has demonstrated that the requested relief is a function of the Applicant's desire to provide a desirable visual environment that is in accordance with the character of the neighborhood, and further that the 3 ft. 5 inch height exceedance is de minimis in nature, particularly since it would only apply to a small portion of the building as the majority of the building is proposed at a height under 35 ft.
122. Based on the foregoing, the Board finds that the Applicant has met the burden of proving the positive criteria of the requested bulk variance relief under subsection c(2).

The Bulk Variance Relief – Negative Criteria:

123. In Pullen v. Twp. of S. Plainfield Planning Bd., 291 N.J. Super. 1, 9 (App. Div. 1996), the court held that a land use board must consider the effect of a proposed bulk variance on the neighborhood and zoning plan rather than focusing its analysis exclusively upon whether the benefits derived from the requested variance substantially outweigh any detriment.
124. The Board concurs with the Applicant's planner, Mr. Kyle, that the significant buffering proposed along both the north and south of the Property, in conjunction with the proposed building's compliance with all setback requirements, suggests that there will be no substantial detriment to neighboring properties.
125. The Board finds that the Applicant has satisfied the negative criteria for the required bulk variance relief for the reasons set forth above. The Board also notes that the Applicant already has demonstrated the negative criteria with the enhanced quality of proof in accordance with Medici. Therefore, the Board finds that the same reasoning can be applied to the Board's analysis of whether the Applicant has satisfied the negative criteria for the requested bulk variance relief.

The Design Waivers:

126. The Board recognizes that, pursuant to Section 146.4 of the Ordinance, the Board shall have the power to grant design waivers from the requirements of the Ordinance upon a showing that meeting the standards would result in an exceptional hardship on the applicant or that the benefits to the public good of the deviation from the standards would outweigh any detriments of the deviation. A hardship will not be considered to exist if reasonable reductions in the scope of the project would

eliminate the noncompliance. The Board concurs with the Applicant's planner, Mr. Kyle, that the design waivers sought are reasonable given the facts at hand and that that the benefits to the public good of the deviation from the standards of the Ordinance outweigh the relatively modest detriments of the deviations. The Board finds that it would be a hardship for the Applicant to provide landscaping for the required 5% of the interior portion of parking areas containing at least ten (10) stalls, pursuant to Section 153.1.g.1 of the Ordinance, as a result of the Site's layout. Furthermore, to prevent greater site disturbance, the Board concludes that the design waiver requested in conjunction with the amount of proposed landscaping on the perimeter of the Property is reasonable, and same creates a benefit to the public good that substantially outweighs any detriments associated with the proposed deviation from the Ordinance. As to the requested design waiver from the requirement that the retaining walls shall not exceed 4 ft. in height in the front yard or 6 ft. in height in the side and rear yards pursuant to Section 154.1.e.3, whereas the refuse enclosure is proposed with a 6 ft. board-on-board fence on top of a 4 ft. high wall (total 10 feet tall) in the side yard, the Board finds that this design waiver is reasonable given the facts at hand and that that the benefits to the public good of the deviation from the standards of the Ordinance substantially outweigh the relatively modest detriments of the deviation. The Board finds that it would be a hardship for the Applicant to relocate the refuse enclosure and that said refuse enclosure should be screened. The Board concludes that the proposed fence, at a total height of 10 ft. (including the retaining wall), is necessary to screen the refuse enclosure, and that there would be a hardship to the Applicant in having to meet the Township's 6 ft. height requirement. Moreover, the design waiver requested results in adequate screening of the refuse enclosure such that it creates a benefit to the public good that substantially outweighs the relatively modest detriments associated with the proposed deviation.

127. **The Preliminary and Final Site Plan Approval:** The Board finds that the Applicant has demonstrated good cause and complied with the Preliminary and Final Major Site Plan provisions set forth in Section 162 of the Ordinance and Article 6 of the MLUL, and that the Applicant is, therefore, entitled to the requested preliminary and final major site plan approval.

WHEREAS, the Board took action on this application at its meeting on May 17, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g):

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 Applicant shall comply with the Applicant's representations to, and agreements with, the Board during the hearing on this application;
2. The plans shall be revised to show consistency between the architectural elevations and the floorplan, as well as indicate same on the site plan;
3. The commercial/retail tenant/s shall be that of a low-intensity use;
4. The Applicant shall comply with the items and comments listed in Board Planner Leheny's memo, dated January 23, 2022, and Board Engineer Anello's memo, dated December 28, 2021;

5. The Applicant shall comply with all UHAC requirements with respect to the affordable units, including, but not limited to, affirmative marketing, income qualifications, and bedroom distribution requirements;
6. The Applicant shall record the revised and approved Stormwater Management Report and Operations and Maintenance (“O & M”) Manual;
7. The Fire Marshall shall review and issue approval of the proposed project at the building permit stage, if merited, same not to be unreasonably withheld or delayed;
8. The Applicant is entitled to a contingent conditional extension approval with respect to sewer capacity and, if sewer capacity does not become available to the Applicant, the Applicant shall clarify whether they intend to secure a permit to locate and construct an individual sewer system from the Long Hill Township Board of Health. If sewer capacity becomes available, said approval shall not lapse;
9. The proposed building shall have a full sprinkler system subject to the review and approval of the Fire Marshall;
10. The Applicant shall work in good faith with the Board’s professionals to develop a mutually agreeable material and color design for any and all fencing on the Property;
11. The Applicant shall provide two (2) benches on the Property adjacent to Plainfield Road, and shall work in good faith with the Board’s professionals to come up with a mutually agreeable material and color design for said benches;
12. If the Applicant installs an emergency generator on the Property, said generator shall be located in the area designated for it on the site plans. The Applicant must provide adequate fencing and/or screening for said generator, subject to the review and approval of the Township’s planner;
13. The Applicant shall provide a 5 ft. wide pedestrian easement, adjacent to the proposed fence, should the Township agree to accept said easement;
14. The Applicant shall work, in good faith, with the Township to explore whether it would be appropriate to install a pathway in the proposed pedestrian easement; and that if said easement is accepted by the Township, the Applicant shall install a pathway in the proposed pedestrian easement subject to the review of the Township, the Township’s planner and the Township’s engineer. Maintenance of said easement and said pathway located in the easement shall be determined by the Applicant and the Township, should the Township accept the proposed pedestrian easement and approve of the pathway;
15. The Applicant shall work, in good faith, with the County to explore whether it would be appropriate to install a sidewalk along Plainfield Road, and if permitted to do so by the County, the Applicant shall install a sidewalk so that it extends the entire length of the Property’s frontage of Plainfield Road to the bank located to the north of the Property;
16. The Applicant shall provide that a minimum of 15% of the proposed parking spaces will have electric vehicle charging stations. The Applicant shall provide three (3) make-ready electric vehicle parking spaces upon the issuance of a Certificate of Occupancy and phase in the other electric

vehicle spaces in accordance with New Jersey Public Law 2021, c. 171. The Applicant shall ensure that at least one (1) of the ADA spaces has an electric vehicle charging station;

17. The Applicant shall ensure that carbon monoxide detection and exhaust systems are installed in each tandem garage, and that the above-referenced systems be fully compliant with building code;
18. The Applicant agrees to construct a bathroom located on the first floor to be exclusively accessible for the building's residents and resident's guests;
19. The Applicant shall comply with the local and State noise regulations, including, but not limited to, N.J.A.C. 7:29;
20. 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 Applicant 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;
21. The Applicant shall comply with all signage requirements, as set forth in the Township's Ordinance;
22. The Applicant shall comply with any and all prior conditions of approval to the extent that same would not be inconsistent with the approval granted herein, including, but not limited to, the Board's Resolution (Application No.: 2020-02Z) dated April 6, 2021;
23. The Applicant shall comply with Section 3-15.8 of the Ordinance, which prohibits construction activities between the hours of 8:00 PM and 7:00 AM;
24. 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;
25. 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 be issued for the Property;
26. Pursuant to Ordinance Section 172.11, any variance from the terms of this Ordinance hereafter granted by the Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within twelve (12) months from the date of entry of the judgment or determination of the Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Township Committee or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding; and
27. 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 Applicant 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 to, or received by, the Applicant.

WHEREAS, a Motion was made by Mr. Grosskopf and seconded by Mr. Gianakis to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on August 16, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: YES: Grosskopf, Gianakis, Lindeman, Gerecht; NO: Aroneo; Recused: None; Not Eligible: None; Absent: Johnson, Hain, Rosenberg, Brennan.


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			X		
ARONEO			X		
GIANAKIS	2 ND				
GROSSKOPF	X				
HAIN			X		
ROSENBERG			X		
LINDEMAN – ALT 1	M				
BRENNAN – ALT 2			X		

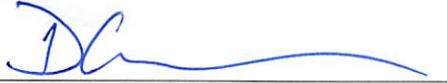
I hereby certify this to be a true copy of the Resolution adopted on August 16, 2022.


 Debra Coonce,
 Board Secretary

STATE OF NEW JERSEY
MORRIS COUNTY

SS.

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 25 day of August, 2022
in said newspaper.

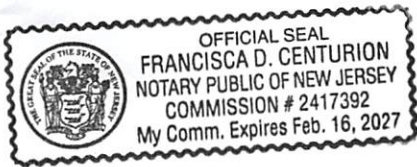
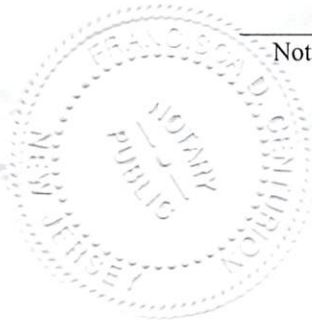


Sworn and subscribed before me this

25 day of AUGUST, 2022



Notary Public of New Jersey



Long Hill Township
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 August 16, 2022:

Resolution of Approval Memorialized
Major Preliminary & Final Site Plan
Block 10515 / Lot 7 / Zone B-D
44 Plainfield Road
Application No. 21-13Z
Jonathan Rocker

Resolution of Approval Memorialized
Bulk Variance
Block 13803 / Lot 19 / Zone R-3
46 Preston Drive
Application No. 22-05Z
Andrew Hart

All documents relating to this application may be examined on the website at: <https://longhillnj.gov/BOA/boa-resolutions.html> or 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. \$35.19 08/25/T1