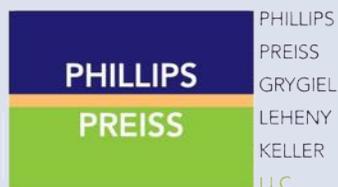




# Long Hill Township Housing Element & Fair Share Plan

**JUNE 24, 2025**

**Prepared by:**



Planning & Real Estate Consultants



**J Caldwell  
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**PART 1**  
**HOUSING ELEMENT**  
**TOWNSHIP OF LONG HILL**  
**MORRIS COUNTY, NEW JERSEY**

**Prepared for:**

Planning Board  
Township of Long Hill  
915 Valley Road  
Gillette, New Jersey 07933

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June 24, 2025

The original copy of this document was signed and sealed  
in accordance with N.J.S.A. 45:14 A-1 et seq.



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**PART 2**  
**FAIR SHARE PLAN**  
**TOWNSHIP OF LONG HILL**  
**MORRIS COUNTY, NEW JERSEY**

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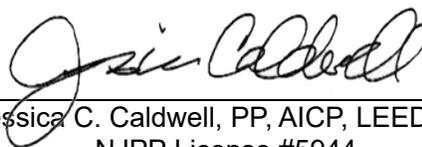
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The original copy of this document was signed and sealed  
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## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

## I. Introduction

This Housing Element of the Township of Long Hill Master Plan has been prepared on behalf of the Township of Long Hill, Morris County, New Jersey in accordance with the New Jersey Municipal Land Use Law (“MLUL”) per N.J.S.A. 40:55D-28b(3) and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq. including 2024 amendments).

The MLUL requires that a municipality’s master plan include a Housing Element in order for the municipality to exercise the power to zone and regulate land use. The Housing Element is adopted by the Township Planning Board and endorsed by the governing body. It is intended to achieve the goal of meeting the Township’s obligation to plan and regulate land use to provide for a fair share of the regional need for affordable housing.

The intention of this Housing Element (Part 1) is to address the statutory requirements of the MLUL as noted above. Chapter II provides an overview of affordable housing statutes in New Jersey and Long Hill’s past compliance with same. Chapter III lists the statutorily required information included in a Housing Element. Chapter IV provides a detailed analysis of those statutory requirements.

A Fair Share Plan (Part 2) is a plan, along with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the Housing Element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations. In tandem with this document, the Fair Share Plan is intended to address all of the requirements required by the Amended Fair Housing Act.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

**II. Affordable Housing in New Jersey and Long Hill****Mount Laurel I and Mount Laurel II**

In 1975, the Supreme Court of New Jersey in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), ruled that the developing municipalities in the State of New Jersey exercising their zoning power, in general, had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low- and moderate-income housing needs. In 1983, the Supreme Court refined that constitutional obligation in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

**Fair Housing Act (1985) and COAH Rounds One and Two**

In 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act ("FHA"), N.J.S.A. 52:2D-301 et seq., which transformed the judicial doctrine that became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation. The FHA created an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it. COAH proceeded to adopt regulations for First Round obligations applicable from 1987 to 1993 and Second Round obligations that created a cumulative obligation from 1987 to 1999.

**COAH Round Three**

COAH first proposed Third Round Substantive and Procedural Rules in October 2003; 35 N.J.R. 4636(a); 35 N.J.R. 4700(a). Those rules remained un-adopted and COAH re-proposed both the Substantive and Procedural Third Round Rules (N.J.A.C. 5:94 and 5:95) in August of 2004 and adopted the same effective on December 20, 2004 (the "2004 Regulations"). The 2004 Regulations were challenged and on January 25, 2007, the Appellate Division invalidated various aspects of those regulations and remanded considerable portions of the rules to COAH with direction to adopt revised rules In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div.), certif. denied, 192 N.J. 72 (2007) (the "2007 Case"). On January 22, 2008, COAH proposed and published revised Third Round regulations in the New Jersey Register. 40 N.J.R. 237.

On May 6, 2008, COAH adopted the revised Third Round regulations and advised that the new regulations would be published in the June 2, 2008 *New Jersey Register*, thereby becoming effective. On May 6, 2008, COAH simultaneously proposed amendments to the revised Third Round rules it had just adopted. Those amendments were published in the June 16, 2008 *New Jersey Register*, 40 N.J.R. 3373 (Procedural N.J.A.C. 5:96); 40 N.J.R. 3374 (Substantive N.J.A.C. 5:97). The amendments were adopted on September 22, 2008 and made effective on October 20, 2008.

N.J.A.C. 5:96 and 5:97 as adopted in 2008 were challenged in an appeal entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010) (the "2010 Case"). In its October 8, 2010 decision, the Appellate Division determined, among other things, that the growth share methodology was invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the First and

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

Second rounds (i.e., 1987-1999). On September 26, 2013, the Supreme Court of New Jersey affirmed the Appellate Division’s invalidation of the third iteration of the Third Round regulations, sustained their determination that the growth share methodology was invalid, and directed COAH to adopt new regulations based upon the methodology utilized in the First and Second Rounds. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013) (the “2013 Case”). COAH proceeded to propose such regulations in accordance with the schedule and amended schedule established by the New Jersey Supreme Court in the 2013 Case. On October 20, 2014, COAH deadlocked with a 3-3 vote and failed to adopt the revised Third Round regulations.

Due to COAH’s failure to adopt the revised regulations and subsequent inaction, Fair Share Housing Center (“FSHC”), a party in the 2010 Case and the 2013 Case, filed a motion with the New Jersey Supreme Court to enforce litigant’s rights. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC’s motion to enforce litigant’s rights. The Supreme Court in the 2015 Case found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. (2015) (the “2015 Case”). In doing so, the Supreme Court established a transitional process for municipalities to file a declaratory judgement action with the trial courts seeking to declare their HEFSPs as being constitutionally compliant and seeking protection and repose against exclusionary zoning litigation.

#### Long Hill’s Third Round Settlement with Fair Share Housing Center

The Township of Long Hill filed a petition for declaratory judgment on July 6, 2015, seeking a declaration of compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015), and also petitioned the court for temporary immunity from builder’s remedy lawsuits. The Township reached a settlement agreement (the “Settlement Agreement”) on September 14, 2017, with Fair Share Housing Center (“FSHC”), a Supreme Court-designated interested party in the matter in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Per the Settlement Agreement, the Township had a Third Round (i.e., 1999-2025) affordable housing obligation of 220 units.

However, due to Long Hill’s Township-wide voluntary sewer ban implemented in 2000, any new development was subject to the limited capacity for sewer. This had implications on housing development as multifamily housing could not be constructed until additional sewer capacity was added to the system. The lack of sewer capacity enabled the Township to defer a portion of its affordable housing obligations until such time as increased sewer capacity becomes available. As such, the Court granted the Township an adjustment of 163 units of its Third Round obligation until such time as the Township’s sewer capacity issues could be resolved and the sewer ban lifted. In return for the adjustment, the Township agreed to reserve and set aside new sewer capacity, when available, for low and moderate-income housing on a priority basis.

On April 10, 2018, the Township adopted a Housing Element and Fair Share Plan (“HEFSP”). The HEFSP details that the Township was able to use several existing projects to address 98 units of its 220 overall obligation and agreed to provide overlay zones on several sites. The Township Committee subsequently created the following zones:

**R-MF-4 Multifamily Residential Zone.** This zone applies to one lot in the Township, i.e., Block 10801, Lot 3 (617-621 Valley Road in Gillette) located on the south side of Valley

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

Road to the east of Mountain Avenue. This site is referred to as “Gillette Office” in the Settlement Agreement with FSHC. In 2020 by Ordinance No. 460-20, the Township Committee rezoned the site from the “O Office Zone” to the “R-MF 4 - Multi Family Residential Zone 4.” The purpose of the R-MF-4 Zone District is to permit multi-family apartment housing with an affordable housing set aside of 15 percent for rental units and 20 percent for ownership units. Permitted uses include inclusionary multifamily residential developments at a density of 12 units per acre. The minimum lot size is 5 acres in size, the maximum building height is 3 stories/50 feet for pitched roof buildings, and 3 stories/45 feet for non-pitched roof buildings. The floor area ratio is 0.50 and the required parking ratio is 1.5 space per unit. In 2022, the Planning Board granted approval to construct a 62-unit multi-family residential project to be known as Gillette Crossings.

- **MU-O Mixed-Use Overlay Zone.** This overlay zone applies to two tax lots in the Township, i.e., Block 10100, Lot 7.01 and Block 12301, Lot 1 (50 Division Avenue in Millington) located at the corner lot on the north side of Stonehouse Road and the west side of Division Avenue extending north to the NJ Transit railroad right-of-way. This site is referred to in the Settlement Agreement as the “TIFA site,” which was formerly used for the manufacturing and processing of asbestos containing materials. The underlying zoning for the lots is LI-2 Limited Industrial Zone. In 2018, by Ordinance No. 413-18, the Township placed the MU-O Overlay Zone on the site to allow for a realistic opportunity for the construction of very low-, low- and moderate-income housing. Permitted uses include up to 10,000 square feet of commercial uses consisting of retail, personal services, restaurants, and offices facing Division Avenue and the NJ Transit station, and inclusionary multifamily residential developments at a density of 12 units per acre. The minimum lot size is 11 acres in size, the maximum building height is 2.5 stories/35 feet. The floor area ratio is 0.50. Pursuant to the MU-O zoning, in 2021, the Planning Board granted approval to demolish the extant buildings onsite and develop fourteen 10-unit multifamily residences (a total of 140 units, 21 of which will be affordable), community building, and a 4,992 square foot retail building.
- **RAHO Redevelopment Affordable Housing Overlay Zone.** This overlay zone applies to seven tax lots in the Township, i.e., Block 10401, Lots 1-4, and Block 11514, Lots 6, 31-32, in Stirling located on Valley Road east of Main Avenue. This site is referred to in the Settlement Agreement with FSHC as the “Valley Road Redevelopment Area” as it is a designated “area in need of redevelopment” pursuant to New Jersey’s Local Housing and Redevelopment Law. The purpose of the RAHO Zone is to permit multi-family apartment housing with an affordable housing set aside of 15 percent for rental units and 20 percent for ownership units. Permitted uses include multifamily residential developments at a density of 15 units per acre. The RAHO Redevelopment Zone was adopted; however, the New Jersey Department of Environmental Protection (“NJDEP”) would not issue residential development permits due to the location in the Flood Hazard Area. As a result, the R-MF-5 Zone was adopted to replace the affordable units proposed in this redevelopment area.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

- R-MF-5 Multifamily Residential Zone 5 Zone.** This zone applies to one lot in the Township, i.e., Block 11001, Lot 22 (488-490 Valley Road in Gillette) located on the north side of Valley Road to the east of Mountain Avenue. In 2020, it was rezoned from the R-4 Residence Zone. The purpose of the R-MF-5 Zone District is to permit multi-family apartment housing with an affordable housing set aside of 15 percent for rental units and 20 percent for ownership units. Permitted uses include inclusionary multifamily residential developments of up to 100 dwelling units. This zone is intended to replace the affordable units originally expected to be situated in the Valley Road Redevelopment Area (i.e., the RAHO zone described above) that have since been determined not to be feasible due to environmental constraints.
- R-MF-4-O Multifamily Residential Overlay Zone.** This overlay zone applies to five tax lots in the Township, i.e., Block 11501, Lots 1 and 4, and Block 11502, Lots 1, 2, and 14, in Stirling located on the east side of Warren Avenue north of Valley Road between the PSEG right-of-way and Morris Street. This site is referred to as “Warren Avenue” in the Settlement Agreement with Fair Share Housing Center. The underlying zoning is LI-2 Limited Industrial Zone. The purpose of the R-MF-4-0 Multifamily Residential Overlay Zone is to permit multi-family apartment housing with an affordable housing set aside of 15 percent for rental units and 20 percent for ownership units. Permitted uses include multifamily residential developments at a density of 12 units per acre. The minimum lot size in the overlay zone is 7 acres which will require the acquisition and consolidation of all the separate lots in this overlay zone, as well as bisecting paper streets.

Since 2020, the Planning Board has granted site plan approval to two inclusionary sites intended to address the Township’s affordable housing obligation including the “Tifa site” and the “Gillette Office” site.

The **Tifa Site (MU-O Mixed-Use Overlay Zone)**: In a resolution memorialized in 2021, the Planning Board granted Preliminary and Final Major Site Plan approval to Prism Millington, LLC to demolish the extant buildings onsite and develop fourteen 10-unit multifamily residences, an 1,800 square foot community building with adjacent swimming pool, a 4,992 square foot retail building, and site improvements including off-street parking areas and landscaping. Of the 140 residential units, 15 percent or 21 units will be reserved as affordable housing units.

The **Gillette Office (R-MF-4 Multifamily Residential Zone)**: In 2022, the Planning Board granted Preliminary and Final Major Site Plan approval to Elite Properties at Long Hill, LLC to construct a multi-family residential property and related improvements to be known as “Gillette Crossings.” The residential building will consist of 62 units, nine of which are proposed to be reserved for affordable housing.

However, as any new development was subject to the sewer ban inclusionary development cannot be built until additional sewer capacity could be added to the system. That said, in 2020, New Jersey American Water (“NJAW”) purchased Long Hill Township’s wastewater system. Under the terms of the sale, NJAWC is obligated to make improvements by October 2025 so that the sewer ban can be lifted.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

**Amended Fair Housing Act (2024) and Fourth Round (2025-2035)**

On March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter “Amended FHA” or “Act”). The Amended FHA requires the New Jersey Department of Community Affairs (“DCA”) to provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024 based upon the criteria of the Amended FHA. DCA issued a report on October 18, 2024 (the “DCA Report”) wherein it reported its nonbinding estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Amended FHA. The DCA Report calculated Long Hill’s Fourth Round (2025-2035) fair share obligation as follows:

- A Present Need (Rehabilitation) Obligation of 0; and
- A Prospective Need (New Construction) Obligation of 102 units.

Per the Amended FHA, municipalities were able to either accept the DCA determination of their obligation, or to provide their own municipal determination of their Fourth Round obligation. The Long Hill Township Committee adopted a binding resolution on January 22, 2025 accepting the numbers stated in the DCA Report.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

### III. Housing Element/ Fair Share Plan Requirements

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.), a municipal Master Plan must include a housing element as the foundation for the municipal zoning ordinance. Pursuant to the Fair Housing Act, a municipality's housing element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. The housing element must contain at least the following, as per the FHA at N.J.S.A. 52:27D-310:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development of lands;
- An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low- and moderate-income housing; and
- A consideration of the lands most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing; and
- An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, pursuant to N.J.S.A. 52:27D-329.20f.(1); and
- An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

## IV. Housing Stock and Demographic Analysis

### Housing Stock Inventory

In 2023, there were 3,038 housing units in Long Hill, of which 36, or approximately 1 percent, were vacant. Of the 3,002 occupied units, close to 87 percent were owner-occupied and 13 percent were renter-occupied. Table 1, Housing Units by Occupancy Status, 2023, illustrates this occupancy status.

*Table 1. Housing Units by Occupancy Status, 2023*

	<b>Housing Units</b>	<b>Owner Occupied</b>	<b>Renter Occupied</b>
Occupied	3,002	2,605	397
Vacant	36	-	-
<b>Total</b>	<b>3,038</b>	<b>-</b>	<b>-</b>

*Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)*

Approximately 83 percent of the total housing stock is comprised of single-family detached units. Structures with three or more units make up 2 percent of the total housing stock. See Table 2, Housing Units by Number of Units in Structure, 2023, for a detailed explanation of the housing units.

*Table 2. Housing Units by Number of Units in Structure, 2023*

<b>Number of Units</b>	<b>Total</b>	<b>Percent</b>
1, Detached	2,534	83.4%
1, Attached	250	8.2%
2	177	5.8%
3 or 4	9	0.3%
5 to 9	0	0%
10 to 19	20	0.7%
20+	40	1.3%
Mobile Home	8	0.3%
Other	0	0%
<b>Total</b>	<b>3,038</b>	<b>100%</b>

*Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)*

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

*Table 3. Housing Units by Age, 2023*

<b>Year Built</b>	<b>Total Units</b>	<b>Percent</b>
2020 or later	5	0.2%
2010 to 2019	40	1.3%
2000 to 2009	125	4.1%
1990 to 1999	297	9.8%
1980 to 1989	464	15.3%
1970 to 1979	375	12.3%
1960 to 1969	500	16.5%
1950 to 1959	383	12.6%
1940 to 1949	196	6.5%
Before 1940	653	21.5%
<b>Total</b>	<b>3,038</b>	<b>100%</b>

Source: American Community Survey, 2019-2023  
(Table DP04 Selected Housing Characteristics)

Table 3, Housing Units by Age, 2023, illustrates the age of the Township's housing stock. Approximately 22 percent of the Township's housing units were constructed prior to 1940, whereas only 6 percent were constructed in 2000 or later. A significant portion of the Township's housing units (i.e., 57 percent of the Township's housing stock) were constructed between 1950 and 1989.

Table 4, Housing Units by Number of Rooms for Long Hill and Morris County, 2023, shows that in Long Hill, approximately 1 percent of the housing units have between one and three rooms; 24 percent have between four and six rooms; and nearly 75 percent have seven or more rooms. In Morris County, just under 13 percent of housing units have between one and three rooms; close to 36 percent have between four and six rooms; and almost 52 percent have seven or more rooms. The median number of rooms per unit in Long Hill is 7.8, which indicates that the housing stock in the Township is, on average, larger in size than that of Morris County (i.e., 6.6 rooms per unit).

*Table 4. Housing Units by Number of Rooms for Long Hill and Morris County, 2023*

<b>Rooms</b>	<b>Number of Units in Long Hill</b>	<b>Percent of Units in Long Hill</b>	<b>Number of Units in Morris County</b>	<b>Percent of Units in Morris County</b>
1	0	0%	3,231	1.6%
2	0	0%	4,927	2.5%
3	32	1.1%	17,467	8.8%
4	107	3.5%	23,012	11.6%
5	174	5.7%	22,577	11.4%
6	451	14.8%	24,978	12.6%
7	522	17.2%	26,090	13.1%
8	791	26.0%	27,717	14.0%
9+	961	31.6%	48,612	24.5%
<b>Total</b>	<b>3,038</b>	<b>100%</b>	<b>198,611</b>	<b>100%</b>
<b>Median Rooms</b>	<b>7.8</b>		<b>6.6</b>	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

Tables 5 and 6, Housing Values, Owner Occupied, 2013 and 2023, respectively, show that the median housing value of owner-occupied housing in Long Hill increased by almost 42 percent between 2013 and 2023. During this same time period, the median value in Morris County increased by almost 29 percent. In 2013, Long Hill's median housing value of \$477,700 was close to 10 percent higher than that of Morris County (\$432,400). In 2023, Long Hill's median housing value of owner-occupied units (\$679,300) was almost 20 percent higher than that of Morris County (\$557,000).

*Table 5. Housing Values, Owner Occupied, 2013*

Housing Value	Number in Long Hill	Percent in Long Hill	Number in Morris County	Percent in Morris County
Less than \$50,000	33	1.3%	2,083	1.5%
\$50,000 to \$99,999	12	0.5%	1,406	1.0%
\$100,000 to \$149,999	0	0%	1,311	1.0%
\$150,000 to \$199,999	13	0.5%	3,346	2.5%
\$200,000 to \$299,999	158	6.3%	18,812	13.8%
\$300,000 to \$499,999	1,190	47.4%	58,230	42.7%
\$500,000 to \$999,999	1,030	41.0%	43,837	32.2%
\$1,000,000 or more	76	3.0%	7,271	5.3%
<b>Total</b>	<b>2,512</b>	<b>100%</b>	<b>136,296</b>	<b>100%</b>
<b>2013 Median Value</b>	<b>\$477,700</b>		<b>\$432,400</b>	

Source: American Community Survey, 2009-2013 (Table DP04 Selected Housing Characteristics)

*Table 6. Housing Values, Owner Occupied, 2023*

Housing Value	Number in Long Hill	Percent in Long Hill	Number in Morris County	Percent in Morris County
Less than \$50,000	0	0%	1,404	1.0%
\$50,000 to \$99,999	7	0.3%	1,480	1.0%
\$100,000 to \$149,999	0	0%	878	0.6%
\$150,000 to \$199,999	0	0%	1,472	1.0%
\$200,000 to \$299,999	0	0%	9,969	7.0%
\$300,000 to \$499,999	366	14%	44,816	31.6%
\$500,000 to \$999,999	1,970	75.6%	67,465	47.6%
\$1,000,000 or more	262	10.1%	14,287	10.1%
<b>Total</b>	<b>2,605</b>	<b>100%</b>	<b>141,771</b>	<b>100%</b>
<b>2023 Median Value</b>	<b>\$679,300</b>		<b>\$557,000</b>	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

Median gross rent in Long Hill (\$1,862) is very similar to that of the median gross rent County-wide (\$1,860). The majority of renter-occupied housing units in Long Hill spent between \$1,500 - \$1,999 a month on rent (i.e., close to 41 percent), and almost 30 percent of Morris County units spent the same amount on rent. A significant portion of Long Hill rental units also spent \$3,000 or more on rent (i.e., 29 percent). Morris County's rental expenses were somewhat more distributed, with 20 percent of units spending between \$1,000 - \$1,499 on rent and close to 18 percent of units spending \$2,000 - \$2,499 on rent. See Table 7, Comparison of Long Hill and Morris County Gross Rent - Renter Occupied Housing Units, 2023, for additional details.

*Table 7. Comparison of Long Hill and Morris County Gross Rent – Renter Occupied Housing Units, 2023*

Gross Rent	Number in Long Hill	Percent in Long Hill	Number in Morris County	Percent in Morris County
No Rent Paid	41	-	1,629	-
Less than \$500	0	0%	2,209	4.6%
\$500 - \$999	54	15.2%	1,930	4.0%
\$1,000 - \$1,499	19	5.3%	9,666	20.0%
\$1,500 - \$1,999	145	40.7%	14,466	29.9%
\$2,000 - \$2,499	6	1.7%	8,520	17.6%
\$2,500 - \$2,999	28	7.9%	5,679	11.7%
\$3,000 or more	104	29.2%	5,970	12.3%
<b>Total</b>	<b>356</b>	<b>100%</b>	<b>48,440</b>	<b>100%</b>
<b>Median Rent</b>	<b>\$1,862</b>		<b>\$1,860</b>	

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

In 2023, 25 percent of Long Hill owner-occupied households contributed 30 percent or more of their income towards monthly housing costs, whereas almost 52 percent contributed less than 20 percent of their income towards monthly housing costs. A sizeable portion of owner-occupied households also contributed between 20 to 29 percent of their income toward monthly housing costs (i.e., close to 23 percent). See Table 8, Monthly Housing Costs as a Percentage of Household Income in the Past 12 Months – Owner Occupied Housing Units, 2023, for further information.

*Table 8. Monthly Housing Costs as Percentage of Household Income in the Past 12 Months – Owner Occupied Housing Units, 2023*

	Less than 20 percent	20 to 29 percent	30 percent or more
Less than \$20,000	0%	0%	4.6%
\$20,000 - \$34,999	0%	0%	3.0%
\$35,000 - \$49,999	0%	0%	3.0%
\$50,000 - \$74,999	0.3%	1.0%	3.5%
\$75,000 or more	51.5%	21.9%	11.1%
<b>Total</b>	<b>51.8%</b>	<b>22.9%</b>	<b>25.2%</b>
<b>Zero or Negative Income</b>	<b>0%</b>		

Source: American Community Survey, 2019-2023 (Table S2503 Financial Characteristics)

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

In 2023, almost 44 percent of Long Hill renter occupied housing units contributed more than 30 percent of their income towards monthly rental costs, and 28 percent of units contributed less than 20 percent of their income toward monthly rental costs. A substantial portion of renter occupied units contributed between 20 to 29 percent of their income toward monthly rental costs (i.e., close to 18 percent) and 10 percent contributed no cash rent. See Table 9, Monthly Housing Costs as a Percentage of Household Income in the Past 12 Months – Renter Occupied Housing Units, 2023, for further information.

*Table 9. Monthly Housing Costs as a Percentage of Household Income in the Past 12 Months – Renter Occupied Housing Units, 2023*

	<b>Less than 20 percent</b>	<b>20 to 29 percent</b>	<b>30 percent or more</b>
Less than \$20,000	0%	0%	0%
\$20,000 - \$34,999	0%	0%	8.6%
\$35,000 - \$49,999	0%	5.0%	17.4%
\$50,000 - \$74,999	0%	2.3%	15.1%
\$75,000 or more	28.2%	10.3%	2.8%
<b>Total</b>	28.2%	17.6%	43.9%
<b>Zero or Negative Income</b>	0%		
<b>No Cash Rent</b>	10.3%		

Source: American Community Survey, 2019-2023 (Table S2503 Financial Characteristics)

There are no housing units in Long Hill that are overcrowded (defined as having 1.01 or more persons per room). 25 housing units lack complete plumbing facilities, 8 lack complete kitchen facilities, and 8 have no telephone service available. See Table 10, Selected Quality Indicators, Occupied Housing Stock, 2023, for further information.

*Table 10. Selected Quality Indicators, Occupied Housing Stock, 2023*

	<b>Overcrowded</b>	<b>No Telephone Service Available</b>	<b>Lacking Complete Plumbing Facilities</b>	<b>Lacking Complete Kitchen Facilities</b>
<b>No. Units</b>	0	8	25	8

Source: American Community Survey, 2019-2023 (Table DP04 Selected Housing Characteristics)

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

## General Population Characteristics

The Township of Long Hill total population increased overall between 1990 and 2020 by approximately 10 percent. The population grew by approximately 12 percent between 1990 and 2000, and has since remained relatively stable, although exhibiting very slight decreases in population between 2000 and 2020. In comparison, the County population has steadily increased since 1990, albeit at a decreasing rate. See Table 11, Population, 1990-2020, for more information.

Table 11. Population, 1990-2020

	1990	2000	Percent Change (1990-2000)	2010	Percent Change (2000-2010)	2020	Percent Change (2010-2020)
<b>Long Hill</b>	7,826	8,777	12.2%	8,702	-0.9%	8,629	-0.8%
<b>Morris County</b>	421,353	470,212	11.6%	492,276	4.7%	509,285	3.5%

Source: 1990, 2000, 2010, & 2020 U.S. Census

From 2010 through 2020, there were shifts in the age distribution of Long Hill. The age group of 5 through 14 decreased from 1,339 persons to 1,060 persons (i.e., almost 21 percent). The age group of 25 through 34 increased from 577 to 733 (i.e., 27 percent). The population group age 65 through 74 also increased from 680 persons to 877 persons (i.e. 29 percent). The largest total population increase occurred for the age group 55 through 64, which increased by 337 persons or 29 percent. The largest total population decrease occurred for the age group 45 through 54, which decreased by 522 persons or approximately 30 percent. The median age of the Township generally remained the same, with a slight increase from 43.9 to 44.4. See Table 12, Comparison of Age Distribution, 2010-2020, for additional details.

Table 12. Comparison of Age Distribution, 2010-2020

Age Group	2010	Percent	2020	Percent	Percent Change
Under 5	453	5.2%	464	5.4%	2.4%
5-14	1,339	15.4%	1,060	12.3%	-20.8%
15-24	972	11.2%	1,058	12.3%	8.8%
25-34	577	6.6%	733	8.5%	27.0%
35-44	1,188	13.7%	1,072	12.4%	-9.8%
45-54	1,747	20.1%	1,225	14.2%	-29.9%
55-64	1,146	13.2%	1,483	17.2%	29.4%
65-74	680	7.8%	877	10.2%	29.0%
75+	600	6.9%	657	7.6%	9.5%
<b>Total</b>	8,702	100.0%	8,629	100.0%	-
<b>Median Age</b>	43.9		44.4		-

Source: 2010 and 2020 U.S. Census (2020 - Table DP1 Profile of General Population and Housing Characteristics)

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

## Household Characteristics

A household is defined by the U.S. Census Bureau as those persons who occupy a single room or group of rooms constituting a housing unit; however, these persons may or may not be related. As a subset of households, a family is identified as a group of persons including a householder and one or more persons related by blood, marriage or adoption all living in the same household. In 2023, there were 3,002 households in Long Hill, of which 2,370 were family households and 632 were nonfamily households. Approximately 72 percent of the households are comprised of married couples with or without children. The average household size was 2.85 and the average family size was 3.17. (Source: ACS 2019-2023, Table S1101 & S2501).

## Income Characteristics

Households in Long Hill have notably higher median income than households county-wide. Notably, the majority of Long Hill households have incomes of \$150,000 or more (i.e. nearly 58 percent), whereas only 45 percent of Morris County households have the same income level. Table 13, Household Income in the Past 12 Months for Long Hill and Morris County Households, 2023, further illustrates these findings by noting the number of households in each of the income categories.

*Table 13. Household Income in the Past 12 Months for Long Hill and Morris County Households, 2023*

	Long Hill		Morris County	
	Households	Percent	Households	Percent
Less than \$5,000	25	0.8%	3,659	1.9%
\$5,000 to \$9,999	8	0.3%	1,630	0.8%
\$10,000 to \$14,999	74	2.5%	2,711	1.4%
\$15,000 to \$19,999	13	0.4%	2,423	1.3%
\$20,000 to \$24,999	85	2.8%	2,975	1.6%
\$25,000 to \$34,999	27	0.9%	7,383	3.8%
\$35,000 to \$49,999	168	5.6%	10,491	5.5%
\$50,000 to \$74,999	195	6.5%	19,409	10.1%
\$75,000 to \$99,999	202	6.7%	19,283	10.1%
\$100,000 to \$149,999	477	15.9%	35,184	18.3%
\$150,000 or more	1,728	57.6%	86,692	45.2%
<b>Total</b>	<b>3,002</b>	<b>100%</b>	<b>191,840</b>	<b>100%</b>
<b>Median Income</b>	<b>\$165,112</b>		<b>\$134,929</b>	

Source: American Community Survey, 2019-2023 (Table S2503 Financial Characteristics)

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Although the Census data does not provide a breakdown of household income by household size, the 2024 Median Regional Income Limit for Essex/Morris/Sussex/Union County (Region 2) for a household of one person was \$90,591.<sup>1</sup> As such, the moderate-income threshold for a household of one person was \$72,473 (i.e., 80 percent of \$90,591). In attempting to approximate the number of low- and moderate-income households in the Township, using the household size of one person is a conservative approach that represents just a minimum threshold. Table 13 above shows that the percentage of households in the Township for which income was below this minimum threshold is approximately 20 percent.

The percentage of persons and households below the poverty level, as defined by the 2023 American Community Survey, equates to just over 5 percent of all Long Hill Residents. This is reflective of the County as a whole, wherein 5 percent of County residents were also living below the poverty level in 2023. (Source: ACS 2019-2023, Table S1701).

### Employment Characteristics

Table 14, Employment Status of Long Hill Residents 16 Years and Over, 2023 indicates the number of Township residents 16 years and over who are in the labor force, the type of labor force (i.e., civilian or armed forces) and employment status. Approximately 69 percent of Long Hill residents that are 16 and over are in the labor force and among those in the labor force, all are in the civilian labor force. Of the residents in the civilian labor force, approximately 94 percent are employed and approximately 6 percent are unemployed.

*Table 14. Employment Status of Long Hill Residents 16 Years and Over, 2023*

	<b>Number</b>	<b>Percentage</b>
Population 16 years and over	7,013	-
In Labor Force	4,826	68.8%
Civilian Labor Force	4,826	68.8%
Employed	4,520	64.5%
Unemployed	306	4.4%
Armed Forces	0	0.0%
Not in Labor Force	2,187	31.2%

*Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)*

Table 15, Occupation of Civilian Employed Population 16 Years and Over, Long Hill, 2023, identifies the occupations of the employed civilian labor force. While Long Hill residents work in a variety of industries, 57 percent of employed residents work in Management, Business, Science,

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<sup>1</sup> Data from Affordable Housing Professionals of New Jersey (AHPNJ). Income limits are not officially adopted by the State of New Jersey.

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and Arts-related occupations; close to 24 percent are employed in Sales and Office-related occupations; and 12 percent work in Service-related occupations.

*Table 15. Occupation of Civilian Employed Population 16 Years and Over, Long Hill, 2023*

<b>Sector Jobs</b>	<b>Number</b>	<b>Percentage</b>
Management, Business, Science, and Arts Occupations	2,592	57.3%
Service	557	12.3%
Sales and Office	1,061	23.5%
Natural Resources, Construction, and Maintenance	119	2.6%
Production, Transportation, and Material Moving	191	4.2%
<b>Total</b>	<b>4,520</b>	<b>100%</b>

*Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)*

Table 16, Employment by Industry, Civilian Employed Population 16 Years and Over, Long Hill, 2023, shows the distribution of employment by industry for employed Long Hill residents. The three industries to capture the largest segments of the population were the Educational, Health and Social Services sector at 18 percent; the Professional, Scientific, Management, Administrative, and Waste Management Services sector at 16 percent; and the Retail Trade sector at 12 percent. The Financing, Insurance, Real Estate, Renting, and Leasing and the Arts, Entertainment, Recreation, Accommodation and Food Services sectors also represented a notable share of employment within Long Hill, at 11 percent and 10 percent respectively.

*Table 16. Employment by Industry, Civilian Employed Population 16 Years and Over, Long Hill, 2023*

<b>Sector Jobs</b>	<b>Number</b>	<b>Percent</b>
Agriculture, Forestry, Fishing and Hunting, and Mining	0	0.0%
Construction	235	5.2%
Manufacturing	316	7.0%
Wholesale Trade	130	2.9%
Retail Trade	543	12.0%
Transportation and Warehousing, and Utilities	86	1.9%
Information	193	4.3%
Financing, Insurance, Real Estate, Renting, and Leasing	510	11.3%
Professional, Scientific, Management, Administrative, and Waste Management Services	732	16.2%
Educational, Health and Social Services	821	18.2%
Arts, Entertainment, Recreation, Accommodation and Food Services	456	10.1%
Public Administration	245	5.4%
Other	253	5.6%
<b>Total</b>	<b>4,520</b>	<b>100%</b>

*Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)*

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Of employed Township residents, approximately 82 percent are private wage and salary workers; close to 12 percent are government workers; and nearly 6 percent are self-employed. See Table 17, Class of Worker, Civilian Employed Population 16 Years and Over, Long Hill, 2023, for additional details.

*Table 17. Class of Worker, Civilian Employed Population 16 Years and Over, Long Hill, 2023*

	<b>Number</b>	<b>Percentage</b>
Private Wage and Salary Workers	3,714	82.2%
Government Workers	556	12.3%
Self-employed in own not incorporated business workers	250	5.5%
Unpaid family workers	0	0.0%
<b>Total</b>	<b>4,520</b>	<b>100%</b>

*Source: American Community Survey, 2019-2023 (Table DP03 Selected Economic Characteristics)*

According to the US Census' Longitudinal Employer-Household Dynamics data, there were 2,853 total jobs in Long Hill in 2022. The three largest sectors of in-town employment in 2022 were Retail Trade, Educational Services, and Accommodation and Food Services, contributing approximately 31 percent, 14 percent, and 12 percent respectively. The total employment in Long Hill declined overall between 2012 and 2022, from a total of 2,991 in 2012 to 2,853 jobs in 2022. The industry which gained the most total jobs between 2012 and 2022 was the Retail Trade sector by 225 jobs (i.e., approximately 35 percent increase). The industry which lost the most total jobs between 2012 and 2022 was the Construction sector by 576 jobs (i.e., nearly 82 percent decrease). See Table 18 (following page), Private Sector Employment in Long Hill by Industry Sector, 2012, 2017, 2022 for details.

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Table 18. Private Sector Employment in Long Hill by Industry Sector, 2012, 2017, 2022

Private Sector Jobs	2012		2017		2022	
	Count	Share	Count	Share	Count	Share
Agriculture, Forestry, Fishing and Hunting, and Mining	44	1.5%	26	0.9%	46	1.6%
Mining, Quarrying, and Oil and Gas Extraction	0	0.0%	0	0.0%	0	0.0%
Utilities	0	0.0%	0	0.0%	2	0.1%
Construction	707	23.6%	433	14.5%	131	4.6%
Manufacturing	166	5.5%	85	2.9%	82	2.9%
Wholesale Trade	96	3.2%	58	1.9%	67	2.3%
Retail Trade	650	21.7%	862	29.0%	874	30.6%
Transportation and Warehousing	17	0.6%	3	0.1%	8	0.3%
Information	32	1.1%	19	0.6%	12	0.4%
Finance and Insurance	112	3.7%	92	3.1%	39	1.4%
Real Estate and Rental and Leasing	42	1.4%	41	1.4%	8	0.3%
Professional, Scientific and Technical Services	98	3.3%	86	2.9%	112	3.9%
Management of Companies and Enterprises	9	0.3%	10	0.3%	11	0.4%
Administration & Support, Waste Management and Remediation	171	5.7%	179	6.0%	229	8.0%
Educational Services	212	7.1%	302	10.1%	396	13.9%
Health Care and Social Assistance	136	4.5%	159	5.3%	216	7.6%
Arts, Entertainment, and Recreation	5	0.2%	41	1.4%	63	2.2%
Accommodation and Food Services	301	10.1%	375	12.6%	349	12.2%
Other Services (Excluding Public Administration)	114	3.8%	122	4.1%	133	4.7%
Public Administration	79	2.6%	83	2.8%	75	2.6%
<b>Total Private Sector</b>	<b>2,991</b>	<b>100%</b>	<b>2,976</b>	<b>100%</b>	<b>2,853</b>	<b>100%</b>

Source: State of New Jersey Department of Labor and Workforce Development Local Employment Dynamics;  
<http://onthemap.ces.census.gov/>

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

## Growth Trends and Projections

### Residential Trends and Projections

According to the New Jersey Department of Community Affairs, between 2013 and 2023, Long Hill issued certificates of occupancy for 18 housing units, all of which were one- and two-family dwellings. See Table 19, Residential Certificates of Occupancy, 2013-2023, for additional details.

*Table 19. Residential Certificates of Occupancy, 2013-2023*

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
<b>1 &amp; 2 Family</b>	3	3	4	1	1	0	1	0	2	2	1	18
<b>Multifamily</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>Mixed Use</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	3	3	4	1	1	0	1	0	2	2	1	18

*Source: New Jersey Construction Reporter*

### Nonresidential Trends and Projections

According to the New Jersey Department of Community Affairs, between 2013 and 2023, Long Hill issued certificates of occupancy for a total of ±49,251 square feet of non-residential building space. See Table 20, Non-Residential Certificates of Occupancy, 2013-2023, for additional details. The majority of the non-residential growth can be attributed to:

- 14,419 square feet of office space for which certificates of occupancy were issued in 2015, 2016, 2022, and 2023;
- 12,610 square feet of retail space for which a certificate of occupancy was issued in 2014;
- 12,104 square feet of signs, fences, utility & miscellaneous items for which certificates of occupancy were issued in 2014, 2015, 2016, 2017, 2020, 2022, and 2023;
- 8,611 square feet of education space for which a certificate of occupancy was issued in 2019.

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

Table 20. Non-Residential Certificates of Occupancy, 2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Office	0	0	4,415	4,400	0	0	0	0	0	4,220	1,384	14,419
Retail	0	12,610	0	0	0	0	0	0	0	0	0	12,610
A-1	0	0	0	0	0	0	0	0	0	0	0	0
A-2	0	0	0	0	0	0	0	0	0	0	0	0
A-3	0	0	0	0	0	0	0	0	0	1,507	0	1,507
A-4	0	0	0	0	0	0	0	0	0	0	0	0
A-5	0	0	0	0	0	0	0	0	0	0	0	0
Multifamily/ Dormitories	0	0	0	0	0	0	0	0	0	0	0	0
Hotel/ Motel	0	0	0	0	0	0	0	0	0	0	0	0
Education	0	0	0	0	0	0	8,611	0	0	0	0	8,611
Industrial	0	0	0	0	0	0	0	0	0	0	0	0
Hazardous	0	0	0	0	0	0	0	0	0	0	0	0
Institutional	0	0	0	0	0	0	0	0	0	0	0	0
Storage	0	0	0	0	0	0	0	0	0	0	0	0
Signs, Fences, Utility & Misc.	0	929	5,583	1,467	1,097	0	0	816	0	1,684	528	12,104
<b>Total</b>	<b>0</b>	<b>13,539</b>	<b>9,998</b>	<b>5,867</b>	<b>1,097</b>	<b>0</b>	<b>8,611</b>	<b>816</b>	<b>0</b>	<b>7,411</b>	<b>1,912</b>	<b>49,251</b>

Source: New Jersey Construction Reporter

### Capacity to Accommodate Present and Prospective Fair Share Obligation

As noted in Chapter II, New Jersey American Water anticipates lifting the voluntary sewer ban by the end of 2025. As additional sewer capacity becomes available, approved Third Round affordable housing projects are expected to begin construction. Furthermore, the Township anticipates that added sewer capacity will enable the Township to address its Fourth Round affordable housing obligation between 2025 and 2035.

That said, many of the undeveloped portions of the Township are environmentally sensitive including wetlands and lands in the 100-year floodplain. This is due in part to its location situated between the Great Swamp National Wildlife Refuge in the north and the Passaic River in the west, south, and east. As such, future multifamily projects will most likely involve the redevelopment of already existing developed parcels.

### Lands Most Appropriate for Construction of Affordable Housing

A consideration of the lands most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing is detailed in the Fair Share Plan.

### Municipal Ordinances Advance/Detract from Construction of Multi-Generational Housing

## Part I: Township of Long Hill Housing Element – Fourth Round 2025-2035

The Township's Land Use Ordinances advance the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, pursuant to N.J.S.A. 52:27D-329.20f.(1) which reads as follows:

(1) To prepare and adopt recommendations on how State government, local government, community organizations, private entities, and community members may most effectively advance the goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity, through the modification of State and local laws and policies in the areas of housing, land use planning, parking and streetscape planning, and other relevant areas.

Long Hill's Land Use Ordinances include §LU-124.2 Accessory Apartments in Single Family Residences which permit accessory apartments to single-family homes in the C, R-2, R-3, R-4, and R-5 zones so long as the accessory unit is occupied by a low- or moderate-income household. Additionally, §LU-124.3 Accessory Apartments in Accessory Buildings permits accessory apartments located in an accessory building on the same parcel as a single-family home in the C, R-2, R-3, R-4, and R-5 zones provided the occupant qualifies as a low- or moderate-income household.

#### Consistency with the State Development and Redevelopment Plan

This Housing Element and related Fair Share Plan is consistent with the State Development and Redevelopment Plan ("SDRP") of 2001 and the draft SDRP dated 2025. Long Hill intends to address its fair share obligation of the regional need for affordable housing by providing for sustainable development, recognizing environmental constraints, while seeking to provide for a diversity of housing types. The Housing Element and related Fair Share Plan align with the State Plan goals.

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

## V. Affordable Housing Fair Share Plan

### Plan Purpose and Goals

This Fair Share Plan will describe specific projects, programs, strategies and funding sources to meet Long Hill Township’s affordable housing obligation, while also complying with the Fair Housing Act, relevant affordable housing regulations and Administrative Directive #14-24. The overarching goal of this Plan is to provide a framework for the Township of Long Hill to take affirmative steps towards providing a realistic opportunity to achieve its fair share of the present and prospective regional need for low- and moderate-income housing.

### Determination of Housing Need

On October 18, 2024, the New Jersey Department of Community Affairs (“NJDCA”) published local and regional affordable housing obligations pursuant to P.L. 2024, c.2. proposing that Long Hill Township has a Fourth Round present need, or rehabilitation, obligation of **0 units** and a prospective need of **102 units**. On January 22, 2025, the Township Committee adopted Resolution 25-046 accepting the obligations as proposed by NJDCA. On January 23, 2025, the Township filed a Declaratory Judgment action requesting certification of the Township’s Housing Element and Fair Share Plan proposed to be submitted to the Dispute Resolution Program by June 30, 2025.

### Prior Round

On August 2, 2001, Long Hill Township received its Substantive Certification from the Council on Affordable Housing (COAH). The Township addressed its Prior Round obligation of 62 units as follows:

*Table 21. Long Hill Township Prior Round Affordable Housing Obligations*

<b>Mechanism</b>	<b>Units/Credits</b>	<b>Bonus Credits</b>	<b>Total Credits</b>	<b>Carryover Credits</b>
Accessory Apartments	13	1	14	0
Lounsbury Meadow Senior (42 age-restricted units/ 10 Handicapped Units)	15*	5	20	27 Age-Restricted 10 Handicapped
RCA (Newark) Prior Round (42 units)	28***	0	28	14
<b>Sub-Totals</b>	56	6**	62	51
<b>Total Prior Round</b>			62 units	
<b>Total Carryover Credits for Third Round</b>				51 units

\*15 units apply due to a 25% cap on age-restricted units in the Prior Round.

\*\*Bonuses are capped at 16 credits (25%) of the obligation.

\*\*\*RCAs are capped at 50% of the obligation; 28 are applied and 14 are carried over.

The Township met its 62-unit Prior Round obligation and carried over up to 51 units subject to age-restricted caps.

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

**Third Round**

The Township's Third Round affordable housing obligation of 220 units has been met through a variety of mechanisms including inclusionary zoning, extensions of expiring controls, group home units and completed inclusionary and 100 percent affordable development. Third Round inclusionary units were durationally adjusted due to a sewer ban on new development because of capacity issues at the Township's sewer treatment facility. The Township was granted a Final Judgement of Repose and immunity from exclusionary zoning litigation on June 15, 2018. The Township has addressed the sewer upgrades through the sale of its sewer utility to New Jersey American Water ("NJAW") where NJAW agreed to complete all necessary upgrades to the sewer system to result in a lifting of the sewer ban by October 20, 2025.

*Table 22. Long Hill Township Third Round Completed Units*

<b>Third Round Based on 220 Unit Obligation</b>					
<b>Completed Units</b>					
<b>Project</b>	<b>Type</b>	<b>Units</b>	<b>Bonuses</b>	<b>Total Credits</b>	<b>Carryover Credits</b>
Lounsberry Meadow Senior	Age-Restricted, 100% Affordable	27	0	27	0
Lounsberry Meadow Handicapped	Handicapped 100% Affordable	10		10	0
RCA (Newark)	RCA	14	0	14	0
Stirling Manor	Family Rental	8	8	16	0
Chestnut Run	Family Rental	6		6	0
Community Options Group Home	Group Home	7		7	0
Lounsberry Meadow Senior Extension of Expiring Controls (42 Senior Units)	Extension of Expiring Controls	42	0	28	14
Lounsberry Meadow Handicapped Extension of Expiring Controls	Extension of Expiring Controls	10	0	10	0
224-230 Main Avenue B 11606 L 17 & 18	Family Rental (Approved not constructed)	2	2	4	
594-606 Valley Road B 11001, Lot 27	Family Rental Constructed	2		2	
<b>Total Third Round Completed</b>		128	10	124	14

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

Table 23. Long Hill Township Third Round Zoning &amp; Redevelopment Plans

Project	Type	Status	Units	Bonuses	Total Credits	Carryover Credits
B10801, L 3 (621 Valley Road, "Gillette Office") R-MF 4	Family Rental	Planning Board Approval	9	9	18	-
B 11501, L 1 & 4; B 11502, L 1, 2, and 14 ("Warren Avenue") R-MF 4-O	Family Rental	Zoned, not built	33		6	27
B10401, L 1-4; B 11514, L 6, 31-32 ("Thermoplastics") RAHO	Family Rental	Zoned, not built <sup>2</sup>	(11) 0	0	0	-
B 11001, L 22, (488-490 Valley Road) R-MF-5	Family Rental	Zoned, not built	15	15	30	
B 10100, L 7.01 and B 12301, L 1 MU-O Zone ("Tifa Site")	Family Rental	Planning Board Approval	21	21	42	
<b>Total</b>			78	45	96	
<b>Total Third Round Inclusionary Zoning</b>					96	27
<b>Total Third Round Completed</b>					124	14
<b>Maximum Bonuses 25% - 55 units</b>						
<b>Total Third Round Credits</b>					220	41

Table 24. Long Hill Township Third Round Carryover Credits

Project	Type	Status	Units	Bonuses	Total Credits	Carryover Credits
Lounsberry Meadow Senior	Extension of Expiring Controls	Complete	14		14	14
B 11501, L 1 & 4; B 11502, L 1, 2, and 14 ("Warren Avenue") R-MF 4-O	Family Rental	Zoned	27			27
<b>Total Carryover for 4th Round</b>						41
<b>Total Credits Applied to Third Round</b>					220	

<sup>2</sup> The RAHO Redevelopment Zone was adopted; however, the NJDEP would not issue residential development permits due to the location in the Flood Hazard Area. As a result, no credits are applied. The R-MF-5 Zone was adopted to replace the 11 units proposed in this redevelopment area.

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

*Table 25. Long Hill Township Third Round Obligation by Unit Type (Micro-requirements)*

<b>Requirement</b>	<b>Number of Units (Based on 220 Unit obligation)</b>	<b>Proposed</b>
Maximum 25% Senior Units	Maximum 55 Units Age-Restricted	55 Units Age-Restricted
Minimum 50% Family Housing	Minimum 110 Units Family	153 Family Units
Minimum 25% Rental (Min. 50% Family Rental)	Minimum 55 Units Rental Minimum 28 Units Family Rental	259 Rental Units 153 Family Rental units
Minimum 50% for Low Income	Minimum 110 Units Low Income	110 Low Income
Minimum 13% for Very Low Income	Minimum 29 Units Very Low Income	47 Very Low Income
Maximum 25% Bonus Credits	Maximum 55 Bonus Credits	55 Bonus Credits

**Fourth Round**

Long Hill Township has a Fourth Round present need, or rehabilitation, obligation of **0 units** and a prospective need of **102 units**. Long Hill Township has **41 credits** from the Third Round to apply to the Fourth Round Prospective Need Obligation.

*Table 26. Long Hill Township Fourth Round Affordable Housing Obligations*

<b>Fourth Round Affordable Housing Obligation</b>	
Third Round Carryover Units	41 credits
Fourth Round Prospective Need	102 units
Present Need Obligation	0 units

**Distribution of Obligation**

The Township proposes to meet to the minimum and maximum requirements for senior, family units, and rental units from the Fourth Round rules as shown below. The requirements listed below will be based on the number of units addressed in the Fourth Round.

*Table 27. Long Hill Township Fourth Round Obligation by Unit Type (Micro-requirements)*

<b>Requirement</b>
Maximum 30% Senior Units
Minimum 50% Family Housing
Minimum 25% Rental (Min. 50% Family Rental)
Minimum 50% for Low Income
Minimum 13% for Very Low Income
Maximum 25% Bonus Credits

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

### Lack of Water and Sewer

According to N.J.S.A. 5:93-4.3, if a community has insufficient sewer to support inclusionary development, it may seek a durational adjustment. The Township received court approval for a durational adjustment of 54 units during the Third Round period. The Township worked diligently to remedy the sewer capacity issue and on November 5, 2019, the Township voters approved a sale of the Township wastewater treatment system to New Jersey American Water Company (“NJAW”). Section VIII4, entitled “Capacity for Affordable Housing Units,” of the Township’s December 13, 2019, agreement of sale with NJAW, contained the following provisions:

- “In accordance with the requirements of N.J.A.C. 5:93-4.31, the Buyer shall reserve and set aside new sewer capacity of 100,000 gpd on a priority basis, when it becomes available, for the low- and moderate-income housing that is included in the Township’s Housing Element and Fair Share Plan.”
- “As soon as reasonably practicable and no later than three years following Closing, the Buyer shall begin to undertake the capital improvements necessary to allow the Township to lift the existing sewer ban. All capital improvements necessary to lift the sewer ban shall be completed within five years from Closing.”

Due to the COVID-19 Pandemic and circumstances beyond the parties’ control, NJAW’s due diligence took longer than anticipated, however closing did take place on October 20, 2020, which means that NJAW has until October 20, 2025 to have the sewer ban lifted. While the Township fully expects NJAW to meet its obligation to lift the sewer ban, to the extent there are any delays, the Township requests to extend the durational adjustment accordingly.

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

## Proposed Mechanisms

On October 18, 2024, New Jersey Department of Community Affairs (“NJDCA”) published local and regional affordable housing obligations pursuant to P.L. 2024, c.2. proposing that Long Hill Township has a Fourth Round present need, or rehabilitation, obligation of **zero (0) units** and a prospective need of **102 units**. On January 22, 2025, the Township Committee adopted Resolution 25-046 accepting the obligations as proposed by NJDCA. On January 23, 2025, the Township filed a Declaratory Judgment action requesting certification of the Township’s Housing Element and Fair Share Plan proposed to be submitted to the Dispute Resolution Program by June 30, 2025. The Township has **41 credits** from the Third Round available to apply to the Fourth Round.

The Township proposes to address the Fourth Round obligation through redevelopment, an overlay zone from the Third Round, extensions of expiring controls and two Board of Adjustment approvals.

### 1106-1122 Valley Road Redevelopment Area

1106-1122 Valley Road, Block 11401, Lot 7, is a designated Area in Need of Redevelopment, also known as the Car Wash Redevelopment Area. The 5.6-acre site was designated as an Area in Need of Redevelopment via Resolution 22-043 by the Township Committee on January 19, 2022. The contract purchaser of the property has proposed a 167-unit multi-family rental development on the site. The proposal includes a 20 percent set-aside of affordable housing, proposed to generate **33 affordable housing units**. The Township proposes to adopt a redevelopment plan to effectuate the development of the project.

### 44 Plainfield Road Mixed-Use Development

44 Plainfield Road, Block 10515, Lot 7, was approved by the Board of Adjustment for a mixed-use building consisting of three (3) floors with 2,399 square feet of commercial/retail space on the first floor and two floors of apartments, totaling 24 multi-family residential units with **three (3) units** of affordable housing proposed. The project was approved but is not yet constructed.

### 1050 & 1058 Valley Road CSH Long Hill Assisted Living Facility

1050 & 1058 Valley Road, Block 11301, Lots 4 & 23 were approved by the Board of Adjustment for an assisted living facility containing 87 individual residential units, with 62 of those units being dedicated to residents requiring assisted living, 25 of those units being dedicated to residents requiring memory care, and 10 Medicaid beds located in five (5) semi-private units. The **10 Medicaid beds** provided in the facility provide for 10 age-restricted affordable housing credits for very low income.

## Part II: Township of Long Hill Fair Share Plan – Fourth Round 2025-2035

## Round 4 Summary Table

Table 28. Summary of Fourth Round Mechanisms and Credits

Project Name	Type	Units	Bonuses	Total Credits
<b>Fourth Round 102 Units</b>				
<b>Proposed Mechanisms</b>				
BOA Approval 44 Plainfield Road B 10515 L 7	Family Rental	3		3
1106-1122 Valley Road B 114 L 1 Redevelopment Plan	Family Rental	33	16*	49
CSH Long Hill Assisted Living – 1050 & 1058 Valley Road, B 11301, Lot 4 & 23	Assisted Living	10		10**
<b>Total Proposed Mechanisms</b>		46	16	61
<b>Third Round Carryover</b>				
Lounsberry Senior Carryover	Extension of Expiring Controls	14	7***	23
B 11501, L 1 & 4; B 11502, L 1, 2, and 14 ("Warren Avenue") R-MF 4-O Carryover	Family Rental	27	2*	29
<b>Subtotal</b>		87	25	52
<b>Fourth Round Fair Share Plan Total</b>				113
Carryover units				11
Fourth Round Obligation				102
Micro-requirements based on 102 units obligation				
Maximum Senior – 30% (30 units)				23
Minimum Family Housing – 50% (51 units)				80
Minimum Rental – 25% (26 units)				103
Minimum Family Rental – 50% of Rental (13 units)				80
Maximum Bonus Credits – 25% (25 units)				25
*0.5 bonus credit for redevelopment of retail, office or commercial tenants				
**Senior Credits Carried Over to Fifth Round				
***0.5 bonus for extensions of expiring controls for rental housing				

# Appendix A – Resolutions

**TOWNSHIP OF LONG HILL  
PLANNING BOARD  
RESOLUTION 2025-11-PB**

**ADOPTING THE HOUSING ELEMENT & FAIR SHARE PLAN**

**WHEREAS**, the Planning Board of the Township of Long Hill, in the County of Morris, State of New Jersey, adopted the Township’s current Master Plan Housing Element & Fair Share Plan pursuant to N.J.S.A. 40:55D-28 on April 10, 2018; and

**WHEREAS**, N.J.A.C. 5:97-2.1(a) requires the adoption of the Housing Element & Fair Share Plan by the Planning Board and endorsement thereof by the Governing Body; and

**WHEREAS**, N.J.A.C. 5:97-3.1(a) requires the preparation of a Housing Element & Fair Share Plan to address the total affordable housing obligation of the Township of Long Hill; and

**WHEREAS**, N.J.A.C. 5:97-3.1(b) requires the adoption of the Housing Element & Fair Share Plan by the Planning Board and endorsement thereof by the Governing Body; and

**WHEREAS**, On March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, an Amendment to the 1985 Fair Housing Act (hereinafter “Amended FHA” or “Act”). The Amended FHA requires the New Jersey Department of Community Affairs (“DCA”) to provide an estimate of the fair share affordable housing obligations of all municipalities on or before October 20, 2024 based upon the criteria of the Amended FIAA. DCA issued a report on October 18, 2024 (the “DCA Report”) wherein it reported its nonbinding estimate of the fair share affordable housing obligation for all municipalities based upon its interpretation of the standards in the Amended FHA. The DCA Report calculated Long Hill’s Fourth Round (2025-2035) fair share obligation as follows:

- A Present Need (Rehabilitation) Obligation of 0; and
- A Prospective Need (New Construction) Obligation of 102 units.

Per the Amended FHA, municipalities were able to either accept the DCA determination of their obligation, or to provide their own municipal determination of their Fourth Round obligation. The Long Hill Township Committee adopted a binding resolution on January 22, 2025 accepting the numbers stated in the DCA Report.

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board of the Township of Long Hill held a public hearing on the Housing Element & Fair Share Plan on June 24, 2025; and

**WHEREAS**, the Planning Board has determined that the Housing Element & Fair Share Plan are consistent with the goals and objectives of the Township of Long Hill's November 2023 Master Plan and that adoption and implementation of the Housing Element & Fair Share Plan are in the public interest and protect public health and safety and promote the general welfare; and

**WHEREAS**, members of the public participated in the hearing and provided their comments; and

**WHEREAS**, the Board has made the following findings of fact:

1. The Housing Element & Fair Share Plan satisfies the Court-approved affordable housing obligations that resulted from a binding resolution on January 22, 2025 accepting the numbers stated in the DCA Report.
2. The Housing Element & Fair Share Plan addresses Long Hill Township's cumulative housing obligations through 2035 and complies with the mandatory requirements for a Housing Plan Element & Fair Share Plan set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-310, et seq.
3. Based on the Board Planner's testimony and documentary evidence as well as the Township review of site suitability of the inclusionary sites, the Planning Board concludes that each of the compliant sites is suitable for inclusionary housing;

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of the Township of Long Hill, in the County of Morris, State of New Jersey, that the Planning Board hereby adopts the June 24, 2025 Fourth Round Housing Element & Fair Share Plan attached hereto as Exhibit A and recommends that the Mayor and Township Committee endorse the Fourth Round Housing Element and Fair Share Plan and implement same; and

**BE IT FURTHER RESOLVED** that this resolution and the Fourth Round Housing Element and Fair Share Plan be filed with the Superior Court within 48 hours of adoption by the Planning Board but no later than June 30, 2025; and

**BE IT FURTHER RESOLVED** that a copy of this resolution shall be sent to the Office of Planning Advocacy and to the Morris County Planning Board, together with a copy of said adopted Fourth Round Housing Element and Fair Share Plan, within 30 days of the date of adoption of this resolution.

(Continued)

The undersigned Chairperson of the Township of Long Hill Planning Board hereby certifies that the above is a true copy of a Resolution adopted by the Board at its meeting on June 24, 2025.

**TOWNSHIP OF LONG HILL  
PLANNING BOARD**



**Don Richardson, Chairperson  
Township of Long Hill Planning Board**

I, Debra Coonce, Secretary of the Planning Board of the Township of Long Hill, in the County of Morris, and State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a Resolution passed at a regular meeting of the Township of Long Hill held on June 24, 2025.

**TOWNSHIP OF LONG HILL  
PLANNING BOARD**



**Debra Coonce, Secretary  
Township of Long Hill Planning Board**

**John R. Pidgeon**  
**Lawyer ID No. 029021976**  
**PIDGEON & PIDGEON, P.C.**  
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**(609) 520-1010**  
**jpidgeon@pidgeonlaw.com**

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IN THE MATTER OF THE )  
APPLICATION OF THE TOWNSHIP OF )  
LONG HILL, a municipal corporation of the )  
State of New Jersey, )  
Plaintiff/Petitioner. )

Superior Court of New Jersey  
Law Division: Morris County  
Docket No.  
Civil Action

COMPLAINT FOR DECLARATORY  
JUDGMENT (Mt. Laurel)

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Plaintiff/Petitioner, the Township of Long Hill (hereinafter “Long Hill Township”), a municipal corporation of the State of New Jersey having its offices at 915 Valley Road, Gillette, New Jersey 07933, by way of Complaint for Declaratory Judgment says:

**JURISDICTION**

1. Jurisdiction is established pursuant to the *New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50, et seq.*

2. Jurisdiction is further established pursuant to the amended *Fair Housing Act (N.J.S.A. 52:27D-312 (P.L. 2024, c))* and Administrative Directive 14-24 issued by Glenn A. Grant, J.A.D., Acting Administrative Director of the Court on December 18, 2024.

### **BACKGROUND AND PRIOR ROUND OBLIGATIONS**

3. In 1975, the Supreme Court of New Jersey in *South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975)*, ruled that the developing municipalities in the State of New Jersey exercising their zoning power had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low and moderate income housing needs.
4. In 1983, the Supreme Court refined that constitutional obligation in *South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983)*, to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.
5. In 1985, the New Jersey Legislature adopted, and the Governor signed, the *Fair Housing Act ("FHA") N.J.S.A. 52:2D-301 et seq.* which transformed the judicial doctrine which became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it.

6. COAH proceeded to adopt regulations for first round obligations applicable from 1987 to 1993 and second round obligations that created a cumulative obligation from 1987 to 1999.
7. Long Hill Township participated in the COAH process from its inception through 2015 when the process was changed by the New Jersey Supreme Court as discussed below. On February 19, 1987, Long Hill Township (which was then known as Passaic Township) filed and adopted Housing Element & Fair Share Plan dated February 17, 1987. Because Long Hill Township was court transferred, its filing on February 19, 1987 acted as a Petition for Substantive Certification pursuant to N.J.A.C. 5:91-4.1. On May 15, 1987, Long Hill Township submitted an adopted Housing Element and Fair Share Plan dated May 12, 1987 that had been revised in response to comments received from COAH. At that time, COAH had determined that Long Hill Township precredited need was 198 units, of which 179 were inclusionary and 19 were indigenous need. COAH granted the Township's First Round Petition for Substantive Certification by the adoption of a resolution on May 2, 1988.
8. During the second round, COAH established Long Hill Township's 1987-99 precredited need to be 85 units, 23 for rehabilitation and 62 for new construction. By resolution adopted August 2, 1995, COAH granted Long Hill Township's Second Round Petition for Substantive Certification after determining that the Township's 1987 through 1999 Fair Share Housing obligation of 85 units of low and moderate income housing was met through the rehabilitation of 5 units, the construction of 114 units and 36 rental bonus credits.

9. In response to COAH's failure to adopt regulations that were acceptable to the Court and its subsequent inaction, Fair Share Housing Center ("FSHC") filed a motion with the New Jersey Supreme Court to enforce litigant's rights.
10. On March 10, 2015, the New Jersey Supreme Court issued its decision on FSHC's motion to enforce litigant's rights in *In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J.(2015)* (the "2015 Case") and found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts.
11. In so doing, the Supreme Court established a transitional process for municipalities, like Long Hill Township, that participated in the administrative process before COAH to file a declaratory judgment action with the trial courts seeking to declare their HEFSP's as being constitutionally compliant and seeking similar protections to those that the participating municipalities would have received if they had continued to proceed before COAH.
12. While the Supreme Court in the 2015 Case declined to adopt a specific methodology or formula to calculate the third round affordable housing obligations of the municipalities and instead left that determination to the 15 Mount Laurel Judges (one in each vicinage), it did provide some guidance by reiterating its endorsement of the previous methodologies employed in the First and Second Round Rules as the template to establish third round affordable housing obligations, and as abovementioned, by treating Participating Municipalities filing Declaratory Judgment actions in the same way that the

1985 FHA when originally enacted on July 2, 1985 treated municipalities transitioning from the judicial to the administrative process.

13. During the third round, Long Hill Township entered into settlement agreement with Fair Share Housing Center on September 27, 2017 whereby the Township agreed to an affordable housing obligation of six rehabilitation units and 220 prospective needs units. After conducting a fairness hearing on December 15, 2017 and a compliance hearing on June 15, 2018, the Court entered a Final Judgment of Compliance and Repose at Docket No. MRS-L-1660-15 in which the Court found that:

“The Township through the adoption of the 2018 HEFSP and the implementation of that plan and the settlement agreement satisfied its obligations under the Mt. Laurel Doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301, et seq. for the prior rounds (1987-1999) and third round (1999-2025).”

14. The FSHC settlement agreement provided in paragraph 7 that because of the sewer ban in effect, the Township would address its durationally adjusted need by placing overlay zoning on designated sites.

15. Paragraph 8ii of the FSHC settlement agreement went on to provide that

“The Township has designated and rezoned the sites in the chart in Paragraph 7(b). As an essential term of this settlement, the Township represents that it is diligently attempting to remedy the sewer capacity issue that has led to the Township to be constricted by a voluntary sewer service moratorium since 2000. The Township intends to either sell the utility to a private entity or to bond for the necessary further upgrades needed to the utility.”

16. The Township diligently attempted to remedy the sewer capacity issue, and at the November 5, 2019 general election, the voters of Long Hill Township approved the sale of the Township wastewater treatment system to New Jersey American Water Company (“NJAW”).

17. Section VIII4 of the December 31, 2019 Agreement of Sale between the Township and New Jersey American Water Company (the "Agreement") entitled "Capacity for Affordable Housing Units" contained the following provisions:

"In accordance with the requirements of N.J.A.C. 5:93-4.31, the Buyer shall reserve and set aside new sewer capacity of 100,000 gpd on a priority basis, when it becomes available, for the low- and moderate-income housing that is included in the Township's Housing Element and Fair Share Plan."

\*\*\*\*

As soon as reasonably practicable and no later than three years following Closing, the Buyer shall begin to undertake the capital improvements necessary to allow the Township to lift the existing sewer ban as described in Exhibit K. All capital improvements necessary to lift the sewer ban shall be completed within five years from Closing."

18. Because of COVID and other circumstances beyond the parties' control, NJAW's due diligence took longer than anticipated, however the closing did take place on October 20, 2020, which means that NJAW has until October 20, 2025 to have the sewer ban lifted.
19. With respect to the sites with overlay zoning, the Tifa site (21 affordable units) and the Gillette office site (9 affordable units) have received final site plan approval from the Township Planning Board. The Valley Road redevelopment area, which was slated to have 10 affordable units, is not developable because of environmental constraints and was replaced by the Lopresti site, which will contain 15 affordable units. Elite Properties, which owns the site, can go before the Board at any time and obtain approval of that development, which means that as soon as the sewer ban is lifted in approximately 9 months, three developments with 45 of the Township's 54 durationally-adjusted affordable units will be able to begin construction.

#### FOURTH ROUND OBLIGATION

20. P.L. 2024C, c.2, which was enacted on March 20, 2024, amended *the Fair Housing Act, N.J.S.A. 53:27D-304, et seq.*, abolished COAH and provided that, “Prior to the beginning of each ten-year round of housing obligations beginning with the fourth round on July 1, 2025, the Department of Community Affairs shall conduct a calculation of regional need and municipal present and prospective obligations in accordance with the formulas established in *[N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3]*.”
21. On October 18, 2024, the Department of Community Affairs (“DCA”) issued its report in which it calculated Long Hill Township’s Round Four (2025-2035) obligations to include a present or rehabilitation obligation of 0 affordable units and a prospective need or new construction need of 102 affordable units.
22. On November 12, 2024, the Administrative Director of the Courts issued directive #14-24 promulgating the procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program created by *P.L. 2024, c. 2*.
23. By resolution adopted January 22, 2025, a copy of which is attached hereto as Exhibit “A”, the Long Hill Township Committee, upon the recommendation of the Township Planner and the Township Affordable Housing Advisory Committee, accepted the DCA calculations of Long Hill Township’s fair share obligations and committed to its fair share of 0 units present need and 102 units prospective need subject to any vacant land and/or durational adjustments the Township may seek as part of its housing plan element and fair share plan that it will adopt in accordance with *P.L. 2024, c.2*.

24. If no challenges to the Township's calculation of its fair share obligation are filed by February 28, 2025, then the Township's determination of its obligation will be established by default and will bear a presumption of validity beginning on March 1, 2025.
25. If a timely challenge is filed, the matter will be referred to the Affordable Housing Dispute Resolution Program (the "Program").
26. If any such challenge is recommended for dismissal by the Program, the case will be sent to the Morris County Mount Laurel Judge for review and entry of an order on the fair share obligations in conformance with the FHA.
27. Upon entry of an order on its fair share obligations, the Township will proceed to adopt its Housing Element and Fair Share Plan.
28. After the entry of an order determining its present and fair share obligations, the Township will file its adopted Housing Element and Fair Share Plan with the Program within 48 hours after adoption, or by June 30, 2025, whichever is sooner.
29. Interested parties may file a challenge to the Township's Housing Element and Fair Share Plan by August 31, 2025. If a timely challenge is filed, the matter will be referred to the Program in accordance with the Directive. After issuance of the Program's decision, the decision will be referred to the Mt. Laurel judge for entry of an order accepting, rejecting, or accepting/rejecting in part the Program's decision on the Housing Element and Fair Share Plan and Certificate of Compliance. Appeals from the order of the Mt. Laurel judge shall be filed in accordance with the Part II Rules of Court.

**COUNT ONE**  
**(Declaratory Relief, Constitutional Compliance)**

30. Long Hill Township repeats and realleges the allegations set forth in Paragraphs 1 through 29 of this Complaint and makes them a part hereof as though set forth at length herein.

31. Pursuant to the *Declaratory Judgment Act, N.J.S.A. 2A:16-50 et seq.*, and the *Fair Housing Act* as amended by *P.L. 2024, c.2*, Long Hill Township has a right to a declaratory judgment verifying and confirming its full compliance with its constitutional affordable housing obligations

WHEREFORE, Plaintiff/Petitioner, Long Hill Township respectfully requests that the Court grant the following relief:

- a. An Order exercising jurisdiction over the compliance by Long Hill Township with the *Fair Housing Act* as amended by *P.L. 2024, c.2*, and Directive 14-24 , and
- b. An Order declaring that Long Hill Township's present and prospective affordable housing obligations as set forth in the binding resolution adopted by the Township Committee on January 22, 2025, which is attached hereto as Exhibit "A" and which is incorporated herein by reference.
- c. A Certificate of Compliance and Immunity from Exclusionary Zoning Litigation in accordance with the *Fair Housing Act* as amended by *P.L. 2024, c.2* and the Directive. Judgment of Compliance and Repose for a period of ten (10) years from its date of entry.
- d. Granting such further relief as the court may deem proper and just under the circumstances.

**COUNT TWO**  
**(Request for Immunity)**

32. Long Hill Township repeats and realleges the allegations set forth in Paragraphs 1 through 31 of this Complaint and makes them a part hereof as though set forth at length herein.
33. If the Township complies with the requirements of the Fair Housing Act as amended by P.L. 2024, c.2 and the Directive, it will have immunity from exclusionary zoning litigation.
34. Since Long Hill Township met the deadline for adoption and filing its binding resolution and filing this declaratory judgment action in accordance with the Directive, it is therefore entitled to immunity from exclusionary zoning litigation during the pendency of this matter.
35. Upon the issuance of a Certificate of Compliance, the Township will be entitled to immunity from exclusionary zoning litigation through the end of the fourth round on June 30, 2035.

WHEREFORE, Plaintiff/Petitioner, Long Hill Township respectfully requests that the Court grant the following relief:

- a. An Order granting temporary immunity from third party lawsuits against Long Hill Township from the date of the filing of the instant Declaratory Judgment action until this Court issues a Final Judgment of Compliance and Repose to the Township for its HEFSP formulated, adopted and approved in accordance with the applicable formula and methodology established by this Court.

- b. Granting such further relief as the court may deem proper and just under the circumstances.

Pidgeon & Pidgeon, P.C.  
Attorneys for Plaintiff/Petitioner  
Township of Long Hill

By: John R. Pidgeon  
John R. Pidgeon

Dated: January 23, 2025

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, notice is hereby given that John R. Pidgeon, Esq., Attorney for Plaintiff/Petitioner, Long Hill Township is designated as trial counsel in the above captioned matter.

*John R. Pidgeon*

Dated: January 23, 2025

**CERTIFICATION PURSUANT TO R. 4:5-1**

Pursuant to R. 4:5-1, I hereby certify that the matter in controversy is not the subject matter of any other action pending in any Court or of a pending arbitration or administrative proceeding, and that no other action or arbitration or administrative proceeding is contemplated.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*John R. Pidgeon*

Dated: January 23, 2025

**EXHIBIT A**

**TOWNSHIP OF LONG HILL  
RESOLUTION 25-046  
RESOLUTION COMMITTING TO DCA'S FOURTH ROUND AFFORDABLE HOUSING PRESENT  
NEED AND PROSPECTIVE NEED NUMBERS AND AUTHORIZING THE TOWNSHIP ATTORNEY TO  
FILE A DECLARATORY JUDGMENT ACTION WITH THE SUPERIOR COURT OF NEW JERSEY  
SEEKING A CERTIFICATION OF COMPLIANCE WITH THE FAIR HOUSING ACT**

WHEREAS, P.L. 2024, C. 4 enacted on March 20, 2024, amended the Fair Housing Act, N.J.S.A 52:27D-304, et seq.; and

WHEREAS, P.L. 2024, C. 4 abolished the Township Committee on Affordable Housing (COAH) and instead provides that:

“Prior to the beginning of each new 10-year round of housing obligations beginning with the fourth round on July 1, 2025, the Department of Community Affairs shall conduct a calculation of regional need and municipal present and prospective obligations in accordance with the formulas established in sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3).” 2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4 (codified as N.J.S.A. 52:27D-304.1); and

WHEREAS, P.L. 2024, C. 4 goes on to provide that:

“With consideration of the calculations contained in the relevant report published by the department pursuant to this section, for each 10-year round of affordable housing obligations beginning with the fourth round, a municipality shall determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established in sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3) by resolution, which shall describe the basis for the municipality’s determination and bind the municipality to adopt a housing element and fair share plan pursuant to paragraph (2) of this subsection based on this determination as may be adjusted by the Program as set forth in this subsection.” 2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4; and

WHEREAS, P.L. 2024, C. 4 further provides that:

“For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the Program no later than 48 hours following adoption. The resolution, along with the date of filing with the Program, shall be published on the Program’s publicly accessible Internet website. The municipality shall also publish the resolution on its publicly accessible Internet website, if the municipality maintains one. If the municipality does not meet this deadline, it shall lose immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the “Fair Housing Act,” P.L.1985, C. 222 (N.J.S.A. 52:27D-301 et al.) and the Mount Laurel doctrine. A determination of the municipality’s present and prospective obligation may be established before a county-level housing judge as part of any resulting declaratory judgment action pursuant to section 13 of P.L.1985, C. 222 (N.J.S.A. 52:27D-313), as amended by P.L.2024, C. 2 (N.J.S.A. 52:27D-304.1 et al.), or through exclusionary zoning litigation. If the municipality meets this January 31 deadline, then the municipality’s determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality’s obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025. The municipality’s determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3), in any challenge initiated through the Program. An interested party may file a challenge with the Program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality’s determination of its present and prospective obligation does not comply with the requirements of sections 6 and 7 of P.L.2024, C. 2 (N.J.S.A. 52:27D-304.2 and N.J.S.A. 52:27D-304.3).” 2024 N.J. ALS 2 ; 2024 N.J. Laws 2 ; 2024 N.J. Ch. 2 ; 2024 N.J. A.N. 4; and

WHEREAS, DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in P.L. 2024, c.4; and

**WHEREAS**, the DCA Report calculates Long Hill's Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 affordable units and a Prospective Need or New Construction Obligation of 102 affordable units; and

**WHEREAS**, P.L. 2024, c.4 provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that P.L. 2024, c.4 would support lower calculations of Round 4 affordable housing obligations; and

**WHEREAS**, P.L. 2024, c.4 further provides that "[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or bidding court decisions" (N.J.S.A. 52:27D-311(m)); and

**WHEREAS**, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

**WHEREAS**, based on the foregoing, Long Hill accepts the DCA calculations of Long Hill's fair share obligations and commits to its fair share of 0 units present need and 102 units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan Element and Fair Share Plan it subsequently submits in accordance with P.L. 2024, c.4; and

**WHEREAS**, Long Hill reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, Long Hill also reserves the right to adjust its position in the event of any rulings in any action that alters the deadlines and/or requirements of P.L. 2024, c.4; and

**WHEREAS**, in the event that a third party challenges the calculations provided for in this Resolution, Long Hill reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

**WHEREAS**, in light of the above, the Township Committee finds that it is in the best interest of Long Hill Township to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

**WHEREAS**, pursuant to the statute, the Administrative Director of the Courts issued Directive #14-24 on November 12, 2024 promulgating the procedures and guidelines implementing the Affordable Housing Alternate Dispute Resolution Program created by P.L. 2024, chapter 2; and

**WHEREAS**, that Administrative Directive provides in relevant part that:

"A municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint and civil case information statement (Civil CIS) in the county in which the municipality is located.

This declaratory judgment action must be filed within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner.

Copies of the municipal resolution must be included with the initial filing.

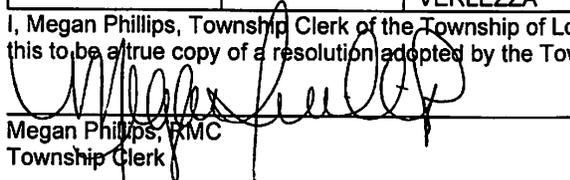
Actions that are not filed by the statutory deadline will not be considered by the Program."

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Long Hill, in the County of Morris, State of New Jersey, as follows:

1. The Township of Long Hill hereby commits to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 102 units described in this resolution, subject to all reservations of rights set forth above.
2. This resolution binds the Township to adopt a Housing Element and Fair Share Plan based on this determination as may be adjusted by the Program.
3. The Township Clerk is hereby directed at publishing a certified true copy of this resolution, along with the date of filing on the Affordable Housing Dispute Resolution Program website and the Long Hill Township website.
4. The Township Attorney is hereby authorized and directed to file a Declaratory Judgment Complaint and Civil CIS in the Superior Court of New Jersey, Law Division, Morris County in accordance with the procedures set forth Directive #14-24. issued by the Administrative Director of the Courts.
5. The declaratory judgment must be filed within 48 hours after the adoption of this resolution.
6. Copies of this resolution must be included with the initial filing.
7. The Township Attorney, the Township Planner and other Township officials are authorized and directed to take all steps necessary for the Township to meet its affordable housing obligations and to defend and protect the Township's interests in meeting its affordable housing obligations.

INTRODUCED	SECONDED	COMMITTEE	AYE	NAY	ABSTAIN	ABSENT
		DORSI	x			
	x	LAVENDER	x			
x		PISERCHIA	x			
		REICHARD-ELINE	x			
		VERLEZZA	x			

I, Megan Phillips, Township Clerk of the Township of Long Hill, County of Morris, State of New Jersey, hereby certify this to be a true copy of a resolution adopted by the Township Committee January 22, 2025.

  
Megan Phillips, FMC  
Township Clerk

 <p style="text-align: center;">New Jersey Judiciary Civil Practice Division</p> <h2 style="text-align: center;">Civil Case Information Statement (CIS)</h2> <p style="text-align: center;">Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information above the black bar is not completed, or attorney's signature is not affixed.</p>				
<b>For Use by Clerk's Office Only</b>				
Payment type <input type="checkbox"/> check <input type="checkbox"/> charge <input type="checkbox"/> cash	Charge/Check Number	Amount \$	Overpayment \$	Batch Number
Attorney/Pro Se Name John R. Pidgeon		Telephone Number (609) 520-1010 ext. 102		County of Venue Somerset
Firm Name (if applicable) Pidgeon & Pidgeon, P.C.			Docket Number (when available)	
Office Address - Street 5 Vaughn Drive, Suite 309		City Princeton	State NJ	Zip 08540
Document Type Complaint for Declaratory Judgment			Jury Demand <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name of Party (e.g., John Doe, Plaintiff) Township of Long Hill		Caption In the Matter of the Application of the Township of Long Hill		
Case Type Number (See page 3 for listing) <u>303</u>				
Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Does this case involve claims related to COVID-19? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If "Yes," see N.J.S.A. 2A:53A-27 and applicable case law regarding your obligation to file an affidavit of merit.				
Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If "Yes," list docket numbers				
Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Name of defendant's primary insurance company (if known) <input checked="" type="checkbox"/> None <input type="checkbox"/> Unknown				
N/A				

**The Information Provided on This Form Cannot be Introduced into Evidence.**

Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation

Do parties have a current, past or recurrent relationship?  Yes  No  
If "Yes," is that relationship:  
 Employer/Employee  Friend/Neighbor  Familial  Business  
 Other (explain) \_\_\_\_\_

Does the statute governing this case provide for payment of fees by the losing party?  Yes  No

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition.

 Do you or your client need any disability accommodations?  Yes  No  
If yes, please identify the requested accommodation:  
  
Will an interpreter be needed?  Yes  No  
If yes, for what language?

**I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).**

Attorney/Self-Represented Litigant Signature: S/ John R. Pidgeon

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

**ELITE PROPERTIES AT LONG HILL, LLC  
621 Valley Road (CR 512)  
Gillette, New Jersey 07933  
Block 10801, Lot 3  
Application No. 2020-07P**

<b>Hearing Dates:</b>	<b>March 23, 2021 April 27, 2021 June 22, 2021 August 10, 2021 September 28, 2021 October 26, 2021 January 25, 2021</b>
<b>Board Action:</b>	<b>February 22, 2022</b>
<b>Memorialization:</b>	<b>April 26, 2022</b>

**WHEREAS, ELITE PROPERTIES AT LONG HILL, LLC** (the “Applicant”) is the contract purchaser of property located at 621 Valley Road (C.R. 512), Long Hill, New Jersey, identified as Block 10801, Lot 3 (the “Property”) on the Official Tax Map of the Township of Long Hill, in the Multifamily Residential (R-MF-4) zoning district and has standing to bring the within application. The Applicant has requested the following relief from the Board (the “Relief Requested”):

1. Preliminary and Final Site Plan approval in accordance with Article 6 of the Land Use Law, N.J.S.A. 40:55D-1, et. seq., and in accordance with the Section 162.2. of the Land Use Ordinance of The Township of Long Hill (the “Ordinance”);
2. Bulk variance relief for disturbance within a critical area (Flood Hazard Area) located on the southerly side of the Property, whereas no principal building or accessory building shall be located in whole or in part within a critical area<sup>1</sup>, pursuant to Section 142-1.a of the Ordinance;
3. Bulk variance relief for disturbance within a critical area (isolated wetlands) located on the northerly side of the Property, whereas no principal building or accessory building shall be located in whole or in part within a critical area<sup>1</sup>, pursuant to Section 142-1.a of the Ordinance;

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<sup>1</sup> Section 111 of the Ordinance defines “critical area” as “the combined area of any portion of a site having an average slope of 15% or greater measured across 10 vertical feet of contour; and/or an area of special flood hazard; and/or any wetlands area.”

4. A design exception for off-street parking in the front yard, whereas no off-street parking or loading area shall be located in any front yard, pursuant to Section 151.2.c of the Ordinance;
5. A design exception for off-street parking spaces with a length of 18 feet (with no overhang), whereas each off-street parking space shall measure 9 feet in width and 19 feet in length (or 18 feet in length where vehicles overhang a curbed area), pursuant to Section 151.1.b of the Ordinance;
6. A design exception for a retaining wall in the front yard having a height of greater than 4 feet, whereas retaining walls shall not exceed 4 feet in height in the front yard, pursuant to Section 154.1.e.3 of the Ordinance; and
7. An exception from the Residential Site Improvement Standards (“RSIS”) for the number of parking spaces, pursuant to N.J.A.C. 5:21-4.14 and Table 4.4; 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 for Development dated August 13, 2020;
- Boundary and Topography Survey Block 10801, Lot 3 prepared by Control Point Associates, Inc. dated April 6, 2020;
- Preliminary and Final Major Site Plans for Elite Properties Proposed Residential Development consisting of 21 sheets, signed and sealed by Joseph G. Jaworski, P.E. of Dynamic Engineering, dated August 7, 2020, last revised December 2, 2021;
- Response memorandum prepared by Dynamic Engineering dated January 6, 2022;
- Architectural Plans and Elevations for Gillette Crossing consisting of 7 sheets, prepared by John Saracco Architect LLC, dated August 6, 2020, last revised February 5, 2021;
- Response memorandum regarding fire department access around buildings, signed by John Saracco Architect, LLC dated February 5, 2021;
- Freshwater Wetlands Letter of Interpretation: Line Verification from New Jersey Department of Environmental Protection, Division of Land Use Regulations stamped May 4, 2017;

- Environmental Impact Statement prepared by Dynamic Engineering dated August 2020;
- Stormwater Management Report prepared by Dynamic Engineering dated August 2020, last revised August 2021;
- Stormwater Basin Area Investigation Report prepared by Dynamic Earth, dated April 16, 2020, last revised March 25, 2021;
- Stormwater Management Facilities Operation and Maintenance Manual prepared by Dynamic Engineering dated February 2021, last revised May 2021;
- Morris County Planning Board Site Plan Report for “Gillette Crossing 617-621 Valley Rd (CR 512) east of intersection with Mountain Ave (CR 531),” issued September 21, 2021; and
- FHA Individual Permit #1430-02-0007.1 LUP210002 from New Jersey Department of Environmental Protection, approved June 25, 2021; and

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

- Review Memorandum prepared by Elizabeth Leheny, A.I.C.P., P.P., Board Planner, dated January 23, 2022;
- Review Memorandum prepared by Mark Kataryniak, P.E., P.T.O.E., for Paul W. Ferriero, P.E., C.M.E., the Board Engineer, dated January 14, 2022; and
- Review Letter prepared by Don Huber, the Fire Official, dated January 24, 2021; and

**WHEREAS**, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the Application and appeared before the Board on the Hearing Date, as specified above; and

**WHEREAS**, during the public hearing on the Application on the Hearing Date, the Applicant, represented by Derek W. Orth, Esq., was given the opportunity to present testimony and legal argument, and the Board’s consultants and members of the public were given an opportunity to question and comment on the Application; and

**WHEREAS**, Alan Pralgever, Esq., entered his appearance on behalf of the Neighboring Objector, Jennifer Pralgever; and

**WHEREAS**, the following exhibits were presented to the Board during the Hearing:

- **Exhibit A-1**: Site Plan dated August 7, 2020, last revised February 5, 2021;

- **Exhibit A-2**: Site Plan Rendering dated February 23, 2021;
- **Exhibit A-3**: Renderings (PB-100), dated February 5, 2021;
- **Exhibit A-4**: Colorized Rendering dated January 25, 2022;
- **Exhibit O-1**: Photographs of flooding conditions taken by Charles Arentowicz; and
- **Exhibit O-2**: Photographs of flooding conditions taken by Candace Reilly; and

**WHEREAS**, Joseph Jaworski, P.E, the Applicant’s engineer, was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in field of civil engineering. Mr. Jaworski provided testimony on behalf of the Applicant as more fully set forth on the record, as follows:

1. Mr. Jaworski described the existing and proposed conditions, as well as the location of the Property and the surrounding neighborhood. Referencing **Exhibit A-1** and **Exhibit A-2**, he explained that the layout of the project is a function of environmental constraints, including wetlands, wetland buffers, flood plains, and Flood Hazard Areas. Mr. Jaworski testified that the proposed multi-family development is permitted and provided an overview of the project, which includes 62 residential units, 9 of which will be designated as affordable units. He explained that the Applicant is proposing parking, at grade, under the building, as well as additional spaces closer to Valley Road.

2. Mr. Jaworski described the requested bulk variance and design exception relief and provided an overview of the proposed stormwater management facilities and utility connections. He testified that the Applicant is proposing to locate a hotbox and a transformer pad in the front yard and stipulated, as a condition of approval, to installing landscape screening to minimize the visibility of same from the right-of-way.

3. Mr. Jaworski provided an overview of the outside agency approvals that the Applicant will need to obtain, which include multiple permits from the New Jersey Department of Environmental Protection (“NJDEP”) and approvals from Morris County Planning Board and the Soil Conservation District.

4. The Applicant stipulated, as a condition of approval, to complying with the comments set forth in the Review Memoranda prepared by the Board’s professionals.

5. In response to questions from the Board, Mr. Jaworski testified as follows:
- a. The location of the hotbox and transformer are dictated by the utility companies;
  - b. The Applicant will need to work with the sewer plant to determine when capacity may be available;
  - c. Lighting will be downward directed or otherwise shielded so as to eliminate light spillage onto adjacent properties;

- d. The Applicant will be required to submit an Operations and Maintenance Manual for the proposed stormwater management system;
- e. The proposed rain garden is essentially a vegetated depression into which water drains, filters, and is then discharged to the headwall, but this feature was subsequently modified;
- f. The Applicant will consider whether it would be safer to relocate the proposed lighting fixtures to the other side of the drive aisle so as to protect the existing wetlands. The Applicant addressed this item with testimony at a subsequent hearing;
- g. The Applicant will increase the number of plantings to ensure that the parking lot and retention basin located along the right-of-way will be sufficiently screened;
- h. The Applicant will relocate the crosswalk that runs along the front of the entrance to the parking area under the building so it is in front of the stop bar;
- i. The Applicant will ensure that the existing and proposed landscaping does not interfere with the sight triangles; and
- j. The Applicant will revise the plans to comply with the Board professionals' recommendations as to the fire hydrant, water line feeding the hotbox (will be 8" instead of 6"), and the location of the hotbox and underground utilities.

6. In response to questions raised on cross-examination by Mr. Pralgever, counsel for the Neighboring Objector, Mr. Jaworski testified as follows:

- a. The Applicant will work with the Fire Official to ensure safe emergency ingress, egress and site circulation;
- b. The proposal consists of three stories above an at-grade parking lot with a total height of 49.9 feet;
- c. The Applicant has designed the stormwater management system in accordance with the NJDEP requirements;
- d. A generator for emergency lighting and fire alarms is incorporated into the design;
- e. Approximately 75% of the Property is encumbered by critical areas including wetlands, buffers, and flood plains and approximately 25% of the Property will be developed; and
- f. The grading plans were prepared based on a geotechnical study that identified high water levels.

7. Mr. Jaworksi addressed questions raised by members of the public regarding the proposed stormwater management system, emergency access, lighting adjacent to the visitor parking lot, and the outside approvals the Applicant will be required to obtain as a condition of approval.

8. At the April 27, 2021 hearing, John Saracco, R.A., was duly sworn according to law, provided the Board with his qualifications, and was accepted by the Board as an expert in the field of architecture, and provided testimony on behalf of the Applicant as more fully set forth on the record, as follows.

9. Referencing **Exhibit A-2** and **Exhibit A-3**, Mr. Saracco testified as to the proposed bedroom distribution (53 market rate units consisting of 13 one bedroom units, 35 two bedroom units and 5 three bedroom units), and the proposed architectural and design elements (stone piers, copper roofs, balconies). Referencing the floor plans submitted with the application materials, he described the various floor plans. Mr. Saracco testified that the Applicant is seeking a design exception for the length of 31 of the proposed parking spaces. He further testified that the Applicant will provide for electric vehicle charging stations.

10. On questioning by the Board, Mr. Saracco testified that the Applicant would revise the plans to include balconies for some of the affordable units. He confirmed that the actual design of the units would be substantially similar in color and materials to what is depicted on the plans and renderings. The Applicant stipulated to installing landscape screening to minimize the visibility of the proposed gas and electric meters, as well as the generator and HVAC equipment.

11. In response to questions raised on cross-examination by Mr. Pralgever, counsel for the Neighboring Objector, Mr. Saracco testified as follows:

- a. The proposal does not include access from the rear of the building;
- b. All of the apartments, corridors, common spaces, and the parking garage will be sprinklered;
- c. Tenants will not be able to access the attic as same will have crossbeams and trusses throughout;
- d. The height of the building, as calculated pursuant to the Ordinance, is 49.94' tall and same does not require variance relief because a maximum height of 50 feet or three residential stories over parking, whichever is less, is permitted;
- e. The Applicant will consider establishing a designated area for walking pets; and
- f. The generator will be located approximately 10' to 15' from the property line and the testing of same will take place approximately once per week and will comply with the applicable noise level requirements.

12. At the February 22, 2022 hearing, the Applicant's counsel, Mr. Orth, explained that the matter had been carried since April 2021 to allow the Applicant to obtain certain outside approvals. He advised that Mr. Jaworski, the Applicant's Engineer, would testify as to all of the changes that were made to the plans in the interim.

13. Mr. Jaworski, having been previously sworn according to law, referenced **Exhibit A-4**, and testified as follows:

- a. The Applicant pursued the necessary approvals from the NJDEP and the County;
- b. The overall layout is largely unchanged and most of the revisions relate to underground improvements, water quality measures, and the required buffers;
- c. The revisions to the plans include regrading the detention basin in the front yard and removing the retaining wall associated therewith; installing post and rail fencing along the rear of the visitor parking area in the front yard and obtaining the necessary approvals for same from the NJDEP; modifying the striping and entrance; converting the rain garden to a sand filter; installing landscape screening around the hotbox and transformer. The revisions are a function of technical changes recommended by the County and NJDEP; and
- d. The Applicant stipulated that the hotbox will be green and will blend into the landscape buffering;

14. On questioning by the Board and the Board professionals, Mr. Jaworski testified as follows:

- a. The Applicant will revise the proposal to include a request for relief for the disturbance of critical areas by the proposed retention basin in the front yard (disturbance of isolated wetlands) and stormwater management structures to the rear of the building (disturbance of the Flood Hazard Area). Relief is not required for the construction of the driveway within the wetland buffer areas as buffers are not considered critical areas;
- b. The Applicant will work in good faith with the NJDEP and the Fire Official to ensure that the Fire Department can utilize fire hoses throughout the Property. Specifically, the Applicant will ensure that there is a gate that can be opened and closed to accommodate the hoses despite the NJDEP's requirement that a fence be installed to protect the wetland areas;
- c. The Applicant will work in good faith with the Board Engineer to revise the plans to include an outdoor seating area, if the same is possible;
- d. The Township Engineer will work in good faith with the County as to the striping on Valley Road; and

- e. The Applicant will revise the plans to include a connection to the existing sidewalk to the west.

15. Mr. Jaworski addressed questions raised by members of the public regarding stormwater management measures and the accuracy of the flood maps and flood levels. He explained that the Applicant designed the stormwater management measures in accordance with NJDEP requirements.

16. Paul Ricci, P.P., A.I.C.P., was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of professional planning. Mr. Ricci testified that the Applicant is seeking preliminary and final site plan approval, bulk variance relief for the proposed disturbance of critical areas and, if necessary, for the location of the proposed hotbox in the front yard, and design exceptions relating to the location of the off-street parking in the front yard, the length of parking spaces, and the height of a retaining wall in the front yard.

17. Mr. Ricci opined that the Applicant had demonstrated an entitlement to the requested bulk variance relief pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2). He explained that the location of the hotbox and disturbance of critical areas are a function of the limited area in which improvements can be constructed and reminded the Board that approximately 75% of the Property is constrained. As such, he opined that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. Mr. Ricci further explained that the benefits associated with granting the requested relief substantially outweigh the detriment associated therewith and that the proposal advances the purposes of the Municipal Land Use Law (“MLUL”). He opined that, overall, the proposal complies with the Ordinance requirements, provides affordable housing which promotes the general welfare, promotes appropriate population densities, preserves open space and natural resources, and provides an aesthetically pleasing design.

18. Mr. Ricci opined that the Applicant had also satisfied the negative criteria by demonstrating that the proposal will not result in substantial detriment to the public good or substantial impairment of the Master Plan and Zoning Ordinance. He explained that the proposed development was specifically contemplated by, and is included in, the Township’s Housing Element and Fair Share Plan and, therefore, cannot be deemed inconsistent with the Master Plan or Zoning Ordinance.

19. Mr. Ricci opined that the Applicant could demonstrate an entitlement to the requested design exceptions because the requested relief is reasonable under the circumstances and facilitates an appropriate design. He further opined that the Applicant could also demonstrate an entitlement to the requested exception from the RSIS parking requirements because the Ordinance requirements for residential uses shall be accepted if they better reflect local standards, and he noted that the proposal complies with the Ordinance requirements, but not the RSIS.

20. On discussion, the Board recognized that the Applicant’s request for variance relief for the location of the hotbox may not be necessary given the ambiguity of the Ordinance. The Board Chair noted that, in the past, the Board has not required applicants to obtain variance relief

for same, because the Board has considered hotboxes and transformers to be integral aspects of the development.

21. Members of the public, having been duly sworn according to law, made the following comments:

- a. Charles Arentowicz, 605 Heritage Road, introduced into evidence, as **Exhibit O-1**, two photographs taken on September 2, 2021, depicting the conditions on the right-of-way after a storm. Referencing same, he expressed concern about the height of the building and whether the fire department would be able to access the building.
- b. Candace Reilly, 593 Valley Road, introduced into evidence, as **Exhibit O-2**, multiple photographs of her property taken after a flooding event. She expressed concern that the NJDEP maps are outdated and do not reflect current conditions.
- c. Robert Demel, 603 Valley Road, expressed concern about flooding and the noise generated by the proposed generators and condensers. Mr. Demel testified that the proposed improvements are too close to his dwelling and will have a detrimental impact on his enjoyment of his property.

22. Mr. Orth provided a summation and requested that the Board approve the application.

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

23. By way of background, the Board notes that the Township filed a declaratory judgment action on July 6, 2015 seeking a declaration of compliance with the Mount Laurel doctrine and Fair Housing Act of 1985. Subsequently, the Township reached a settlement agreement with Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in the matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015). The terms of the Settlement Agreement were memorialized in an agreement dated September 27, 2017 and included the requirement that the Township address its Fair Share obligation, in part, by rezoning Block 10801, Lot 3 indicated as “Gillette Office” in the agreement. The terms of the agreement indicated that the Site could accommodate 62 housing units with a set aside of 9 affordable units for a rental project and 12 affordable units for an ownership project. By Ordinance #413-18, the Township adopted zoning regulations necessary to implement the Settlement Agreement including creating a new zone, the R-MF-4 Multifamily Residential Zone 4, on Block 10801, Lot 3. The Township Committee adopted Ordinance #460-20 in July 2020 which amended some of the standards for the R-MF-4 Zone.

24. The R-MF-4 Multifamily Residential Zone permits multifamily dwelling units for the provision of inclusionary affordable housing. The purpose of the R-MF-4 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. The zoning standards specify that development in the zone “shall be used for inclusionary affordable housing multi-family dwelling units.” Further,

not less than 9 units (15 percent of the total number of units) shall be affordable to very low-, low- and moderate-income households for rental projects or 12 units (20 percent of the total number of units) for sale units. The affordable units must meet the relevant income and bedroom distribution requirements of the Fair Housing Act (i.e., N.J.S.A. 52:27D-329.1) and Uniform Housing Affordability Controls (i.e., N.J.A.C. 5:80-26.3). The Applicant's proposal is substantially compliant with the Ordinance requirements.

25. The Property is approximately five (5) acres and is located on the south side of Valley Road to the east of Mountain Avenue. The rear of the Property abuts property owned by New Jersey American Water Company which itself abuts the Passaic River. To the west of the Site, along Valley Road, are commercial uses including restaurants, a Valero gas station, insurance offices, and doctors' offices. Directly across the street is a strip mall which includes both commercial uses and a branch of the U.S. Post Office. To the east of the Site, along Valley Road, are single-family residential uses. The Site is constrained by wetlands and floodway areas. According to Sheet 4 of the Revised Site Plan drawings, approximately 106,992 square feet (or 2.5 acres) of the Site is shown as critical areas (the Long Hill Code defines "Critical Area" as "the combined area of any portion of a site having an average slope of 15% or greater measured across 10 vertical feet of contour; and/or an area of special flood hazard; and/or any wetlands area.").

26. The Applicant proposes to remove all existing improvements and construct a multi-family residential building consisting of 62 units, 9 of which are proposed to be designated for low- and moderate-income households. The development includes 14 one-bedroom units, 41 two-bedroom units, and 7 three-bedroom units. Of these units, there will be 1 one-bedroom unit, 6 two-bedroom units, and 2 three-bedroom units set aside as low- and moderate-income units. The proposed bedroom distribution of the affordable units satisfies the standards set forth in N.J.A.C. 5:80-26.3 (i.e., the Uniform Housing Affordability Controls or "UHAC").

27. The building is proposed to be four (4) stories with three (3) stories of residential units above a ground floor structured parking area. There will also be 28 surface parking spaces for visitors. The garage spaces measure 19 feet in length and 9 feet in width. However, one bank of 18 garage spaces will measure 18 feet in length and 9 feet in width. These spaces will not have an overhang curbed area and, therefore, require design exception relief.

28. The ground level will include 77 parking spaces, a bicycle storage area, the building lobby, a refuse area, and two areas for mechanical equipment. The first residential floor will have a lounge, business center and storage areas and 20 residential units including 2 two-bedroom and 2 three-bedroom affordable units. The second residential floor will have a gym and storage areas and 20 residential units including 2 two-bedroom affordable units. The third residential floor will have storage areas and 22 residential units including 1 one-bedroom and 2 two-bedroom affordable units. All but one of the market rate units include a balcony. However, the affordable one and two-bedroom units do not have balconies, but the Applicant stipulated to providing balconies for some of the units. The affordable three-bedroom units do have balconies.

29. The building will be "U" shaped and will have a pitched roof. The exterior building materials include hardie-plank siding and hardie-panel board and batten siding, as well as stone and brick veneer. The roofline of the north elevation facing Valley Road will be broken up into

three bays delineated by cross gables. The floor plan for the roof indicates that there will also be smaller cross gables along this northern façade facing toward the drop-off area. The Applicant proposes a generator and air conditioning condenser unit adjacent to the east façade.

30. The exterior area of the Site includes an entry drive from Valley Road leading to a turn-around at the building entrance. A sidewalk is proposed along the Valley Road frontage heading westward. There will also be a detention basin in the front yard adjacent to Valley Road with an accompanying split rail wire fence set back 10 feet from the front lot line. A water utility hotbox is proposed in the northwest corner of the Site. The hotbox will be 12 feet in length, 7 feet in depth and 6.5 feet in height. A transformer on a concrete pad is proposed along the western side of the driveway. There is also a water meter along Valley Road to the south of the property line. A landscaped area is provided between the concrete pads and the neighboring streets and property lines for screening purposes.

31. A ground sign is proposed on the western side of the driveway near the entrance from Valley Road. The sign will say "Gillette Crossing 621" in five-inch black aluminum lettering on a white background. The sign board is 2 feet 3 inches tall by 4 feet wide and will rest on a stone veneer base approximately 1 foot in height and 5 feet in width.

32. The Board finds that all jurisdictional requirements of the application were met and the Board proceeded to hear the application and render its determination which is memorialized herein in accordance with N.J.S.A. 40:55D-10(g).

### **DECISION:**

33. After reviewing the evidence submitted, the Township of Long Hill Planning Board, after carefully considering the plans, reports, submissions and evidence provided, by a vote of 8 to 1, finds that the Applicant has demonstrated an entitlement to the requested preliminary and final site plan approval, bulk variance and design exception relief sought herein.

### **The Bulk Variance Relief:**

34. As to the requested bulk variance relief for the disturbance of critical areas, the Board finds that the Applicant has demonstrated an entitlement to same pursuant to N.J.S.A. 40:55D-70(c)(1) by demonstrating that the strict application of the zoning regulations will result in peculiar and exception difficulties to, or exceptional and undue hardship upon, it as the owner of the Property. In this regard, the Board recognizes that approximately 75% of the Property is constrained by wetlands, wetland buffer areas, flood hazard areas, thereby restricting the Applicant's ability to develop the Property in conformance with the Ordinance requirements. The Board accepts the unrefuted expert testimony provided by Mr. Jaworski, the Applicant's professional engineer, that the disturbance is permitted by the NJDEP. The Board further recognizes that the improvements proposed within the critical areas cannot be relocated given the limited building envelope within which the improvements can be constructed. Finally, the Board finds that the undue hardship that would be incurred by the Applicant if the zoning regulations were to be strictly enforced would not be self-created by the Applicant or any predecessor-in-title. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested relief

pursuant to N.J.S.A. 40:55D-70(c)(1).

35. The Board further finds that the Applicant has demonstrated an entitlement to the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) by demonstrating that the purposes of the MLUL will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. Here, the Board accepts the unrefuted expert testimony provided by Mr. Ricci, the Applicant's professional planner, that the proposal advances purposes set forth in MLUL Section 2 at subsections (a), (e), (g), and (i). In this regard, the Board concurs that the proposal provides affordable housing, thereby promoting the general welfare; promotes the establishment of appropriate population densities and concentrations; provides sufficient space in appropriate locations for residential uses; and promotes a desirable visual environment. The Board finds that the benefits of the proposal, which include the provision of aesthetically pleasing market rate and affordable housing and improved stormwater management, substantially outweigh the detriment associated therewith. As such, the Board finds that the Applicant has satisfied the positive criteria for the requested relief pursuant to N.J.S.A. 40:55D-70(c)(2).

36. As to the negative criteria for the requested bulk variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2), the Board finds that the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Master Plan and Zoning Ordinance. As to the substantial detriment prong of the negative criteria, the Board recognizes that granting the requested relief will improve the existing neighborhood by providing stormwater management facilities where none currently exist and providing an attractive development with limited impact on the critical areas that constrain the Property. As to the substantial impairment prong of the negative criteria, the Board recognizes that the proposal was specifically considered in the Housing Element and Fair Share Plan, as well as the Settlement Agreement resolving the declaratory judgment action. The Board further recognizes that the R-MF-4 Zone was designed to implement the provisions of the Settlement Agreement and the development of this Site and, therefore, finds that, notwithstanding the minor variance relief requested, granting the requested relief will not result in substantial impairment of the Master Plan or Zoning Ordinance. As such, the Board finds that the Applicant has satisfied the negative criteria for the requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(1) and (c)(2).

#### **The Design Exception Relief:**

37. As to the requested design exception for the location of parking in the front yard, length of certain parking spaces, and the height of a retaining wall in the front yard, the Board recognizes that N.J.S.A. 40:55D-51b allows it to "grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question". Exceptions must be reasonable, based upon the facts of each case.

38. Here, the Board finds that given the magnitude of the critical areas on the Property, there is no other location in which the visitor parking can be located. The Board further finds that the deficient parking space length is de minimis and compliance would result in additional disturbance of critical areas. As to the retaining wall, the Board recognizes that the location of same is largely determined by the conditions pertaining to the Property and cannot be relocated. As such, the Board finds that the Applicant has demonstrated an entitlement to the requested design exception relief.

**Preliminary and Final Site Plan Approval:**

39. 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. Saratoga v. Borough of West Paterson, 346 N.J. Super. 569, 581 (App. Div. 2002) certif. denied, 172 N.J. 357 (2002). Here, the Board finds that the Applicant has demonstrated an entitlement to the requested preliminary and final site plan approval pursuant to the Ordinance and the MLUL.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Long Hill, on this 26<sup>th</sup> day of April, 2022, that the application of Elite Properties at Long Hill, LLC, as aforesaid, be, and hereby is, granted, subject to the following conditions:

1. The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
2. The Applicant shall comply with the Applicant's representations to and agreements with the Board during the hearing on this application;
3. The Applicant shall comply with the recommendations in the January 23, 2022 Review Memorandum prepared by the Board Planner, Ms. Leheny; the January 14, 2022 Review Letter prepared by the Board Engineer, Mr. Mark Kataryniak for Paul W. Ferriero; and the January 24, 2021 Review Letter prepared by the Fire Official, Don Huber;
4. The Applicant shall screen all equipment including, but not limited to, gas and electric meters, the transformer, and the hotbox. The hotbox shall be painted green so as to blend in with the existing and proposed landscaping;
5. The Applicant's plan currently is to locate certain ground mounted equipment along the eastern side of the proposed building. The Applicant shall work with the Township

Engineering and Construction Department and attempt to relocate the ground mounted equipment in a conforming location, if reasonably possible, away from the adjacent residential dwellings, potentially on the southerly side of the building. If the equipment cannot be relocated in a conforming location, the Applicant shall ensure that said equipment is appropriately screened from view and same shall be subject to the review and approval of the Township Engineering and/or Construction Departments.

6. The Applicant shall install sufficient landscape screening to reduce the visibility of the proposed retention basin and same shall be subject to the review and approval of the Township Engineering Department;
7. The Applicant shall work in good faith to ensure that the Fire Department can utilize fire hoses around the building. Specifically, the Applicant shall install a gate in the wetlands protective fence that can be opened and closed to accommodate the hoses around the building.;
8. The Applicant shall work with the Board Engineer to include outdoor amenities, such as an outdoor seating area, as part of the proposed improvements, if the same are possible given the site constraints and DEP permitting requirements;
9. The Township Engineer shall work with the County as to any modifications to the striping of Valley Road;
10. The Applicant shall comply with the local and State noise regulations, including, but not limited to, N.J.A.C. 7:29;
11. 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;
12. The approval shall be subject to, and conditioned on, the Applicant or its related affiliates or permitted assignees agreeing to the phasing of affordable housing units with the market rate residential units in accordance with COAH's second round regulations, specifically N.J.A.C. 5:93-5.6(d);
13. The Applicant shall construct a sidewalk along the Property that shall connect to the existing sidewalk located on Valley Road heading westward and same shall be subject to the review and approval of the Township Engineering Department;
14. The Applicant shall comply with the State regulations requiring the installation of electric vehicle supply equipment and make ready parking spaces (N.J.S.A. 40:55D-66.20);
15. 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, except as specifically stated in this Resolution;

16. 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;
17. 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.
18. The Applicant shall submit all funds relating to affordable housing that are required to be submitted pursuant to the Ordinance and New Jersey State Law;
19. All fees assessed by the Township of Long Hill for this Application and the Hearing shall be paid prior to any construction. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property;
20. Any variance from the terms of this Ordinance hereafter granted by the Planning Board 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 12 months from the date of approval by New Jersey American Water of the Applicant's requested Treatment Works Approval permit, 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 to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding; and
21. 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 or received by the Applicant.

**BE IT FURTHER RESOLVED**, that this Resolution, adopted on April 26, 2022, memorializes the action of the Planning Board taken on February 22, 2022 with the following vote: Yes: Motion/Mr. Pfeil, Second/Committeeman Rae, Committeeman Verlezza, Ms. Dill, Mr.

Hands, Mr. Malinousky, Vice Chairman Richardson, Chairman Sandow; No: Mr. Jones; Recused: None; Not Eligible: None; Absent: None.

ATTEST:

  
 Debra Coonce,  
 Board Secretary

  
 Dennis Sandow,  
 Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN SANDOW	X				
VICE CHAIRMAN RICHARDSON	X				
COMMITTEEMAN RAE					X
COMMITTEEMAN VERLEZZA	X				
DILL	2nd				
HANDS	X				
JONES			X		
MALINOUSKY	X				
PFEIL	M				

I hereby certify this to be a true copy of the Resolution adopted on April 26, 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 19th day of May, 2022 in said newspaper.

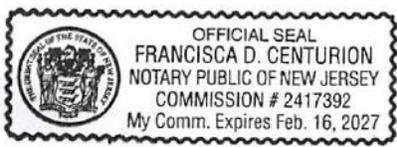




Sworn and subscribed before me this

19th day of MAY, 2022

  
Notary Public of New Jersey



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

**CSH LONG HILL, LLC  
1050 & 1058 Valley Road  
Stirling, New Jersey  
Blocks 11301 & 11401, Lots 4 & 23  
APPLICATION NO. 22-06Z**

**Hearing Dates: May 2, 2023  
June 20, 2023  
July 25, 2023  
Board Action: July 25, 2023  
Memorialization: September 19, 2023**

**WHEREAS, CSH LONG HILL, LLC** (the “Applicant”) has brought an application before the Zoning Board of Adjustment of the Township of Long Hill (the “Board”), pertaining to property located at 1050 and 1058 Valley Road, Stirling, identified on the Official Tax Map of the Township of Long Hill, respectively, as Lot 4 within Block 11301 (“Lot 4”) and Lot 23 within Block 11401 (“Lot 23”), in the B-D (Downtown Valley Commercial) and C (Conservation) Zones (the “Property” or the “Site”); and

**WHEREAS,** the Applicant requests preliminary and final minor subdivision approval, preliminary and final major site plan approval, and variance relief, as set forth below, in connection with its proposal to 1) reconfigure Lots 4 and 23 to create two (2) new lots (“Proposed Lots A & B”), and 2) construct a three-story assisted living/memory care residence with associated site improvements on Proposed Lot A (the “Proposed Residence”):

Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)

- a. A variance, pursuant to N.J.S.A. 40:55D-70(d)(1) (a “(d)(1) use variance”), to permit the operation of the assisted living and memory care elements of the Proposed Residence on Proposed Lot A, whereas assisted living/memory facilities are not permitted in either the B-D and C Zones, pursuant to Sections 122.1 and 122.6 *et. seq.* of the Township of Long Hill Land Use Ordinance (the “Ordinance”);
- b. A variance, pursuant to N.J.S.A. 40:55D-70(d)(4) (a “(d)(4) F.A.R. variance”), to permit a proposed aggregate floor area of 77,980 square feet, representing a floor area ratio (“F.A.R.”) of approximately 4.6 times the permitted limit, for the Proposed Residence on Proposed Lot A, whereas the maximum permitted floor area of Proposed Lot A would be 16,891 square-feet, pursuant to Section 132.6 of the Ordinance; and
- c. A variance, pursuant to N.J.S.A. 40:55D-70(d)(6) (a “(d)(6) height variance”), to permit a proposed building height of 43.5’ for the Proposed Residence on

Proposed Lot A, whereas the maximum permitted building height in the B-D Zone is 25' (an exceedance of approximately 74%) and the maximum permitted building height in the C Zone is 35' (an exceedance of approximately 24%) , pursuant to Section 131 of the Ordinance; and

Bulk Variance Relief

- d. A bulk variance to permit the Proposed Residence on Proposed Lot A to feature three (3) stories, whereas the maximum permitted number of stories for a building in the B-D zone is two (2) and the maximum permitted number of stories for a building in the C Zone is two and one-half (2.5), pursuant to Section 131 of the Ordinance;
- e. A bulk variance to permit a front-yard setback of 296.1' for Proposed Lot A, whereas the maximum permitted front-yard setback in the B-D Zone is 50', pursuant to Section 131 of the Ordinance;
- f. A bulk variance to permit a front-yard setback of 50.9' for Proposed Lot B, whereas the maximum permitted front-yard setback in the B-D Zone is 50' and the minimum required front-yard setback in the C Zone is 75', pursuant to Section 131 of the Ordinance;
- g. A bulk variance to permit the location of the principal building, front parking lot and bioretention basin within a critical area featuring a slope of at least 15%, whereas no disturbance is permitted to be located within a critical area featuring a slope of 15% or greater, pursuant to Sections 142.1(a) and 111 of the Ordinance;
- h. A bulk variance to permit a parking area within the front yard of Proposed Lot A, whereas no off-street parking area is to be located in a front yard, pursuant to Section 151.2 of the Ordinance;
- i. A bulk variance to permit a retaining wall with a height of 10.34 feet with a 6 foot tall fall protection fence (combined height 16.34 feet) on Proposed Lot A, whereas no retaining walls are to exceed 4' in height in a front yard or 6' in height in a side or rear yard, pursuant to Section 154.1.e.3 of the Ordinance; and
- j. A bulk variance to permit a ground sign encompassing an area of approximately 21 square feet, whereas no ground sign in the B-D Zone is to exceed 16' square feet in area, pursuant to Section 155.2 of the Ordinance; and

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

- a. An Application for Development for Block 11301, Lot 4 and Block 11401, Lot 23 including completed checklists and an Addendum, signed by Lawrence A. Calli, Esq., dated April 1, 2022;
- b. A preliminary and final major site and subdivision plan set, prepared by Dynamic Engineering, dated March 28, 2022, last revised March 31, 2023, same consisting of twenty-two (22) sheets;
- c. A site photo report, prepared by Dynamic Engineering, dated April 2022, same consisting of nine (9) pages;
- d. An architectural plan set, prepared by Meyer Architecture, dated March 31, 2022, last revised March 31, 2023, same consisting of five (5) sheets;
- e. An ALTA/NSPS land title survey, prepared by Craig Black, PLS, dated October 21, 2021, last revised, March 28, 2022, same consisting of two (2) sheets;
- f. A landscape plan set, prepared by James J. Langenstein, L.L.A., dated April 1, 2022, last revised, March 31, 2023, same consisting of three (3) sheets;
- g. A geotechnical engineering report, prepared by Geo-Technology Associates, Inc., dated November 3, 2021;
- h. A stormwater management report, prepared by Daniel T. Sehna, P.E. of Dynamic Engineering, dated March 2022, last revised March 2023; and
- i. A traffic engineering assessment, prepared by David R. Shropshire, P.E., P.P., of Shropshire Associates, LLC, dated April 4, 2022; and

**WHEREAS**, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application and appear before the Board on the Hearing Dates, as specified above; and

**WHEREAS**, the Board, in adjudicating the proposal, considered the following reports concerning the application from its Professionals:

- a. A planning review memorandum, prepared by the Conflict Board Planner, David G. Roberts, P.P., A.I.C.P., L.L.A., L.E.E.D., A.P., N.D., dated June 6, 2023;
- b. An engineering review memorandum, prepared by the Board Engineer, Joseph Vuich, P.E., dated April 20, 2023; and
- c. A traffic engineering review memorandum, prepared by the Board Traffic Consultants, John J. Jahr, P.T.P., T.S.O.S., and Joseph A. Fishinger, Jr., P.E., P.P., P.T.O.E., dated March 28, 2023, revised April 13, 2023 and July 25, 2023; and

**WHEREAS**, the Property consists of two (2) distinct parcels – Lot 4 within Block 11301 and Lot 23 within Block 11401. Lot 4 fronts Valley Road to the south, comprises approximately 8.02 acres, is situated in the B-D Zone, and is improved with a Walgreens Pharmacy and associated improvements, including a stormwater detention basin, paved parking area, driveway, and walkways. Lot 23 is landlocked and northerly adjacent to Lot 4, situated in the C Zone, comprises approximately 3.69 acres, and is vacant; and

**WHEREAS**, the Applicant proposes to reconfigure, through subdivision, Lots 4 and 23 to create two (2) new Lots (Proposed Lots A and B) and construct a three-story assisted living/memory care residence on Proposed Lot A. Proposed Lot B would be excised from Lot 4, retain the entire premises of the existing Walgreen Pharmacy, and contain 2.91 acres. Proposed Lot A would consist of the remainder of Lot 4 and the entirety of Lot 23, comprising a total area of 8.7 acres; and

**WHEREAS**, during the public hearings on the application on May 2, June 20, and July 25, 2023 (the “Hearing Dates”), the Applicant was given the opportunity to present testimony and legal argument, and members of the Public were given an opportunity to question all witnesses and comment on the application; and

**WHEREAS**, the Applicant presented testimony from the following individuals who were duly sworn according to law. Those of whom were offered as experts provided their credentials and were accepted by the Board as experts in their respective fields of expertise:

1. Joseph McElwee, Principal of Development for the Applicant, having a business address of 1275 Pennsylvania Avenue, NW, Second Floor, Washington, D.C., who provided factual and operational testimony;
2. Daniel T. Sehnal, P.E., of Dynamic Engineering, having a business address of 245 Main Street, Suite 110, Chester, accepted by the Board as an expert in the field of civil engineering;
3. David R. Shropshire, P.E., P.P., of Shropshire Associates, LLC, having a business address of 277 White Horse Pike, Suite 203, Atco, accepted by the Board as an expert in the field of traffic engineering;
4. John McDonough, P.P., A.I.C.P., L.A., of John McDonough Associates, LLC, having a business address of 101 Gibraltar Avenue, Morris Plains, accepted by the Board as an expert in the field of professional planning; and
5. Mark Kuberski, R.A., of Meyer Design, Inc., having a business address of 227 East Lancaster Avenue, Ardmore, Pennsylvania, accepted by the Board as an expert in the field of architecture; and

**WHEREAS**, David G. Roberts, P.P., A.I.C.P., L.L.A., L.E.E.D., A.P., N.D., the Board Conflict Planner, Joseph R. Vuich, P.E., the Board Engineer, and John J. Jahr, P.T.P., T.S.O.S.,

the Board Traffic Engineering Consultant, were duly sworn according to law (the "Board Professionals"); and

**WHEREAS**, Lawrence A. Calli, Esq., of Calli Law, LLC, having a business address of 170 Kinnelon Road, Suite 6, Kinnelon, entered his appearance on behalf of the Applicant and provided a brief overview of the application and witnesses to be presented; and

**WHEREAS**, Arthur M. Neiss, Esq., of Beattie Padovano, LLC, having a business address of 200 Market Street, Suite 401, Montvale, entered his appearance on behalf of Stirling SL Urban Renewal, LLC, an Objector to the application (the "Objector"). Mr. Neiss appeared on the Objector's behalf at the May 2 and June 20 hearing dates to note objections and cross-examine witnesses. By way of letter dated July 24, 2023 (entered into the record as **Exhibit A-4**), Mr. Neiss notified the Board and the Applicant that the Objector had elected to discontinue its participation in the proceedings; and

**WHEREAS**, members of the Public appeared to ask questions about or to comment on the application, as more fully set forth on the record; and

**WHEREAS**, the Board has made the following findings and conclusions based upon the evidence submitted:

1. Mr. McElwee (the Applicant's operational fact witness) introduced into evidence, as **Exhibit A-1**, a compendium of presentation slides consisting of colorized photographs and background information relative to the proposal, dated May 2, 2023, and testified to the impetus behind the proposal. According to Mr. McElwee, the Applicant was founded in 2003 and has developed over 150 active-senior, assisted-living, and memory care facilities, mostly throughout the eastern United States. He provided a litany of demographic projections, explaining that the United States is poised to see a significant proportional increase of individuals over the age of sixty-five, in what he described as a "silver tsunami." Mr. McElwee indicated that the projected increase in the country's senior citizen population, as well as the rates of Alzheimer's Disease, will necessitate assisted living/memory care facilities like the one proposed. Additionally, he testified that nearby facilities within a five (5) mile radius of the Property, that would be competitors to the one proposed, are at a high level of occupancy and so contended that there is, and will continue to be, a need for the services the Proposed Residence would provide. Mr. McElwee also testified that the Applicant had obtained "Certificate of Need" from the New Jersey State Department of Health, approving the Proposed Residence and demonstrating the public interest served by same.

2. Mr. McElwee also testified to the operations of the Proposed Facility, explaining that it would include eighty-seven (87) individual residential units, with sixty-two (62) of those units being dedicated to residents requiring assisted living, twenty-five (25) of those units being dedicated to residents requiring memory care, and ten (10) beds will be located in 5 semi-private units. He explained that the ten (10) Medicaid beds fully satisfy the Applicant's COAH requirement/obligation. He explained that the memory care units would have their own dedicated and secured wing, featuring a garden with 6' tall fencing, to protect the residents therein. Additionally, Mr. McElwee testified that there would be three (3) rotating shifts of staff present

at the Proposed Facility, including up to about thirty (30) employees during the morning and early afternoon, twenty (20) employees during the late afternoon and early evening hours, and five (5) employees during the overnight hours. He stated that the bulk of the proposed on-site parking spaces would be used by those employees as the residents of the Proposed Facility would be highly unlikely to drive on their own, due to their age and health, and so instead would utilize their family members and/or a fourteen (14) passenger van, provided by the Facility, to leave the premises. Mr. McElwee also testified that the Applicant expects an average of two (2) weekly 911 calls to occur on-site.

3. On questioning by members of the Board and Board Professionals, Mr. McElwee explained "Letters of Need" and testified that: i) the Applicant would coordinate with local emergency services to arrange for efficient ambulance access to the Site; ii) the expectation of two (2) weekly 911 calls is based on the frequency of such calls at other, similar facilities; the Proposed Residence will utilize a private ambulance company to transport residents to medical appointments off-site; iii) the Applicant is a for-profit enterprise and so it will pay property taxes for Proposed Lot A; iv) residents not living within the memory care unit will be able to come and go as they please, and leave the premises with their family members; v) it is highly unlikely to have a resident walk off the premises; vi) the Applicant expects an average of two (2) visitors to the Proposed Residence per hour during the daytime; vii) the ratio of assisted living to memory care units was determined based on staffing requirements; viii) nearly all staff members will be employees and all will undergo background checks; ix) and the Applicant expects an average of fourteen (14) weekly trips to be undertaken by the on-site passenger van.

4. On cross-examination by Mr. Neiss, Mr. McElwee testified that: i) the Applicant may have had discussions with the Township's governing body about changing the Ordinance to permit the proposed use of the Property; ii) the Proposed Residence building will be 35' tall, in order to provide shorter hallway lengths for its residents who would often have limited mobility; iii) the two (2) expected weekly 911 calls would likely not account for a net increase to 911 calls in the community; iv) it is an industry standard to evaluate competitors within a 5-mile radius to determine the need for a residence like the one proposed; and v) the Applicant expects existing elderly residents of the Township to become residents at the Proposed Residence based on prior experience.

5. Mr. Sehnal (the Applicant's civil engineer) introduced into evidence, as **Exhibit A-2**, a colorized site plan rendering, dated May 2, 2023, and, as **Exhibit A-3**, a colorized landscaping plan, dated April 1, 2022, last revised March 31, 2023. Mr. Sehnal offered testimony on the civil engineering considerations of the proposal.

6. Mr. Sehnal testified to the existing conditions on the Property, remarking that it is marked with natural features throughout, like wetlands and steep slopes, as well as a Walgreen Pharmacy location with associated improvements. He testified that the Applicant had obtained a Letter of Interpretation ("LOI") from the New Jersey State Department of Environmental Protection ("NJDEP") approving the location of the wetlands and associated classification of the same. Mr. Sehnal testified that the proposed improvements would not infringe on the Property's existing wetlands and no further NJDEP wetlands permitting is necessary. Mr. Sehnal also indicated that the Property is encumbered with access, utility, sight triangle, and conservation

easements. Additionally, he confirmed that the Property is split-zoned, with Lot 4 being within the B-D Zone and Lot 23 being in the C Zone and testified that the Property is currently deficient only as to its front-yard setback due to the location of the Walgreens Pharmacy building.

7. Mr. Sehnal testified that the Applicant proposes to subdivide the Property so as to result in two (2) new lots – Proposed Lots A and B. He explained that the Proposed Residence would be constructed on Proposed Lot A and the Walgreens Pharmacy would remain on Proposed Lot B. Mr. Sehnal also testified that the access easement on the Property, improved with an existing driveway, will remain to the benefit of the Walgreens location, but be situated on Proposed Lot A where it would also provide access to the Proposed Residence from Valley Road.

8. Mr. Sehnal testified to the proposed vehicular access improvements. He explained that a 24' wide driveway would be installed, connected from the access easement driveway to the circulation and parking areas of the Proposed Residence. Mr. Sehnal testified that the Site would feature a total of forty-five (45) parking stalls, including seven (7) make-ready electric vehicle (EV) charging stations and four (4) ADA-compliant parking stalls, that would be spread between three (3) areas to the north, west, and south of the Proposed Residence. He also indicated that circulation would be afforded to the south, west, north, and northeast sides of the proposed building and stated that the west entrance would feature a portico over an 18' wide strip of driveway. Mr. Sehnal opined that the proposal affords sufficient parking and circulation for emergency vehicles, delivery trucks, and other vehicles anticipated to frequent the Proposed Residence. Additionally, he testified that the Applicant would provide an additional access easement on Proposed Lot A that would connect to the easterly adjacent lot owned by the Township, but the Applicant would not construct a roadway thereon until so directed by the Township.

9. Mr. Sehnal testified to the stormwater management considerations of the proposal. He testified that the Applicant proposes to install two (2) detention basins – a bio-retention basin situated to the south of Proposed Lot A, and a pervious asphalt basin comprising the parking area to the north of the Proposed Residence. Mr. Sehnal further testified that runoff would be routed to the proposed detention basins, through which the water would be filtered.. The proposed bio-retention basin which manages the building roofs, front and side parking lots routes through an existing detention basin on Lot B. Additionally, he stated that the Property is marked with high bedrock which provides little to no ability for ground water recharge.

10. Mr. Sehnal testified to grading work that would need to be performed on the Site. He explained that the Property is marked with a steep grade, so the proposed improvement area would need to be lowered to accommodate the Proposed Residence. To do so, Mr. Sehnal further explained that, the Applicant would install a +/- 10.5' high retaining wall, with a 6' tall fence on top, on the east side of Proposed Lot A, running through the Lot's front and east side yard, with said wall facing the interior of the Site, as well as a +/- 4' high retaining wall on the west side of Proposed Lot A, along the shared boundary with Proposed Lot B.

11. Mr. Sehnal testified that the Applicant proposes to install a freestanding sign on Proposed Lot A, near Valley Road, to the west of the existing access driveway, to identify the Proposed Residence, not only to the public but also to ambulances needing to access the Site. He

explained that the proposed sign would measure 8.5' wide and 5.75' high, comprising 23 square-feet, and it would identify the Proposed Residence as "Chelsea Senior Living."

12. Mr. Sehnal testified that the Applicant proposes to construct a trash and generator enclosure area to the east of the building on Proposed Lot A, which would be accessed by the driveway leading around the building to the north side of the Proposed Residence. He explained that this enclosure would measure 18' by 22' and that the proposed generator would be fueled by a diesel tank and be tested on a monthly basis, during the day time, at 30-minute intervals. Mr. Sehnal also indicated that just west of the proposed trash and generator enclosure would be two (2) outdoor courtyards for the benefit of the Proposed Residence's residents.

13. Mr. Sehnal testified that the Applicant had obtained will-serve letters from the applicable gas, electric, and water utility companies, and intends to tie the Proposed Residence into the soon-to-be-upgraded sewer system along Valley Road.

14. Mr. Sehnal testified that the proposal includes nineteen (19) freestanding light poles, with mounting heights of 14.5', throughout the proposed parking areas, as well as six (6) light bollards along the Property's various walkways.

15. Mr. Sehnal, using Exhibit A-3, testified to proposed landscaping improvements, explaining that the Applicant would plant a total of over 900 different plantings of a variety of colorful and inviting native species on Proposed Lot A. He stated that twenty-five (25) trees measuring over 8" in diameter would be removed, and that the Applicant proposes to install 62 replacement trees.

16. On questioning by members of the board and Board Professionals, Mr. Sehnal testified that: i) the proposal will not exacerbate the existing front-yard setback deficiency; and the sloped walkway along the existing access driveway is ADA-complaint; ii) the Applicant would purchase all of Proposed Lot A while Proposed Lot B would remain with the current owner; iii) the New Jersey Residential Site Improvement Standards (RSIS) may not be applicable to the proposal, despite its residential nature; iv) utility meters would be situated in an enclosure situated to the southeast of Proposed Lot A, setback about 10.1' from the south boundary line; v) the Applicant will be adding landscaping along the fence atop the proposed 10.34' retaining wall; vi) the proposed building will measure 45' from the lowest point of grade; vii) a portion of the Property is within a flood zone but the proposed improvement area is not; viii) the proposed building will be equipped with a sprinkler system; ix) and if the proposal were approved, the Applicant would arrange for a portable generator to be brought to the Site in anticipation of the possibility of the proposed generator either failing or running out of fuel.

17. On cross-examination by Mr. Neiss, Mr. Sehnal testified that: i) the proposed bioretention basin will appear as a landscaped area; ii) delivery trucks will be directed to the west side of the Proposed Residence; iii) the proposed portico over the west entrance to the Proposed Residence will have enough clearance to accommodate an ambulance; and site circulation was designed to accommodate a standard-size ladder fire truck; iv) while traffic circulation is not provided to the east side of the Proposed Residence, the proposed circulation areas will provide ample space for fire trucks to access the east side of the building; v) there will be yard inlets on

the east side of Proposed Lot A to capture and direct stormwater; vi) the proposed generator will be hidden towards the rear of Proposed Lot A and is proposed in the optimal location; and vii) the proposed trash enclosure will be situated in the same area as the proposed generator and that area will be sufficiently screened from view.

18. Mr. Shropshire (the Applicant's traffic engineer) testified that he performed the Applicant's submitted traffic study and explained the study's findings, describing the Proposed Residence as a low traffic generator. He testified that the Proposed Residence is expected to see a peak of twenty-six (26) vehicle trips during the afternoon hours and nineteen (19) vehicle trips during the morning hours. Mr. Shropshire also explained that access to the Site would be provided by an access driveway, which effectively serves as a leg of the intersection of Valley Road and Plainfield Road, and he opined that the impact of the Proposed Residence's traffic on that intersection's levels of service would be negligible.

19. Mr. Shropshire also addressed the comments raised in Board Traffic Consultant Jahr's last revised April 13, 2023 and July 25, 2023 review memorandum to Mr. Jahr's satisfaction.

20. On questioning by members of the Board and Board Professionals, Mr. Shropshire testified that the Applicant's circulation plan assumes 47' as the longest length for a firetruck traversing the Site and the Applicant does not propose designated parking areas for staff and visitors.

21. Mr. Jahr advised that he concurred with Mr. Shropshire's findings and he requested that the Applicants be required to consult with the Township's Fire Department Chief to confirm that emergency vehicles will be able to effectively maneuver through the Site.

22. Mr. McDonough (the Applicant's professional planner) entered into evidence, as **Exhibit A-5**, an compendium of five (5) colorized aerial photographs of the Site and surrounding properties, dated March 20, 2023.

23. Mr. McDonough testified to the planning merits of the Applicant's request for subdivision and site plan approval, and Subsection (d) and bulk variance relief. Using Exhibit A-5, he explained the configuration of Proposed Lots A and B and location of the Proposed Residence, relative to surrounding properties.

24. Mr. McDonough addressed the Applicant's request for (d)(1) use variance relief. He opined that the proposed assisted living and memory care elements of the proposed residence, while not permitted by the Ordinance, qualify as inherently beneficial uses, as anticipated by the the New Jersey Municipal Land Use Law (the "MLUL"), and that, as such, the Applicant has presumptively satisfied the requisite positive criteria for (d)(1) use variance relief. Mr. McDonough further opined that the proposal satisfies the applicable negative criteria, which he explained was the multi-prong balancing test adopted by the New Jersey Supreme Court in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992), in balancing the public benefits and detriments of the requested (d)(1) use variance relief within the context of a proposed inherently beneficial use. In this regard, he opined that: i) the proposed memory care and assisted living

elements serve a compelling public interest by providing combined health care and residential services to the elderly; ii) the proposed assisted living and memory care uses would lead to minimal detrimental impact to the surrounding area as same will not result in significant traffic impact; iii) the Applicant is amenable to the imposition of reasonable conditions by the Board aimed at further mitigating any deleterious impacts of the proposed use; and iv) on balance, the grant of a (d)(1) use variance here would not result in a substantial detriment to the public good.

25. Mr. McDonough also addressed the Applicant's request for (d)(4) F.A.R. variance relief, confirming that the Applicant proposes a total floor area of 77,980 square feet for the Proposed Residence on Proposed Lot A, while the maximum permitted floor area for Proposed Lot A would be 16,891 square feet. He opined that proposed Lot A would be able to sufficiently accommodate the problems that may be associated with having a floor area ratio approximately 4.6 times greater than that which would ordinarily be permitted by the Ordinance, as required by Randolph Town Center v. Tp. of Randolph, 324 N.J. Super. 412, 416 (App. Div. 1999). Mr. McDonough further opined that the proposed excess floor area will not pose a substantial detriment to the public good, as stormwater runoff will be effectively mitigated, there will be no significant traffic impacts, and the Proposed Residence building will appear in-character with the surrounding neighborhood. Additionally, he opined that the proposed floor area ratio exceedance would not pose a substantial impairment to the intent and purpose of the Township's Master Plan and the Ordinance because the intent of the Ordinance's floor area limitations is to act as a control on the intensity of a use upon its host site and Proposed Lot A, with its proposed improvements, will be able to accommodate the problems associated with the intensity of the proposed use by way of providing sufficient stormwater management controls, parking, waste storage, and vehicular access.

26. Mr. McDonough addressed the Applicant's request for (d)(6) height variance relief, confirming that the Applicant proposes to erect the Proposed Residence building on Proposed Lot A at 43.5' tall. He opined that the proposal satisfies the requisite positive criteria for the grant of a (d)(6) height variance, as set forth by the Appellate Division in Grasso v. Bor. of Spring Lake Heights, 175 N.J. Super. 41 (App. Div. 2004). In this regard, Mr. McDonough opined that the 43.5' proposed height of the Proposed Residence on Proposed Lot A does not offend the purpose of the Ordinance's height restriction, which is focused primarily on light, air, and density concerns, as the proposed building will be setback sufficiently far from Valley Road and other improvements on nearby lots. He also opined that the architectural style of the Proposed Lot A building, despite the building's proposed excess height, would promote a harmonious, consistent visual environment while not offending the purpose of the Ordinance's height restrictions. Mr. McDonough further opined that the proposed excess building height would not pose a substantial detriment to the public good, as the Proposed Residence will be setback far enough from Valley Road and other nearby improvements so as not to cause massing concerns, and the building will also feature an appearance that is in-character with the surrounding neighborhood. Additionally, he opined that the proposed excess building height would not pose a substantial impairment to the intent and purpose of the Township's Master Plan and the Ordinance, because the intent of the Ordinance's building height limitation is to promote adequate air and light space, and to act as a control on density, and here, the proposed building height is mitigated by the structure's significant front-yard setback and distance from residential structures,

and aesthetic composition, such that it poses no substantial impairment to the intent and purpose of said restrictions.

27. Mr. McDonough also addressed the Applicant's request for bulk variance relief connected to the proposal. He confirmed that the Applicant required bulk variances for: i) the Proposed Residence building on Proposed Lot A to be three (3) stories in height where only two (2) stories are permitted in the B-D Zone and 2.5 stories are permitted in the C Zone; ii) the Proposed Residence on Proposed Lot A to be setback 196.1' from Valley Road where the maximum permitted setback in the B-D Zone is 50'; iii) the existing Walgreens building that would be on Proposed Lot B and be setback 50.9 from Valley Road where the maximum permitted setback in the B-D Zone is 50'; iv) the proposed location of a retaining wall in a critical area having a slope of 15% or greater where the location of any structure within a critical area having a slope of 15% or greater is prohibited; v) the proposed presence of a front yard parking area on Proposed Lot A, where front yard parking areas are prohibited; vi) the proposed 10.9' retaining wall on Proposed Lot A that would be situated in both the front and side yards where front-yard retaining walls can be no greater than 4' tall and side-yard retaining walls can be no greater than 6' tall; and vii) the proposed front-yard ground sign to be 21 square feet where no ground sign is permitted to exceed 16 square feet.

28. Mr. McDonough opined that all the Applicant's requested bulk variances qualify for relief under N.J.S.A. 40:55D-70(c)(2). In this regard, he further opined that the proposal: i) promotes the public health and general welfare by resulting in an additional senior residential and healthcare residence; ii) provides adequate light, air, and open space as the Proposed Residence on Proposed Lot A would be setback sufficiently far from Valley Road and so not pose massing concerns; iii) promotes a desirable visual environment due to the positive aesthetic contribution of the Proposed Residence; and iv) encourages senior citizen community housing construction as the Proposed Residence will house, almost exclusively, elderly citizens. He also opined that these benefits substantially outweigh the relatively modest detriments associated with the requested items of bulk variance relief.

29. Mr. McDonough further opined, regarding the Applicant's request for bulk variance relief, that the proposal would not pose a substantial detriment to the public good, nor would it pose a substantial impairment to the intent and purpose of the Township Master Plan and the Ordinance.

30. Regarding the "substantial detriment" prong of the negative criteria for the requested bulk variance relief, Mr. McDonough opined that no substantial detriment would arise from the granting of bulk variance relief here as i) the proposed building height in stories deficiency will be sufficiently mitigated by the significant front-yard setback and aesthetically positive appearance of the Proposed Residence building; ii) the proposed front-yard setback deficiency for Proposed Lot A actually represents a better aesthetic alternative than a conforming setback under the circumstances; iii) the proposed setback deficiency for Proposed Lot B arises as a function of the proposed subdivision and does not represent a change in existing Site conditions; iv) the aesthetic impact of the proposed retaining wall-related deficiencies is constrained to the interior of Proposed Lot A; iv) the front-yard parking area on Proposed Lot A will be setback far enough from Valley Road so as not to pose aesthetic concerns; and v) the

proposed ground sign is minimally excessive and will not have a negative impact on traffic conditions in the area.

31. Regarding the "substantial impairment" prong of the negative criteria for the requested bulk variance relief, Mr. McDonough opined that: i) building height in stories limitation is to promote adequate air and space, and to control density; ii) front-yard setback requirements and prohibition on front-yard parking areas is to promote an aesthetically pleasing streetscape; iii) critical area protections is to safeguard the ability for stormwater to naturally runoff, thus ensuring sufficient drainage; iv) retaining wall height limits is to maintain an aesthetically pleasing environment; and v) ground signage size limitations is to also maintain an aesthetically pleasing environment. He further opined that the intent of the applicable Ordinance provisions would not substantially impaired by the granting of the requested bulk variance relief here because: i) the proposed height in stories of the Proposed Residence on Proposed Lot A will not result in significant density-related issues; ii) the proposed front-yard setback of, and front-yard parking area on Proposed Lot A, as well as the proposed front-yard setback of Proposed Lot B, which represents no change in present conditions, will not undermine the Valley Road streetscape; iii) the proposed steep slope disturbance will not result in a net detriment to the Site's stormwater management capabilities; iv) the proposed retaining wall will face the interior of the Site; and v) the proposed ground sign will not be aesthetically displeasing.

32. Charles Arentowicz, a member of the Public, having an address of 605 Heritage Road, Millington, posed a question to Mr. McDonough that was related to the need for the Proposed Residence to be three (3) stories in height. Mr. McDonough deferred to the direct testimony of the Applicant's architect, Mr. Kuberski.

33. Mr. Kuberski entered into evidence, as Exhibit A-6, colorized elevations of the Proposed Residence, dated July 25, 2023, and, as Exhibit A-7, a colorized contextual photograph exhibit, dated July 25, 2023.

34. Mr. Kuberski testified that the structure of the Proposed Residence was designed to accommodate the proposed use as best and as efficiently as possible. Using Exhibits A-6 and A-7, he demonstrated that the Proposed Residence building will feature a residential-style appearance, similar to other notable structures within the surrounding area. Additionally, he explained that the proposed building would feature a mansard-style roof that would function as a parapet, in so far as it would screen rooftop mechanical equipment. Mr. Kuberski also testified that the proposed macadam-style roof could be removed from the design of the Proposed Residence and that doing so would eliminate the need for (d)(6) height variance relief, though this would also result in the visual exposure of rooftop mechanical equipment.

35. On questioning by members of the Board and Board Professionals, Mr. Kuberski testified that: i) the first floor wing extension of the Proposed Residence would house the proposed memory care units; ii) there would be twenty-eight (28) assisted living units on the second floor and thirty (30) assisted living units on the third floor of the Proposed Residence; iii) the proposed project would not be viable without the inclusion of a third floor or additional variance relief beyond what is requested; and iv) the buildable area on Proposed Lot A is restricted by a conservation area.

36. The Applicant, through its witnesses and representatives, stipulated to the conditions of approval contained herein, set forth below.

37. Except for Mr. Arentowicz's question to Mr. McDonough, and the cross-examination of Mr. McElwee and Mr. Sehnal by Objector's counsel, no member of the public asked questions of the Applicant's witnesses. Additionally, no member of the Public commented on, or objected to, the application.

### **DECISION**

38. After reviewing the evidence submitted, the Board, by a vote of 5 to 1, finds that the Applicant has demonstrated an entitlement to the requested: minor subdivision approval; preliminary and final major site plan approval; (d)(1) use, (d)(4) F.A.R., and (d)(6) height variance relief; and all requested bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2).

### **Minor Subdivision Approval**

39. First, concerning the Applicant's request for minor subdivision approval, the Board first notes that, in evaluating such a request, the MLUL requires a land use board to consider the subdivision plan provided by an applicant, and to grant approval in accordance with N.J.S.A. 40:55D-47.

40. Here, the Board finds that the Applicant has demonstrated compliance with the Township's Subdivision requirements, as set forth in Sections 158, 160, and 162 *et seq.* of the Ordinance, and that good cause exists to grant the Applicant minor subdivision approval, with the requested relief detailed below.

### **Preliminary and Final Major Site Plan Approval**

41. Second, concerning the Applicant's request for preliminary and final major site plan approval, the Board first notes that, in evaluating such a request, the MLUL requires a land use board to consider the development plan provided by an applicant, and to grant approval if the detailed drawings, specifications, and estimates of the application conform to the standards established by ordinance for final approval, pursuant to N.J.S.A. 40:55D-50(a).

42. Here, the Board finds that the Applicant has demonstrated compliance with the Township's Site Plan requirements, as set forth in Sections 160 and 162 *et seq.* of the Ordinance, and that good cause exists to grant the Applicant preliminary and final major site plan approval, with the requested relief detailed below.

### **Variance Relief**

43. As it relates to all of the variance relief requested by the Applicant, the Board first notes that N.J.S.A. 40:55D-70 requires an applicant to demonstrate both the applicable "positive criteria" and "negative criteria" for any form of variance relief requested in order to establish an entitlement to same. The requisite "positive" and "negative" criteria may vary, depending on the

type of variance requested by an applicant.

Use Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)(1)

44. Regarding the Applicant's request for (d)(1) use variance relief, related to the proposed assisted living and memory care elements of the Proposed Residence, the Board notes that, in the case of (d)(1) use variances, the positive criteria is established by a showing of "special reasons" to permit "a use or principal structure in a district restricted against such use or principal structure." New Jersey Courts recognize three circumstances in which such "special reasons" may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing residence; (2) where the property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because "the proposed site is particularly suitable for the proposed use." See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

45. The Board further recognizes that when a proposed use is held to be an "inherently beneficial" use, the positive criteria for (d)(1) use variance relief is presumptively satisfied. Smart SMR v. Fair Lawn Bd. of Adj., 152 N.J. 309, 323 (1998), citing Burbridge v. Mine Hill Tp., 117 N.J. 376, 394 (1990). Accord, Cell v. Zoning Bd. of Adjustment, 172 N.J. 75, 90 (2002); Salt & Light Co. v. Willingboro, 423 N.J. Super. 282, 287 (App. Div. 2011), certif. den. 210 N.J. 108 (2012); House of Fire v. Clifton Bd. of Adj., 379 N.J. Super. 526, 535 (App. Div. 2005); Med. Ctr. v. Princeton Tp. Zoning, 343 N.J. Super. 177, 200 (App. Div. 2001). An "inherently beneficial" use is defined at N.J.S.A. 40:55D-4 as:

"[...] a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy residence or structure."

46. Additionally, the Board notes that the "negative criteria" for (d)(1) use variance relief is ordinarily shown by an applicant demonstrating that the proposed deviation(s) from the requirements of the Ordinance will neither pose a "substantial detriment" to the public good, nor "substantially impair" the intent and purpose of a municipality's master plan and zoning ordinance. However, within the context of a request for a (d)(1) use variance where the proposed use is an "inherently beneficial" one, New Jersey Courts have applied a different standard for evaluating the negative criteria. As per Sica, in evaluating the negative criteria for (d)(1) use variance relief within the context of a proposed "inherently beneficial" use, a board of adjustment must i) "identify the public interest at stake;" ii) "identify the detrimental effect that will ensue from the grant of the variance;" iii) consider "reduc[ing] the detrimental effect by imposing reasonable conditions on the use;" and iv) "weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good." Id. at 165-166.

47. Here, the Board concurs with the unrefuted expert testimony of Mr. McDonough to find that the Applicant has satisfied the positive criteria for the grant of a (d)(1) use variance

as the proposed assisted living and memory care elements of the Proposed Residence are "inherently beneficial" uses. The Board finds the proposed assisted living and memory care elements to be uses which fundamentally serve the public good and promote the general welfare, similar to statutorily-enumerated forms of "inherently beneficial" uses, such as hospitals and group homes, as well as forms of uses found to be "inherently beneficial" by New Jersey Courts, such as senior citizen housing. See Borough of Roselle Pk. v. Tp. of Union, 113 N.J. Super. 87, 98 (Law Div. 1970). See also Jayber, Inc. v. Municipal Council, 238 N.J. supra 165 (App. Div.) certif. den. 122 N.J. 142 (1990) (reversing a denial of a d(1) use variance for consideration of a congregate care housing residence as an adjunct to an existing nursing home).

48. The Board also concurs with Mr. McDonough's unrefuted expert opinion in that the Applicant has satisfied the negative criteria for a (d)(1) use variance within the context of an "inherently beneficial" use. Here, as per the Sica test, the Board concurs with Mr. McDonough and finds that: i) the proposed assisted living and memory care elements serve a compelling public interest by providing combined health care and residential services to the elderly; ii) the proposed assisted living and memory care uses would lead to minimal detrimental impact to the surrounding area as same will not result in significant traffic or environmental impact; iii) the imposition of conditions of approval (as set forth below) will further mitigate any deleterious impacts of the proposed uses; and iv) as such, on balance, the grant of a (d)(1) use variance here would not result in a substantial detriment to the public good.

F.A.R. Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)(4)

49. Regarding the Applicant's request for (d)(4) F.A.R. variance relief, related to the proposed floor area of the Proposed Residence on Proposed Lot A being 77,890 square feet, representing a floor area ratio of approximately 4.6 times greater than the permitted floor area of 16,891 square feet, the Board notes that, for (d)(4) F.A.R. variances, the positive criteria is satisfied by an applicant demonstrating "special reasons," interpreted to mean that "the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance." Randolph at 417. The negative criteria for (d)(4) F.A.R. variance relief is satisfied by an applicant demonstrating that the proposed excess floor area ratio will 1) not pose a substantial detriment to the public good, and 2) not pose a substantial impairment to the intent and purpose of the municipality's zone plan and zoning ordinance.

50. Here, the Board concurs again with Mr. McDonough's unrefuted expert opinion that the Site can accommodate the problems associated with the proposed floor area ratio exceedance and so finds that the Applicant has demonstrated the positive criteria for the grant of a (d)(4) F.A.R. variance. In this regard, the Board recognizes that floor area restrictions function as controls on the intensity of the use of a property. Here, the Board is satisfied that Proposed Lot A can accommodate the intensity of the Proposed Residence, as the Applicant will provide sufficient stormwater management controls, parking, waste storage, and vehicular access relative to the anticipated intensity of a multi-functional senior housing development of this caliber.

51. The Board also concurs with Mr. McDonough's unrefuted expert testimony in finding that the Applicant has also satisfied its burden of proving the negative criteria required for (d)(4) F.A.R. variance relief as the Applicant has demonstrated that the same can be granted

without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master Plan and the applicable provisions of the Ordinance.

52. As it relates to the "substantial detriment" prong of the negative criteria for the requested (d)(4) F.A.R. variance relief, the Board finds that the proposed floor area ratio will not pose a substantial detriment to the public good, as stormwater runoff will be effectively mitigated, there will be no significant traffic impacts, and the Proposed Residence building will appear in-character with the surrounding neighborhood.

53. As it relates to the "substantial detriment" prong of the negative criteria for the requested (d)(4) F.A.R. variance relief, the Board finds that the proposed floor area ratio will not pose a substantial impairment to the intent and purpose of the Township's Master Plan and the Ordinance. The Board recognizes that the intent of the Ordinance's floor area limitations is to act as a control on the intensity of a use upon its host Site. Here, as demonstrated by the Applicants' witnesses' testimony, Proposed Lot A, with its proposed improvements, will be able to accommodate the problems associated with the intensity of the proposed use by way of providing sufficient stormwater management controls, parking, waste storage, and vehicular access.

Height Variance Relief Pursuant to N.J.S.A. 40:55D-70(d)(6)

54. Regarding the Applicant's request for (d)(6) height variance relief, related to the proposed 43.5' height of the Proposed Residence on Proposed Lot A, the Board notes the positive criteria for (d)(6) height variance relief is satisfied by an applicant demonstrating "special reasons," interpreted to mean that either a) the applicant would suffer an undue hardship, in that the height restriction prohibits use of the property for a conforming structure, or b) the increased height of the building does not offend the purpose of the height restriction, which is focused primarily on light and air concerns as well as being another method of controlling density, or c) the particular style of proposed structure could promote a harmonious, consistent visual environment while not offending the purpose of the height restriction. Grasso at 52-54. The negative criteria for (d)(6) height variance relief is satisfied by an applicant demonstrating that the proposed height exceedance will 1) not pose a substantial detriment to the public good, and 2) not pose a substantial impairment to the intent and purpose of the municipality's zone plan and zoning ordinance.

55. Here, the Board again concurs with the unrefuted expert testimony of Mr. McDonough in finding that the Applicant has satisfied the positive criteria for the requested (d)(6) height variance relief. In this regard, the Board finds that the proposed excessive height does not offend the purpose of the Ordinance's height restriction, which is intended to maintain adequate light and air, and control density, because the Proposed Residence building will be setback far enough from Valley Road, and be located sufficiently far from residential uses, so as not to offend the purpose of the height restriction. Additionally, the Board finds that the architectural style of the Proposed Residence building is aesthetically consistent with other buildings in the surrounding neighborhood and, as such, the structure will promote a harmonious and consistent visual environment.

56. The Board also concurs with Mr. McDonough's unrefuted expert opinion in finding that the Applicant has also satisfied its burden of proving the negative criteria required for the requested (d)(6) height variance relief as the Applicant has demonstrated that the same can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master Plan and the applicable provisions of the Ordinance.

57. As it relates to the "substantial detriment" prong of the negative criteria for the requested (d)(6) height variance relief, the Board finds that the proposed excessive height of the Proposed Residence building will not pose a substantial detriment to the public good, as the structure will be setback far enough from Valley Road and other nearby improvements so as not to cause massing concerns and the building will also feature an appearance that is in-character with the surrounding neighborhood.

58. As it relates to the "substantial detriment" prong of the negative criteria for the requested (d)(6) height variance relief, the Board finds that the proposed excessive height of the Proposed Residence building will not pose a substantial impairment to the intent and purpose of the Township's Master Plan and the Ordinance. The Board recognizes that the intent of the Ordinance's building height limitations is to promote adequate air and light space, and to act as a control on density. Here, the Board finds that the excessive height of the proposed building is mitigated by the structure's significant front-yard setback and distance from residential structures, and aesthetic composition, such that it poses no substantial impairment to the intent and purpose of the Ordinance's height restrictions.

Bulk Variance Relief Pursuant to N.J.S.A. 40:55D-70(c)(2)

59. As it relates to the Applicant's request for bulk variance relief, the Board finds that the Applicant has demonstrated the requisite positive and negative criteria for same, pursuant to N.J.S.A. 40:55D-70(c)(2). In this regard, the Board first recognizes that the positive criteria for such bulk variance relief is established by a showing that the granting of an application for variance relief would advance the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2, and that the benefits to be derived from the proposal will outweigh any detriments associated therewith. The negative criteria for such bulk variance relief is established by a showing that 1) the proposed deviations will not pose a substantial detriment to the public good and surrounding properties, and 2) that the proposed deviations will not substantially impair the purpose and intent of a municipality's zoning ordinance and master plan. The focus of the "substantial detriment" prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the "substantial impairment" prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

60. The Board finds that the Applicant has satisfied its requirement in demonstrating the positive criteria for all if its requested bulk variance relief. In this regard, the Board again concurs with the unrefuted expert testimony of Mr. McDonough in finding that that the proposal promotes the purposes of the MLUL, enumerated in subsections (a), (c), (g), and (l) of N.J.S.A. 40:55D-2, because the proposal: i) promotes the public health and general welfare by resulting in an additional senior residential and healthcare residence; ii) provides adequate light, air, and open

space as the Proposed Residence on Lot A would be setback sufficiently far from Valley Road and so not pose massing concerns; iii) promotes a desirable visual environment due to the positive aesthetic contribution of the Proposed Residence; and iv) encourages senior citizen community housing construction as the Proposed Residence will house, almost exclusively, elderly citizens. The Board also concurs with Mr. McDonough's professional opinion that these benefits substantially outweigh the relatively modest detriments associated with the bulk variance relief requested by the Applicant.

61. The Board also concurs with Mr. McDonough's unrefuted expert testimony in finding that the requested bulk variance relief poses no substantial detriment to the public good and no substantial impairment to the intent and purpose of the Township's Master Plan and the Ordinance.

62. As to the "substantial detriment" prong of the negative criteria for the requested bulk variance relief, the Board finds that the Applicant has demonstrated that the requested variance relief will not result in substantial detriment to the neighborhood or public good. In this regard, the Board is satisfied that there will be no substantial detriment to surrounding properties because: i) the proposed building height in stories deficiency will be sufficiently mitigated by the significant front-yard setback and aesthetically positive appearance of the Proposed Residence building; ii) the proposed front-yard setback deficiency for Proposed Lot A actually represents a better aesthetic alternative than a conforming setback under the circumstances; iii) the proposed setback deficiency for Proposed Lot B arises as a function of the proposed subdivision and does not represent a change in existing Site conditions; iv) the aesthetic impact of the proposed retaining wall-related deficiencies is constrained to the interior of Proposed Lot A; iv) the front-yard parking area on Proposed Lot A will be setback far enough from Valley Road so as not to pose aesthetic concerns; and v) the proposed ground sign is minimally excessive and will not have a negative impact on traffic conditions in the area. Finally, the Board notes that no member of the Public ultimately objected to the Applicant's proposal. The Board notes that the Objector rescinded its opposition to the application prior to the conclusion of the hearings. The Board considers these factors to further evidence that the Applicant's requested variance relief results in no substantial detriment to the public good.

63. As to the "substantial impairment" prong of the negative criteria for the requested bulk variance relief, the Board finds that the proposal will not substantially impair the intent of the Master Plan and the Ordinance. The Board recognizes that the intent of the Ordinance's: i) building height and story limitations is to promote adequate air and space, and to control density; ii) front-yard setback requirements and prohibition on front-yard parking areas is to promote an aesthetically pleasing streetscape; iii) critical area protections is to safeguard the ability for stormwater to naturally runoff, thus ensuring sufficient drainage; iv) retaining wall height limits is to maintain an aesthetically pleasing environment; and v) ground signage size limitations is to also maintain an aesthetically pleasing environment. Here, the Board finds that the intent of the applicable Ordinance provisions is not substantially impaired by the granting of the requested bulk variance relief because: the proposed height and stories of the Proposed Residence building on Proposed Lot A will not result in significant density-related issues; ii) the proposed front-yard setback of, and front-yard parking area on Proposed Lot A, as well as the proposed front-yard setback of Proposed Lot B, which represents no change in present conditions, will not undermine

the Valley Road streetscape; iii) the proposed steep slope disturbance will not result in a net detriment to the Site's stormwater management capabilities; iv) the proposed retaining wall will face the interior of the Site; and v) the proposed ground sign will not be aesthetically displeasing.

64. Thus, being satisfied that the requisite criteria has been demonstrated, the Board finds that the Applicant has established an entitlement to the requested minor subdivision approval, preliminary and final major site plan approval, and all of the subsection d and bulk variance relief, as aforesaid.

**WHEREAS**, the Board took action on this application at its meeting on July 25, 2023, 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 does hereby GRANT the Relief Requested as noted above, subject to the following:

1. The Applicant is required to comply with the following conditions:
  - a. The Applicant shall comply with the Applicant's representations to, and agreements with, the Board during the hearing on this application;
  - b. The Applicant shall comply with all requirements and recommendations set forth in the Board Engineer's review memorandum concerning this application, revised through April 20, 2023, to the extent applicable or otherwise not already satisfied, including, all necessary updating and revisions to the previously submitted plans;
  - c. The Applicant shall comply with all requirements and recommendations set forth in the Board Conflict Planner's review memorandum concerning this application, revised through June 6, 2023, to the extent applicable or otherwise not already satisfied, including all necessary updating and revisions to the previously submitted plans;
  - d. The Applicant shall comply with all requirements and recommendations set forth in the Board Traffic Consultant's review memorandum concerning this application, revised through April 13, 2023, to the extent applicable or otherwise not already satisfied, including, all necessary updating and revisions to the previously submitted plans;
  - e. The Applicant or current property owner shall provide an easement to the Township providing driveway access across Proposed Lot A, connecting the Township-owned property identified as Lot 1 within Block 11301 to Valley Road through the existing, and to-be-revised access easement that will be shared between Lots A and B, to the satisfaction of the Township Attorney and Township Engineer. The Applicant or current property owner shall ensure that

the easement is established and perfected, and shall install all stormwater management and related infrastructure improvements required for such easement. The Applicant or current property owner shall also bear the responsibility for paving such access easement, prior to the issuance of a certificate of occupancy;

- f. The Applicant shall submit a revised stormwater management plan, to the satisfaction of the Board Engineer;
  - g. The Applicant shall ascertain the dimensions of the Township Fire Department's vehicles and submit a revised circulation plan demonstrating that said vehicles will be able to effectively maneuver on Proposed Lot A, to the satisfaction of the Board Traffic Consultant;
  - h. The Applicant shall contract with a private company to ensure that emergency fuel can be readily delivered to the Proposed Residence in the event that the proposed backup generators run out of fuel;
  - i. The Applicant shall remain obligated to pay its *pro rata* share for any geometric capacity improvements to the Valley Road – Plainfield Road intersection and/or traffic signal, prior to implementation of such capacity improvements, in the event same is required by the Township, County, or other agency having jurisdiction over same, related to Block 11301, Lot 4, Block 11401, Lot 23, and Block 11301, Lot 1;
  - j. The Applicant shall work in good faith with the Township to locate a ground sign on Proposed Lot A that would identify access to the future park expected to be developed on the Township-owned property identified as Lot 1 within Block 11301;
  - k. The Applicant shall test the emergency generator on a monthly basis for no longer than a 30 minute interval only on weekdays between the hours of 9 am and 5 pm; and
  - l. The Applicant shall request from the Township governing body a landscaping easement on the Township owned adjacent lot to the east (Block 11301, Lot 1) (the “Township Owned Lot”) to plant and maintain vegetation in perpetuity and/or otherwise prevent public access to the 10 foot tall retaining wall along the easterly boundary line with the Township Owned Lot, for safety purposes, subject to the review and approval of the Township Engineer. The Applicant shall solely bear all costs associated with the landscaping easement, including, but not limited to, survey, metes and bounds description and recordation with the County Clerk’s Office;
2. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, or the

requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the 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;

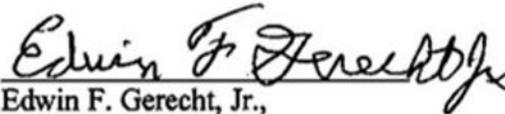
3. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code;
4. All fees and escrows assessed by the Township of Long Hill for this application and the hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property;
5. Pursuant to LU-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 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 however the Board notes that current sewer moratorium may impact the aforementioned timeframe and explicitly recognized that the continuance of same may constitute, in and of itself, a basis for the Board's future extension of same; and
6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant' securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the 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 Vice Chairman Grosskopf and seconded by Ms. Brennan to GRANT approval of the Relief Requested as set forth herein.

**BE IT FURTHER RESOLVED**, that this Application, heard and acted upon by the Board, with Hearing Date of July 25, 2023, is approved with the following vote: Yes: Grosskopf, Brennan, Gianakis, Opalka, Gerecht; No: Hain; Recused: None; Not Eligible: None; Absent: Aroneo, Rosenberg, Flatley.

**ATTEST:**

  
 Debra Coonce,  
 Board Secretary

  
 Edwin F. Gerecht, Jr.,  
 Chairman

**BE IT FURTHER RESOLVED**, that this Resolution, adopted on September 19, 2023, memorializes the action of the Board of Adjustment taken on July 25, 2023 with the following vote:

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT	X				
VICE CHAIRMAN GROSSKOPEF	X				
ARONEO			X		
BRENNAN					X
FLATLEY			X		
GIANAKIS	2 <sup>ND</sup>				
ROSENBERG			X		
OPALKA – ALT 1					X
VACANT – ALT 2					

I hereby certify this to be a true copy of the Resolution adopted on September 19, 2023.

  
 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 28th day of September, 2023 in said newspaper.

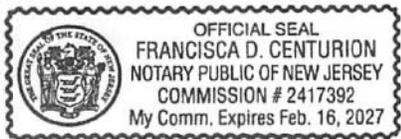
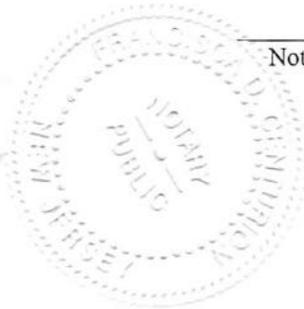
Debra Coonce

Sworn and subscribed before me this

29<sup>th</sup> day of September, 2023

Francisca D. Centurion

Notary Public of New Jersey



**Long Hill Township**  
**PUBLIC NOTICE**  
**NOTICE OF DECISION OF THE TOWNSHIP OF LONG HILL**  
**ZONING BOARD OF ADJUSTMENT**

Public notice is hereby given that the following action was taken by the Township of Long Hill Zoning Board of Adjustment at its meeting on September 19, 2023:

- Resolution of Approval Memorialized Use Variance / Major Site Plan Application Block 11301 & 11401 / Lot(s) 4 & 23 / Zone B-D & C Valley Road Application No. 22-06Z CSH Long Hill, LLC c/o Calli Law, LLC
- Resolution of Approval Memorialized Amendment to Major Site Plan Application Block 10801 / Lot 1.01 / Zone B-1-20 645 Valley Road Application No. 21-07Z DOAR LLC

All documents relating to these applications 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.\$34.17

09/28/21

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

**224230MAINSTLLC**

**224-230 Main Avenue, Stirling, New Jersey**

**Block 11606, Lot 17 and 18**

**APPLICATION NO.: #21-03Z**

**Hearing Dates: May 4, May 18,**

**July 6, September 7, October 5,**

**November 16, December 21, 2021,**

**January 4, 2022**

**Board Action: January 4, 2022**

**Memorialization: February 15, 2022**

**WHEREAS, 224230MAINSTLLC** (the “Applicant”) is the owner of property located at 224-230 Main Avenue, Stirling, identified as Block 11606, Lots 17 and 18 (the “Property” or the “Site”) on the Official Tax Map of the Township of Long Hill, in the B-1-5 Village Business Zone; and

**WHEREAS,** the Applicant applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application requesting preliminary and final major site plan approval, as well as bulk variance relief (the “Relief Requested”), as set forth below, in order to demolish the existing improvements on the Property to construct a 3-story, mixed-use building, with a 2,466 square foot professional office space facing Main Avenue, along with a 2- and 3-bedroom affordable housing unit on the ground floor, four 2-bedroom market rate apartments on the second floor, and two 2-bedroom market rate apartments on the third floor:

1. A d(1) use variance for an apartment in excess of 1,000 square feet, whereas apartments permitted in the B-1-5 zone shall be at least 500 square feet in gross floor area, and shall be no more than 1,000 square feet, pursuant to Section 124.1 of the Township’s Land Development Ordinance (the “Ordinance”);
2. A d(1) use variance for two ground floor apartments, whereas apartments shall not be located on the ground floor of any building, pursuant to Section 124.1 of the Ordinance;
3. A d(5) density variance for a density in excess of five dwelling units per acre, whereas the gross density of all apartments on a lot shall not exceed five dwelling units per acre, pursuant to Section 124.1 of the Ordinance;
4. A bulk variance for a three-story structure at 35 feet, 11 inches tall, whereas the maximum permitted height of a structure in the B-1-5 Village Business Zone is two-stories and 35 feet, pursuant to Section 131 of the Ordinance;
5. A bulk variance for the proposed land disturbance in a critical area, whereas such development and/or land disturbance is not permitted within same pursuant to Section 142.1(a) of the Ordinance; and

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

- a. Land Development Application with addenda, checklists, checklist waiver forms and zoning tables, dated January 26, 2021 and amended through September 23, 2021;
- b. Engineering Plans titled “Site Plan for Lots 17 and 18, Block 11606, Main Avenue, Township of Long Hill, Morris County, NJ Area Map”, prepared by Murphy & Hollows Associates, LLC; dated January 22,

2021, last revised October 21, 2021, same consisting of 6 sheets;

- c. Survey titled “Topographic Survey of Lots 17 & 18, Block 11606, Main Avenue, Township of Long Hill, Morris County, New Jersey”, prepared by Murphy & Hollows Associates LLC, dated August 15, 2019, last revised October 23, 2019, same consisting of 1 sheet;
- d. Architecture Plans titled “Preliminary Floor Plans and Building Elevations,” prepared by Architecture Plus, dated September 20, 2021, last revised October 27, 2021, same consisting of 2 sheets;
- e. Undated color rendering titled “Preliminary Front Elevation Proposed Mixed-Use Building, Long Hill, NJ 07980”, prepared by Architecture Plus, same consisting of 1 sheet; and
- f. Eleven color photographs of the existing site; and

**WHEREAS**, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application and appeared before the Board on the Hearing Date, as specified above; and

**WHEREAS**, the Board considered the following reports from its professionals:

- a. Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated November 12, 2021, same consisting of seven pages; and
- b. Memorandum from Board Engineer, Richard Keller, PE, PP, CME, dated November 14, 2021, same consisting of five pages; and

**WHEREAS**, during the public hearing on the application on the Hearing Date, the Applicant was given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to question all witnesses and comment on the application; and

**WHEREAS**, the Applicant presented testimony from the following individuals:

- 1. Tony Clintock, representative/owner of the Applicant;
- 2. William G. Hollows, P.E., P.P., P.L.S., the Applicant’s civil engineer;
- 3. Rocco Campanella, R.A., the Applicant’s architect; and
- 4. Elizabeth McManus, P.P., the Applicant’s professional planner; and

**WHEREAS**, members of the public appeared to ask questions about and to comment on the application, as more fully set forth on the record; and

**WHEREAS**, the requested variance relief is subject to the criteria set forth in N.J.S.A. 40:55D-70(d)(1), -70(d)(5) and -70(c); and

**WHEREAS**, the Board Professionals, Elizabeth Leheny, AICP, PP, the Board Planner, and Richard Keller, PE, PP, CME, the Board Engineer, were duly sworn according to law.

**WHEREAS**, Frederick B. Zelly, Esq., of Bisogno, Loeffler & Zelly, L.L.C., with a business address of 88 South Finley Avenue, Basking Ridge, New Jersey 07920, introduced the application, the requested relief, the witnesses to be presented, and the materials submitted as part of the application, and called witnesses to present testimony to the Board, as more fully set forth on the record, as follows:

1. The Property is located in the B-1-5 Village Business Zone. Subsection 122.5(a)(6) Zoning Ordinance permits apartments in accordance with Subsection 124.1. However, Subsection 124.1, titled “Apartments in Business Zones” provides, in relevant parts, that residential apartments are not permitted on the ground floor, apartments are not allowed in excess of 1,000 square feet, a density of in excess of five dwelling units per acre is not permitted and the height of the building is limited to 2.5 stories.

2. The Applicant proposes to raze the existing structures, which include a rooming house on Lot 17, and a detached single story office building on Lot 18, all of which are depicted in photographs of the buildings taken on January 26, 2021, which were previously submitted to the Board.

3. After razing all buildings, the Applicant proposes to merge the two lots, and develop a mixed-use building that will provide housing near the train station. The Applicant proposes professional office space and two affordable housing apartments consisting of one 2-bedroom unit and one 3-bedroom unit on the ground floor, four 2-bedroom market rate apartments on the second floor, and two 2-bedroom market rate apartments on the third floor.

4. While the proposed building will be three stories, it will appear to be two stories from the front of the building, given the grading/slope of the lot.

5. The proposal will be approximately 12.96 dwelling units per acre, while a density of 5 units per acre is permitted in the zone. Likewise, the proposed building height is three-stories, at 35 feet, 11 inches, whereas a maximum height of two-stories at 35 feet is permitted in the Zone.

6. With the exception of the proposed three-bedroom affordable housing apartment, each of the proposed apartments is less than 1,000 square feet, in compliance with the unit size requirement of the subsection. In addition, the two affordable housing units are proposed to be located on the ground floor and the proposed density of 12.96 units per acre exceeds the maximum permitted. Accordingly, use variance relief is required for the project. The project also requires bulk variance relief for the overall height of the building and development in a critical area.

7. Tony Clintock appeared on behalf of the Applicant as the managing member of the L.L.C., and provided an overview of the Applicant’s proposal. Mr. Clintock testified as to the deterioration of the existing buildings located on the Property, and the Applicant’s desire to develop same with a single, three-story building consisting of eight apartments, two of which will be affordable housing units, as well as a ground floor commercial space. He testified that it is not the Applicant’s intention to have either a restaurant or medical professional office space occupying the proposed commercial unit, and stipulated to same.

8. Mr. Clintock testified that the Applicant intends to own and manage the Property.

9. In response to questions from the Board, Mr. Clintock testified that he is not worried that he will not find commercial tenants for the commercial space. Mr. Clintock deferred any questions regarding square footage and marketability to his Planner.

10. Charles Arentowicz, 605 Heritage Road, questioned whether the Property is located in a flood plain, which Mr. Clintock deferred to the Applicant’s engineer.

11. William G. Hollows, P.E., of Murphy & Hollows Associates, LLC, having a business address of 192 Central Avenue, Sterling, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Mr. Hollows introduced into evidence **Exhibit A-1**, the complete set of site plan drawing previously submitted to the Board. Referencing Sheet 2 of said plans, a colorized rendering of the existing conditions on the Property, Mr. Hollows went through the details of same with the Board.

12. Mr. Hollows testified that the flood elevation of the Property is at approximately 214 feet, and that there are some portions of the Property that fall below same, so it would be in flood area. However, he testified that the existing buildings are not below 214 feet, and as such, they are not subject to flooding under FEMA guidelines. He testified that at an elevation of 214 feet, floodwaters go through the southwest portion of the Property and the floodwaters do not get to the buildings. He stated that floodwater in the area is at approximately 213.8/213.5 feet near the buildings, but it nevertheless consists of backwater from the closest river, which does not reach the Property or the Stirling Hotel across Main Avenue. He stated that, while the flood area is at elevation 214, the proposal may be subject to a maximum of six inches of standing water, limited to the southwest corner of the parking lot.

13. Referencing Sheet 3, Mr. Hollows testified that the Applicant proposes 23 parking stalls, with 21 stalls proposed in the rear of the Property, and two stalls on the side of the proposed building. He testified that the proposed driveway will be on north side of the Property, as it has the highest elevation, provides access to Main Avenue, and it would not be located in a flood hazard area. He testified that the proposed building's elevation is at 217 feet, which is three feet above flood elevation, and thus, there is no potential for flooding of the building. He testified that, likewise, the parking lot is designed so that the cars are not going to be in any flood areas.

14. Mr. Hollows testified that the Applicant proposes one ADA parking stall, with an adjacent ramp, so that residents have access to the ground level ADA compliant/accessible affordable housing units.

15. Mr. Hollows testified that the proposal includes an increase of approximately nine thousand square feet of imperious coverage over that which presently exists. He stated that the Applicant is proposing stormwater management facilities under the "higher side" of the parking lot, which will then discharge into a stormwater management system that flows to the south of the Property.

16. With regard to environmentally critical areas, Mr. Hollows testified that no steep slopes will be disturbed. He testified that only the flood plain in the rear of the Property will be filled in order to compensate for any floodwaters. He testified that, otherwise, the Applicant will have "zero net fill" and ultimately will have to seek approval from the NJDEP for same.

17. Mr. Hollows testified that the Property presently suffers from a lack of maintenance, and that there is nothing on the Property that can be saved, thus it would be better to start from scratch. According to Mr. Hollows, "even the existing trees" are not in good condition.

18. With regard to landscaping, Mr. Hollows stated that the Applicant will add foundation plantings around the building on all sides, flow through vents on the sides of the building so landscaping will be more open, and perhaps some river stone. He stated that the Applicant proposes a mixture of ornamental trees and lower shrubbery, with arborvitae to the rear, and with additional holly trees and evergreens.

19. Mr. Hollows testified as to the proposed household waste disposal, and stated that there will be a Dumpster with landscaping surrounding same, as well as landscaping to the rear of the property. With regard to the proposed landscaping, Mr. Hollows stated that he would work with the Board Professionals regarding the use of native species.

20. Referencing Sheet 6, a cross-section of the Property, previously submitted to the Board, Mr. Hollows testified as to the Applicant's intentions as to the volume of clean fill to be transported to the Property.

21. Referencing Sheet 3 of the plans, the Site Plan, Mr. Hollows testified that the Applicant proposes 23 parking stalls, 21 in the rear of the Property, with an additional two stalls along the side of the proposed building. He testified that the proposed parking stalls will be nine feet by 18 feet, with one ADA parking stall and a ramp into the building.

22. Mr. Hollows testified as to the topography of the Property, as well as the elevations of the Applicant's proposed building, and its location relative to any flood hazard areas or environmentally sensitive areas.

23. With regard to the Board Planner's report, Mr. Hollows referenced the "50% exception" for parking requirements set forth in Ordinance. Mr. Hollows testified that the Applicant is required to provide 26 parking stalls based on the number of proposed bedrooms, but proposes only 23 of same. He testified that the Applicant is allowed to reduce its parking requirement by 50%, so as to require only 13 parking stalls. However, due to the limited availability of parking on Main Avenue, it was his opinion that it would be better to have more parking spaces available and that if the Applicant was to reduce same, he would eliminate the two spaces on the side, leaving the remaining 21 parking stalls in the rear of the Property.

24. As to the Board Engineer's report, Mr. Hollows testified as follows:

- a. Concentrating on a "zero net fill", he will add additional detail into the drawings upon final submission;
- b. The Applicant proposes four LED shoebox lights in the rear of the Property, with one on the side of the building, all of which will have automatic "cut offs";
- c. In addition, there will be new LED lights in the parking lot area, which will be very narrow and smaller in size, with two located on 12-foot poles across the rear of the Property. Further, there may be one additional light near the building and one additional light for the driveway. This proposal was previously sent to the Applicant's lighting consultant to come up with a plan. Nevertheless, lights will not intrude onto adjacent properties, as the new LED lights can be controlled better as to brightness and direction, which therefore produces less light spillage;
- d. The Applicant will comply with the remainder of the Engineer's review memorandum, and that the Applicant will provide more detail regarding stormwater management;
- e. With regard to landscaping, it will be similar to what is shown on the plan, but the species may change as it is hard to find native plants that are hardy and attractive;
- f. The Applicant tried to work within the NJDEP regulations so that the parking area ingress/egress is located at the highest possible elevation;
- g. The sanitary sewer will go from 2 lines to 1 line, as both lots currently have their own connection; and
- h. There are 9 on-street parking spaces along the frontage of the block, but, with the new driveway, the number of spaces will be reduced to 7.

25. Referencing his Engineering report to the Board, Mr. Keller stated that this application has been completely modified since the initial TRC hearing. He stated his belief that the Applicant appears focused on demonstrating a permissible design, but NJDEP requirements are very stringent, even more stringent than the Township. Mr. Keller stated that there is dry access to the Property, which is required for more than two units, but there was not enough information as to drainage and the Applicant will have to supplement its application with same. He stated that, should the Board approve the application, it should be subject to same. With regard to lighting, Mr. Keller stated that "lighting is more advanced these days," and he has no issue with same as proposed.

26. Upon further questioning by the Board, Mr. Hollows testified as follows:
- a. There is an 11-foot offset to the proposed building, which is the bottom of the proposed front steps, as the Applicant did not want to locate the building any closer to the street. The building itself is set back 14 or 15 feet from Main Avenue; and
  - b. The Applicant will work with the Board Professionals on a comprehensive landscape plan, which will include additional plantings near the proposed ADA spaces.

27. In response to questions from the Board Professionals, Mr. Hollows testified as follows:

- a. Parking in a flood hazard area would require variance relief;
- b. The Applicant proposes to merge both lots; and,
- c. While some parking spaces will be below New Jersey's demarcation of the flood hazard line, they all will comply with FEMA's measurement of same at 214 feet. Nevertheless, NJDEP may require signage.

28. In response to questions from the Board, Mr. Hollows testified as follows:

- a. If the Applicant were to have a similar design, yet have parking in an area that is not a flood hazard, the project would have to be reduced in size by approximately 50%;
- b. Only a small portion of the parking area is in a flood hazard area. While much of the Property is above 214' in elevation, the Applicant was looking for zero net fill;
- c. While the proposed building does not need to be 35 feet, 11 inches, he believes that the roofline as proposed has a greater aesthetic value than reducing it to a conforming 35 feet; and
- d. Referencing Sheets 4 and 6, the proposed drainage along the Property line will direct stormwater towards the inlets, which flows to stormwater drainage along Main Avenue, and should not flow towards adjacent Lot 20.

29. With regard to stormwater flooding, Mr. Hollows testified that, instead of stormwater ponding in the parking lot, it will be held for groundwater recharge purposes under same. He testified that, in his opinion, there will not be any stormwater impact on Lot 20. He stated that while stormwater will flow in that direction, it will also be flowing toward the flood vents. He testified that currently, the natural slope of the Property will take stormwater to the stormwater storage area. Mr. Hollows testified that in reality, stormwater currently flows off Somerset Street onto the Property, and flows under existing building through the flood vents, not through storm drains. He testified that the proposed building will have a concrete floor with a slight slope toward the flood plain in the crawl space. Mr. Hollows stated that flood vents are now much improved.

30. In response to an additional question from the Board, Mr. Hollows testified that the proposal includes an increase in impervious coverage of approximately 9,000 square feet, which is why the Applicant proposes the stormwater management system in question. He testified that the water storage system under the building stores floodwater off Somerset Street, but the driveway water storage system will take stormwater runoff from the parking lot, and discharge same at a slower rate into the stormwater drainage system, where it will sit until discharged into the ground.

31. Charles Arentowicz, 605 Heritage Road, Millington, received the following answers to his inquiries of Mr. Hollows:

- a. As to the existing site conditions on the Property during storms, stormwater does not flow onto the Property, and if it does, just to the back corner;
- b. With the existing conditions, stormwater likely backs up to the limits of adjacent Lot 20;
- c. It is likely the Applicant will require a “few” inches of soil fill for the 21 parking spaces in the rear of the Property;
- d. There should not be any impact on the five adjacent lots;
- e. There will be approximately 9,000 square feet of available storage for stormwater runoff, an increase of 3,000 square feet;
- f. A negligible amount of stormwater will flow off the Property onto Main Avenue; and
- g. Mr. Hollows cannot opine as to whether the combining of two sewer lines into one sewer line will reduce sanitary sewer flow.

32. Patrick Thornton, 50 Camptown Drive, Berkeley Heights, and the owner of adjacent Lot 16, received the following answers to his inquiries of Mr. Hollows:

- a. Stormwater runoff from the roof and driveway will flow to the underground stormwater drainage system under the parking lot through a trench drain;
- b. Yes, stormwater will flow from the high point of the Property at the end of the driveway, and flow toward the southwest corner of the Property. Thereafter, the Applicant is going to capture stormwater near the curb line, then pipe same back into the system as the driveway is pitched toward an inlet;
- c. Stormwater is distributed with gravel between the stormwater storage units, which can put it into different ends of infiltrators, which will fill up the gravel and infiltrators;
- d. The Applicant will create a soil log to see where the ground water is located;
- e. The stormwater storage system is a shallow system, which will be below the elevation of 214 feet, with six inches of stone at the bottom. This is just a backup, as the stormwater drainage in the right-of-way is lower than the elevation of 214 feet;
- f. The underground stormwater storage system has a volume of about 22,000 gallons of water, which is sized correctly. This is necessary as the standard size will require storage for four inches of stormwater runoff;
- g. This will fill up a couple of times per year, which may increase. Rainfall could be cyclical;
- h. In Mr. Hollows opinion, the system will not leak and flow onto neighboring properties;
- i. Mr. Hollows will look into whether or not thermoplastic is required;
- j. According to manufacturer specifications, concrete (in addition to the plastic, fill, and pavement) is not required over the storage system since cars will be driving on top of it;

- k. No, the manufacturer of the underground stormwater system has not visited the site;
- l. In Mr. Hollows' opinion, even with four inches of rain, the Applicant need not be concerned about stormwater runoff;
- m. He is not aware if the Applicant's proposal reaches 70% of critical area coverage. Mr. Keller stated that the critical area coverage is likely close to said number, and asked the Applicant to plot out the Flood Hazard Area, and recommended that the Board consider it a variance, "just to cover all the bases".

33. Returning to the Board, Mr. Hollows testified regarding the disturbance of non-critical areas. He testified that, pursuant to the Section 142.1(c) of the Ordinance, no more than 70% of noncritical areas on an individual lot can be disturbed. He testified further that, while there is some disturbance to a "critical area" on the Property, which will require a variance, no more than 70% of noncritical areas on the Property will be disturbed, and a variance for same will not be required.

34. Mr. Hollows testified that there will be an approximately five-foot building bump-out proposed in the front of the Property, which appears to give the proposal a shorter front-yard setback. He stated that, if the front porch is not constructed, the front-yard setback would be approximately 11 feet.

35. With regard to parking lot lighting, Mr. Hollows testified that the current proposal is for two 12-foot pole mounted lights in the parking lot, two building mounted lights in the rear, as well as two lights mounted on the side of the building, all of which will be LED lighting. He stipulated that the lighting will not exceed the maximum footcandles set forth in the Ordinance, and there will be no light spillage onto adjacent properties.

36. Rocco Campanella, R.A., of Architecture Plus, with a business address of 1130 Route 202 South, Raritan, New Jersey, was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the field of architecture.

37. Mr. Campanella began his testimony focusing on the existing conditions on the Property and how the buildings upon same are in disrepair.

38. With regard to the Applicant's proposal, Mr. Campanella testified that the proposed structure will contain a mix of both commercial and residential uses, and will have access from both the front and rear of the Property. He testified that the building will contain eight residential units, all of which will be under 1,000 square feet, except for the three-bedroom ADA accessible affordable housing unit on the ground floor, which will be approximately 1,200 square feet. He stated that there will be a staircase in the building which will go from the ground floor to the third floor.

39. Mr. Campanella testified that, while the building will be three stories, it will look like two stories from the front, as the third floor will be approximately one half the size of the other floors. He testified that, in total, the proposed building will have approximately 12,450 square feet of floor area. Mr. Campanella testified that, in his opinion, the proposal will fit nicely in the Township.

40. Mr. Campanella testified that the proposed building will be approximately 35 feet, 11 inches in height. He testified that, while the building could be lowered to 35 feet to fit within the provisions of the Ordinance, in his opinion, the steeper pitch of the roof will appear more attractive.

41. Mr. Campanella testified that the proposed front porch is decorative only, and is not meant to be habitable with such items as rocking chairs. He testified that the entire building will be roofed and sided with quality materials, and will contain a fire suppression system. Notwithstanding the fire suppression system, he testified that there will be two ingress and egress locations on the ground floor, even though the building would be compliant with the fire code with just one ingress/egress in the rear for the residential units.

42. In response to questions from the Board, Mr. Campanella testified as follows;
- a. The excess size (additional 279 square feet, or 25%) of the three-bedroom unit on the ground floor is due to the third bedroom, as well as the requirement for ADA accessibility, which requires extra space for circulation. Nevertheless, the bedrooms and living areas are very modest in his opinion;
  - b. Currently, there are no plans for exterior egress, such as ladders or fire escapes;
  - c. The Applicant proposes exterior lighting, with a soft porch light, dormers, and perhaps a light on the right side of the building. The Applicant stipulated to working with the Board Engineer as to any additional exterior lighting, including safety lighting; however, all exterior lighting will be compliant with the Ordinance; and
  - d. While there may be some discrepancies between the site plan and the architectural drawings, any discrepancy will be corrected on the final plans.

43. Patrick Thornton, 50 Champtown Drive, Berkeley Heights, and owner of neighboring Lot 16, questioned the Applicant's measurements of critical versus noncritical area disturbances. Mr. Keller, the Board Engineer, testified that, while all of the necessary details have not been provided, he has enough to opine that the Applicant's numbers are consistent with what he estimates. Mr. Keller stated that, nevertheless, the NJDEP will review same and, if necessary, will request the additional details. Mr. Keller testified that, in the end, if the Applicant cannot pass the NJDEP standards for critical areas and stormwater management, the project will ultimately fail.

44. With regard to other properties within the Township, Mr. Keller testified that he has not seen any projects within the past three years with an application such as the one before it, but the properties along Main Avenue have all been developed in a manner similar to the Applicant's proposal, including Mr. Thornton's property, which was designed by the same engineering firm. Mr. Keller stated that, in his opinion, the application is consistent with good development.

45. In response to additional questions from Mr. Thornton, Mr. Hollows testified as follows:
- a. Stormwater sheet flows to the south, away from the railroad, which is part of the flood plan;
  - b. Yes, a good amount of stormwater from the rear of the Property will flow toward Main Avenue, but it will flow into the stormwater management system in the road;
  - c. Yes, a positive aspect of this application is that there is no net increase in the rate of volume or flow of stormwater;
  - d. Yes, the Applicant is using StormTech Advanced Drainage Systems; and
  - e. Soil logs will be completed during installation as opposed to a hydrological study.

46. Elizabeth McManus, P.P., of Kyle McManus, with a business address of 2 East Broad Street, Hopewell, New Jersey, was duly sworn according to law, provided her credentials, and was accepted by the Board as an expert in the field of professional planning.

47. Ms. McManus began her testimony with a brief overview of the Applicant's proposal, as well as the requested use, density, and bulk variance relief.

48. Ms. McManus testified that six of the eight proposed apartments are consistent with Section 124.1 of the Ordinance, in that those apartments are greater than 500 square feet, less than 1,000 square feet, and are not

to be located on ground floor. In addition, Ms. McManus testified that as to the two affordable apartment units proposed on the ground floor, which will require a variance for same, as well as that one of the proposed units, the three-bedroom unit, has a floor area in excess of 1,000 square feet. She testified as to the proposed density of the Applicant's proposal, which will be 12.97 units per acre, whereas a maximum of five units per acre is permitted, and same will require a subsection d(5) density variance.

49. Ms. McManus testified that, in her opinion, the Property is well suited for a mixed-use apartment and commercial building, such as the proposal. She testified that the Property is five times the size of the minimum lot area required under the Ordinance.

50. With regard to the Township's affordable housing obligations, Ms. McManus testified the Applicant's proposal consists of an affordable housing set-aside of approximately 25%. She testified that, as part of the State's affordable housing regulations and the Township's obligations, three-bedroom affordable rental units are necessary to comply with same. Ms. McManus testified that having dwelling units on the ground floor allows the Applicant to provide ADA compliant units. Ms. McManus testified that, in her opinion, the ground level, affordable ADA compliant units provide a real quality of life opportunity for present or future residents of the Township.

51. Ms. McManus testified that, while the Township currently complies with its affordable housing obligations, the next "round" of affordable housing review will be coming shortly in 2025, and the proposal will allow the Township to receive affordable housing credits for same. She testified that the Property is 180 feet deep, and is an interior lot, both of which make the Property particularly suited for the residential uses on the first floor, as the residential units will not be seen from the front of the building.

52. Ms. McManus testified that the Property is well suited for the Applicant's proposal as the Site is surrounded by commercial uses, there is a residential garden apartment complex (12 units per acre) located to the rear of the Property, which is where the residential portion of the building is proposed, there are other mixed use properties in the area, it is a three minute walk to the train station, and all of the units will contribute to the downtown, so it is located exactly where the Township would want multifamily housing with such an intense density. She testified that, with the current state of the commercial retail market, additional residential housing is necessary to support same.

53. Ms. McManus testified that the Applicant's proposal meets criteria (a), (e), (g) and (i), of Section 2 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), or the applicable zoning "purposes", in that it (i) encourages municipal action to guide the appropriate development in a manner that will promote the public health, safety, morals, and general welfare; (ii) promotes appropriate population densities; (iii) provides sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens; and (iv) it promotes a desirable visual environment through creative development techniques and good civic design.

54. Ms. McManus testified that, in her opinion, this application is a great opportunity to redevelop two well used parcels of property using private capital, even if not redeveloping same under the Local Housing Redevelopment Law, N.J.S.A. 40A:12A-1.

55. Ms. McManus went on to testify that the Applicant's proposal will not have any substantial detriment to the public good, or the Township's Master Plan or Zoning Ordinance. She stated that the proposed ground floor residential units will not be visible from the front of the building, as they are located behind the commercial unit, the building will only appear to be three stories if looked at from the rear, the density can be clearly accommodated, and it meets all relevant bulk requirements, aside from height. Overall, Ms. McManus opined that there are no negative impacts associated with the Applicant's proposal, whether it be the public good or the Master Plan or Zoning Ordinance.

56. In terms of the Master Plan, Ms. McManus testified that the Applicant's proposal actually meets

several of its goals. She testified that the proposal ensures that the commercial development is to scale (only 50% of first floor), it does not encroach on surrounding residential properties (residential development abuts rear only, which is a garden apartment complex), and that it improves the aesthetic of the Property and surrounding areas (removing dilapidated buildings and replacing with new building and landscaping). Finally, with regard to the Township's Housing Element and Fair Share Plan, while this proposal is not contained in same, it will contribute to the Township's future affordable housing obligations.

57. With regard to the standards set forth in Medici, Ms. McManus testified as to how this proposal can be reconciled with the Master Plan and Zoning Ordinance, as the proposal is not a permitted use in the zone. Ms. McManus testified that this is a very large, unique site, located close to the train and surrounded by other mixed use properties, which is not something that was originally contemplated by the Township's Master Plan and Zoning Ordinance. She opined that all of the above demonstrates that the Township never anticipated this need for a change, and, as such, the proposal satisfies the enhanced Medici quality of proof required for a d(1) use variance.

58. With regard to the d(5) density variance, Ms. McManus testified that the standards used when addressing same differ from those used when discussing a d(1) use variance. She testified that, instead of weighing positive and negative criteria, one must discuss whether or not the Property can accommodate an increase in density. Ms. McManus testified that one criteria to make said determination is that, while requiring a density variance, the proposal nevertheless does not require any bulk variances, including, but not limited to, parking or setbacks. She testified that the Applicant's proposal can provide eight residential units in three stories, yet be aesthetically pleasing and not out of scale with regard to the use of the Property or dimensionally with the surrounding properties.

59. With regard to the height of the Property, a bulk variance, as a maximum of two stories at a maximum of 35 feet is permitted in the B-1-5 Zone. She testified that the Applicant seeks a c(2) variance, or "flexible c," to permit the proposed height. She testified that the proposed building will not only appear as if it is two stories from the front of the building, it will also be visually appealing to the surrounding properties. Ms. McManus testified that, while the proposed building could meet the 35-foot height restriction, the proposal is more aesthetically pleasing, and it will appear to be two stories off Main Avenue, which is the location in which three-story buildings are not permitted. Ms. McManus testified that the proposal facilitates a smaller footprint and, had the Applicant proposed a two-story building, it likely would have required additional development in critical areas on the Property. With regard to the Master Plan, Ms. McManus testified that the proposal is a creative use of the building, as it will appear to be two stories in the front of the building, it will have no visual impact as it is not too tall, and it highlights the goals of said Master Plan.

60. Finally, Ms. McManus testified as to the Applicant's proposal to include part of its proposed parking lot within a "critical area," which is not permitted pursuant to Section 142.1(a) of the Ordinance. She testified that, in her opinion, the Applicant's requested relief meets purposes (e) and (g) of Section 2 of the MLUL, in that it promotes the establishment of appropriate population density, as well as provides sufficient space for a variety of uses, yet requires sufficient parking for same. Ms. McManus testified that the proposal is truly an appropriate location as residents will be able to walk to the train station, there are other mixed uses in the immediate area, the proposal allows a mix of eight residential units with a commercial space, which also adds to the beautification of the area and the public's well-being. She stated further that there are no detriments to the Township's zoning plan and meets at least three of the Master Plan's goals. She stated that there is no substantial detriment to the public good associated with the proposal, and the proposed building and parking lot areas are at least three feet above any flood hazard area. She stated that as of now, the proposal meets all stormwater runoff regulations, but still needs to go through the NJDEP permitting process to receive approval for same.

61. As for on-site parking, Ms. McManus testified that 23 parking spaces are proposed, yet 26 parking spaces are required under RSIS. Nevertheless, Ms. McManus testified that, under the Ordinance, there is a 50% in parking requirements as the proposal fronts on Main Avenue, which has significant on-street parking. As such, the proposed 23 parking spaces exceeds the on-site parking requirements, and a parking variance is not required.

62. In response to questions from the Board professionals, Ms. McManus testified as follows:

- a. There is a commercial unit on the ground floor as that is what the Ordinance permits along Main Avenue. The commercial space does not encompass the entire ground floor as it allows an appropriate size footprint of the building on the lot in question, while not offering a commercial space that is in excess of what is necessary or appropriate. Downtown areas have been suffering due to the change of retail landscaping is reducing the need for traditional “brick and mortar” retail buildings. In her opinion, the Township is looking for thriving retail space along Main Avenue. To propose the entire ground floor as commercial retail space would be too much in her opinion;
- b. While there has not been a change in circumstances in the Township since the last Master Plan, there is a broader retail economy, which reduces the need for “store fronts”; and
- c. The Applicant is considering the commercial space to be “office” space, but not medical office space, and not a restaurant either.

63. In response to questions from the Board, Ms. McManus testified as follows:

- a. Removing the third floor would reduce the project from eight apartment units (six market and two affordable) to six apartments (four market and two affordable), and the project would not be economically viable;
- b. The parking proposal is compliant, as Section 151(a)(i) reduces the minimum parking requirements by 50%. It is reasonable to reduce the parking requirements due to on-street parking, the location of the train station, and all the commercial retail space in the Township;
- c. While the proposed building is likely larger than the other nearby buildings, its presence will not be so outsized as to devour the buildings surrounding it;
- d. While it is always a benefit to reduce impervious surface coverage, the Applicant is also a little weary of the parking demand. As such, it is best to maintain the volume of parking as proposed;
- e. The Applicant will stipulate to the magnitude of the commercial space, as well as the location, keeping the commercial use in the front, while maintaining residential use in the rear; and
- f. Requiring a second ingress and egress for the residential units, while not required by Fire Code, would have a sufficient nexus to safety so that the Board can require the Applicant to provide same.

64. Charles Arentowicz, 605 Heritage Road, Millington, a 40-year resident of the Township, questioned Ms. McManus as to the proposed density. Ms. McManus testified that she is not aware of the density of all properties within the Township, but she is aware that the garden apartment complex located behind the proposed development is approximately 12 units per acre, while there are several affordable housing overlay zones throughout the Township that also permit a density of approximately 12 units per acre.

65. With regard to Mr. Arentowicz’s questions as to critical versus noncritical areas, Mr. Keller confirmed that a variance is not required for the Applicant’s proposed magnitude of disturbance in noncritical areas.

66. Patrick Thornton, 50 Champtown Drive, Berkeley Heights, and owner of neighboring Lot 16, questioned the proper denominator when calculating the Applicant’s proposal regarding FEMA regulations and

Flood Hazard Areas. Mr. Keller confirmed the accuracy of the Applicant's submissions and calculations as to same.

67. Upon being duly sworn according to law, Mr. Thornton requested that the Applicant's engineer certify to the accuracy of the stormwater calculations and that stormwater will not infringe upon neighboring properties.

68. No other members of the public commented on, or objected to, the Application.

### **DECISION**

69. After reviewing the evidence submitted, the Board, by a vote of 5 to 2, finds that the Applicant has demonstrated an entitlement to the requested preliminary and final major site plan approval and use, density and bulk variance relief sought herein.

#### **The "d(1)" Use Variance Relief – Positive Criteria:**

70. As to the positive criteria for subsection d(1) use variance relief, New Jersey courts recognize three circumstances in which the "special reasons" required for such a variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because "the proposed site is particularly suitable for the proposed use." See Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

71. The Board finds that the Applicant has demonstrated that the proposal serves the general welfare and that the Site is particularly suitable for the proposed mixed-use building with residential units on the ground floor, as well as a residential apartment unit that consists of more than 1,000 square feet. In this regard, the Board accepts the unrefuted expert testimony of the Applicant's professional planner, Ms. McManus, that the Site can accommodate a three-story mixed-use building with residential apartment units on the ground floor. The Board concurs with Ms. McManus that the location is such that the front of the proposed building, which will contain a commercial unit on the ground floor, and appear to be two-stories with residential apartments on the second floor, will blend well with both the permitted and existing uses along Main Avenue, while the three-story residential use in the rear of the building will blend well with the adjacent garden apartment complex abutting the rear of the Property. The Board accepts Ms. McManus' unrefuted expert testimony that granting the requested relief will advance purposes (a), (e), (g) and (i), of Section 2 of the MLUL, in that it (i) encourages municipal action to guide the appropriate development in a manner that will promote the public health, safety, morals, and general welfare; (ii) it promotes appropriate population densities; (iii) it provides sufficient space in appropriate locations for a variety of uses to meet the needs of all New Jersey citizens; and (iv) it promotes a desirable visual environment through creative development techniques and good civic design. In this regard, the Board notes that the mixed-use building will afford occupants of the residential apartments walkable access to local businesses, including the ground level commercial space, the train station, as well as other local businesses. The Board further recognizes that the proposal will be more aesthetically pleasing than the existing buildings, will not look out of character in the neighborhood, and will provide a good mix of commercial and residential space, including the two affordable housing units. As such, the Board finds that the Applicant has satisfied the positive criteria required for subsection d(1) use variance relief.

#### **The "d(1)" Use Variance Relief – Negative Criteria:**

72. As to the negative criteria, the Board recognizes that, in d(1) use variance cases, the Applicant must demonstrate that granting the requested relief will not result in substantial detriment to the public good or substantial impairment of the Master Plan and Zoning Ordinance with "an enhanced quality of proof."

Specifically, in Medici v. BPR Co., supra, 107 N.J. 1, 21-22 (1987), the Supreme Court required that an applicant must show:

in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant's proofs and the board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district.

73. 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, Ms. McManus, that the Applicant has demonstrated that the proposed mix use building will not result in substantial detriment to the character of the neighborhood, because the building will be complimentary in size to the existing buildings along Main Avenue. Additionally, given the conditions stipulated to by the Applicant, the overall safety and aesthetic concerns associated with the proposed building are mitigated. The Board notes, in this regard, that only one member of the public objected to the proposed mixed-use building.

74. As to the "substantial impairment" prong of the negative criteria, the Board concurs with the undisputed expert testimony of Ms. McManus 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, while providing access to the train station and local business, while enhancing the aesthetics of the Property, 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 and character and quality of the Township, and will, in fact, enhance residents' quality of life.

75. As to the "reconciliation" under Medici, the Board concurs with the undisputed expert planning testimony of Ms. McManus, including, that ground level residential apartments was not as commonplace when the Ordinance was last amended, thus explaining the omission of same from the list of permitted uses in the Ordinance.

76. In sum, the Board finds that the Applicant has met its burden of demonstrating both the positive and negative criteria for the requisite subsection d(1) variance relief.

### **The "d(5)" Density Variance Relief:**

77. First, the Board recognizes that "density" is defined by N.J.S.A. 40:55D-4, as "the permitted number of dwelling units per gross area of land to be developed" and that a zoning board of adjustment has sole jurisdiction over applications that seek a variance from a zone's density restrictions. Moreover, the Board notes that, pursuant to N.J.S.A. 40:55D-70(d), a board of adjustment may grant a variance to allow departure from regulations to permit an increase in the permitted density, except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots result from a minor subdivision. Here, the Applicant's proposal results in a lot that is not the result of a minor subdivision and, therefore, this exception to the Board's exclusive jurisdiction over density variances did not apply.

78. Similarly, the Board recognizes that in Grubbs v. Slothower, 389 N.J. Super. 377 (App. Div. 2007), the appellate court addressed the issue of "special reasons" in the context of an application for a density variance as follows:

Since special reasons supporting a particular variance request "must be tailored" to the purpose served by the restriction in the ordinance, Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41, 52 (App.Div.2004), we examine the purpose of restricting density in a particular zone. The MLUL explicitly recognizes the

regulation of the density of development as a general purpose of zoning that contributes to “the well-being of persons, neighborhoods, communities and regions and preservation of the environment.” N.J.S.A. 40:55D-2(e). Density restrictions, in the residential context, and [Floor Area Ratio] restrictions, in the commercial setting, both serve to limit the intensity of the use of the land to be developed. Commercial Realty & Res. Corp. v. First Atl. Prop. Co., 122 N.J. 546, 561 (1991); see also Cox, New Jersey Zoning and Land Use Administration § 7-7.2 at 215 (2006).

Special reasons are those that promote the purposes of zoning as set forth in N.J.S.A. 40:55D-2. Though not expressly stated in the MLUL, the preservation of the character of a neighborhood or property values in that neighborhood have also been recognized as legitimate purposes of zoning. Home Builders League of S. Jersey, Inc. v. Twp. of Berlin, 81 N.J. 127, 145 (1979)

79. Second, as to the positive criteria for the d(5) variance relief, the Board recognizes that the standard for granting variance relief from residential density restrictions is the same standard as is applied to a floor area ratio case. See, Grubbs, supra, 389 N.J. Super. at 386-391. As such, an applicant must show that the site will accommodate the problems associated with a density greater than that permitted by the Zoning Ordinance. See, Randolph Town Center v. Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999). Here, the Board accepts the unrefuted evidence and expert opinions of the applicant’s planner, Ms. McManus, that the size and location of the lot would be sufficient to support the proposed mixed-use building thereon and that no other dimensional variances are required (except for critical area disturbance). The Board also concurs that the Applicant’s proposal provides adequate light, air and open space, provides sufficient space for residential development, and promotes a desirable visual environment, and, as such advances purposes (c), (g), and (i) of Section 2 of the MLUL.

80. Third, as to the negative criteria for d(5) variance relief, an applicant must demonstrate that the increase in density would not have a more detrimental effect on the neighborhood than construction of the project in a manner consistent with the zone’s restrictions. For example, an applicant might demonstrate that the increased proposed density was only minimally greater than the permitted density in the zone or in adjacent areas. Randolph Town Ctr. Assocs., L.P., supra, 324 N.J. Super. at 418. An applicant might show that it was unlikely that a minimal increase in density would create a “substantial detriment” to nearby properties. Yahnel v. Bd. of Adjustment of Jamesburg, 79 N.J. Super. 509, 519 (App. Div.), certif. denied, 41 N.J. 116 (1963). Here, the Board finds that the Applicant’s proposal to construct a mixed-use building in excess of the permitted density will not be substantially out of character with the existing neighborhood. The Board recognizes that the density of the proposal is not substantially out of character with the density of the adjacent developments, including the garden apartment complex abutting the Property. As such, the Board finds that the increased density will not result in substantial detriment to the public good, or substantial impairment in the zone plan and zoning ordinances.

### **The Bulk Variances – Positive Criteria:**

81. The Board recognizes that an applicant requesting bulk variance under subsection “c” of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria. The positive criteria in bulk variance cases may be established by the Applicant showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the subsection c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created.

82. The positive criteria for bulk variance relief may also be established by a showing that the granting of an application for variance relief would advance the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”) and the benefits of the granting such relief would substantially outweigh any detriment

associated therewith, in accordance with N.J.S.A. 40:55D-70c(2). Under the subsection c(2) standard, an applicant must prove that the granting of a proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

83. Here, the Board finds that the requested bulk or “c” variance relief may be granted under subsection c(2) of N.J.S.A. 40:55D-70.

84. Pursuant to N.J.S.A. 40:55D-70(c)(2), the Board concurs with the undisputed expert planning testimony of Ms. McManus and finds that granting the requested relief advances the purposes of the MLUL and that the benefits associated with the proposal substantially outweigh the detriment associated therewith. Specifically, the Board finds that the proposal advances the purposes set forth in subsections (e) and (g) of Section 2 of the MLUL, in that it promotes the establishment of appropriate population density, as well as provides sufficient space for a variety of uses. In this regard, the Board recognizes that the Applicant’s proposal presents a better zoning alternative in that it offers a mix of both commercial and residential development, which is authorized in the zone fronting on Main Avenue, with residential, both market rate and affordable, in the rear of the Property, which abuts a garden apartment complex, with a similar residential density, set forth on a combined lot, wherein the proposal meets all relevant bulk variance standards, such as setbacks, parking and the like. Notwithstanding that the Applicant proposes a three-story building, it will appear as a 2-story building along the Main Avenue frontage and will be less than one foot taller than 35 feet in height. The Board further finds that the benefits of granting the requested relief substantially outweigh the detriment associated therewith, particularly given the number of relevant zoning purposes met, the relatively modest nature of the Applicant’s proposal, and the stipulated to conditions, which will further mitigate such relatively modest detriment.

85. As to the requested variance relief for the disturbance of a critical area, the Board recognizes that the proposal results in a deviation that will allow the Applicant to improve the functionality and aesthetics of the Property without changing on-site circulation.

86. As such, the Board finds that the Applicant has demonstrated the positive criteria for all of the requested variance relief under subsection c(2) of Section 70 of the MLUL.

#### **The Bulk Variances – Negative Criteria:**

87. In order to satisfy the negative criteria for “c” variance relief, an applicant must prove that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

88. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicant has demonstrated that the proposal will not result in substantial detriment to the neighborhood or the general welfare, particularly since the appearance of the Property will be improved and, while the size and location of the proposed building are larger than what currently exists on the Property, the Applicant proposes to combine two lots into one, with one proposed building in place of the currently existing two. While two lots will be merged to become one, and two structures will be removed and be replaced by one, the proposal will not change the neighborhood substantially from what currently exists, all while fitting in well within its surroundings. The Board recognizes that only one member of the public objected to the Applicant’s proposal, further evidencing that the proposal is not substantially out of character with the subject neighborhood. As to the “substantial impairment” prong of the negative criteria, the Board finds that granting the requested relief certainly does not rise to the level

of a rezoning of the Property, particularly since the proposed mixed use is a permitted use in the B-1-5 Zoning District.

89. Here, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested bulk variance relief under N.J.S.A. 40:55D-70(c)(2).

**The Preliminary and Final Major Site Plan Approval:**

90. The Board finds that the Applicant has demonstrated good cause and complied with the Preliminary and Final 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 site plan approval.

**WHEREAS**, the Board took action on this application at its meeting on January 4, 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 commercial tenants shall not include office medical space or a restaurant;

3. The Applicant shall work in good faith with the Board Planner to provide native species, where possible, in its landscaping plan;

4. The Applicant shall comply with the requirements and recommendations set forth in the Board Engineer's Memorandum, dated November 14, 2021, and the Board Planner's Memorandum, dated November 12, 2021, including, but not limited to the following:

a. The Applicant shall comply with the provisions of Ordinance Section 155.7 regarding signage requirements;

b. The plans shall be revised to show consistency between the architectural elevations and the floorplan, as well as indicate same on the site plan;

c. The Applicant shall revise the Zone Table with regard to the ground floor area;

d. The Applicant shall record the necessary documents with the Morris County Clerk merging the two lots;

e. The Applicant shall obtain an Individual Permit from the NJDEP per the State Flood Hazard Area Control Act Rules located at N.J.A.C. 7:13;

f. The Applicant shall revise the plans to identify the existing sanitary sewer and provide construction details as appropriate for the proposed project, which shall be subject to the review and approval by the Board Engineer;

g. The Applicant shall provide additional site plan details, including but not limited to:

i. Storm sewer capacity & line calculations;

- ii. Additional top & bottom of curb elevations;
- iii. All rim and invert elevations for all inlets;
- iv. Additional grade elevations to demonstrate that the handicap parking space and accessible route to the rear door are ADA compliant; and
- v. All construction details, including, curb, pavement, detention system, refuse/dumpster area, ramps, concrete walks, traffic signage and all other typical site details.

Should the Applicant fail to comply with the requirements of this condition of approval, the Applicant shall comply requirements contained in Section 3.2 of Mr. Keller's November 14, 2021 review memorandum;

- h. The Applicant shall provide a lighting plan, which shall include all lighting being shielded and pointed in a downward direction so as to not have light spillage onto neighboring properties, with an automatic cutoff at night (except for safety), all of which shall be subject to the review and approval of the Township Engineer;
- i. The Applicant shall identify whether any building or ground mounted signage is proposed, which shall be subject to the review and approval of the Board Engineer;
- j. The Applicant has provided a comprehensive proposed landscape plan, which shall be subject to the following:
  - i. The Applicant shall consider a narrower/more upright alternative to be planted along entry drive;
  - ii. The Applicant shall consider using Leatherleaf Viburnum instead of Arrowwood Viburnum to get evergreen shrubs along the perimeter of the parking lot;
  - iii. The Applicant shall consider a smaller species tree against the building;
  - iv. The Applicant shall consider a more upright shade tree for the parking lot island;
  - v. The Applicant shall provide plantings along the ADA building ramps (front & back) and consider evergreen shrubs around the dumpster;
  - vi. The plan shall identify the ground plane treatment throughout the site (grass, groundcover, stone, mulch, etc.); and
  - vii. There is a concern that the installation of drainage/piping along the western property line may damage the existing trees. The Applicant shall evaluate and provide specifics on tree removal in this area.

5. The Applicant shall comply with the local and State noise regulations, including, but not limited to, N.J.A.C. 7:29;

6. 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;

7. 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;

8. 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;

9. 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;

10. All fees and escrows assessed by the Township of Long Hill for this application and the hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property;

11. 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 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

12. 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. Rosenberg and seconded by Mr. Grosskopf to GRANT approval of the Relief Requested as set forth herein.

**BE IT FURTHER RESOLVED**, that this Resolution, adopted on February 15, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Rosenberg, Grosskopf, Gianakis, Hain, Gerech No: Aroneo, Johnson; Recused: None; Not Eligible: None; Absent: None.

ATTEST:

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

\_\_\_\_\_  
Edwin F. Gerech, Jr.  
Chairman

**RESOLUTION DATE: February 15, 2022**

<b>VOTE ON RESOLUTION</b>					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT					
VICE CHAIRMAN JOHNSON			X		
ARONEO			X		
GIANAKIS					
GROSSKOPF					
ROSENBERG					
HAIN					
LINDEMAN – ALT 1			X		
BRENNAN – ALT 2			X		

I hereby certify this to be a true copy of the Resolution adopted on February 15, 2022.

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

**RESOLUTION OF THE PLANNING BOARD  
TO THE 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

□ **HEREAS**, 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

□ **HEREAS**, 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

**HEREAS**, 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

**HEREAS**, the Applicant requires a design waiver from Section 153.2.c for maintaining an illumination level of over 0.2 foot candles overnight; and  **HEREAS**, 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

**HEREAS**, 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

**HEREAS**, 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

**HEREAS**, 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

□ **HEREAS**, 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

□ **HEREAS**, 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

□ **HEREAS**, 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

□ **HEREAS**, the Applicant, represented by Attorney Francis □ 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

□ **HEREAS**, 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

□ **HEREAS**, 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

□ **HEREAS**, 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

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

□ **HEREAS**, 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 □ 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 □ 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.

□ **HEREAS**, 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 □ 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.

**HEREAS**, 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

**HEREAS**, 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

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

**HEREAS**, 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.

□ **HEREAS**, 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.

□ **HEREAS**, 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.

□ **HEREAS**, 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.

□ **HEREAS**, 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 □ 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.

□ **HEREAS**, 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 AZE□ (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 □ inches deep and 43 □ 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.

□ **HEREAS**, 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 □aufman was sworn and provided the board with his qualifications as a licensed architect and his qualifications were accepted by the Board. Mr. □aufman presented a series of exhibits to illustrate the different perspectives in a three-dimensional manner. Mr. □aufman 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 W-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 W-1A: Proposed Alternate Design;  
 Exhibit W-1B: Proposed Alternate Design;  
 Exhibit W-2: Proposed Alternate Site Plan;  
 Exhibit W-3A: Stone House Road Comparison;  
 Exhibit W-3B: Division Avenue Comparison;  
 Exhibit W-4A: Aerial from North;  
 Exhibit W-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), cert. 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 facades 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, “  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.

**HEREAS**, 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.

**NO**  **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  **RANT** 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**  **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

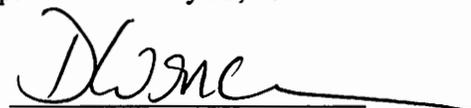
Moved By: Mr. Pfeil

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.

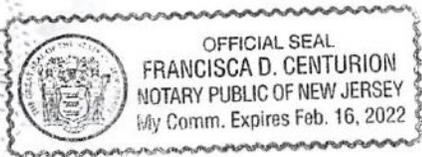


Sworn and subscribed before me this

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



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/T1

**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 proposed<sup>1</sup>;
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.

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<sup>1</sup> 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 trees, 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 1<sup>st</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> 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 1<sup>st</sup> 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 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 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

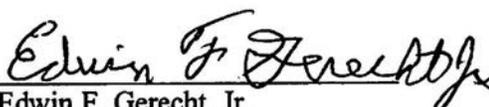
Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits 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 <sup>ND</sup>				
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

# Appendix B – Ordinances

Township of Long Hill, NJ

## § LU-185. DEVELOPMENT FEES.<sup>1</sup>

### § LU-185.1. Purpose. [Ord. No. 414-2018]

- a. In *Holmdel Builder's Association V. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b. Pursuant to P.L.2008, c.46 Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c. This ordinance (Section 185) establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

### § LU-185.2. Basic Requirements. [Ord. No. 414-2018]

- a. This section shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- b. Long Hill Township shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

### § LU-185.3. Definitions. [Ord. No. 414-2018]

The following terms, as used in this section, shall have the following meanings:

**AFFORDABLE HOUSING DEVELOPMENT** — Means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

**COAH OR THE COUNCIL** — Means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

**DEVELOPER** — Means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

**DEVELOPMENT FEE** — Means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

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1. Editor's Note: Prior ordinance history includes portions of Ordinance No. 155-04 and Ordinance No. 200-06.

Township of Long Hill, NJ

§ LU-185.3

§ LU-185.4

**EQUALIZED ASSESSED VALUE** — Means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c.123 (C.54: 1-35a through C.54: 1-35c).

**GREEN BUILDING STRATEGIES** — Means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

#### **§ LU-185.4. Residential Development Fees. [Ord. No. 414-2018]**

##### a. Imposed fees.

1. Within the Township residential district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1 1/2% of the equalized assessed value for residential development provided no increased density is permitted.
2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1 1/2% of the equalized assessed value on the first two units; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

##### b. Eligible exactions, ineligible exactions and exemptions for residential development.

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

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4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

**§ LU-185.5. Non-residential Development Fees. [Ord. No. 414-2018]****a. Imposed fees.**

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

**b. Eligible exactions, ineligible exactions and exemptions for non-residential development.**

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
2. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

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5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Long Hill Township as a lien against the real property of the owner.

**§ LU-185.6. Collection procedures. [Ord. No. 414-2018]**

- a. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit and the Zoning Officer.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should Long Hill Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h. 50% of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i. Appeal of development fees.
  1. A developer may challenge residential development fees imposed by filing a challenge

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with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Long Hill Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Long Hill Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**§ LU-185.7. Affordable Housing Trust Fund. [Ord. No. 414-2018]**

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction of affordable units;
  2. Developer contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
  3. Rental income from municipally operated units;
  4. Repayments from affordable housing program loans;
  5. Recapture funds;
  6. Proceeds from the sale of affordable units; and
  7. Any other funds collected in connection with Long Hill Township's affordable housing program.
- c. Within seven days from the opening of the trust fund account, Long Hill Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

**§ LU-185.8. Use of Funds. [Ord. No. 414-2018]**

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- a. The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Township of Long Hill's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b. Funds shall not be expended to reimburse Long Hill Township for past housing activities.
- c. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
  1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  2. Affordability assistance to households earning 30% or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
  3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The Township of Long Hill may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e. No more than 20% of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and

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compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

**§ LU-185.9. Monitoring. [Ord. No. 414-2018]**

- a. The Township of Long Hill shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Long Hill Township's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

**§ LU-185.10. Ongoing Collection of Fees. [Ord. No. 414-2018]**

- a. The ability for Long Hill Township to impose, collect and expend development fees shall expire with its substantive certification unless Long Hill Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Long Hill Township fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L.1985, c.222 (C.52:27D-320). The Township of Long Hill shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Long Hill Township retroactively impose a development fee on such a development. The Township of Long Hill shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

# Appendix C – Spending Plan

# **AFFORDABLE HOUSING TRUST FUND SPENDING PLAN**

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**TOWNSHIP OF LONG HILL  
MORRIS COUNTY, NEW JERSEY**

June 24, 2025

Prepared by: Jessica C. Caldwell, P.P., A.I.C.P.  
NJPP License #5944

## SPENDING PLAN

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### INTRODUCTION

The Township of Long Hill, Morris County, has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the present and prospective affordable housing need in accordance with the Municipal Land Use Law (MLUL), the Fair Housing Act (FHA), the regulations of the Council on Affordable Housing (COAH) and recent decisions by the Courts.

A development fee ordinance creating a dedicated revenue source for affordable housing following state guidelines was adopted in November 2004, which was later amended in 2005, 2006 and 2013. The ordinance established a fee of 1.5% of equalized assessed value for new residential construction and 2.5% for new commercial construction. The ordinance established the need for a Township of Long Hill Affordable Housing Trust Fund. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by affordable housing fees are deposited in a separate-interest-bearing affordable housing trust fund account for the purposes of affordable housing. This Spending Plan supersedes the spending plan adopted by the Township of Long Hill as part of its Third Round Superior Court approvals.

The Township of Long Hill has prepared this Spending Plan (2025) to guide the allocation of funds within the Township of Long Hill Affordable Housing Trust Fund. As of December 31, 2024, the Township of Long Hill has \$164,578 in funds in its Affordable Housing Trust Fund. The funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

## **REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of Fourth Round substantive certification, the Township of Long Hill considered the following:

- (a) Development fees:
  - 1. Nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
  - 2. All nonresidential projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
  - 3. Future development that is likely to occur based on historical rates of development.
  
- (b) Payments in Lieu (PIL): Payments in Lieu of development into the Township's Housing Trust are permitted as pursuant to Section 185.4a.2 of the Long Hill Code.
  
- (c) Other funding sources: The Township reserves the option to pursue various public funding options to support its municipal rehabilitation program.
  
- (d) Projected interest: Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate is 0.5% based on prevailing interest rates for savings accounts.

**Projected Revenue Schedule, 2025-2035  
Township of Long Hill Affordable Housing Trust Fund**

Source of Funds	Up to 12/31/2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Total
(a) Development Fees	\$164,578												
1. Approved Residential and Nonresidential Development Projects	NA	\$2,500	\$2,500	\$2,500									\$7,500
2. Projected Residential Development Projects Only	NA	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$220,000
3. Projected Non-Residential Development Projects (New construction only)	NA	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$550,000
(b) Payments in lieu of Construction	NA												
(c) Other Funds (specify source)	NA												
<b>Subtotal</b>	\$164,578	\$72,500	\$72,500	\$72,500	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000	\$845,000
(d) Interest	NA	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$11,000
<b>Total Revenue from Development Fees</b>	\$164,578	\$73,500	\$73,500	\$73,500	\$71,000	\$71,000	\$71,000	\$71,000	\$71,000	\$71,000	\$71,000	\$71,000	\$1,020,667

The Township of Long Hill projects a total of **\$856,000** to be collected between January 1, 2025 and December 31, 2035 for residential and non-residential new construction. There is an existing balance of \$164,578, resulting in a total of \$1,020,667 for use on affordable housing. Projections are based on projected development as it relates to permits issued within the Township over the last five years and revenues generated by the fund over the last ten years.

### **ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

Long Hill will follow the process for the collection and distribution of development fee revenues detailed below.

- (a) Collection of development fee revenues: Long Hill will collect development fee revenues in a manner that is consistent with the Township's development fee ordinance for both residential and nonresidential development and in accordance with applicable regulations.
- (b) Distribution of development fee revenues: Long Hill will distribute funds with the oversight of the Township Committee. The Committee will work with the Township Administrator and the Municipal Housing Liaison to manage the projects outlined in this spending plan.

### **DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

The Township of Long Hill proposes to use the monies in its Affordable Housing Trust Fund for the following purposes:

- (a) **Rehabilitation Projects** (N.J.A.C. 5:97-6.2): the Township of Long Hill will dedicate the following funds to Rehabilitation projects in order to meet its fair share affordable unit obligation:  
**Township Rehabilitation Program:** The Township does not have a present need obligation; however, funds may be expended if a homeowner is in need and meets the criteria. A minimum of \$12,500 would be allocated to rehabilitate a unit pending available funds. A budget is not allocated for this item.
- (b) **Administrative Expenses** (N.J.A.C. 5:97-8.9) the Township of Long Hill will dedicate no more than 20 percent of revenue from the affordable housing trust fund to be used for administrative purposes. **The current budget for administrative expenses is a maximum of \$75,000 subject to the twenty percent (20%) cap are as follows:**
  - Administration of affordable housing programs;
  - Legal fees associated with affordable housing administration;
  - Planning fees for any necessary updates and/or revision to the Housing Element and Fair Share Plan; and,
  - Other expenses associated with the development and implementation of the Housing and Fair Share Plan and the monitoring of current and future affordable housing programs within Long Hill Township.
- (c) **Affordability Assistance** (N.J.A.C. 5:97-8.8) Long Hill will dedicate **\$307,000** from the affordable housing trust fund to render units more affordable, including at \$92,000 to render units more affordable to households earning thirty percent (30%) or less of median income by region.

(d) **Supportive Living and Special Needs** (N.J.A.C. 5:97-6.10): Long Hill will dedicate **\$320,000** in funds to assist in the development and renovation of supportive and special needs homes as the budget permits.

(e) **Excess Funds**: Any excess funds will be dedicated **\$318,667** to emergent projects such as municipally sponsored 100% affordable housing, market to affordable program, redevelopment and other permitted affordable housing programs.



**SUMMARY**

Long Hill intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the affordable housing programs outlined in the Township's Housing Element and Fair Share Plan dated May 21, 2025.

**Spending Plan Summary  
Long Hill Affordable Housing Trust Fund**

<b>Trust fund balance as of 12/31/2024</b>	<b>\$615,453</b>
<b>Projected Revenue (2025-2035)</b>	
Development fees	<b>\$856,000</b>
Payments in lieu of construction	
Other funds	
Interest	<b>\$11,000</b>
<b>Total Revenue (Rounded)</b>	<b>\$845,000</b>
<b>Expenditures</b>	
Rehabilitation	<b>\$562,500</b>
Administration	<b>\$249,290</b>
Affordability Assistance	<b>\$441,436</b>
Other programs	<b>\$218,227</b>
<b>Total Projected Expenditures</b>	<b>\$1,471,453</b>

# Appendix D – Marketing Plan

**TOWNSHIP OF LONG HILL  
COUNTY OF MORRIS, STATE OF NEW JERSEY**

Affordable Housing

Affirmative Marketing Plan

The Township of Long Hill Municipal Building  
915 Valley Road  
Gillette, NJ, 07933  
908-647-8000

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### **Overview**

All affordable units are required to be affirmatively marketed using Township of Long Hill's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an Administrative Agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

The Township of Long Hill provides this Affirmative Marketing Plan for any affordable housing within the Township. Individual projects may develop their own affirmative marketing plan in compliance with this plan.

Every Affirmative Marketing Plan must include all of the following:

1. Publication of at least one advertisement in a newspaper of general circulation within the housing region;
2. Broadcast of at least one advertisement by radio or television throughout the housing region; and
3. At least one additional regional marketing strategy such as a neighborhood newspaper, religious publication, organizational newsletter, advertisement(s) with major employer(s), or notification through community and regional organizations such as non-profit, religious, and civic organizations.

For each affordable housing opportunity within the municipality, the Affirmative Marketing Plan must include the following information:

1. The address of the project and development name, if any;
2. The number of rental units;
3. The price ranges of the rental units;
4. The name and contact information of the Municipal Housing Liaison, Administrative Agent, property manager, or landlord;
5. A description of the Random Selection method that will be used to select applicants for affordable housing; and
6. Disclosure of required application fees, if any.

Advertisements must contain the following information for each affordable housing opportunity:

1. Location of the units;
2. Directions to the units;
3. Range of prices for the units;
4. Size, as measured in bedrooms, of units;

5. The maximum income permitted to qualify for the housing units;
6. The locations of applications for the housing units;
7. The business hours when interested households may obtain an application for a housing unit; and
8. Application fees, if any.

### **Regional Preference**

The Township of Long Hill has provided that households that live or work in Housing Region #2 (comprised of Essex, Morris, Union, and Warren Counties) shall be selected for an affordable housing unit before households from outside of this region. Units that remain unoccupied after households who live or work in the region are exhausted, may be offered to the households outside the region.

### **Implementation**

The affirmative marketing process for affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the Administrative Agent shall undertake all of the strategies outlined in the Township of Long Hill's Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

All newspaper articles, announcements and requests for applications for low- and moderate-income units will appear in the following daily regional newspapers/publications when units are available and there is no wait list for existing units and when any new units may be constructed in the future:

1. The Echoes Sentinel
2. The Morris County Daily Record

The primary marketing will take the form of at least one (1) press release sent to the above publications and a paid display advertisement in each of the above newspapers. Additional advertising and publicity will be on an as-needed basis. The advertisement will include a description of the:

1. Location of the units;
2. Directions to the units;
3. Range of prices for the units;
4. Size, as measured in bedrooms, of units;
5. Maximum income permitted to qualify for the units;
6. Location of applications;
7. Business hours when interested households may obtain an application; and
8. Application fees.

All newspaper articles, announcements and requests for applications for low- and moderate-income housing will appear in the following neighborhood-oriented weekly newspapers, religious publications and organizational newsletters within the region:

1. The Echoes Sentinel
2. The Morris County Daily Record

The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.

The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:

1. Station(s) Choose stations from Attachment A.

The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Essex, Morris, Union, and Warren Counties that will aid in the affirmative marketing program with particular emphasis on those contacts that are able to reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's Affirmative Fair Housing Marketing Plan for Affordable Housing in Region #2 (attached to and hereby made part of this Resolution) as well as the following entities:

1. Quarterly informational flyers and applications shall be sent to the Essex, Morris, Union, and Warren Counties' Boards of Realtors for publication in their journals and for circulation among their members; and
2. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the municipalities and counties of Essex, Morris, Union, and Warren.

Applications will be mailed to prospective applicants upon request.

The following is the location of applications, brochure(s), signs and/or poster(s) used as part of the affirmative program, including specific employment centers within the region:

1. Municipal Building: 915 Valley Road, Gillette, NJ 07933
2. Municipal Library: 917 Valley Road, Gillette, NJ 07933

The following is the community contact person who will aid the affirmative marketing program:

Municipal Housing Liaison  
915 Valley Road  
Gillette, NJ 07933  
908-647-8000

Additionally, quarterly informational circulars and applications for new units which may be constructed in the future will be sent to the chief administrative employees of each of the following agencies in the counties of Essex, Morris, Union, and Warren:

1. Welfare or Social Service Board;
2. Rental assistance office (local office of DCA);
3. Office on Aging.
4. Housing Agency or Authority.
5. County Library.
6. Area community action agencies.

Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

1. Township of Long Hill Administrative Offices;
2. Township of Long Hill website;
3. Developer's Sales/Rental Offices;
4. Essex, Morris, Union, and Warren Counties' Administration Buildings;
5. Essex, Morris, Union, and Warren Counties' Libraries (all branches); and
6. Other public buildings and agencies as deemed appropriate by the Administrative Agent.

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and multiple copies of application forms shall be mailed to Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association for dissemination to their respective constituents. In addition, the foregoing entities shall be notified directly whenever an affordable housing unit(s) becomes available in the Township of Long Hill.

The following is a listing of community contact person(s) and/or organizations in Essex, Morris, Union, and Warren Counties that will aid in the affirmative marketing program and provide guidance and counseling services to prospective occupants of very low-, low-and moderate-income units:

1. Boonton Housing Authority: 125 Chestnut Street, Boonton;  
<https://www.shelterlistings.org/details/32138>
2. Catholic Charities Diocese of Paterson: 777 Valley Road, Clifton,  
<https://www.catholiccharities.org>

3. Community Hope, Inc.: (973) 463-9600; 959 Route 46 East, Suite 402, Parsippany
4. Eric Johnson House: (973) 326-9636; 44 South Street, Morristown
5. Family Promise of Morris County: P.O. Box 1494, Morristown;  
<https://www.familypromise.org>
6. Homeless Solutions: 6 Dumont Place, Suite 3, Morristown;  
<https://www.homelessolutions.org>
7. Hope House Catholic Charities: (973)895-3143; 11 Forrest Road, Randolph
8. Housing Partnership Neighborworks Home Ownership Center: 2 East Blackwell Street, Dover; <https://www.housingpartnershipnj.org>
9. Jersey Battered Women's Service, Inc.: P.O. Box 1437, Morristown, <https://www.jbws.org>
10. Madison Affordable Housing Corporation: 24 Central Avenue, Madison;  
<https://affordablehousingonline.com/housing-authority/New-Jersey/Housing-Authority-of-the-Borough-of-Madison/NJ105>
11. Market Street Mission: 9 Market Street, Morristown; <https://www.marketstreet.org>
12. Morris County Affordable Housing Corp.: 99 Ketch Road, Morristown;  
<https://housing.morriscountynj.gov/housingcorp>
13. Morris County Human Services: 340 West Hanover Avenue, Morristown;  
<https://hs.morriscountynj.gov/services-list/>
14. Morris County Human Services Office of Community Development: P.O. Box 900, Morristown; <https://hs.morriscountynj.gov/community/>
15. Mrs. Wilson's Halfway House for Women: 7 Industrial Road, #301, Pequannock;  
<https://newbridge.org>
16. Our Place Day Shelter: (973)539-9920; 51 Washington Street; Morristown
17. The Housing Partnership: 2 East Blackwell Street, Suite 12, Dover;  
<https://www.housingpartnershipnj.org/>
18. Urban League of Morris County: 300 Madison Avenue, Suite A, Morristown;  
<https://www.ulmcnj.org>

A random selection method to select occupants of very low-, low- and moderate-income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (I). The Affirmative Marketing Plan shall provide a regional preference for very low-, low- and moderate-income households that live and/or work in Housing Region #2, comprised of Essex, Morris, Union, and Warren Counties. Pursuant to the New Jersey Fair Housing Act (C.52:27D-311), a preference for very low-, low- and moderate-income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the municipality prior to the affirmative marketing of the units.

The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify very low-, low- and moderate-income households; to place income-eligible households in very low-, low- and moderate-income units upon initial occupancy; to provide for the initial occupancy of very low, low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very low-, low- and moderate-income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26-1, et seq.

The Administrative Agent shall provide or direct qualified very low-, low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services. In addition, it shall be the responsibility of the Administrative Agent to inform owners of affordable units and prospective occupants of affordable units of the Borough's affordability assistance programs and to assist with the implementation of such programs.

All developers/owners of very low-, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.

The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low-, low- and moderate-income housing units are initially occupied and thereafter upon the re-sale or re-rental of an affordable unit for as long as an affordable unit remains deed restricted.

The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to the Borough's adopted Affordable Housing Ordinance.

An applicant pool will be maintained by the Administrative Agent for re-rentals.

1. When a re-rental affordable unit becomes available Administrative Agent will select applicants from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above. The selection of applicants from the applicant pool is described in more detail in this manual under the section **Random Selection & Applicant Pool(s)**.

### **Sample Advertisement for Available Rental Units**

The **Town/Township/Borough** of **municipality** hereby announces that **# affordable housing units** will be available for rent in the **name of development/project**. The housing is under development by **developer** and is available for **type of income** households. **Development** is located at **address, description**.

The affordable housing available includes rents from **\$/###/month** and includes **#-bedroom units**. **Utilities are included (if applicable)**. Interested households will be required to submit **application, documentation if applicable, and any other requirements** in order to qualify. The maximum household incomes permitted are **\$41,471 for a one person household, \$47,395 for a two person household, \$53,320 for a three person household, \$59,244 for a four person household, \$63,984 for a five person household, and \$69,723 for a six person household**. Once certified, households will be matched to affordable units through a lottery system. All successful applicants will be required to demonstrate the ability to pay a security deposit (**requirements of security deposit**).

Applications are available at **Location(s), hours of operation**. Applications can also be requested via mail by calling **Realtor** at **Phone #**. Applications will be accepted until **mm/dd/yy** and there is a **\$5 fee for the credit check**.

Visit [www.njhousing.gov](http://www.njhousing.gov) or call 1-877-428-8844 for more affordable housing opportunities.

Although any income eligible households may apply, workers of **[Insert counties in the COAH Housing regional preference zone]**; Morris County will be selected before residents of other counties or states.

### **Sample Public Service Announcement**

10 second slot:

Affordability priced homes available in Mayberry Borough. Income restrictions apply. Call (800) 555-1234 for information.

30-35 second slot:

Affordably priced, brand new two, three, and four-bedroom attractive homes with nice amenities are available at the Equality at Mayberry Development in desirable Mayberry Borough. Call A Home For You at (800) 555-1234 for information on sales prices and income limits and to get a pre-application. The deadline to submit a pre-application is August 1, 2020, so don't delay. These homes are in accordance with State requirements for low- and moderate-income housing.

**Random Selection & Applicant Pool(s)**

The following is a description of the random selection method that will be used to select occupants for low- and moderate-income housing:

There will be a period in which to complete and submit applications. Households that have completed applications in that timeframe and have been determined that they are income eligible will be randomly selected to establish an order (service list) in which they will be evaluated by the Administrative Agent for the available unit(s). A copy of the first page of the applications will be folded and placed in a container of sufficient size to allow the applications to be randomly mixed. Once mixed, all applications will be drawn one by one from the container until none are left. The first application drawn will be the first position on the service list, and so on.

At least two people will be present during a random selection and both will sign the resulting service list as having participated and/or witnessed the random selection. Once the applicant is placed on the service list, they shall remain in that position until they are served or asked to be withdrawn from the list. Applicants on the service list shall not be a part of any future random selections. If the household on the list is not of an appropriate household size, income or does not live or work in the Housing Region, that applicant will be skipped and the next applicant household with sufficient income will be evaluated for the available unit. This will continue until a properly sized household with sufficient income or purchase or rent the unit is reached.

The applicant household will be required to submit a complete application to establish their eligibility as defined by the Fair Housing Act. If the end of the service list is reached before an appropriately-sized household that lives or works in the New Jersey Housing Region is identified the Administrative Agent will review skipped households in the order of the random selection. Households that live or work in the Housing Region that are smaller than the ideal household size, as defined by the Township's Affordable Housing Ordinance, will be considered next.

Any applicants that are skipped for size, income or regional preference will remain on the list and continue to be considered for future restricted units in the order in which they were selected in the random selection.

Unless applicants ask to be removed from the list or become ineligible for assistance, or are unresponsive to our communications, they will remain on the service list. Therefore, these applicants will not need to be in future random selections. Instead, the service order created by future random selections will be placed at the end of the service list set by all prior random selections.

If there are sufficient names remaining on the service list to fill two years of resales and rentals, the applicant pool may be closed by the Administrative Agent. The Administrative Agent will notify the Township in writing if it intends to close the waiting list. Any households calling or writing to express their interest in an affordable home will be directed to call back on a future date determined by the Administrative Agent. When the applicant pool is being depleted to a point where there is not a sufficient number of people to fill two (2) years of re-sales or rentals, the Administrative Agent will re-open the pool and conduct a new random selection process after fulfilling the affirmative marketing requirements. The service list established by subsequent random selection shall be added to the end of the previous service list.

### **Initial Randomization**

Applicants are selected at random before income-eligibility is determined, regardless of household size or desired number of bedrooms. The process is as follows:

1. After advertising is implemented, applications are accepted for 120 days.
2. At the end of the period, sealed applications are selected one-by-one through a lottery (unless fewer applications are received than the number of available units, then all eligible households will be placed in a unit).
3. Households are informed of the date, time and location of the lottery and invited to attend.
4. An applicant pool is created by listing applicants in the order selected.
5. Applications are reviewed for income-eligibility.
6. Ineligible households are informed that they are being removed from the applicant pool or given the opportunity to correct and/or update income and household information.
7. Eligible households are matched to available units based upon the number of bedrooms needed (and any other special requirements, such as [regional preference or] the need for an accessible unit).
8. If there are sufficient names remaining in the pool to fill future re-rental, the applicant pool shall be closed.
9. When the applicant pool is close to being depleted, the Administrative Agent will re-open the pool and conduct a new random selection process after fulfilling the affirmative marketing requirements. The new applicant pool will be added to the remaining list of applicants.

### **Randomization After Certification**

Random selection is conducted when a unit is available, and only certified households seeking the type and bedroom size of the available unit are placed in the lottery. The process is as follows:

1. After advertising is implemented, applications are accepted for 120 days.
2. All applications are reviewed and households are either certified or informed of non-eligibility. (The certification is valid for 180 days, and may be renewed by updating income-verification information.)
3. Eligible households are placed in applicant pools based upon the number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit)
4. When a unit is available, only the certified households in need of that type of unit are selected for a lottery.
5. Households are informed of the date, time, and location of the lottery and invited to attend.

6. After the lottery is conducted, the first household selected is given 3 days to express interest or disinterest in the unit. (If the first household is not interested in the unit, this process continues until a certified household selects the unit.)
7. Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is ongoing, according to the Affirmative Marketing Plan.

#### Matching Households to Available Units

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to implement the following policies:
  - a. Maximum of two person per bedroom;
  - b. Children of same sex in same bedroom;
  - c. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms;
  - d. Children not in same bedroom with parents;
  - e. Provide an occupant for each unit bedroom;
  - f. Provide children of different sex with separate bedrooms;
  - g. Require that all the bedrooms be used as bedrooms; and
  - h. Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

In no case shall a household be referred to an affordable housing unit that provides for more than one additional bedroom per household occupancy as stated in the policies above.

The Administrative Agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor.

A household can be eligible for more than one unit category, and should be placed in the applicant pool for all categories for which it is eligible.

**ATTACHMENT A**

Affirmative Fair Housing Marketing Plan  
For Affordable Housing in Region #2

## AFFIRMATIVE FAIR HOUSING MARKETING PLAN

For Affordable Housing in **(REGION 2)**

### I. APPLICANT AND PROJECT INFORMATION

(Complete Section I individually for all developments or programs within the municipality.)

1a. Administrative Agent Name, Address, Phone Number		1b. Development or Program Name, Address	
1c. Number of Affordable Units:  Number of Rental Units:  Number of For-Sale Units:	1d. Price or Rental Range  From  To	1e. State and Federal Funding Sources (if any)	
1f.  <input type="checkbox"/> Age Restricted  <input type="checkbox"/> Non-Age Restricted	1g. Approximate Starting Dates  Advertising: <span style="float: right;">Occupancy:</span>		
1h. County  <b>Essex, Morris, Union, Warren</b>		1i. Census Tract(s):	
1j. Managing/Sales Agent's Name, Address, Phone Number			
1k. Application Fees (if any):			

(Sections II through IV should be consistent for all affordable housing developments and programs within the municipality. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

## II. RANDOM SELECTION

2. Describe the random selection process that will be used once applications are received.

## III. MARKETING

3a. Direction of Marketing Activity: (indicate which group(s) in the housing region are least likely to apply for the housing without special outreach efforts because of its location and other factors)

- White (non-Hispanic)     Black (non-Hispanic)     Hispanic     American Indian or Alaskan Native
- Asian or Pacific Islander     Other group:

3b. <b>HOUSING RESOURCE CENTER</b> ( <a href="http://www.njhousing.gov">www.njhousing.gov</a> ) A free, online listing of affordable housing <input type="checkbox"/>			
3c. Commercial Media (required) (Check all that applies)			
	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL NEWSPAPER(S)	CIRCULATION AREA
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Daily Newspaper			
<input type="checkbox"/>		Star-Ledger	
<input type="checkbox"/>		New York Times	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily Newspaper			
<input type="checkbox"/>		Daily Record	Morris
<input type="checkbox"/>		Express Times	Warren
Weekly Newspaper			
<input type="checkbox"/>		Belleville Post	Essex
<input type="checkbox"/>		Belleville Times	Essex
<input type="checkbox"/>		Bloomfield Life	Essex
<input type="checkbox"/>		East Orange Record	Essex
<input type="checkbox"/>		Glen Ridge Paper	Essex
<input type="checkbox"/>		Glen Ridge Voice	Essex

<input type="checkbox"/>		Independent Press	Essex
<input type="checkbox"/>		Irvington Herald	Essex
<input type="checkbox"/>		Item of Millburn and Short Hills	Essex
<input type="checkbox"/>		Montclair Times	Essex
<input type="checkbox"/>		News-Record	Essex
<input type="checkbox"/>		Nutley Journal	Essex
<input type="checkbox"/>		Nutley Sun	Essex
<input type="checkbox"/>		Observer	Essex
<input type="checkbox"/>		Orange Transcript	Essex
<input type="checkbox"/>		Progress	Essex
<input type="checkbox"/>		Vailsburg Leader	Essex
<input type="checkbox"/>		Verona-Cedar Grove Times	Essex
<input type="checkbox"/>		West Essex Tribune	Essex
<input type="checkbox"/>		West Orange Chronicle	Essex
<input type="checkbox"/>		Atom Tabloid & Citizen Gazette	Middlesex, Union
<input type="checkbox"/>		Chatham Courier	Morris
<input type="checkbox"/>		Chatham Independent Press	Morris
<input type="checkbox"/>		Citizen of Morris County	Morris
<input type="checkbox"/>		Florham Park Eagle	Morris
<input type="checkbox"/>		Hanover Eagle	Morris

<input type="checkbox"/>		Madison Eagle	Morris
<input type="checkbox"/>		Morris News Bee	Morris
<input type="checkbox"/>		Mt. Olive Chronicle	Morris
<input type="checkbox"/>		Neighbor News	Morris
<input type="checkbox"/>		Randolph Reporter	Morris
<input type="checkbox"/>		Roxbury Register	Morris
<input type="checkbox"/>		Parsippany Life	Morris
<input type="checkbox"/>		Clark Patriot	Union
<input type="checkbox"/>		Cranford Chronicle	Union
<input type="checkbox"/>		Echo Leader	Union
<input type="checkbox"/>		Elizabeth Reporter	Union
<input type="checkbox"/>		Hillside Leader	Union
<input type="checkbox"/>		Leader of Kenilworth & Roselle Park	Union
<input type="checkbox"/>		Madison Independent Press, The	Union
<input type="checkbox"/>		Millburn and Short Hills Independent Press	Union
<input type="checkbox"/>		News Record	Union
<input type="checkbox"/>		Record-Press	Union
<input type="checkbox"/>		Scotch Plains Times (Fanwood Times)	Union
<input type="checkbox"/>		Spectator Leader	Union
<input type="checkbox"/>		Union Leader	Union

<input type="checkbox"/>		Warren Reporter	Warren
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
<input type="checkbox"/>		2 WCBS-TV Cbs Broadcasting Inc.	
		3 KYW-TV Cbs Broadcasting Inc.	
<input type="checkbox"/>		4 WNBC NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		5 WNYW Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	
<input type="checkbox"/>		9 WWOR-TV Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		11 WPIX Wpix, Inc. (Tribune)	
<input type="checkbox"/>		13 WNET Educational Broadcasting Corporation	
<input type="checkbox"/>		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	
<input type="checkbox"/>		31 WPXN-TV Paxson Communications License Company, Llc	
<input type="checkbox"/>		41 WXTV	

		Wxvt License Partnership, G.p. (Univision Communications Inc.)	
<input type="checkbox"/>		47 WNJU NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		50 WNJN New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		52 WNJT New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		54 WTBY-TV Trinity Broadcasting Of New York, Inc.	
<input type="checkbox"/>		58 WNJB New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		62 WRNN-TV Wrnn License Company, Llc	
<input type="checkbox"/>		63 WMBC-TV Mountain Broadcating Corporation	
<input type="checkbox"/>		68 WFUT-TV Univision New York Llc	Spanish
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
<input type="checkbox"/>		42 WKOB-LP Nave Communications, Llc	Essex
<input type="checkbox"/>		22 WMBQ-CA Renard Communications Corp.	Essex, Morris, Union
<input type="checkbox"/>		66 WFME-TV Family Stations Of New Jersey, Inc.	Essex, Morris, Union
<input type="checkbox"/>		21 WLIW Educational Broadcasting Corporation	Essex, Union

<input type="checkbox"/>		60 W60AI Ventana Television, Inc	Essex, Union
<input type="checkbox"/>		36 W36AZ New Jersey Public Broadcasting Authority	Morris
<input type="checkbox"/>		6 WPVI-TV American Broadcasting Companies, Inc (Walt Disney)	Morris, Union, Warren
<input type="checkbox"/>		65 WUVP-TV Univision Communications, Inc.	Morris, Union, Warren
<input type="checkbox"/>		23 W23AZ Centenary College	Morris, Warren
<input type="checkbox"/>		28 WBRE-TV Nexstar Broadcasting, Inc.	Morris, Warren
<input type="checkbox"/>		35 WYBE Independence Public Media Of Philadelphia, Inc.	Morris, Warren
<input type="checkbox"/>		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Morris, Warren
<input type="checkbox"/>		44 WVIA-TV Ne Pa Ed Tv Association	Morris, Warren
<input type="checkbox"/>		56 WOLF-TV Wolf License Corp	Morris, Warren
<input type="checkbox"/>		60 WBPH-TV Sonshine Family Television Corp	Morris, Warren
<input type="checkbox"/>		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Morris, Warren
<input type="checkbox"/>		10 WCAU NBC Telemundo License Co. (General Electric)	Warren
<input type="checkbox"/>		16 WNEP-TV New York Times Co.	Warren

<input type="checkbox"/>		17 WPHL-TV Tribune Company	Warren
<input type="checkbox"/>		22 WYOU Nexstar Broadcasting, Inc.	Warren
<input type="checkbox"/>		29 WTXF-TV Fox Television Stations, Inc. (News Corp.)	Warren
<input type="checkbox"/>		38 WSWB Mystic Television of Scranton Llc	Warren
<input type="checkbox"/>		48 WGTW-TV Trinity Broadcasting Network	Warren
<input type="checkbox"/>		49 W49BE New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		55 W55BS New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		57 WPSG Cbs Broadcasting Inc.	Warren
<input type="checkbox"/>		61 WPPX Paxson Communications License Company, Llc	Warren
<b>DURATION &amp; FREQUENCY OF OUTREACH</b>			
<b>DURATION &amp; FREQUENCY OF OUTREACH</b>		<b>NAMES OF CABLE PROVIDER(S)</b>	<b>BROADCAST AREA</b>
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
<input type="checkbox"/>		Cablevision of Newark	Partial Essex
<input type="checkbox"/>		Comcast of NJ (Union System)	Partial Essex, Union
<input type="checkbox"/>		Cablevision of Oakland	Partial Essex, Morris
<input type="checkbox"/>		Cable Vision of Morris	Partial Morris

<input type="checkbox"/>		Comcast of Northwest NJ	Partial Morris, Warren
<input type="checkbox"/>		Patriot Media & Communications	Partial Morris
<input type="checkbox"/>		Service Electric Broadband Cable	Partial Morris, Warren
<input type="checkbox"/>		Cablevision of Elizabeth	Partial Union
<input type="checkbox"/>		Comcast of Plainfield	Partial Union
<input type="checkbox"/>		Cable Vision of Morris	Partial Warren
<input type="checkbox"/>		Service Electric Cable TV of Hunterdon	Partial Warren
	<b>DURATION &amp; FREQUENCY OF OUTREACH</b>	<b>NAMES OF REGIONAL RADIO STATION(S)</b>	<b>BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE</b>
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
AM			
<input type="checkbox"/>		WFAN 660	
<input type="checkbox"/>		WOR 710	
<input type="checkbox"/>		WABC 770	
FM			
<input type="checkbox"/>		WFNY-FM 92.3	
<input type="checkbox"/>		WPAT-FM 93.1	Spanish
<input type="checkbox"/>		WNYC-FM 93.9	
<input type="checkbox"/>		WFME 94.7	Christian
<input type="checkbox"/>		WPLJ 95.5	

<input type="checkbox"/>		WQXR-FM 96.3	
<input type="checkbox"/>		WQHT 97.1	
<input type="checkbox"/>		WRKS 98.7	
<input type="checkbox"/>		WAWZ 99.1	Christian
<input type="checkbox"/>		WHTZ 100.3	
<input type="checkbox"/>		WCBS-FM 101.1	
<input type="checkbox"/>		WKXW-FM 101.5	
<input type="checkbox"/>		WQCD 101.9	
<input type="checkbox"/>		WNEW 102.7	
<input type="checkbox"/>		WKTU 103.5	
<input type="checkbox"/>		WAXQ 104.3	
<input type="checkbox"/>		WWPR-FM 105.1	
<input type="checkbox"/>		WLTW 106.7	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
AM			
<input type="checkbox"/>		WWRL 1600	Essex
<input type="checkbox"/>		WXMC 1310	Essex, Morris
<input type="checkbox"/>		WWRV 1330	Essex, Morris (Spanish)
<input type="checkbox"/>		WZRC 1480	Essex, Morris (Chinese/Cantonese)
<input type="checkbox"/>		WMCA 570	Essex, Morris, Union (Christian)

<input type="checkbox"/>		WNYC 820	Essex, Morris, Union
<input type="checkbox"/>		WCBS 880	Essex, Morris, Union
<input type="checkbox"/>		WPAT 930	Essex, Morris, Union (Caribbean, Mexican, Mandarin)
<input type="checkbox"/>		WWDJ 970	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WINS 1010	Essex, Morris, Union
<input type="checkbox"/>		WEPN 1050	Essex, Morris, Union
<input type="checkbox"/>		WKMB 1070	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WBRR 1130	Essex, Morris, Union
<input type="checkbox"/>		WLIB 1190	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WMTR 1250	Essex, Morris, Union
<input type="checkbox"/>		WADO 1280	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WNSW 1430	Essex, Morris, Union (Portuguese)
<input type="checkbox"/>		WJDM 1530	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WQEW 1560	Essex, Morris, Union
<input type="checkbox"/>		WWRU 1660	Essex, Morris, Union (Korean)
<input type="checkbox"/>		WCTC 1450	Union
		WCHR 1040	Warren
		WEEX 1230	Warren

		WNNJ 1360	Warren
		WRNJ 1510	Warren
FM			
<input type="checkbox"/>		WMSC 90.3	Essex
<input type="checkbox"/>		WFUV 90.7	Essex
<input type="checkbox"/>		WBGO 88.3	Essex, Morris, Union
<input type="checkbox"/>		WSOU 89.5	Essex, Morris, Union
<input type="checkbox"/>		WKCR-FM 89.9	Essex, Morris, Union
<input type="checkbox"/>		WFMU 91.1	Essex, Morris, Union
<input type="checkbox"/>		WNYE 91.5	Essex, Morris, Union
<input type="checkbox"/>		WSKQ-FM 97.9	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WBAI 99.5	Essex, Morris, Union
<input type="checkbox"/>		WDHA -FM 105.5	Essex, Morris, Union
<input type="checkbox"/>		WCAA 105.9	Essex, Morris, Union (Latino)
<input type="checkbox"/>		WBLS 107.5	Essex, Morris, Union
<input type="checkbox"/>		WHUD 100.7	Essex, Morris, Warren
<input type="checkbox"/>		WPRB 103.3	Essex, Union, Warren
<input type="checkbox"/>		WMNJ 88.9	Morris
<input type="checkbox"/>		WJSV 90.5	Morris
<input type="checkbox"/>		WNNJ-FM 103.7	Morris, Warren

<input type="checkbox"/>		WMGQ 98.3	Union
<input type="checkbox"/>		WCTO 96.1	Union, Warren
<input type="checkbox"/>		WNTI 91.9	Warren
<input type="checkbox"/>		WSBG 93.5	Warren
<input type="checkbox"/>		WZZO 95.1	Warren
<input type="checkbox"/>		WAEB-FM 104.1	Warren
<input type="checkbox"/>		WHCY 106.3	Warren
3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters) (Check all that applies)			
	<b>NAME OF PUBLICATIONS</b>	<b>OUTREACH AREA</b>	<b>RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE</b>
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Monthly			
<input type="checkbox"/>	Sino Monthly	North Jersey/NYC area	Chinese-American
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily			
<input type="checkbox"/>	24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly			
<input type="checkbox"/>	Arab Voice Newspaper	North Jersey/NYC area	Arab-American
<input type="checkbox"/>	Brazilian Voice, The	Newark	Brazilian-American

<input type="checkbox"/>		Catholic Advocate, The	Essex County area	Catholic
<input type="checkbox"/>		La Voz	Hudson, Union, Middlesex Counties	Cuban community
<input type="checkbox"/>		Italian Tribune	North Jersey/NYC area	Italian community
<input type="checkbox"/>		New Jersey Jewish News	Northern and Central New Jersey	Jewish
<input type="checkbox"/>		El Nuevo Coqui	Newark	Puerto Rican community
<input type="checkbox"/>		Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
<input type="checkbox"/>		El Especialito	Union City	Spanish-Language
<input type="checkbox"/>		La Tribuna Hispana	Basking Ridge, Bound Brook, Clifton, East Rutherford, Elizabeth, Fort Lee, Greebrook, Linden, Lydenhurst, Newark, North Plainfield, Orange, Passaic, Paterson, Plainfield, Roselle, Scotch Plains, Union, Union City, West NY	Spanish-Language
<input type="checkbox"/>		Ukranian Weekly	New Jersey	Ukranian community

3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)

DURATION & FREQUENCY OF OUTREACH	NAME OF EMPLOYER/COMPANY	LOCATION
Essex County		
<input type="checkbox"/>	Newark Liberty International Airport	Newark Airport, Newark, NJ
<input type="checkbox"/>	Verizon Communications	540 Broad St Newark, NJ 07102
<input type="checkbox"/>	Prudential Financial, Inc.	751 Broad St Newark, NJ 07102
<input type="checkbox"/>	Continental Airlines	1 Newark Airport, Newark, NJ

<input type="checkbox"/>		University of Medicine/Dentistry	Office of Marketing & Media Relations 150 Bergen Street Room D347 Newark, NJ 07103
<input type="checkbox"/>		Public Service Enterprise Group	80 Park Plz Newark, NJ 07102
<input type="checkbox"/>		Prudential Insurance	751 Broad Street, Newark, NJ 07102-3777
<input type="checkbox"/>		Horizon Blue Cross & Blue Shield of NJ	3 Raymond Plz W Newark, NJ 07102
<input type="checkbox"/>		Newark Liberty International Airport	Newark Airport, Newark, NJ
<input type="checkbox"/>		Horizon Blue Cross & Blue Shield of NJ	540 Broad St Newark, NJ 07102
Morris County			
<input type="checkbox"/>		Atlantic Health System-Morristown Memorial Hospital	100 Madison Avenue Morristown, NJ 07962
<input type="checkbox"/>		AT&T	295 N Maple Ave, Basking Ridge, NJ and 180 Park Ave, Florham Park, NJ
<input type="checkbox"/>		US Army Armament R&D	21 Picatinny Arsenal, Picatinny Arsnl, NJ
<input type="checkbox"/>		Lucent Technologies	67 Whippany Rd, Whippany, NJ and 475 South St, Morristown, NJ and 5 Wood Hollow Rd, Parsippany, NJ and 24 Mountain Ave, Mendham, NJ
<input type="checkbox"/>		Pfizer	Morris Plains/Parsippany
<input type="checkbox"/>		Novartis Pharmaceutical	59 State Route 10, East Hanover, NJ
<input type="checkbox"/>		Kraft foods	200 Deforest Ave, East Hanover, NJ and 7 Campus Dr, Parsippany, NJ
<input type="checkbox"/>		Mennen Sports Arena	161 E Hanover Ave, Morristown, NJ
<input type="checkbox"/>		Honeywell	101 Columbia Rd Morristown, NJ 07960

<input type="checkbox"/>		Pfizer	5 Woodhollow Rd, Parsippany and 175 Tabor Rd, Morris Plains
<input type="checkbox"/>		St. Clare's Hospital	130 Powerville Road Boonton Township, NJ 07005 and 25 Pocono Road Denville, NJ 07834 and 400 West Blackwell Street Dover, NJ 07801 and 3219 Route 46 East, Suite 110 Parsippany, NJ 07054
<b>Union County</b>			
<input type="checkbox"/>		A&M Industrial Supply Co	1414 Campbell St Rahway
<input type="checkbox"/>		A.J. Seabra inc,	574 Ferry St Newark
<input type="checkbox"/>		Bristol-myers Products Research & Dev	1350 Liverty Ave Hillside
<input type="checkbox"/>		Cede Candy Inc	1091 Lousons Road PO Box 271 Union, NJ
<input type="checkbox"/>		Comcast Network	800 Rahway Ave Union, NJ
<input type="checkbox"/>		HoneyWell Inc.	1515 West Blancke Street Bldgs 1501 and 1525 Linden, NJ
<input type="checkbox"/>		IBM Corporation	27 Commerce Drive Cranford, nj
<input type="checkbox"/>		Howard Press	450 West First Ave Roselle,nj
<input type="checkbox"/>		Lucent Technologies	600 Mountain Ave Murray Hill,NJ
<input type="checkbox"/>		Merck & Co. Inc	1 Merck Drive PO Box 2000 (RY60-200E) Rahway, NJ
<input type="checkbox"/>		Rahway Hospital	865 Stone Street Rahway, NJ
<input type="checkbox"/>		Rotuba Extruders, Inc	1401 Park Ave South Linden
<input type="checkbox"/>		Union County College	1033 Springfield Ave Cranford,NJ
<b>Warren County</b>			

<input type="checkbox"/>		Masterfoods USA	800 High Street Hackettstown, NJ
<input type="checkbox"/>		Warren Hospital	185 Roseberry St Phillipsburg, NJ
<input type="checkbox"/>		Roche Vitamins	206 Roche Drive Belvidere, NJ
<input type="checkbox"/>		Hackettstown Hospital	651 Willow Grove St. Hackettstown, NJ
<input type="checkbox"/>		Pechiney	191 Route 31 North Washington, NJ
<input type="checkbox"/>		Lopatcong Care Center	390 Red School Lane Phillipsburg, NJ
<input type="checkbox"/>		Mallinckrodt/Baker, Inc	222 Red School Lane Phillipsburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)			
Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach

IV. APPLICATIONS

Applications for affordable housing for the above units will be available at the following locations:																
4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)																
	<table border="1"> <thead> <tr> <th></th> <th>BUILDING</th> <th>LOCATION</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td>Morris County Library</td> <td>30 East Hanover Avenue, Whippany, NJ 07981</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Warren County Library Headquarters</td> <td>199 Hardwick Street, Belvidere, NJ 07823</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Essex County/Hall of Records</td> <td>465 Dr. Martin Luther King, Jr. Blvd, Newark, NJ 07102 (973)621-4400</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Union County/Administration Building</td> <td>Elizabethtown Plaza, Elizabeth, NJ 07207 (908)527-4100</td> </tr> </tbody> </table>		BUILDING	LOCATION	<input type="checkbox"/>	Morris County Library	30 East Hanover Avenue, Whippany, NJ 07981	<input type="checkbox"/>	Warren County Library Headquarters	199 Hardwick Street, Belvidere, NJ 07823	<input type="checkbox"/>	Essex County/Hall of Records	465 Dr. Martin Luther King, Jr. Blvd, Newark, NJ 07102 (973)621-4400	<input type="checkbox"/>	Union County/Administration Building	Elizabethtown Plaza, Elizabeth, NJ 07207 (908)527-4100
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4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)																
4c. Sales/Rental Office for units (if applicable)																

V. CERTIFICATIONS AND ENDORSEMENTS

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the (select one: Municipality's substantive certification or DCA Balanced Housing Program funding or HMFA UHORP/MONI/CHOICE funding).

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Name (Type or Print)

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Title/Municipality

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Signature

Date