

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

**PRISM MILLINGTON, LLC  
50 DIVISION AVENUE  
MILLINGTON, NEW JERSEY 07933  
BLOCK 12301, LOT 1  
BLOCK 10100, LOT 7.01  
FILE NO.: 19-13P**

**Hearing Dates:     June 9, 2020  
                          June 23, 2020  
                          July 14, 2020  
                          July 28, 2020  
                          August 18, 2020  
                          September 8, 2020  
                          September 22, 2020  
                          October 13, 2020  
                          October 27, 2020  
                          November 10, 2020  
                          December 8, 2020  
                          December 29, 2020  
**Board Action:     December 29, 2020  
Memorialization: February 23, 2021****

**WHEREAS**, Prism Millington, LLC (the “Applicant”) is the owner of property located at 50 Division Avenue in Millington, identified as Block 12301, Lot 1 and Block 10100, Lot 7.01 (the “Property”) on the Long Hill Township Tax Map, in the LI-1, Light Industrial, zoning district and the MU-O, Mixed Used Overlay, zoning district; and

**WHEREAS**, the Property, formerly the location of an asbestos products manufacturing facility known as the “TIFA” site, is comprised of an approximately 11.90 acre lot currently improved with a multitenant industrial/business park; and

**WHEREAS**, the Property is divided into two areas, the “Restricted Area”, encompassing a closed former asbestos landfill comprising approximately 4.5 acres that is to remain capped and undeveloped and, the “Developable Area”, consisting of approximately 7.5 acres of land that is proposed to be developed; and

**WHEREAS**, the Property was included in the Township’s settlement agreement with Fair Share Housing Center, dated September 27, 2017, which concluded the Township’s participation in litigation, under Superior Court docket number MRS-1660-15, in which the Township sought a declaration of its compliance with its State mandated third-round affordable housing obligation under the Mt. Laurel doctrine and the Fair Housing Act of 1985 (the

“Settlement Agreement”); and

**WHEREAS**, in accordance with the aforesaid settlement agreement, the Township was required and did enact an overlay zoning ordinance, numbered 413-18, to effectuate the terms of the settlement agreement and to permit the construction of housing on the Property; and

**WHEREAS**, the overlay zoning ordinance enacted for the Property, entitled the MU-O, Mixed Use Overlay, zoning district, codified at Section 122.15.3 of the Land Use Ordinance of the Township of Long Hill, 1996 (the “Ordinance”) specifically provided the following:

122.15.3 MU-O Mixed Use Overlay Zone

a. Purpose

The purpose of the MU-O Overlay zone district is to provide zoning for affordable housing which allows a realistic opportunity for the construction of very low, low and moderate income housing.

b. Location

The location of the MU-O zone is at the corner lot on the north side of Stone House Road and the west side of Division Avenue extending north to the NJ Transit railroad. This property is known as Block 10100, Lot 7.01 and Block 12301, Lot 1.

c. Permitted Uses

Commercial uses consisting of retail, personal services, restaurants and offices and multifamily dwelling units for the provision of inclusionary affordable housing pursuant to the Zone Standards below shall be permitted uses in the MU-O zone district in addition to those uses already permitted by the underlying zone district.

d. Zone Standards

1. The properties specified in this location shall be used for inclusionary affordable housing multi-family dwelling units.
2. A maximum of 10,000 SF of commercial space for retail, personal service, restaurant and office uses is allowed.
3. The minimum lot area shall be not less than eleven (11) acres.
4. The maximum density for residential development shall not exceed twelve (12) dwelling units per acre.
5. Not less than fifteen (15%) percent of the total number of units shall be affordable to very low, low and moderate income households or twenty (20%) percent of any for sale units. Any computation resulting in a fraction of less than 0.5 shall be rounded down; any computation resulting in a fraction of more than or equal to 0.5 shall be rounded up.
6. The affordable units must meet the income and bedroom distribution requirements of N.J. Stat. § 52:27D-329.1 and N.J.A.C. 5:80-26.3.
7. Commercial buildings may only face Division Avenue and the NJ Transit railroad right of way.
8. These bulk standards shall apply to development in the MU-O zone:
  - a. Minimum lot size: 11 acres.
  - b. Minimum lot width: 500 feet.

- c. Maximum building height:
  - 1. 2.5 stories or 35 feet for buildings facing Division Avenue (east boundary line) or the NJ Transit Railroad tracks (north boundary line).
  - 2. Maximum 3 stories or 45 feet for buildings facing Stone House Road (south boundary line) and in the interior of the property.
- d. Minimum front yard:
  - 1. 50 feet on Division Avenue.
  - 2. Commercial buildings facing Division Avenue shall have a 20 foot front yard setback.
  - 3. 30 feet on Stone House Road.
- e. Minimum side yard: 30 feet.
- f. Minimum rear yard: 50 feet.
- g. Maximum building coverage: 20%.
- h. Maximum lot coverage: 40%.
- i. Floor Area Ratio: 0.5.
- j. Buffer: 10 feet; and

**WHEREAS**, the Applicant applied to the Planning Board of the Township of Long Hill (the “Board”) with an application (the “Application”) requesting preliminary and final major site plan review in accordance with N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 with a design waiver in order to construct 140 multifamily residential units, an 1,800 square foot community building with adjacent swimming pool, approximately 4,000 square feet of commercial space, together with parking, walkways, landscaping, lighting, green space, and other site amenities, as more fully described in the Applicant’s plans, made a part hereof, (the “Relief Requested”) on the Property; and

**WHEREAS**, the Applicant requires a design waiver from Section 153.2.c for maintaining an illumination level of over 0.2 foot candles overnight; and **WHEREAS**, the Applicant complied with the notification and publication requirements of the Municipal Land Use Law and the Ordinance by publishing notice in the newspaper of record and mailing notice to property owners within 200 feet of Property (“Notice”) and paid in full all property taxes due and owing for the Property and the professional fees/escrow account in connection with the Application; and

**WHEREAS**, the Board considered the Application during public hearings held on the Hearing Dates which public hearings were held virtually due to the public health emergency and in accordance with the Governor’s Executive Order numbered 104, as amended and extended, which limited public gatherings and required social distancing protocols; and

**WHEREAS**, the Applicant included information regarding the virtual nature of the hearings and instructions regarding access to the electronic platform utilized during the Hearing Dates in its Notice; and

**WHEREAS**, all of the Applicant’s submissions and revisions thereto, as specified

below, as well as all documents and exhibits submitted with regard to the Application were placed on the Township's website in advance of the Hearing Dates for public inspection and the Applicant provided a court reporter on the Hearing Dates who produced hearing transcripts which were also placed on the Township's website after each hearing for public inspection; and

**WHEREAS**, the Applicant submitted the following plans and documents in support of its Application, which plans and documents were made a part of the record before the Board, as follows:

Application with addenda and checklist, submitted September 6, 2019;  
Site Plan entitled, "Preliminary & Final Major Site Plan for Enclave at Millington Proposed Mixed-Use Multi-Family and Commercial Development", prepared by Stonefield Engineering & Design, LLC, dated 10/25/19, last revised 08/25/2020, consisting of 24 sheets;  
Architectural plans entitled, "Architectural Plans and Elevations for Prism Capital Partners, LLC, Millington Apartments, Millington, NJ", prepared by Devereaux and Associates, PC, dated 06/20/2019, consisting of 6 sheets;  
Site photographs, prepared by Stonefield Engineering and Design, LLC, dated 10/25/19, consisting of 7 sheets;  
Environmental Impact Statement, prepared by Stonefield Engineering and Design, LLC, dated 10/25/19, revised 04/03/20, and letter related to Environmental Impact Statement 04/09/2020;  
Stormwater Impact Report, prepared by Stonefield Engineering and Design, LLC, dated 10/25/19, revised 04/03/20;  
Letter to Planning/Zoning Coordinator, prepared by Stonefield Engineering and Design, LLC, dated 04/03/20;  
Letter to Planning/Zoning Coordinator, prepared by Stonefield Engineering and Design, LLC, dated 04/09/20;  
Traffic Impact Assessment Report, prepared by Stonefield Engineering and Design, LLC, dated 04/03/20;  
Letter to Planning/Zoning Coordinator containing revised landscape and parking plans, prepared by Stonefield Engineering and Design, LLC, dated July 17, 2020;  
Perspective Rendering of Development, designated as Exhibit A-1, submitted August 28, 2020;  
Perspective Rendering of Clubhouse and Pool, dated June 11, 2020;  
Perspective Rendering of Retail Building, dated June 11, 2020;  
Revised Rendering of Retail Building, dated September 18, 2020;  
Revised Perspective Rendering, dated August 28, 2020;  
Revised Elevations for Residential Building, dated October 9, 2020; and

**WHEREAS**, the Board's professionals submitted the following reports, which reports were made a part of the record before the Board, as follows:

Report prepared by Elizabeth Leheny, AICP, PP, Phillips, Preiss, Grygiel, Leheny, Hughes, LLC, Board Planner, dated June 4, 2020 and December 28, 2020;

Report prepared by, Michael Lanzafama, PE, PLS, PP, Casey & Keller, Inc., Board Engineer, dated February 28, 2020, last revised September 18, 2020, and December 28, 2020; and

**WHEREAS**, several Township officials and commissions submitted reports, which reports were made a part of the record before the Board, as follows:

Shade Tree Commission report, dated July 6, 2020;

Environmental Commission report, dated August 10, 2020;

Fire Officials' report, dated February 20, 2020; and

**WHEREAS**, the Applicant, represented by Attorney Francis X. Regan, Esq., appeared before the Board on the Hearing Dates and was given the opportunity to present testimony and legal argument, and the Board's consultants and members of the public were also given an opportunity to present testimony and to comment on the Application; and

**WHEREAS**, some members of the public engaged an attorney and objected to the Application and other members of the public appeared to present testimony and exhibits, ask questions about or to speak with regard to the Application, as is more fully set forth on the record; and

**WHEREAS**, the objectors and their attorney appeared at the November 10, 2020 hearing to officially voice objections to, among other things, the Board's jurisdiction to hear the Application; and

**WHEREAS**, neither the objectors nor the objectors' attorney ever communicated any objection to the Board's jurisdiction in the nine hearings preceding the November 10, 2020 hearing on the Application; and

**WHEREAS**, during the November 10, 2020 hearing, objectors' attorney, Robert Simon, placed his appearance on the record and indicated that he represents William Kaufman, John and Emily Caputo, Christina and David Berquist, and Pamela Ogens, all residents of Millington; and

**WHEREAS**, in support of the objectors' position, the objectors' attorney introduced a professional planner, Michael Pessolano, who testified and gave certain opinions with regard to the Application, as well as the need for additional relief, as more fully set forth on the record, as follows:

Mr. Pessolano was sworn and qualified as a professional planner by the Board. Mr. Pessolano testified that he evaluated applicable ordinance sections and asserted that the Applicant's proposal required several use variances. Mr. Pessolano indicated that he believed that the Board did not have jurisdiction to hear the Application and that it should have been sent to the Zoning Board of Adjustment. The following is a list of use variances that Mr. Pessolano believed were required for the Applicant's proposal, as well as a bulk variance and design waiver:

- 1) A d(1) use variance for more than one principal permitted use on the Property.

Mr. Pessolano stated that the development proposal required a use variance in accordance with N.J.S.A. 40:55D-70d(1) because the development would contain residential, commercial, and accessory uses on one lot and because the site would contain more than one principal building in contravention of Section 103.5 of the Ordinance.

2) A d(1) use variance for the accessory uses on the Property.

Mr. Pessolano indicated that he did not believe that accessory uses, in this instance, the clubhouse and swimming pool, were permitted in the MU-O zone and therefore a use variance would be required.

3) A d(1) use variance for the residential occupancy of a third story where the height limitation is 2 ½ stories.

Mr. Pessolano stated that he believed a use variance was required for third story residential occupancy based upon a comment made by a former planner for the Township's Zoning Board of Adjustment with regard to an application that had been made to that board by Mr. Pessolano's former and current client, Mr. Kauffman.

4) A d(4) variance for exceeding the permitted floor area ratio.

Mr. Pessolano believed the Applicant's proposal exceeded the floor area ratio requirement in section 132.6 of the Ordinance.

5) A d(6) variance for exceeding the height limitation.

Mr. Pessolano stated that Applicant's buildings 1 and 14 which face the New Jersey Transit railroad tracks and buildings 12, 10 and 8 which face Division Ave exceed the 2 ½ story and 35' height limitation.

6) A c(1) or c(2) bulk variance for uniformity of architectural design.

Mr. Pessolano indicated that the Applicant's uniform and repetitive architectural design failed to comport with the intent of Section 135 of the Ordinance which requires variety in exterior design and appearance.

7) A design waiver from Section 152 of the Ordinance related to the design of the buildings.

Mr. Pessolano opined that the design of Applicant's development does not comport with the design guidance in Section 152 in that it does not relate harmoniously to natural features of the site and to surrounding existing buildings as to design features, materials, and the like.

**WHEREAS**, the Board’s Planner provided testimony rebutting the objectors and the objectors’ planner’s assertions regarding jurisdiction, as more fully set forth on the record, as follows:

Ms. Leheny testified during the October 28, 2020 hearing:

With regard to the Settlement Agreement and subsequent adoption of the MU-O overlay zoning district, Ms. Leheny reminded the Board that applicable law requires municipalities to implement ordinances which provide a realistic opportunity for the construction of low- and moderate-income housing. Mere good intentions or adoptions of plans or ordinances that fail to create this realistic likelihood do not satisfy the municipality's constitutional obligation. The Township cannot adopt zoning that would intentionally delay, frustrate, result in undue cost, or otherwise impede development on sites that are chosen to produce affordable housing. Against this backdrop, Ms. Leheny addressed whether buildings 1 and 14 “face” the New Jersey Transit railroad tracks and whether buildings 12, 10 and 8 “face” Division Ave in order to determine whether those buildings exceed the MU-O zone’s height limitation. Ms. Leheny concluded that the front facades of said buildings are oriented toward internal roadways and, as such, do not violate the MU-O overlay district height regulations and are permitted to take advantage of zone’s permitted maximum height which is 45’ and 3 stories for buildings facing the interior of the site.

Ms. Leheny testified during the December 8, 2020 hearing:

With regard to the assertions by objectors’ planner that additional relief is required for the Application, Ms. Leheny testified, as follows.

- 1) A d(1) use variance for more than one principal permitted use on the Property.

Ms. Leheny noted that the uses proposed by the Applicant are all permitted by the MU-O zone and, in addition, the regulations refer to the buildings in the plural. Ms. Leheny also stated that expecting all of the permitted uses to be located in one building will lead to an absurd result.

- 2) A d(1) use variance for the accessory uses on the Property.

Ms. Leheny testified indicating that clubhouses and swimming pools are generally considered accessory to residential developments.

- 3) A d(1) use variance for the residential occupancy of a third story where the height limitation is 2 ½ stories.

Ms. Leheny testified that she recalled that a previous consultant planner for the Zoning Board had made a comment in a report about such an occupancy requiring a use variance but the comment was retracted and the Zoning Board never acted on any such request nor did the Zoning Board find that such relief was required.

- 4) A d(4) variance for exceeding the permitted floor area ratio.

Ms. Leheny noted that the objectors' planner failed to recognize that the MU-O zone contained its own requirement for floor area ratio and that the Applicant was compliant with that requirement.

5) A d(6) variance for exceeding the height limitation.

Ms. Leheny reiterated her testimony from the October 28, 2020 hearing indicating that a height variance is not required.

**WHEREAS**, the Board initially and, after the objectors' presentation on November 10, 2020, ultimately found that the Applicant met all jurisdictional requirements enabling the Board to hear and act on the Application and said findings are more fully discussed in the Board's findings of fact and conclusions of law, below; and

**WHEREAS**, the following pre-marked exhibits were presented to the Board during the hearings:

- Exhibit A-3: EIS Aerial Map;
- Exhibit A-4: Aerial Photograph;
- Exhibit A-5: Site Plan and Rendering;
- Exhibit A-6: Stonefield Engineering Letter;
- Exhibit A-7: Parking Exhibit;
- Exhibit A-8: Landscape Plan;
- Exhibit A-9: Soil Movement Plan 7-31-20;
- Exhibit A-10: Revised Proposed Retail Rendering;
- Exhibit A-11: Waste and Recycling Receptacle Study;
- Exhibit A-12: Elevation Rendering; and

**WHEREAS**, Francis X. Regan, Applicant's Attorney, introduced the Application and presented legal argument to the Board, as more fully set forth on the record; and

**WHEREAS**, Edward Sullivan, the Applicant's Licensed Site Remediation Professional ("LSRP"), provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. Sullivan was sworn and provided the Board with his qualifications as a licensed site remediation professional, environmental expert, and his qualifications were accepted by the Board. Mr. Sullivan explained the role of the LSRP. The LSRP program was implemented in New Jersey starting in 2009. It came into effect through the passage of the Site Remediation Reform Act. At the time the act was passed, there was a great backlog of mediation cases under New Jersey Department of Environmental Protection ("NJDEP") oversight. LSRP's are licensed professionals authorized to oversee the investigation and the remediation of soil and groundwater contamination issues in the place of the NJDEP. Mr. Sullivan explained that at the completion of a site remediation, the LSRP issues a site closure document that is called the response action outcome or RAO. The RAO is essentially a certification from the LSRP indicating that the remediation has been completed in compliance with all of the applicable regulations and guidance issued by the NJDEP and is protective of public health, safety and the environment.



With regard to the Property, Mr. Sullivan testified that the site is divided into two areas. The Restricted Area is approximately 4.5 acres. This is the area containing the former asbestos landfill that was remediated under the “NPL” program which is also known as the Superfund program. The site was capped with clean soil and vegetation, it was fenced, and it was delisted from the Superfund list. Effectively, the remediation of that portion of the site is complete. Mr. Sullivan indicated that it is the property owner’s responsibility to implement the operations and maintenance plan under the oversight of the United States Environmental Protection Agency (“EPA”) and the NJDEP in order to ensure that the engineering controls, the cap, and the fencing remains protective of the Restricted Area.

Mr. Sullivan testified with regard to the remainder of the site which consists of approximately 7.5 acres. This 7.5 acres is the Developable Area that will contain the housing development proposed by the Applicant. The Developable Area has historically contained a number of light industrial uses including the current uses of the Property. In addition, this portion of the site contained an asbestos manufacturing operation which is no longer present on the site. The Developable Area of the site is underlain by fill material to a depth of about 5 feet across the area which was likely placed in order to raise the site above what may have been the flood area at that time. Mr. Sullivan indicated that typically this type of fill is referred to as historic fill which means that it was imported to the site to raise the grade of land in order that it be usable. In addition to the historic fill material, the site contains native soils that consists mostly of finer grain soils, clays and silts that extend down to the bedrock surface which is about 20 to 35 feet below grade. Mr. Sullivan stated that the bedrock formation is a shale rock formation and that there are aquifers within this formation.

With regard to environmental investigations, Mr. Sullivan testified that a preliminary assessment and a site investigation had been completed. The preliminary assessment identified twenty-two areas of concern. The site investigation is designed to investigate those areas of concern to determine whether or not there is any contamination of the soil or the groundwater. Mr. Sullivan indicated that there are relatively low levels of contamination. Metals have been detected in the soil but, according to Mr. Sullivan, some of them may be natural background metals and may not be associated with any operations at the site. Further groundwater investigation will be performed relative to those metals. Mr. Sullivan stated that new compounds were identified at the site that belong to a class of compounds, called polycyclic aromatic hydrocarbons, that are generally found in petroleum products and asphalt. Mr. Sullivan indicated that the levels of those compounds are relatively low. In addition, another issue identified in the soils was evidence of some limited amounts of asbestos outside the Restricted Area on the north and west sides of the existing buildings. Mr. Sullivan conceded that the asbestos issue will need to be addressed during demolition and construction through measures such as dust control, a perimeter air monitoring program, a community air monitoring plan, and a site health and safety plan. Mr. Sullivan also noted that an area north of existing building one contained two features below the ground surface that are referred to as oil pits where lubricating or hydraulic oils may have been disposed at one point. These oils may have contaminated some of the soil in that area and further testing will be required.

With regard to the groundwater contamination, Mr. Sullivan indicated that the perched layer of groundwater approximately 8 to 9 feet below ground contains some contamination from

the oil product that was found in the oil pits. There is also contamination of the groundwater in the bedrock aquifer. The contaminants present in the aquifer are called volatile organic compounds. Because the compounds are volatile and may vaporize, it may be necessary to install vapor barriers or other vapor mitigation systems during construction to prevent the vapors from entering into buildings.

With regard to necessary investigations, Mr. Sullivan indicated that the next stage of investigation will be what is referred to as a remedial investigation. The remedial investigation will define the limits of any contamination and is scheduled to take place in the fall and into the winter of 2020/2021. Mr. Sullivan opined that the overall issues that have been identified on the Property appeared to be relatively minor and are common issues found at many sites throughout New Jersey. Mr. Sullivan believed that the remediation should be relatively straightforward.

With regard to the control of contaminants being taken off of the site, Mr. Sullivan stated that air monitoring programs would be implemented. Mr. Sullivan further stated that the Applicant would engage a company that specializes in asbestos removal and that a representative of the company would monitor demolition and any materials leaving the site. In addition, monitoring stations that will be placed on the perimeter of the Property are automated and will send alarms if any level of any type of particulate that is of concern is released. In response to a question regarding precautionary measures taken to impede breaching the Restricted Area, Mr. Sullivan indicated that the existing fence will be maintained. Mr. Sullivan testified that since the area is capped even if someone does breach the fence there should not be any risk of exposure to the asbestos that has been capped. In response to questions regarding the monitoring of site remediation, Mr. Sullivan testified that a site safety officer will be present on site every day to supervise activity.

**WHEREAS**, Robert Fourniadis, Senior Vice President for Prism, provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. Fourniadis was sworn and gave testimony and answered questions throughout the hearings, as more fully set forth on the record.

With regard to remediation and monitoring, Mr. Fourniadis stated that the former Superfund site on the Property is subject to an administrative consent order with the NJDEP. The order had been entered into in 1992 and it governs mainly the maintenance of the cap on the site. Mr. Fourniadis indicated that a communication plan is in place during any type of air monitoring. In the event there is a release of contaminants, the point of contact is typically the Board of Health.

With regard to any contaminants released from groundwater, Mr. Fourniadis indicated that the EPA, as part of the administrative consent order, tests the Passaic River every five years in perpetuity to monitor anything that may leach into the river. To date, nothing of that nature has been found by the EPA in the river.

With regard to site work, Mr. Fourniadis testified that old storm drains will be eliminated and new storm drains will be installed. With regard to monitoring wells, Mr. Fourniadis stated that the wells will remain throughout and after construction and that the Property owner will be responsible for maintaining the wells. The wells inside of the footprint of the proposed buildings will be closed and capped. With regard to the prevention of vapor intrusion, Mr. Fourniadis

testified that a vapor barrier will be installed in each of the buildings on the site.

With regard to the affordable housing units, Mr. Fourniadis stated that dispersing the units among the market rate units comports with the spirit of the COAH regulations. Mr. Fourniadis testified that all of the affordable housing units will comply with the State required bedroom distribution and will be marketed and rented in a manner consistent with State regulations.

With regard to questions about the design and architecture of the buildings, Mr. Fourniadis agreed, on multiple occasions during the hearings, to work with a subcommittee of the Board and Board professionals to amend the architectural design of the proposed residential buildings. Mr. Fourniadis also agreed to allow the project engineer to work with the Board Engineer to reduce the amount of fill required for the Property as much as possible without impeding ADA compliance, without compromising safety, or reducing parking.

**WHEREAS**, Jeffrey Martell, PE, the Applicant's Engineer, provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. Martell was sworn and provided the Board with his qualifications as a licensed professional engineer and his qualifications were accepted by the Board. Mr. Martell testified describing the existing conditions on the site. The Property comprises 11.8 acres and is located in a mixed-use overlay zone. It has frontage on Commerce Street to the north, Division Avenue to the east and Stone House Road to the south. The Property contains approximately 4.5 acres of Restricted Area that is currently fenced. The balance of the property, the Developable Area, is approximately 7.5 acres. Currently, the Property is almost fully developed with a series of buildings and an asphalt parking and circulation area. The Passaic River traverses the western property line. A riparian buffer and a flood zone are associated with the River and are both under the jurisdiction of the NJDEP. Neither the flood zone nor the riparian buffer encroach beyond the Restricted Area. Mr. Martell testified that there is a 35 foot grade change on the Property. The high side is at the northeast corner which slopes to the south west of the Property. Stone House Road drops approximately 25 feet along the Property's frontage.

With regard to the proposed development, Mr. Martell testified that the Applicant proposes to remove all of the existing structures and all of the existing pavement and a couple of the existing pear trees that exist along the perimeter. The proposed development will contain a total of 14 multifamily residential buildings totaling 140 residential units. In addition to the residential buildings, the Applicant proposes to construct an 1800 square-foot community building in the northeast quadrant of the site and a 4000 square-foot retail building to the far northeast of the site. The retail building will be constructed in close proximity to the pedestrian path to the train station. In addition to the buildings, Mr. Martell testified with regard to the parking which was more fully explained in the Applicant's Traffic Engineer's testimony. Mr. Martell testified that each of the residential buildings will contain a total of 10 units. Of those 10 units, six units will contain a garage. An exterior parking space will be in front of every garage. . The 4 units in each building that do not have a garage will utilize the common parking field. In total, 84 units will have access to garages and 56 units will not. Mr. Martell indicated that none of the buildings will contain basements. In addition to the buildings and parking, the Applicant also proposes to construct three courtyard areas within the clusters of the residential buildings which will consist of a combination of hardscape, landscape, and seating areas. The Applicant also proposes to construct a flat lawn

area for general outdoor use toward the north of the site.

In terms of services, Mr. Martell testified that all of the trash will be stored in the interior of the buildings containing garages and carted out for pickup. The four units in each building that do not have garages will utilize trash enclosures that will be located on the sides of the buildings. The only exception will be the retail building which will have an exterior trash and recycling container customary to a small-scale neighborhood commercial use. Mr. Martell also stated that a pool will be constructed within an enclosed area behind the community building. The 1800 square-foot community building will be located generally to the west of the retail building. Both the community building and the retail building will have access to sidewalk areas and to some of the parking areas.

Mr. Martell testified that the design and layout of the site meets all of the bulk standards of the Ordinance. Mr. Martell also testified with regard to the two driveways that are proposed for the site. One of the driveways will be located along Division Avenue and the other along Stone House Road. The access driveway on Stone House Road is located approximately two thirds to the east of the Developable Area before the grade drops. Mr. Martell indicated that the site has been designed with a master utility plan. The water main has two connection points to the public system. In addition, there are a series of fire hydrants that are proposed on site. Within the site there is an internal system of sanitary sewer mains as well as underground gas, electric, and telecommunications lines.

Mr. Martell noted that the replacement of the current development with the proposed development will result in a reduction of impervious surface by over two acres. Mr. Martell indicated that the site currently contains 59.3% impervious coverage and will contain 39.4%, after it is developed with the Applicant's proposal. The reduction in impervious surface coverage will decrease the stormwater runoff rates and the volume of storm water leaving the site which is considered the best management practice related to stormwater and floodplain management. Mr. Martell testified that the site fully complies with all stormwater management regulations.

Mr. Martell testified that all pedestrian paths on the property are compliant with the federal Americans with Disabilities Act ("ADA") and all concrete sidewalk areas have been designed in accordance with ADA design standards. Mr. Martell testified that the site has been designed to allow pedestrians to walk between buildings, to the community building, to the retail center, and to various units on the site. Mr. Martell indicated that these walking paths provide functionality without providing excessive pavement areas. Mr. Martell also noted that a bicycle rack will be located near the community building.

With regard to the grade, Mr. Martell testified that the site had been graded in a manner that is within appropriate engineering standards. The site will not be excessively steep although there are sloped areas within the lawns around the northeast side. Along the southwest side, tiered retaining walls with a split rail fence on top will be installed.

With regard to lighting, Mr. Martell testified that the site will contain a series of decorative light fixtures. The fixtures are residential in character in terms of height and design. In response to the Board Engineers report, Mr. Martell indicated that the Applicant will work to reduce the lumens, to improve the uniformity of the light fixtures, and to adjust the height of the fixtures in

order to comply with the Township's regulations.

With regard to emergency services, Mr. Martell testified that a fire truck can safely access the Property and can navigate throughout the entire site. Mr. Martell indicated that the drive aisle widths and the turning radii were designed not only to comply with the State's Residential Site Improvement Standards ("RSIS") but also to accommodate the Millington fire station trucks. In addition, Mr. Martell testified that large box trucks and garbage trucks will also be able to navigate throughout the Property.

With regard to the environmental land-use aspect, Mr. Martell stated that there is a flood zone on the Property as well as a riparian buffer. Mr. Martell also stated that threatened and endangered species have been documented on the site. These environmental land-use concern areas are all located on the west side of the Property in the Restricted Area. None of these concerns extend to the Developable Area. Mr. Martell opined that the proposed development will pose no negative impact to the geology, air quality, water quality, threatened and endangered habitat, critical vegetation or slope areas. In Mr. Martell's opinion, the elimination of the current use and replacement with the residential use, a more benign use, will positively impact environmental land-use concerns.

In response to a Board member inquiry regarding the sidewalk on Division Avenue, Mr. Martell agreed to soften the two 90 degree angles that are proposed in order for the sidewalk to avoid close proximity to utility poles. Plans provided later during the hearing process demonstrated that the 90° angles had had been smoothed. Mr. Martell clarified that utility poles would only be located along public roadways, all utilities in the Property will be buried underground. After discussion with the Board, the Applicant agreed to provide a sidewalk on the north side of Stone House Road from Division Avenue to River Road.

In response to the Board Engineers report, Mr. Martell amended and resubmitted the site plan and testified at a later hearing in this regard. With regard to landscaping, a total of 47 trees were added to the plan in accordance with Township requirements. Mr. Martell indicated that a number of plantings were added around the perimeter of the site and between the buildings closest to Division Avenue. Mr. Martell agreed to work with the Board Engineer to adjust the species of plantings and agreed to provide documentation of any imported soil. With regard to the lighting plan, Mr. Martell testified that the average lighting on the Property was reduced from 2.3 foot candles to 1.7 foot candles. Mr. Martell also noted that the uniformity ratio was improved from 11.67 to 3.67 bringing it within the Ordinance requirement of 4. Mr. Martell agreed to dimming the lighting during the nighttime hours.

As to additional site work, Mr. Martell indicated that a sidewalk has been added near building eight which leads to the sidewalk along Division Avenue. With regard to parking, Mr. Martell stated that the plans had been revised to show the future banked parking. Mr. Martell also testified with regard to other details brought up in the Board Engineers report. Specifically, Mr. Martell indicated that the Applicant had prepared and submitted a soil movement exhibit that describes the change in grade in the number of feet across the site in order to quantify the amount of soil that would be brought to the site to construct the development. In response to questions regarding the amount of soil necessary for the site, Mr. Martell testified that materials currently present on the site might be used as fill. Mr. Martell further testified that before any such materials

could be used as fill, the LSRP would have to agree and approve of their use. Any soil that would be imported onto the site would consist of clean soil. After discussion with the Board, the Applicant stipulated on the record and agreed to work with the Board Engineer to reduce as much fill as possible on the Property.

**WHEREAS**, Matthew Seckler, PE, the Applicant's Traffic Engineer, provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. Seckler was sworn and provided the Board with his qualifications as a licensed professional traffic engineer and his qualifications were accepted by the Board. Mr. Seckler testified that he had been involved in the preparation of the traffic impact assessment report that was submitted to the Board. Mr. Seckler discussed the RSIS standards as they apply to parking. Two parking spaces are required for every two-bedroom unit. Mr. Seckler testified that 281 parking spaces are required for the residential units according to RSIS. With regard to the retail building, Mr. Seckler indicated that the Applicant is required to provide 20 spaces in accordance with the Ordinance. The total number of necessary parking spaces is 301 and the Applicant is providing 307. As for the distribution of parking, Mr. Seckler testified that six of the 10 units in each residential building will have a garage and a driveway. The four remaining units in each building will be given one assigned parking space within the parking field nearest to each building. With regard to guest parking, Mr. Seckler indicated that 70 parking spaces are required to remain undesignated for use by guests in accordance with RSIS standards. The Applicant's site plan provides for 83 undesignated parking spaces for use by guests. Mr. Seckler testified that visitors to the retail building will be able to use some of the guest parking spaces.

In response to concerns regarding parking distribution, Mr. Seckler referenced an exhibit which showed that the Applicant amended the parking plan to add 18 parking spaces on the eastern side of buildings 10 and 12. This change increased the number of parking spaces on site to 314. Mr. Seckler also discussed the possibility that 10 parallel parking spaces along the western side of the western drive aisle can be converted to 26 perpendicular parking spaces in the future if needed. Mr. Seckler indicated that even with an increase in parking the site will be compliant with the impervious coverage regulations. After discussions with the Board, the Applicant agreed to implement the banked parking spaces in the future upon the Township's finding that they are necessary. With regard to handicap parking, Mr. Seckler indicated that there are handicap accessible garage spaces as well as ADA compliant spaces on the site. After distributing additional parking to the eastern and southern end of the site, the Applicant also distributed the ADA compliant spaces throughout the site. Some of the ADA compliant spaces are van accessible.

With regard to the traffic report, Mr. Seckler testified describing the traffic study dated April 3, 2020. In performing the study, Mr. Seckler looked at the general roadway network and the existing travel patterns on the roads around the site. Mr. Seckler described the traffic on Division Avenue and indicated that it consists of between 2,500 and 3,000 vehicles per day. In the morning, the northbound and southbound traffic is balanced. In the evening, the southbound flow is slightly heavier than the northbound flow in the area of the site. As part of the study, turning movement counts were performed on June 4, 2016 and June 7, 2016. The Saturday count occurred from 11 AM to 2 PM. The weekday count occurred from 7 AM to 9 AM and then from 4 PM to 7 PM. The counts revealed that the busiest hour of the day in the area of the site is the evening rush hour from 5:15 PM to 6:15 PM. Since the study was conducted in 2016, Mr. Seckler indicated that

he increased the volume by 1% compounded annually from 2016 to 2019. The 1% number was provided by the New Jersey Department of Transportation which is the agency responsible for determining the estimated growth on all roadways throughout the State.

In order to determine the impact of the site on the roadway network, Mr. Seckler utilized the Institute of Transportation Engineers Trip Generation Manual. Mr. Seckler testified that the site would produce one or two cars into the roadway network every minute during the busiest rush hour time periods. Mr. Seckler further testified that nearby intersections will continue to operate consistently with how those intersections operate currently. In sum, Mr. Seckler surmised that there will be no substantial difference in the level of service at those intersections or the amount of time that someone would wait at those intersections. Mr. Seckler indicated that the reason there would not be a substantial impact on traffic from the site is because the site is already developed and is operational. Mr. Seckler stated that the levels of service at the intersections are between A and B. With regard to electric charging stations, Mr. Seckler testified that there would be three located to the northwest of the retail building and three others spread throughout the site. During discussion of electric vehicle charging stations, the Applicant agreed to add one such station to its banked parking plan. The Applicant also indicated that the charging stations would be available for a fee.

**WHEREAS**, Paul DeVitto, the Applicant's Landscape Architect, provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. DeVitto was sworn and provided the Board with his qualifications as a licensed landscape architect and his qualifications were accepted by the Board. Mr. DeVitto described the landscape plan indicating that over 181 evergreen and shade trees will be planted on the site. Buildings throughout the site will feature planting schemes that take advantage of different sun exposures. The planting schemes will consist of evergreens, flowering shrubs, ornamental grasses and perennials. In accordance with the Shade Tree Commission's report, the planting schemes had been simplified with emphasis placed on enhanced plant spacing and open areas. The patio areas on the site will be enhanced with plantings to provide separation between the buildings. Mr. DeVitto stated that the Ordinance requires the Applicant to plant 141 shade trees and the Applicant originally planned to plant 110 deciduous shade trees and 71 evergreen buffer trees.

After discussion with the board's professionals, Mr. DeVitto conceded that the ordinance requirement for shade trees is 148 and that buffer trees are not counted toward that requirement. After discussion with the Board, the Applicant revised the landscaping plan to more closely comply with the Ordinance standards, as aforesaid in the summary of Mr. Martell's testimony above. The western side of the property has little or no shade trees proposed along the roadway corridor. The Applicant agreed to add some shade trees on the Western North South Rd., Mr. DeVitto also agreed to repositioning some of the evergreen plantings along Division Avenue. Mr. DeVitto indicated that the plantings that are proposed will be a mix of native and non-native species. None of the proposed plantings are invasive species. Mr. DeVitto testified that the proposed street trees will be a size of 3 inch to 3 ½ inch caliper which is approximately 20 feet tall at planting.

Mr. DeVitto testified that the open lawn space to the north of the Property bordering Commerce Street is enclosed with buffer and shade tree plantings. A mix of evergreen and

deciduous shade trees are proposed along the Commerce Street roadway to provide a buffer between the site and the neighboring train station and parking lot. Buffer plantings will be planted south of the proposed retail building and along Stone House Road. Street trees will span the entire lengths of all three streets with frontages bordering on the site. Larger shade trees are proposed to be planted in the internal landscape islands. The proposed retaining wall plantings will consist of a low maintenance flowering seed mix. At the grade level along Stone House Road, the Applicant has proposed dyed shade trees to serve as a foundation type of planting. The planned selection is designed to be as deer resistant as possible in accordance with guidance from the Rutgers Agricultural Extension.

**WHEREAS**, Angelo Alberto, the Applicant's Architect, provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

Mr. Alberto was sworn and provided the board with his qualifications as a licensed architect and his qualifications were accepted by the Board. Mr. Alberto testified that he was not involved in the preparation of the plans for the residential buildings but was retained by the Applicant to prepare the plans for the retail and clubhouse buildings. Mr. Alberto indicated that he will be involved with the preparation of the construction plans for the residential buildings and is familiar with the architectural plans for said buildings. Mr. Alberto presented the renderings of the buildings. The residential buildings will all be three-story buildings. The first floor of every residential building will contain garages and entrances on the long side that is designated as the facade and entrances to two units on the back side of each building. The second and third floors contain stacked units. The building heights are 45 feet except along Division Avenue and Commerce Street. The living quarters on the first floors and on the second floors will have 9 foot ceiling heights and the bedroom areas will have 8 foot ceiling heights. Mr. Alberto stated that although the buildings are proposed to be 45 feet, they will not appear as large since the roofs will be pitched.

With regard to building materials, Mr. Alberto testified that the bases of the buildings will be clad in brick and the second and third floors will be clad in horizontal vinyl siding. The brick is proposed to be red and the siding is proposed to be slate blue. A vinyl cedar shake styled siding material in white will be installed on the gable ends. All of the windows will be clad in vinyl and about 80% of the trim will consist of a composite material similar to AZEK (a product from the brand "Timbertech"). The roof material will consist of an upgraded asphalt architectural shingle.

With regard to the interior, Mr. Alberto stated that there will not be an elevator in the residential buildings and that the units will be separated by firewalls. All of the units will be sprinklered per code within an NFPA 13R sprinkler system. The first-floor units will have ADA accessible features and adaptable features. 21 of the proposed units will be deed restricted as affordable units. 5% of those 21 units are required to contain three-bedrooms. While the Applicant is only required to provide five three-bedroom units, each building will contain a three-bedroom unit therefore the total number of three-bedroom units will be 14. Mr. Alberto then described the floor plans of the units. Each building will contain one story first floor units and two story walk-up units on the second and third floors of the buildings. The remaining 16 affordable units will be dispersed among the buildings. The Applicant is dispersing the affordable units among the market rate units instead of creating a building containing only affordable units.



With regard to the garages, Mr. Alberto testified that each unit with a garage will contain a trash and recycling area inside the garage. The four units in each building that do not have garages will utilize trash enclosures that will be located on the short ends (sides) of the buildings. An electrical room and a sprinkler closet will be provided next to the trash enclosures on said ends of the buildings. At a later hearing, Mr. Alberto testified with regard to the types of trash receptacles that would be used on site. Mr. Alberto stated that three garbage receptacles and one recycling receptacle would be located at each end of each residential building for use by tenants without garages. The dimensions of each receptacle are 30 inches wide by 35 ½ inches deep and 43 ½ inches high. The garbage and recycling receptacles will be enclosed by a wooden structure. With regard to utility meters, Mr. Alberto indicated that the meters would be placed on both sides of each residential building.

With regard to the clubhouse, Mr. Alberto testified that the building will be 36' x 50'. On the poolside, the building will contain an overhang and the entrance to the building. The interior will consist of a vestibule, men's and women's restrooms, utility spaces and mechanical spaces, a janitor's closet, and an approximately 20' x 28' community or club room and a 20' x 22' exercise area with a small kitchenette and storage area off of the clubroom. All of the interior rooms will face the pool. The exterior of the building will mimic the exteriors of the residential buildings with similar brick, the slate blue horizontal siding, and similar asphalt roof shingles.

With regard to the retail building, Mr. Alberto initially testified that while the other buildings on the site are more traditional, the retail building will be more modern. Upon discussion with the Board, Mr. Alberto revised the plan for the retail building in order to ensure that the building looks more traditional and contains features mimicking a rail station building. The building is proposed to comprise 40' x 100' and is designed to accommodate one tenant who will utilize all 4000 sq. ft. or can be divided into two or three smaller units. The exterior of the building will be clad predominantly in brick and will contain a double gable pitched roof instead of the flat roof originally proposed. The entrance doors were moved to the center of each bay and each bay will contain a decorative shed dormer. The base of the building will be clad in a grayish masonry material. The HVAC units will be contained in a 5' x 40' cut out in the roof on the rear side of the retail building. Upon discussion with the board, the Applicant agreed to screen the HVAC units that will be visible to the residential buildings behind the retail building. Mr. Alberto also discussed adding a 450 square-foot paved area next to the retail building in order to accommodate some outdoor seating and noted that additional glazing was added to both ends of the retail building. As to lighting, Mr. Alberto indicated that bollard lights that were shown on one of the architectural renderings will not be constructed. After discussion with the Board, Mr. Alberto added additional rendered elevations to the plan set. The elevations were used to demonstrate that none of the buildings exceed the maximum height of 45 feet and were used to show the pitch of the roof. Mr. Alberto also showed a detail of the trash enclosure.

**WHEREAS**, certain members of the public appeared as objectors, represented by attorney Robert Simon, as stated above, and certain others appeared to testify with regard to the Application, as follows:

William Kaufman was sworn and provided the board with his qualifications as a licensed architect and his qualifications were accepted by the Board. Mr. Kaufman presented a series of exhibits to illustrate the different perspectives in a three-dimensional manner. Mr. Kaufman opined

that the Applicant's architectural design does not comport with the local architecture or the history of the Millington area as required by the Ordinance. Mr. Kaufman further opined that the Applicant's architectural design did not comport with Ordinance Section 135.2, and that the regulation prohibited uniformity in design. Mr. Kaufman also took the position that the Applicant requires a height variance because he interpreted that buildings 12, 10 and 8 face Division Street. Mr. Kaufman appeared at a later hearing and presented additional exhibits containing architectural and site design renderings for the Board's consideration. Mr. Kaufman suggested stepping the proposed buildings down the slope instead of bringing additional fill to the Property. Mr. Kaufman also suggested using different materials rather than horizontal vinyl siding. Mr. Kaufman recommended that the Applicant use design features such as balconies or bay windows to enhance the residential buildings. Mr. Kaufman further recommended repositioning the buildings on the site and increasing the size of the commercial building. Mr. Kaufman also proposed ways to vary design elements on the buildings in order to break up the uniformity.

John Caputo was sworn and provided the Board with his qualifications as a licensed architect and his qualifications were accepted by the Board. Mr. Caputo stated, in his opinion, that the Applicant could provide a higher quality of architectural finishes in the design of the buildings. Mr. Caputo questioned whether the proposed green space on the Property was sufficient. Mr. Caputo also noted that some of the areas of concern are located in the proposed green space. Mr. Caputo then asked the Board to consider an excerpt from the 1990 master plan depicting the Millington Village and to incorporate the recommendations contained therein.

Charles Arentowicz was sworn and gave testimony regarding photographs he had taken at the site which showed some broken asphalt in the parking area.

**WHEREAS**, members of the public presented the following exhibits, which were considered by the Board and are made a part hereof, as follows:

- Exhibit WK-1: Six-page document presented by Mr. Kaufman;
- Exhibit JC-A1: Drawings;
- Exhibit JC-A2: Drawings, Photo;
- Exhibit JC-A3: Slides 117 19 CA-1 Photographs;
- Exhibit WK-1A: Proposed Alternate Design;
- Exhibit WK-1B: Proposed Alternate Design;
- Exhibit WK-2: Proposed Alternate Site Plan;
- Exhibit WK-3A: Stone House Road Comparison;
- Exhibit WK-3B: Division Avenue Comparison;
- Exhibit WK-4A: Aerial from North;
- Exhibit WK-5A: Alternate Site Plan; and

**WHEREAS**, the Board has made the following **Findings of Fact and Conclusions of Law**:

1. The Property is comprised of an 11.90 acre parcel located at 50 Division Avenue in Millington, identified as Block 12301, Lot 1 and Block 10100, Lot 7.01 on the Long Hill Township Tax Map, in the LI-1, Light Industrial, zoning district and the MU-O, Mixed Used Overlay, zoning district. The Property consists partially of an approximate 4.5 acre Restricted Area that comprises the former, delisted Superfund site. The Restricted Area

remains fenced and must be maintained in accordance with a consent decree entered into by the property owner and the NJDEP. In addition, the Property is comprised of an additional approximate 7.5 acres of Developable Area that is currently improved with industrial uses.

2. As a result of the Township's Settlement Agreement, as aforesaid, the Property was included in a list of properties that were designated to produce the affordable housing that would satisfy the Township's affordable housing obligation. The Township enacted the MU-O overlay zoning district regulations, reproduced above, in 2018 in order to create a realistic opportunity for the Property to be developed in a manner that would support 21 affordable housing units in accordance with the Settlement Agreement.
3. The Applicant filed an Application with the Board in November of 2019 for the Relief Requested, seeking preliminary and final major site plan approval in order to construct, upon the Developable Area, 140 residential units located in 14 freestanding residential buildings, one 1,800 square foot community building with swimming pool, one approximately 4,000 square foot retail/commercial building, and appurtenant parking, green space, walkways, utilities, landscaping, lighting and the like, as more fully detailed in Applicant's plans and described herein.
4. The Board found that the Applicant satisfied all jurisdictional requirements of the Application and the Board proceeded to hear the Application and render its determination which is memorialized herein. However, during the November 10, 2020 hearing, the tenth hearing on the Application, objectors appeared, not only to challenge the Application, but to object to the Board's jurisdiction arguing that the Application belonged before the Zoning Board of Adjustment. The objectors' principal arguments are summarized in the testimony of Michael Pessolano, objectors' planner, herein.

Although planning boards are not empowered under the Municipal Land Use Law to officially interpret provisions of land use ordinances, it is within the inherent jurisdiction of planning boards to determine the meaning of ordinances related to a pending application. See Fallone Properties v. Bethlehem Planning Board, 369 N.J. Super 552 (App. Div. 2004). This inherent jurisdiction is vital when a board's jurisdiction is challenged or questioned. See, DiPetro v. Township of Wayne Planning Board, 367 N.J. Super 161 (App. Div. 2004), certify. denied 181 N.J. 544 (2004). Against this backdrop, the Board rendered its determination and found that jurisdiction over the Application remained with the Board for the following reasons.

The Township's Settlement Agreement, as aforesaid, required the Township to rezone certain parcels of land to accommodate affordable housing development. The Property was one of the parcels selected to contain affordable housing development that would partially satisfy the Township's obligation under the Settlement Agreement. Prior to enacting the zoning for the Property pursuant to the Settlement Agreement, the Township Committee charged the Board with drafting, discussing, and reviewing an overlay zoning ordinance that would provide the requisite opportunity to provide affordable housing on the Property. In the months of February and March of 2018, the Board, which was at that time largely comprised of the same Board members that heard

the Application, worked with its previous planner to study the Property and develop provisions that would eventually be included in the MU-O overlay zoning district. After the zoning overlay was drafted by the Board's previous planner and considered by the Board, the Board sent its findings to the Township Committee. The Township Committee adopted the Board's recommendations and enacted the MU-O zoning overlay in accordance therewith. The Application was submitted in November of 2019 and hearings thereon commenced in June of 2020. The Board believed that the proposed development comported with the Ordinance's regulations, as the Board understood them, and took jurisdiction.

The Board rejects the claims made by objectors' planner and concludes that the relief that is required for the Application rests with the Planning Board not the Zoning Board of Adjustment. The Board makes the following specific findings regarding the relief that, if required, would divest the Board of jurisdiction over the Application:

First, the Board rejects the objectors' allegation that the proposed development requires a use variance in accordance with N.J.S.A. 40:55D-70d(1) for more than one principal permitted use and for more than one principal permitted building on the Property. The MU-O zoning overlay clearly indicates that multiple "commercial" uses "consisting of retail, personal services, restaurants and offices and multifamily dwelling units for the provision of inclusionary affordable housing..." are permitted. In addition, the MU-O zoning overlay references permitted uses and buildings in the plural. The Board finds that the MU-O zoning overlay permits multiple uses as well as multiple buildings on the Property, in accordance with the plain language of the Ordinance. The Board further accepts the testimony of the Board's Planner, Ms. Leheny, and agrees that if the aforesaid permitted uses were limited to one principal building on the site that would lead to an absurd result and would not further the zoning overlay's legislative intent to provide a realistic opportunity for the development of affordable housing.

Second, the Board also rejects the objectors' position that a use variance in accordance with N.J.S.A. 40:55D-70d(1) is required for the clubhouse and the swimming pool because accessory uses are not permitted on the Property. The Board finds that the MU-O zoning regulations, under the heading "Permitted Uses", states that the permitted uses are "in addition to those uses already permitted by the underlying zoning district". The Ordinance in Section 122.9, the underlying LI-2 zoning district, provides that "other accessory uses customarily incidental to a permitted principal use" are permitted. The Board accepts the testimony of its Planner and finds that a clubhouse with a swimming pool is an accessory use to a residential development and provides said development with additional recreational amenities on site, obviating the need for residents to seek recreational opportunities off-site. As such, the Board finds that the clubhouse and the swimming pool are uses that are accessory to the principal residential use proposed by the Applicant and further finds that the MU-O zoning regulations permit accessory uses based upon the plain language of said regulations.

Third, the Board rejects the objectors' position that a use variance in accordance with N.J.S.A. 40:55D-70d(1) is required for the residential occupancy of a third story. The objectors' planner failed to identify any ordinance provision that would prohibit

such a use or that identified such occupancy as a stand-alone use. The Board notes that a former planning consultant for the Zoning Board of Adjustment may have taken such a position, but the comment was withdrawn. The objectors have not provided and the Board has not viewed any credible evidence to demonstrate that any Township authority has ever prohibited the residential occupancy of a third story.

Fourth, the Board rejects the objectors' contention that the Applicant's proposal exceeds the floor area ratio requirement in Section 132.6 of the Ordinance and requires a variance for increasing the permitted floor area ratio in accordance with N.J.S.A. 40:55D-70d(4). The Board finds that the applicable section of the Ordinance governing the permitted floor area ratio for the Property is Section 122.15.3, the MU-O overlay zone, as reproduced in this Resolution, not Section 132.6. Section 132.6 is a general regulation that is to be applied when floor area ratio requirements are not specified in residential zones, whereas Section 122.15.3 is specific to the MO-U zoning overlay in which the Property is located. The maximum floor area ratio permitted by Section 122.15.3 is 0.5. The Applicant's plans indicate that the maximum floor area ratio proposed on the Property is 0.4. Thus, the Board is satisfied that Applicant's proposal complies with the zoning regulations' maximum floor area ratio requirement.

Finally, the Board rejects the objectors' assertion that the Applicant requires a height variance in accordance with N.J.S.A. 40:55D-70d(6) for buildings 1 and 14 which the objectors claim face the New Jersey Transit railroad tracks and buildings 12, 10, and 8 which the objectors claim face Division Avenue. The Board accepts the Board Planner's testimony and finds that the aforesaid buildings do not face either the New Jersey Transit railroad tracks or Division Avenue. The Board further accepts the Board Planner's well-founded opinion that the side elevations of the buildings are oriented toward those locations but what is intended to be the front façades of the buildings are turned to face internal roadways. The Board additionally notes that the addition of substantial buffering between the aforesaid buildings and the New Jersey railroad tracks and Division Avenue demonstrates that the buildings are intended to "face" the internal roadway system. The Board finds that the aforesaid buildings are permitted to be constructed at a height of 45 feet and to contain three stories because the aforesaid buildings are oriented toward internal roadways, as required by the MU-O overlay zone regulations.

In conclusion, the Board finds that no variances pursuant to N.J.S.A. 40:55D-70d are required by the Applicant's proposal and, therefore, jurisdiction lies with the Board.

5. In evaluating a request for site plan approval, a board considers the development plan provided by the Applicant which is required to be compliant with the zoning and site development standards in the Township's Land Use Ordinance and the Township's requirement for site plan approval and will generally show "(1) the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways, (2) the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and (3) any other information that may be reasonably required in

order to make an informed determination pursuant to an ordinance requiring review and approval of site plans...” N.J.S.A. 40:55D-7. The Board's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms with the zoning ordinance and the applicable provisions of the site plan ordinance. Sartoga v. Borough of West Paterson, 346 N.J. Super 569, 581 (App. Div. 2002) certify. denied, 172 N.J. 357 (2002).

6. With regard to a potential bulk variance requirement, the Board rejects the objectors' planner's assertion that Section 135 of the Ordinance applies to the Applicant's mixed-use development. The pertinent section of that section states, “[n]o new dwelling shall be erected in a housing development consisting of two or more houses if it shall appear from the plans submitted that said house is substantially alike in exterior design or appearance... with any adjacent dwellings situated on the same or opposite sides of the street within 300 feet of the proposed dwelling...”. The Board finds that this provision applies to residential subdivisions or developments which are comprised of either, houses built on single lots or give the appearance of houses built on single lots, and which are developed around “streets”. The Applicant's proposal, rather, is analogous to a townhome or condominium development, a higher density development built on one lot or an assemblage of lots generally developed as one property in uniform fashion. Although the Board does not discourage the introduction of some variety, the Board does not believe that a bulk variance is required from the foregoing Ordinance provision for the Applicant's proposal.
7. With regard to the design standards in Section 152 of the Ordinance and to the Ordinance's site planning requirements, the Board is satisfied that the Applicant has agreed to work with a subcommittee of the Board, as well as the Board professionals, in order to amend the exterior design elements of the proposed residential buildings and to more closely comply with said standards. In addition, the Board is satisfied that the Applicant has agreed to work with the Board's Engineer to lessen the amount of fill that may be necessary to level some of the Property's slopes. The Board, as well as the public, expressed concern about the Applicant's proposal to fill the site to the extent that was initially proposed. The Board finds that the Applicant's willingness to change this aspect of its proposal and its willingness to comply with the conditions imposed in this Resolution lessens the visual impact of the development on the surrounding neighborhood. In other respects, the Board finds that the Applicant's proposal, with the conditions imposed herein, comports with the intent of the Ordinance. The Board further finds that the Applicant's proposal is appropriate to the development of the Property in accordance with the MU-O zoning overlay and complies with the Settlement Agreement. Based upon the foregoing, the Board finds that good cause has been shown to approve the Applicant's request for preliminary and final major site plan approval with the conditions imposed herein.

**WHEREAS**, after deliberation, a motion was made by Mr. Pfeil and seconded by Mr. Malinousky to grant approval of the Relief Requested, subject to certain conditions, as set forth herein.

**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 Planning Board does hereby **GRANT** preliminary and final major site plan approval with the design waiver, as noted above, subject to the following:

1. The Applicant shall comply with Applicant's and Applicant's witness' and professionals' testimony and representations made before the Board and with any conditions and/or restrictions imposed herein.
2. The Applicant shall comply with all requirements of the Township's Ordinances, except as specifically modified by this Resolution.
3. The Applicant shall comply with all statutory requirements in accordance with N.J.S.A. 40:55D-1 et seq. and the Ordinance for bonding and guarantees. The grant of this Application is subject to the posting of site improvement performance bonds, maintenance bonds, the payment of water and sewer connection fees and inspection escrow fees in accordance with law. The Applicant shall further enter into a Developer's Agreement with the Township Committee, to the satisfaction of the Township Attorney.
4. As stipulated and agreed to on the record, the Applicant shall comply with all of the Board Engineer's comments in the report dated December 28, 2020 and the following Board Engineer's comments in the report dated May 29, 2020, last revised September 18, 2020:
  - a. Under "Technical Review Site Plan:"
    - i. Paragraph numbered 1 under "C-1 Cover Sheet";
    - ii. Paragraphs numbered 1 and 2 under "C-2: Existing Conditions Plan";
    - iii. Subparagraphs b, c, and d under Paragraph 2, entitled signage, under "C-4&5 Site Plan";
    - iv. Subparagraph b under Paragraph 2, entitled Sanitary, under "C-8 Utility Plan".
5. As stipulated and agreed to on the record, the Applicant shall comply with the Board Planner's recommendation to develop exterior design alternatives to the proposed architectural drawings for the residential buildings only. The Applicant has agreed to work with a subcommittee of the Board, to be determined by the Board Chairman, to modify the exterior architectural treatment of the residential buildings only of the proposed development as suggested by, but not limited to, the Board Planner in the Planner's report dated December 28, 2020.
6. As stipulated and agreed to on the record, the Applicant, in conjunction with the Board Engineer, shall reduce the amount of proposed fill to the greatest extent possible. However, any reduction in the amount of proposed fill shall not reduce the proposed parking or pedestrian areas and shall not cause the Property to become noncompliant with applicable regulations such as, but not limited to, the Americans with Disabilities Act, RSIS, and others. In addition, this Resolution serves in lieu of approval for a Grading Permit

in accordance with Ordinance Section 14-1.2.g.

7. As stipulated and agreed to on the record, the Applicant shall provide documentation of any imported soil to the Township Engineer. Said requirement shall be included in the Developer Agreement with the Township Committee.
8. As stipulated and agreed to on the record, the Applicant shall provide an air monitoring plan which shall include a plan for air monitoring of the interior of the site and a plan for air monitoring the perimeter of the site during demolition, clearance and construction of the project in accordance with regulations applicable to such plans and shall further ensure that an appropriate expert is present on site to conduct the air monitoring as required. Said requirement shall be included in the Developer Agreement with the Township Committee.
9. As stipulated and agreed to on the record, the Applicant shall submit its environmental remediation plan, air monitoring plans, and any other health and safety plans or reports related to environmental remediation, demolition, or monitoring to the Township and shall further agree not to prevent or to impede any consultant retained by the Township from having access to the site, to the Applicant's LSRP and any other experts retained by Applicant upon written notice to the Applicant from the Township or its experts. Said requirement shall be included in the Developer Agreement with the Township Committee.
10. As stipulated and agreed to on the record, the Applicant shall install a sidewalk on the north side of Stone House Road from Division Avenue to River Road and shall ensure that said sidewalk is constructed in accordance with Ordinance requirements and ADA standards, to the satisfaction of the Board Engineer.
11. As stipulated and agreed to on the record, the Applicant shall comply with Ordinance Section 153.1b with regard to the distribution of tree species, to the satisfaction of the Board Engineer.
12. The Applicant shall ensure that the outdoor lighting installed on the Property is down-facing, dark sky compliant lighting and shall further ensure that the outdoor lighting is dimmed overnight as close to 1 foot candle as practicable, to the satisfaction of the Board Engineer provided the outdoor lighting is sufficient for the safety and security of tenants and residents.
13. The Applicant shall restrict the use of the community building for exclusive use by the residents and their guests. This restriction shall be included in the Applicant's Developer Agreement with the Township Committee.
14. The Applicant shall restrict and designate parking spaces for residents, visitors, and customers of the commercial building. This restriction shall be included in the Applicant's Developer Agreement with the Township Committee.
15. As stipulated and agreed to on the record, the Applicant shall construct additional parking in accordance with its banked parking plan upon the Township Committee's finding, upon




the recommendation of the Township Engineer, that such parking is necessary and warranted. This restriction shall be included in the Applicant's Developer Agreement with the Township Committee.

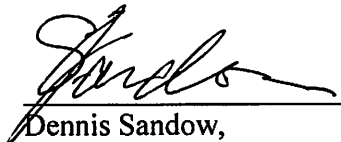
16. As stipulated and agreed to on the record, the Applicant shall submit a proposed trucking route to the Township Engineer and the Chief of Police for review and approval before any demolition or fill importation occurs on the Property.
17. The Applicant shall replenish the escrow within three weeks of the adoption of the Resolution, upon notice from the Planning/Zoning Coordinator of the Township of Long Hill, or designee, if required. The grant of this Application is subject to confirmation of payment of current outstanding real property taxes and all professional and escrow fees and supplementation of the escrow account, as needed. No building permit shall issue without the Applicant having paid all outstanding balances for any taxes, professional or escrow fees or other charges related to the Property and the Property's development in accordance with this Resolution.
18. The grant of this Application shall not be construed to reduce, modify or eliminate any applicable County, State or Federal law, requirement, rule, regulation, directive, or resolution including, but not limited to, those enacted, issued, or determined by the Morris County Planning Board, the New Jersey Department of Community Affairs, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the United States Environmental Protection Agency and any other governmental agency or department exercising third party jurisdiction over the Property.
19. 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.
20. 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. The Applicant shall secure the approval and permits of all other agencies having jurisdiction over the proposed development, as specified but not limited to those approvals in the Board Engineer's report dated December 28, 2020.
21. 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 or received by the Applicant.

**BE IT FURTHER RESOLVED**, that this Resolution, adopted on February 23, 2021, memorializes the action of the Planning Board taken on December 29, 2020 with the following

vote: Yes: Mr. Hands, Mayor Rae, Committeeman Verlezza, Mr. Pfeil, Mr. Falvey, Mr. Malinousky, Mr. Sandow; No: Mr. Jones; Recused: Mr. Richardson; Not Eligible: None; Absent: None.

ATTEST:

  
\_\_\_\_\_  
Debra Coonce,  
Board Secretary

  
\_\_\_\_\_  
Dennis Sandow,  
Chairman

ROLL CALL VOTE TO APPROVE RESOLUTION OF MEMORIALIZATION  
February 23, 2021


Moved By: Mr. Pfeil

Seconded By: Deputy Mayor Rae

Those in favor: Mr. Hands, Mayor Rae, Committeeman Verlezza, Mr. Pfeil, Mr. Falvey, Mr. Malinousky, Mr. Sandow

Those opposed: None

I hereby certify this to be a true copy of the Resolution adopted on February 23, 2021.

  
\_\_\_\_\_  
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 25 day of February, 2021 in said newspaper.

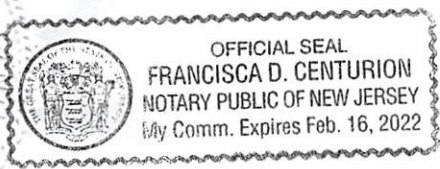
Debra Coonce

Sworn and subscribed before me this

25<sup>th</sup> day of FEBRUARY, 2021

Francisca D. Centurion

Notary Public of New Jersey



**Long Hill Township**  
 Public Notice  
 NOTICE OF DECISION OF THE township of LONG HILL  
 planning board

Public notice is hereby given that the following action was taken by the Township of Long Hill Planning Board at its meeting on February 23, 2021:

**Resolution of Approval Memorialized  
 Major Preliminary & Final Site Plan**  
 Blocks 12301 / 10100 Lots 1 / 7.01 / Zone MU-O  
 50 Division Avenue  
 Application No. 19-13P  
 Prism Millington, LLC

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  
 Planning & Zoning Coordinator  
 Township of Long Hill

P.F.\$26.01 02/25/21