

September 9, 2019

VIA EMAIL AND REGULAR MAIL
Cranford Township Committee
Cranford Municipal Building
8 Springfield Avenue
Cranford, New Jersey 07016

**Re: Hartz Mountain Industries, Inc. - Application for Rezoning
750 Walnut Avenue, Cranford New Jersey**

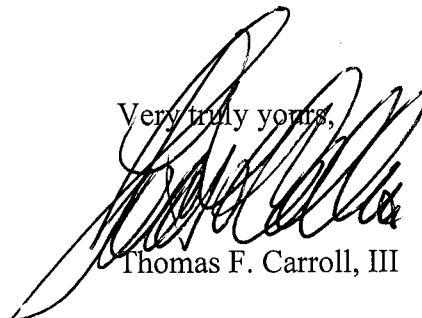
Dear Members of the Township Committee:

This office represents Hartz Mountain Industries, Inc. ("Hartz"). I write in connection with the rezoning application submitted by Hartz to the Cranford Township Planning Board ("Planning Board"), which is before the Township Committee this evening.

As the Township Committee reviews the Planning Board's Resolution recommending against a rezoning of the Hartz Property, Hartz would like the Township Committee to consider the summation letter submitted to the Planning Board, on behalf of Hartz, dated May 24, 2019 and prepared by James P. Rhatican, Esq., of Hartz. A copy of said letter is attached hereto. As noted in the attached letter, Hartz participated in 14 meetings before the Planning Board, during which Hartz presented various experts in support of its rezoning application. That letter sets forth in detail the reasons justifying a rezoning of the subject property.

Thank you for your attention in this matter.

Very truly yours,



Thomas F. Carroll, III

Enclosure

c: Ryan Cooper, Esq. (w/enc.) (via email and regular mail)



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May 24, 2019

Cranford Township Planning Board
8 Springfield Avenue
Cranford, New Jersey

**Re: Hartz Mountain Industries, Inc. Application for Rezoning
750 Walnut Avenue, Cranford**

Dear Chairwoman Murray and Members of the Board,

As the Board approaches the conclusion of its hearings on the above-referenced rezoning application, Hartz Mountain Industries, Inc. ("Hartz") takes this opportunity to provide a summation of the facts and opinions put forth in support of the application. The application was filed nearly two years ago in May 2017, and the hearings have spanned 14 meetings to date. We therefore thought it prudent to summarize the voluminous record for the Board's easy consumption prior to voting on the matter.

As you know, the Cranford Township has passed an ordinance that sets forth the particular procedure and standards to be met in a request for rezoning property. Hartz has tailored its presentation to those standards. We note at the outset that the standards to be met in the context of a rezoning application do not quite rise to the detailed standards required for site plan approval. Nonetheless, Hartz has in most instances provided more detailed information as requested by the Board. As stated throughout the proceedings, certain design details may be worked out at future site plan hearings, but Hartz has attempted in good faith to provide as much detail as is reasonably possible in the context of this rezoning application.

The Property

The property in question—750 Walnut Avenue (the "Property")—measures 30.5 acres in size and is triangular in shape. (4T17:17-18)¹ (Ex. A-1) It is bounded to the east by Walnut Avenue, to the northwest by a freight rail line, and to the southeast by Hyatt Hills Golf Course. (Ex. A-1) The Property is situated in the southern portion of Cranford, proximate to the Clark

¹ References to transcripts shall be in the format "XTY:Z-Z", in which X represents the transcript in question, Y represents the page of that transcript, and Z-Z represents the range of pages being cited. 1T represents the May 16, 2018 transcript; 2T the July 18, 2018 transcript; 3T the August 1, 2018 transcript; 4T the September 5, 2018 transcript; 5T the September 12, 2018 transcript; 6T the October 17, 2018 transcript; 7T the November 28, 2018 transcript; 8T the December 5, 2018 transcript; 9T the January 30, 2019 transcript; 10T the March 6, 2019 transcript; 11T the March 20, 2019 transcript; 12T the April 3, 2019 transcript; 13T the May 8, 2019 transcript; and 14T the May 15, 2019 transcript.

border. (4T17:18) (Ex. A-1) Across the freight rail line and across Walnut Avenue are single family home neighborhoods. (4T17:22 to 18:2) (Ex. A-1) As noted by Keenan Hughes, a licensed professional planner accepted by the Board as an expert in the field of land use planning, the freight rail line "serves as a physical and visual buffer between the property and the residential area to the north". (4T18:3-5, 59:6-15)

The Property is presently within the C-3 zone district, a commercial zone isolated from other commercial zones by the surrounding residential zones. (4T17:19 to 18:2) (Ex. A-1) The Property is one of only two parcels in Cranford that fall within the C-3 zone district, the other being a very narrow parcel comprising part of the Hyatt Hills Golf Club, abutting the Property. (4T18:11-16) The C-3 zone district regulations permit office, research and light industrial uses. (4T20:13-19) As opined by Mr. Hughes and as further developed below, these uses are not conducive to the Property. (4T20:18-19)

The Property has no sensitive environmental features such as wetlands, open waters or threatened or endangered species habitat. (4T58:4) There is an existing berm along a portion of the Walnut Avenue frontage, which shall be largely retained to minimize visual impacts of the project. (4T59:22 to 60:6) (Exs. Martell-6 and Martell-7) Presently, two driveways exist between the Property and Walnut Avenue. (Ex. A-1) The vast majority of the Property is paved or improved with impervious coverage. (Ex. A-1)

Hartz purchased the Property in 1988, (1T25:10-12), prior to which it had been used for manufacturing, (1T25:21-22). After purchasing the Property, Hartz built an extension on the existing building and made significant improvements to convert much of the existing building (approximately 163,000 s.f.) to office use, (1T26:1-18, 36:10-14), then subdivided the Property into seven distinct commercial condominium units. (Ex. A-2) Hartz also constructed the existing berm and installed landscaping along the Walnut Avenue frontage. (1T37:5-9) The building presently measures approximately 420,000 leasable square feet, (Ex. A-2), not including basement spaces. The various units are described as follows:

Unit 1: 28,554 s.f., most recently occupied by Trinitas Hospital, the lease for which expired in May 2017. (Ex. A-2) (1T23:20-22) Hartz made significant improvements to that space for Trinitas. (1T36:25 to 37:4)

Unit 2: 75,638 s.f., constructed by Hartz specifically for Summit Bank, pursuant to Summit Bank's particular specifications. (Ex. A-2) (1T26:1-7) This addition consists of two floors of office use above open parking and was a modern office building at the time it was constructed. (1T36:22-24)

Unit 3: 141,519 s.f., converted from its prior manufacturing use to office use for Summit Bank's particular specifications. (Ex. A-2) (1T26:8-18) Among other things, the building façade was changed and new windows were installed. (1T36:10-14) Within Condo Unit 3 is basement space measuring approximately 20,000, which houses most of the mechanical equipment that services the entire building. (1T24:1-3)

Unit 4: 31,017 s.f., previously used by Summit Bank/Bank of America for storage. (Ex. A-2)

Unit 5: 81,563 s.f., occupied by LabCorp pursuant to a lease that expires on July 31, 2019. (Ex. A-2) (1T24:4-9) Hartz made substantial and expensive improvements to the space to accommodate LabCorp and its unique needs. (1T36:14-22, 38:2-11) LabCorp has not elected to extend that lease within the time it was permitted to do so, despite year-long efforts to retain that tenant for its full extension term. (7T431-11)

Unit 6: 40,088 s.f., occupied by Jagro Customs for warehousing and distribution. Ex. A-2)

Unit 7: 21,770 s.f., occupied by PSE&G as a call center. (Ex. A-2)(7T41:5-6) PSE&G has notified Hartz that it will not continue to occupy this space after its lease expires this year. (7T40:14-18) Summit Bank/Bank of America previously occupied 3,000 s.f. of Unit 7. (1T24:10-13)

Although Bank of America's lease for Units 2, 3 and 4 expired in May 2017, Bank of America had vacated the space as of 2012, retaining occupancy of only 20,000 s.f. (1T26:23 to 27:3) Bank of America continued to vacate the space until the lease expired, by which time it had occupied only 5,000-10,000 s.f., all in Unit 2. (1T27:16 to 28:1) After May 2017, Units 2, 3 and 4 were completely vacant. The vacant Bank of America space totals approximately 270,000 s.f., including the basement. (Ex. A-2) (1T31:11-15)

The Proposed Zoning Change

The changes being proposed to the zoning regulations for the C-3 zone district are set forth in detail in the March 2017 report of Phillips Preiss Grygiel LLC, entitled "Planning Report in Support of a Request to Rezoning Block 541, Lot 2 in the Township of Cranford, Union County, New Jersey" (the "PPG Planning Report"). Keenan Hughes described those proposed changes in detail during his testimony. We briefly summarize the proposed changes here for context.

The proposed zoning change contemplates redevelopment of the Property in two phases. A planned unit development (PUD) would facilitate the first phase, a multi-family build-out of the front portion of the Property, while retaining a portion of the existing building to the rear of the Property. A planned unit residential development (PURD) would facilitate phase two, resulting in redevelopment of the rear portion of the Property with the same multi-family use as the front portion. The proposed zoning change also would allow redevelopment of the Property via a general development plan as permitted in the Municipal Land Use Law, N.J.S.A. 40:55D-45.3. The proposed new ordinance also sets forth bulk regulations governing such issues as setbacks, building height, etc.

The proposed ordinance would permit multi-family development on the Property up to 30 units per acre. As explained by Mr. Hughes, that density is consistent with other multi-family projects in Cranford and is compatible with the area. Mr. Hughes noted that the average density of three recent multi-family projects in town is 39 units per acre. Because those three projects are closer to downtown Cranford, Mr. Hughes adjusted that average downward nearly 25% to arrive at the 30 units per acre density for 750 Walnut Avenue. (4T43:12 to 44:6, 52:1-14) Mr. Hughes offered his expert opinion that a project constructed pursuant to the proposed zoning and

the proposed density can be accommodated on the Property in a manner that is compatible with the overall area given the proposed building setbacks, the proposed buffering and the surrounding land uses. (4T117:10-16) That opinion was echoed by the project architect and engineer, who testified that the Property could accommodate the proposed density and number of units. (2T116:19-21; 3T90:15-19)

The Proposed Project

Although relying on a mere concept plan and not a fully engineered plan for site plan approval purposes, Hartz has demonstrated that a project at the proposed density can, in fact, function. The project could consist of five buildings constructed in two phases, totaling 905 units. The Property already is served by adequate utility infrastructure for such a project, and adequate utility capacity exists. (3T11:23-24, 74:9 to 75:3) The project as conceptually designed has compliant internal driveways and has adequate parking as a matter of law, by State-wide Residential Site Improvement Standards. (3T21:13 to 22:10; 10T143:22 to 144:4) Stormwater can be accommodated on site. (3T98:9-11, 108:23 to 109:6, 113:12-15, 114:17 to 115:2; 8T13:17-23) An existing berm along Walnut Avenue will remain and will be expanded to enhance screening and minimize visual impacts from Walnut Avenue. (4T59:22 to 60:6; 7T85:23 to 86:2; 8T16:1-7, 17:10-15) (Ex. Martell-17) The Town's underlying landscaping requirements would be unchanged in the proposed zoning ordinance. (4T61:23 to 62:1) Importantly, the conceptual project can be constructed in a way that actually reduces impervious coverage of the Property. (3T10:20-22, 79:23-24, 121:11-14)

As stated throughout the proceedings and above, Hartz submitted to the Planning Board a concept plan to illustrate that the proposed zoning would result in a functionally feasible project.² However, that plan could be modified based on comments provided during an ultimate site plan review, when more details would be provided to the plans.

The Existing Building is Obsolete

The aggregate proofs presented to date demonstrate that the existing building, much of which already has been repurposed, is obsolete and not suitable for either office or industrial purposes.

As noted by Bill Sitar, a professional industrial broker accepted by the Board as an expert in his field, the existing building simply is not suitable for an industrial user. (5T24:22 to 25:2) For example, Mr. Sitar and Charlie Reese, Hartz's in-house leasing agent, both explained that current industrial users are looking for much higher ceiling clearance than the existing office space offers. (1T41:12-14; 5T27:2-3, 6-7, 17-18) The Board's broker witness, Jim Brunette, acknowledged this shortcoming as well. (10T16:11-15, 96:7 to 97:8) The building also cannot accommodate the cross-loading that contemporary warehouse and distribution users need, since it is too deep and has awkward angles. (5T27:1-16, 38:23 to 39:5) Furthermore, the 20,000 s.f.

² Notwithstanding Hartz's reliance on the concept plan to illustrate as a courtesy that the proposed zoning ordinance could yield a feasible project at the Property, we note that feasibility is not a factor to be evaluated pursuant to the Township's rezoning ordinance.

basement below Unit 3 presents concerns about floor load capacity.³ (5T28:16-23, 30:12-17) In addition, the centralized HVAC system, located within the basement of Unit 3, will create substantial obstacles in subdividing the existing space for a multitude of users (industrial or office). (2T32:10-12, 54:6-9, 74:21-25; 5T38:13-24) In response to questions from the Board, Mr. Sitar explained that the obsolescence of the building is an impediment to finding an industrial tenant. (5T38:23-24) Ultimately, Mr. Sitar's advice is to demolish the building. (5T39:13 to 40:2, 51:5-13)

Matt McDonough, a professional office broker accepted by the Board as an expert in his field, came to similar conclusions about the building. Among other challenges, the building has a very limited window line, which makes it unattractive to office users. (2T29:5-21, 74:16-20) The floor plates are simply too large for contemporary office expectations and prevent the building from being classified as class A space. (2T30:16 to 31:7, 60:13-24) Other office buildings in Cranford with favorable floor plates are likely to be leased before the building at 750 Walnut Avenue. (2T61:11-24) In addition, the building lacks modern amenities such as a gym and cafeteria, (2T31:8 to 32:7), and, as noted by Mr. McDonough, constructing such amenities on spec would not necessarily be a wise investment, (2T34:7-20). Mr. McDonough also explained in response to questions from the Board that the building isn't suitable as a data center and that he had, in fact, unsuccessfully tried to lease it for such use. (2T74:2-9) None of the improvements made for Summit Bank/Bank of America can be reused for a current tenant. (2T95:1-8) Mr. McDonough felt so negatively about the existing building that he wouldn't even take on the job of leasing the space for Hartz after spending eight years unsuccessfully trying to locate a subtenant for Bank of America. (2T83:9-13, 50:20-25)

Even if the existing building were to be demolished, the existing zoning constraints do not provide ample opportunity to support viable development options. Keenan Hughes, a professional planner, expressed his opinion about the "lack of viable development options for this property under the existing zoning". (4T19:2-6) The site suffers from a very weak suburban office market and lack of proximity to viable truck routes to support industrial uses, among other things. (4T19:22 to 20:6) These issues will be explored further below.

Local Standards for Rezoning

Article VII of Cranford's zoning ordinance sets forth a detailed process for applications to rezone property, as well as the substantive standards to evaluate such an application. In particular, Sec. 136-67 of the Town's ordinances contains the standards for approval:

§ 136-67. Review standards.

Each application for rezoning shall comply with and address the following standards:

³ Mr. Brunette was unaware of the basement when offering his testimony and comparing 750 Walnut Avenue to buildings without basements, but admitted that floor loads are critical to warehouse and distribution users. (10T98:12 to 100:9) Moreover, Mr. Brunette did not rebut the depth and cross-loading problems identified by Mr. Sitar and Mr. Reese, the centralized HVAC system or other problems that render this older building obsolete. Indeed, Mr. Brunette was completely unaware of the size or dimensions of the space he suggested could be converted to industrial use. (10T92:13-22, 94:8-23) Thus, his opinion on the possible conversion of the space by raising the roof is lacking in factual support in addition to being utterly preposterous, and is a net opinion that the Board should disregard. See, e.g., New Brunswick Cellular v. Board of Adj., 160 N.J. 1, 16 (1999); Clifton City Board of Education v. Board of Adj., 409 N.J. Super. 389, 435 (App. Div. 2009).

A. Necessity. No application for rezoning shall be granted if the relief sought could be granted through an application for development other than one pursuant to N.J.S.A. 40:55D-70d.

B. Master Plan. In submitting its recommendations, the Planning Board shall submit a report in accordance with N.J.S.A. 40:55D-26. The governing body shall comply with such section in acting on the application. If the proposed rezoning is inconsistent with the Master Plan, the Planning Board shall include in its recommendation whether it is in the best interest of the municipality to amend the Master Plan in accordance with the Municipal Land Use Law.

C. Modification. In making its recommendations, the Planning Board may recommend that the application for rezoning be granted, in whole or in part, or be modified. If the Planning Board recommends the granting of the application with modifications or conditions, the Planning Board shall set out such modifications or conditions in detail, including findings, conclusions and recommendations.

D. Effect of current zoning. The applicant shall demonstrate by proper proof that, absent rezoning, there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility or that the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2.

E. Municipal services. In demonstrating that the proposed rezoning will substantially benefit the municipality and will advance the purposes of the Municipal Land Use Law, the applicant shall demonstrate that the proposed rezoning will not unduly burden the planned and orderly development of the municipality or place an undue burden upon community services and facilities. Where deemed appropriate by the Planning Board, the Board may require traffic studies, fiscal impact studies or such other information as it requires to be produced either by the applicant or for the Board at the applicant's expense.

The proofs presented by Hartz unequivocally satisfy these factors. Each is addressed below.⁴

A. Necessity:

This factor requires an evaluation as to whether other means exist to accomplish the goal of the rezoning through an application for development other than a use variance pursuant to N.J.S.A. 40:55D-70d.⁵ The present application seeks to put 750 Walnut Avenue to residential use, which is not permitted under the local zoning regulations. As a matter of law, there exist three means of accomplishing a conversion of 750 Walnut Avenue to multi-family use: a use variance pursuant to N.J.S.A. 40:55D-70d, a redevelopment designation with a redevelopment plan pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., that permits residential development, and a rezoning of the Property. As written, the Township's ordinance excludes use variances from the analysis. The redevelopment process was proposed to and rejected by the Township Committee and is not an option. Thus, the only remaining option is a rezoning as proposed by Hartz.

Notwithstanding the express exclusion of use variances from the analysis, Keenan Hughes explained in his expert testimony that a use variance is not a viable option to grant the relief sought by Hartz. The Property makes up virtually all of the Township's C-3 zone district. If the Zoning Board of Adjustment were to grant such a substantial use variance for nearly all of

⁴ The Board heard testimony from its own planning consultant, Ray Liotta. However, Mr. Liotta failed to evaluate the application in light of the standards set forth in the Township's rezoning ordinance. Indeed, Mr. Liotta didn't even make reference to the ordinance, which governs and guides this application. Having failed to even attempt to evaluate the application in light of the governing standards, Mr. Liotta's testimony should be rejected out of hand.

⁵ The "necessity" factor does not require a finding that the change in use is necessary, but that rezoning the property is the only means to effectuate a change in use.

a particular zone district, such action would rise to the level of usurpation of the governing body's legislative power. See, e.g., Saddle Brook Realty, LLC v. Borough of Saddle Brook Zoning Board of Adjustment, 338 N.J. Super. 67, 81 (App. Div. 2006). Mr. Hughes explained this during the course of his planning testimony. (4T36:3 to 37:10) Unlike a use variance, the rezoning process ensures that the governing body—with the guidance of the Planning Board—retains its rightful power with respect to local zoning.

There can be no doubt as a matter of law that no other means exists for Hartz to seek the relief it seeks with the present application and that Hartz therefore demonstrated the necessity factor contained in the local ordinance.

B. Master Plan Consistency

The next factor in the local ordinance is really a requirement for the Planning Board consistent with N.J.S.A. 40:55D-26, which governs planning board recommendations to a governing body for adoption of development regulations. If the proposed rezoning is inconsistent with the Township's Master Plan, the Planning Board must include in its report to the Township Committee a recommendation as to whether the Master Plan should be amended. Importantly, Section 136-67 does not say that inconsistency is fatal to a rezoning application, only that a finding of inconsistency should be accompanied by a recommendation whether the Master Plan should be amended. In the present application, Keenan Hughes explained that the proposed rezoning will advance multiple goals of the Cranford Master Plan.

As explained in the Master Plan (and as cited by Mr. Hughes), the existing C-3 zoning regulations are "intended to provide for class A office space in a campus-like setting". The Master Plan goes on to require that all design standards in the C-3 zone district be crafted "to ensure that the existing campus-like environment is retained as part of any future development in the district." The proofs presented during the hearings on this application clearly demonstrate that suburban office campuses are an obsolete use from a planning standpoint and are failing throughout the State. (1T34:3-20, 35:11-21; 4T19:22 to 20:6) One need only occasionally read a newspaper or drive by the State's many vacant suburban office parks to know this to be true. So, the very goals of the Master Plan will not be advanced by continued application of the existing zoning standards. Moreover, the immutable conditions of the existing building and property prevent it from being classified as Class A space as contemplated by the existing zoning regulations. (1T93:14-25; 2T30:16 to 31:7, 60:13-24)

Mr. Hughes explained that changing the zoning to permit multi-family residential use will advance a number of goals of the Master Plan. First, the requested rezoning would help the Town to provide a wide range of housing to meet the needs of residents in diverse income groups, which is the Master Plan's residential goal number 1. (4T38:13-23) Aside from providing rental housing in a town with very little rental housing, the proposed rezoning would provide affordable units and accomplish the Master Plan's goal of encouraging diversity of income groups. In addition, the Master Plan encourages in-fill development in a manner that is consistent and compatible with the surrounding neighborhood and environment. The proposed rezoning would likewise advance this goal. (4T38:23 to 39:3) Specifically, the unique physical boundaries of the Property, including the golf course to the south and the rail line to the north, create natural barriers to minimize the impacts to the surrounding neighborhoods, as will the enhanced berm along Walnut Avenue. These characteristics make the proposed rezoning

consistent and compatible with the surrounding neighborhood and environment. At least the residential use would be consistent with surrounding uses, unlike the historic uses, which have never been part of the surrounding neighborhood. (4T63:13-24, 64:8-10, 118:25 to 119:16) The Master Plan also promotes the increasing of property values and the improvement of underutilized properties, both of which are goals that will be advanced by the proposed rezoning. (4T39:3-8) Finally, the rezoning would advance the Township's goals promoting development in existing non-residential areas that accommodate alternative modes of transportation, through the proposed use of a local shuttle serving the Property. (4T39:8-14)

In these ways, the goals of the Master Plan are served by rezoning the Property as proposed, even if the use is not presently permitted. And, if the Planning Board were to find that the rezoning would be inconsistent with the Master Plan, the local ordinance empowers the Board to recommend amendments to the Master Plan.

C. Modification

This factor is not a factor that requires proofs on the part of an applicant seeking rezoning. Rather, as is the case with the preceding factor, this provision in the ordinance empowers the Planning Board to make recommendations for modifications to the proposed rezoning. Consequently, we do not address this any further other than to say that the proofs adduced during the hearings do not warrant modification to the proposed rezoning ordinance.

D. Effect of Current Zoning

This factor can be satisfied by one of two ways according to the local ordinance: by demonstrating that (i) there is a substantial likelihood that the zoning regulations currently in existence will zone the property into inutility, *or* (ii) the rezoning shall substantially and meaningfully benefit the municipality and further the purposes of the Municipal Land Use Law, including purposes set forth in N.J.S.A. 40:55D-2. The proofs before this Board satisfy both points, but the Board need only find that one is satisfied to recommend the rezoning.

(i) The Current Zoning Renders the Property Inutile

The current zoning regulations permit only the following principal uses in the C-3 zone district: (i) business, administrative, executive and professional offices, (ii) health care facilities, (iii) office-distribution centers (defined to include warehousing and distribution, provided that up to 10% of the gross floor area may be used for offices related to the warehouse distribution use), (iv) research laboratories, (v) essential services (defined to utility and emergency services), and (vi) golf courses. Whether through rehabilitation of the existing obsolete building or through redevelopment of the Property with an altogether new building, the uses permitted by the current zoning regulations simply are not sustained in the market.

As set forth below in more detail, neither office nor distribution use—both permitted uses on the Property—is realistic or economically viable. The suburban office market is commonly known to be weak (1T34:8-20; 2T32:23 to 34:6, 57:1-11; 4T19:22 to 20:6), and office vacancy rates are falling only because office buildings have been converted to other uses, (2T35:21 to 36:4). Without a large tenant, a new office building is not viable, and there have been no new speculative office buildings constructed in New Jersey since the early 2000s. (2T38:19-22) The

Master Plan states that the C-3 zoning regulations are intended to encourage Class A office space (4T38:2-5), but that will not be accomplished given that (a) the existing building cannot be converted to Class A space given its poor configuration and large floor plates, (5T27:1-16, 38:23 to 39:5; 2T29:5-21, 74:16-20, 30:16 to 31:7, 60:13-24), and (b) a new speculative office building would not be constructed. There is no viable path to developing the Property with the intended Class A office space.

The Master Plan also specifically encourages uses in a campus setting in the C-3 zone district, but suburban office campuses are a thing of the past. Accordingly, the Master Plan's strategies for the C-3 zone district are themselves obsolete. Instead of standalone office complexes, the suburban office users of the 21st century desire walkable, mixed-use locations with access to public transportation, dining, entertainment, fitness and other amenities. Like many other municipalities struggling with aging office campuses, it is incumbent on Cranford to reexamine the reasonableness of the C-3 concept given these well-established trends and also the tremendous supply of existing and better situated office campuses in Northern New Jersey suburbs. There is simply no planning justification in favor of retaining the Township's outmoded vision for the C-3 zone; even the Board's own planner offered none. The Municipal Land Use Law specifically places parameters on a municipality's zoning authority in a way that favors the current application: "The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land." N.J.S.A. 40:55D-60a. The existing C-3 regulations do not encourage the most appropriate use of land, but Hartz's proposed rezoning does.

With respect to specific uses, a warehouse/distribution use so remotely removed from the New Jersey Turnpike is highly unlikely to be attractive to users to whom highway access is vital. William Sitar noted that he would not build a large industrial building on the Property because "this is not an industrial location for today's market". (5T31:2-7) One principal problem with the Property is its remoteness from a highway system that can accommodate large trucks. (5T31:8 to 33:17) Industrial users simply do not want to be in a location such as the Property. (5T33:16-17) Moreover, a large industrial facility will generate substantial truck traffic in and around the nearby residential neighborhoods. (5T36:12-19) Even if a user may distribute deliveries with small box trucks, large tractor trailers are required to deliver the inventory to the facility. (5T48:2-7) Because of its remoteness from the Turnpike and other highways used for distribution of goods and its largely residential nature, Cranford doesn't have much of an industrial market, (5T34:15-16), so these limitations will hinder any development of the Property with the industrial uses permitted by current zoning regulations. Ultimately, the Property is simply not a good industrial site.⁶ (5T34:19-20)

Even Mr. Brunette, a broker retained on behalf of the Board, acknowledged the many challenges with the existing building and site and admitted that much of what Hartz's experts said about the Property is true. Specifically, Mr. Brunette admitted that the site has poor access, that the ceiling height is inadequate, and that there aren't many large users in the market today. (10T16:11-15, 96:7 to 97:8, 55:12-17, 21:5-7)

⁶ Although not a permitted use in the existing C-3 zone district, Mr. Sitar noted in response to a question from the Board that the Property is not suitable for a self storage facility. (5T37:10 to 38:11)

The Property's current zoning regulations permit office and industrial uses, but the current conditions of the market in each asset class are such that reuse of the Property for either would be highly unlikely. This is borne out in the inability of Hartz to lease (and Bank of America to sublease) any portion of the building, but general market conditions explain why. Even Mr. Brunette, the Board's broker witness, testified on direct that "[i]t is difficult to find tenants, okay, for large blocks of space right now". (10T21:5-7)

As explained by Mr. Reese, Mr. McDonough and Mr. Hughes, the suburban office is flagging as people and jobs return to more urban areas, a trend that has been well documented and is likely to continue for another decade. (1T34:8-20; 2T32:23 to 34:6, 57:1-11; 4T19:22 to 20:6) On the other hand, urban office markets such as the ones that would compete with an office in Cranford are strong. Newark, for example, is one of the hottest office markets in the Northeast. (1T35:13-21, 38:12-24; 2T23 to 34:6, 57:1-11)

Notwithstanding the strong urban office market, the overall office market in New Jersey is not strong. No new speculative office buildings have been constructed since the early 2000s. (2T38:19-22) Generally speaking, construction costs for office buildings in New Jersey substantially exceed the rents that could be charged for such space. (2T79:7 to 80:15, 92:19-25) As explained by Mr. McDonough, a landlord would have to charge \$50/s.f. in rent to pay for a full rehabilitation of an office building; however, no tenant would pay more than \$30/s.f. for 750 Walnut Avenue, even after a full rehab. (2T95:18-23) Given the ceiling on rents at this suburban location, a new office building likewise would not be viable. This problem is common throughout the New Jersey office market, as vacancy rates State-wide are in the mid to high teens.⁷ (2T35:21-23) Jim Brunette summed up the situation nicely: "The office market is the toughest market that is out there. And I concur with all the experts they [Hartz] had here. It is very difficult to find big block users that are out there at the moment."⁸ (10T55:12-17)

With specific regard to the Cranford sub-market, Mr. McDonough explained that vacancy rates at Cranford Business Park have been higher than State-wide vacancy rates, and absorption rates have not been good. (2T36:18 to 37:14) He explained that an office tenant is very unlikely to come to 750 Walnut Avenue when there is more available space at Cranford Business Park with advantageous floor plans. Cranford Business Park can subdivide its space much more conveniently than 750 Walnut Avenue with its larger, wider floor plate and can accommodate smaller tenants. (2T39:4-24, 44:5-23, 61:18-24) Moreover, the rents charged at Cranford Business Park are much lower than what could be charged at 750 Walnut Avenue with new construction or a significant rehabilitation. (2T38:10-18) Given the vacancy rates and rents at Cranford Business Park, Mr. McDonough would be surprised by an office tenant taking space at the Property. (2T37:23 to 38:3)

Similarly, returning the existing building to industrial use or demolishing the existing building and constructing a new industrial building would not be viable. Mr. Reese testified that the local industrial market could not absorb a 500,000 s.f. building. (1T44:5-13) In fact, the site simply is not viable for a Class A warehouse building. (1T93:14-25) Linden, for example,

⁷ That rate is down from higher vacancy rates, but only because many former office buildings have been converted to other uses. (2T35:23 to 36:4)

⁸ Perhaps for this reason, Mr. Brunette's strategy for re-use of the existing building focused on industrial use, not office use.

would be a superior industrial location with better access to the Turnpike. (4T101:1-10) Furthermore, an industrial use would be more onerous on the neighborhood surrounding 750 Walnut Avenue. (5T34:19-22, 36:13-19) As explained by Mr. Sitar, accepted as an expert in the industrial real estate market, he would not build a large industrial building at 750 Walnut Avenue because it is not an industrial location for today's market. He explained that the distance from the Turnpike and the challenging route one would have to take to get to and from the Turnpike are a deterrent to industrial users.⁹ (5T30:18 to 33:17, 34:19-20) Indeed, Cranford simply does not have much of an industrial market for these reasons. (5T34:15-16)

The problems with the current zoning are reflected in the utter lack of success in Hartz's marketing efforts. The impediments presented by the existing structure and general market conditions have not deterred Hartz from attempting to locate tenants to use the building or retain existing tenants. The majority of the vacant space at 750 Walnut Avenue is the former Bank of America office space, the total vacant office space measuring approximately 250,000 s.f. The vacant industrial/warehouse/storage space is Bank of America's former storage space, measuring approximately 31,000 s.f.¹⁰ (Ex. A-2)

As explained by Mr. Reese, Hartz unsuccessfully attempted to retain Bank of America, even in a substantially reduced space of 37,000 s.f. and at reduced rents. (1T28:25 to 29:5; 7T50:15-22, 66:12-17) Instead, Bank of America opted to relocate to Metropark, despite significantly higher rents. (1T52:1-5) Likewise, Hartz offered a thirty percent reduction in rent to retain LabCorp, but LabCorp instead opted to allow its lease term to expire and to expand an existing facility in Middlesex. (1T52:5-10, 29:9-22; 7T50:15-22, 51:5-7) Hartz also came close to a deal with Summit Medical Group to lease 80,000 to 100,000 square feet of the former Bank of America space, but Summit Medical Group instead opted to lease space in Florham Park. (1T28:13-22)

Hartz's efforts to market the building to the real estate community are well-documented and date back to 2012, when Bank of America made clear that it would be vacating its space. (1T52:16-18) Those efforts increased in early 2016, by which time Bank of America was largely departed from the building. From mass mailings and email blasts to and conversations with hundreds of brokers among all asset classes, to identifying the available office space on the company website and listing it on national databases such as CoStar and LoopNet, Hartz has aggressively tried to lease the building. (Reese-1, Brunette-1) (1T30:13-22, 31:5-10, 45:9-15, 48:20 to 49:12, 52:16-18, 62:2-12, 63:15-18; 7T12:13-24, 24:21-24) Hartz has continued those efforts even through the current application process. (7T7:14-16) The building has been readily available on the market for anyone looking for office space in Cranford, including medical users. (1T60:4-11)

⁹ Jim Burnette acknowledged during his direct testimony that the site is difficult to access. (10T21:1-3) Thus, his comparisons to buildings in Mt. Olive and Clifton are inapt, given that both of those buildings are within about one mile from major trucking routes, Rt. 80 and Rt. 3 respectively. (10T98:1-6)

¹⁰ Jim Brunette testified that he contacted Hartz in early 2017 to inquire about space for a tenant needing 100,000 s.f. of industrial space. (10T103:23 to 104:4) Without conceding the accuracy of that claim, Hartz notes that the purported need of 100,000 s.f. far exceeded the available industrial space at the Property. (Ex. A-2) In any event, Mr. Brunette testified that the prospective tenant was looking for space for a printing facility, which is not permitted in the C-3 zone district, a fact of which Mr. Brunette was unaware. (10T91:3-13)

In an effort to attract potential users, Hartz has expressed a willingness to subdivide available space and make tenant improvements, has offered rent concessions, and markets the rents as negotiable. (Reese-1) (7T21:1-4, 59:7-16, 15:23 to 16:11; 1T37:12 to 38:1, 89:15-23; 2T61:4-7, 84:19 to 85:6, 96:9-21, 100:14 to 101:21, 103:19 to 104:5) Hartz even reached out to specific potential users. For example, as explained by Mr. Reese in response to a question by a member of the public, Hartz reached out to WeWorks but never heard back. (1T72:23 to 73:22)

While Hartz maintains the property routinely, (2T94:14-20; 1T100:15-16), prospective tenants aren't worried about cosmetic matters, since Hartz would perform tenant improvements for the right tenant, (2T96:8-21; 1T37:12 to 38:1). Thus, any perceived lack of updates to the building is not an impediment to marketing efforts.

Two professional brokers—one in the industrial sector and the other in the office sector—acknowledged Hartz's aggressive marketing efforts. (5T23:8-25 to 24:5; 2T25:5-16, 50:4-25, 84:19-20) As noted by Mr. Sitar, "everyone knows about the availabilities of the property". (5T24:4-5) Mr. McDonough is uniquely familiar with the challenges of leasing space at 750 Walnut Avenue, given his role as Bank of America's broker as it tried for years to find a subtenant. (2T20:1 to 24:15) In about eight years of trying to locate subtenants for Bank of America, Mr. McDonough was successful only in subleasing 28,000 s.f. of office space to Trinitas Hospital and 4,000 s.f. of warehouse space to an existing tenant, Jagro. (2T22:11-18, 24:11-15, 53:7-13, 69:11-15)

The record clearly demonstrates that the inherent limitations of the building and property thwart all marketing efforts. (1T32:18 to 33:18; 2T60:13-24) For example, the floor plate of Unit 3 is of such a size and configuration as to make subdivision efforts for multiple office users fruitless. As explained by Mr. Reese and Mr. McDonough, office tenants require substantial window lines and light that cannot be provided in a building as wide as the one at 750 Walnut Avenue. (2T28:16 to 29:21) In addition, the mechanical systems would have to be entirely rebuilt to accommodate multiple users within the Bank of America space. (2T32:8-12) The fact of the matter is that all of the infrastructure installed for Bank of America cannot be reused for a new tenant. (2T94:25 to 95:8) Economically, a full rehabilitation of the building would not be worthwhile, since the rents that could be charged at this site would not allow Hartz to recoup the substantial costs. (2T92:19-25, 95:18-23) With respect to industrial uses, poor truck access opportunities and low ceilings inhibit any interest on the part of warehouse or distribution tenants. (2T53:17-23; 1T93:16-25) Thus, the current zoning offers nothing to encourage adaptive reuse of the existing building.

As explained by Keenan Hughes, the permitted uses in the C-3 zone district are not conducive to the Property. (4T18:11 to 20:19, 41:8-20) Mr. Hughes also echoed the sentiments of other witnesses who testified that a large-scale office or industrial project on the Property would be highly unlikely and that full build-out of the Property under existing zoning regulations would be futile. (9T127:21 to 128:11)

- (ii) The Proposed Rezoning will Benefit the Town and Advance the Goals of the Municipal Land Use Law

In the event that the Board finds that the existing zoning does not render the Property inutile, it must still evaluate whether the rezoning would benefit the Town and advance the purposes of the Municipal Land Use Law. An affirmative finding on this alternative inquiry would support the rezoning.

Rezoning the property to residential use will benefit the municipality and advance the purposes of the Municipal Land Use Law. Mr. Hughes testified that the Property's natural boundaries with the adjacent golf course and rail line and the ample buffering along Walnut Avenue make the Property an appropriate location for a multi-family residential development. (4T21:1-19) Mr. Sitar echoed this opinion, (5T36:8-9), and added his opinion that a full-scale industrial development at the Property would be much more onerous on the neighborhood, (5T34:19-22). As noted by Mr. Hughes, there are no substantial detrimental impacts that would be unaddressed on site pursuant to the proposed zoning ordinance. (4T56:13-15)

With specific regard to the goals of the Municipal Land Use Law, Mr. Hughes testified as follows:

- (a) Encouraging municipal actions to guide the appropriate use for development of all lands in the State in a manner that will promote the public health, safety, morals and general welfare

Mr. Hughes explained that the proposed rezoning will advance this goal by facilitating the transition of a fading suburban office site into a vibrant, multi-family residential community that will include both market rate and affordable housing opportunities for the community. (4T41:21 to 42:7) The amended ordinance also would encourage onsite recreational amenities and a shuttle to and from the local train station and ensure adequate separation from surrounding land uses and facilitates necessary traffic improvements to traffic circulation along Walnut Avenue. (4T42:7-13) Changing the use would not have a material off-site traffic impact,¹¹ (5T113:2-20), further supporting the conclusion that the proposed multi-family use is appropriate. Moreover, the transition to residential use will remove a potentially noxious use from a largely residential neighborhood. (5T36:12-19) Importantly, the market for rental apartments is strong, (2T87:9-13), so rezoning the Property for such use will promote the general welfare and serve goal (a) of the Municipal Land Use Law.

- (e) Promoting the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment

As noted above, the proposed density in the C-3 PUD/PURD would be 30 units per acre, which is less than the densities of other existing multi-family projects in Cranford. Mr. Hughes offered his opinion that the proposed density is appropriate and can be accommodated on the site. (4T42:16 to 43:3) Likewise, the proposed density on the Property would not generate more traffic than would result from full operation of the existing improvements. (5T113:2-20) The proposed density would contribute to the well-being of persons looking for alternative housing types in Cranford (whether for financial or lifestyle reasons), where rental apartments comprise only a small percentage of the local housing stock. Furthermore, the proposed population

¹¹ This conclusion was not challenged by the Board's traffic consultant.

density will facilitate the housing of a larger quantity of people within a smaller area, assisting in the preservation of open space. Lastly, the overall impervious coverage of the Property would be reduced with a development of the type proposed in Hartz's concept plan, further preserving the environment.

- (g) Providing sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, to meet the needs of all New Jersey residents

Mr. Hughes explained that the Property is in an appropriate location to create a self-contained, multi-family residential community. (4T45:3-5) The Property is separated from the surrounding residential areas by both the existing rail line and the berm (to be expanded) along Walnut Avenue, and is bounded to the south by a golf course. (4T45:5-13) The site is 30 acres, and represents sufficient space for the proposed residential uses. Moreover, Hartz's concept plan demonstrates that the zoning goals can be accomplished while also reducing the overall impervious coverage at the Property. (4T45:14-16) Reducing the coverage while also providing above-ground amenity decks on some of the buildings does result in the provision of sufficient open space.

- (h) Encouraging the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which will result in congestion or blight

As already noted, the unopposed proofs before the Board demonstrate that there will not be a net increase in traffic should the proposed zoning be implemented. (5T113:2-20) The inclusion of a shuttle, as proposed by Hartz, will further enhance the free flow of traffic. On the contrary, putting the Property to industrial use will result in the proliferation of truck traffic in the immediate neighborhood, which would only aggravate congestion.

- (i) Promoting a desirable visual environment through creative development techniques and good civic design and arrangement

As noted by Mr. Hughes, the proposed rezoning is intended to create a planned residential community with a sense of place defined by high quality architectural and landscape features, including an expanded berm along Walnut Avenue and generous landscaping buffers. Moreover, the majority of the parking will be enclosed, promoting a more attractive and pedestrian-oriented environment. (4T46:12-19)

E. The Proposed Change in Zoning Regulations Will Not Burden Municipal Services

In the event the Board is called upon to evaluate the benefit that the rezoning would have on the community (and only in such event), the Board must—as part of that evaluation—determine whether the rezoning would generate a burden on municipal services.¹² Among the

¹² Factor E in Cranford Ord. Sec. 136-67 is prefaced with the phrase, "In demonstrating that the proposed rezoning will substantially benefit the municipality and will advance the purposes of the Municipal Land Use Law . . .". Thus, Factor E is to be considered only if the Board determines in evaluating Factor D that the existing zoning will *not* render the Property inutile and thus is called upon to evaluate the rezoning's net benefit to the municipality. If, in evaluating Factor D, the Board finds that the existing property *does* render the Property inutile, then analysis under the second half of Factor D and Factor E is unnecessary.

factors to be considered are traffic impacts and fiscal impacts. The unopposed data, analysis and conclusions offered by Hartz illustrate a lack of burden on municipal systems that would result from the proposed rezoning.

Karl Pehnke, a professional traffic engineer accepted by the Board as an expert in his field, opined that the traffic to be generated by a conceptual project developed pursuant to the proposed rezoning would not have an undue off-site traffic impact relative to the traffic impacts that would result from a fully operational project that complies with the existing zoning. (5T113:2-20) Mr. Pehnke proposed some off-site traffic improvements that would provide an overall benefit to the community, including a traffic signal in front of the project and a widening of Walnut Avenue, as well as a shuttle for residents. (6T34:8-21, 63:22 to 64:2; 9T10:4-8) Mr. Pehnke's conclusions with respect to off-site traffic impacts were not questioned by a professional traffic engineer retained by the Board to review Mr. Pehnke's work.¹³

Among the permitted uses in the existing zoning is office-distribution. E-commerce represents a growing subcategory in that use description. Such users (such as Amazon, Stitch Fix, Wayfair, etc.) generate substantial traffic, particularly truck traffic, due to high volumes of deliveries at all times of day. These uses also commonly generate a high employee count, causing high volumes of passenger vehicle traffic. (5T107:5-11) According to accepted industry standards, the highest traffic generating use among uses permitted by the existing zoning regulations would be medical offices. (5T108:24-25) Based on those same standards and accepted methodology, Mr. Pehnke concluded that a multi-family development constructed pursuant to the proposed rezoning would generate roughly the same level of traffic as the existing improvements at full occupancy, though the distribution would be slightly different, a little less traffic in the morning, and a little more traffic in the evening.¹⁴ (5T113:2-7; 6T65:12-18; 9T22:3-18)

To facilitate the flow of traffic coming into and out of the Property in a post-development scenario, Mr. Pehnke proposes the installation of a traffic signal on Walnut Avenue, which would operate at a high level of service and allow for safe pedestrian crossing of Walnut Avenue that doesn't presently exist. (6T34:8-21, 63:22 to 64:2; 9T10:4-8) The traffic signal would be programmed to prioritize the easy flow of traffic on Walnut Avenue such that the signal would clear traffic on Walnut Avenue on every cycle. (9T10:9-15, 45:9-21) The Board's traffic consultant had no objection to such a signal, though he did suggest in his review report that the signal may be better situated at another location.¹⁵ Furthermore, Mr. Pehnke proposed widening

¹³ The Board's traffic engineer acknowledged in his May 15, 2018 review report that Mr. Pehnke used appropriate industry standards and techniques in performing his analysis and arriving at his conclusions. Moreover, the site layout testimony provided by the Board's traffic engineer related to site plan details that have no relationship to the standards in the Township's rezoning ordinance. Nonetheless, the Board's traffic engineer acknowledged such facts as compliance with RSIS and the ability for fire trucks to pass one another on the designed fire lanes, (10T156:1-12), a fact echoed by Mr. Martell, (13T88:6-16). Indeed, Mr. Martell explained that the questions raised by the Board's traffic engineer are easily addressed in site plan review and that the project as conceptually designed meets all RSIS requirements and can accommodate the maneuvers of large vehicles and firefighting equipment. (13T60:20 to 63:11, 88:6-16)

¹⁴ Mr. Pehnke's analysis was conservative in his projections of traffic to be generated by a prospective residential project, as he did not take into account the shuttles that Hartz proposes for such a project. (6T79:22-25, 89:24 to 90:7)

¹⁵ Mr. Pehnke explained that Hartz is amenable to exploring relocation of the proposed traffic signal in a future site plan review. (6T88:16 to 89:5)

Walnut Avenue to facilitate the safe passage of traffic. (6T123:18 to 124:25) The apparent end result—unrefuted by the Board's own traffic consultant—is that a hypothetical project on the Property, constructed pursuant to the proposed amendment to the zoning ordinance, would not burden the local roadways any more than full operation of the existing improvements and, in fact, would likely ease existing conditions.

With respect to fiscal impacts, Keenan Hughes engaged in a comprehensive analysis—updated more than once throughout the proceedings to incorporate current data—of the impacts that the rezoning would have on municipal finances. The most recent analysis and conclusions are set forth in an October 2018 report entitled, “Fiscal Impacts of the Proposed Rezoning of 750 Walnut Avenue, Cranford, NJ”. Without repeating here the entirety of that report or Mr. Hughes’ testimony on the subject, the Board will recall that he concluded using accepted techniques that a multi-family project constructed to the maximum extent allowed under the proposed zoning would yield 110-135 school children at full build-out, depending on which of two accepted methodologies is employed, and about half of that after only the first phase of development is completed.¹⁶ (9T61:3-8, 63:11-15) As noted by Mr. Hughes, these students would not all enter the school system at once and would be distributed throughout the various grades and schools in town. (9T83:1-12) Mr. Hughes found no need for additional school facilities. (9T83:9-12)

Based on that number of students, Mr. Hughes was able to extrapolate the financial impact to the local school district using existing budget figures made available by the Town and the Board of Education.¹⁷ Ultimately, Mr. Hughes concluded that the net annual financial impact would be +\$660,084 to the Town and +\$2,108,901 to the school district at full build out, assuming 110 additional students in the district. (9T66:10-22) Alternatively, he concluded that the net annual financial impact would be +\$660,084 to the Town and +\$1,754,426 to the school district, assuming 135 additional students in the district. (9T67:2-12) So, depending on which methodology is relied upon, the aggregate net benefit to the community is projected to range from approximately \$2,410,000 to \$2,770,000 annually. This takes into account the additional municipal expenditures that would result from the additional residents.

Dr. Rubin, the Superintendent of the Cranford School District, Robert Carfagno, the School District’s Business Administrator, and Mr. Haber, the School District’s demographer, all speculated that the rezoning may necessitate construction of a new school.¹⁸ Their conclusions

¹⁶ The 110 student projection is derived from actual data in comparable multi-family projects in Cranford, (9T61:1-3); the 135 student projection is derived from data set forth in a widely used 2018 study prepared by the Rutgers Center for Real Estate, which illustrated the State-wide reduction in school children, (9T61:19-21, 91:15-23, 113:14-23). The projection of total new residents was derived from actual Cranford census data. (9T73:14-16)

¹⁷ The budget figures relied upon by Mr. Hughes take into account the additional costs attributable to special needs education. (9T77:6-11)

¹⁸ The Board should bear in mind that land use approvals cannot be denied due to such impacts. A very similar issue arose in Board of Education v. Gloucester, 127 N.J. Super. 97 (Law Div. 1974). In that case, a regional board of education challenged a local ordinance passed by the Township of Gloucester, which township was served by the plaintiff regional board of education. The ordinance in question rezoned a large area within Gloucester to permit residential development. The board of education challenged that ordinance, alleging that it would burden the regional school system with additional children. While recognizing that the State Constitution requires a “thorough and efficient system of free public schools”, the Law Division ultimately held that zoning that would result in a burden on the public school system doesn’t run afoul of that constitutional mandate. The court observed,

were predicated on the flawed analysis and conclusions of Mr. Haber, who projected the resulting number of school aged children by relying on single family homes, townhomes and for-sale units in towns other than Cranford, all units that are known to generate more schoolchildren than garden apartments of the type proposed by Hartz. Dr. Rubin conducted no independent analysis on this subject. (11T56:21 to 57:3) Consequently, his opinion with regard to the impact on the school district, and the opinion of Mr. Carfagno, should be rejected out of hand.

Mr. Haber concluded from data derived from other towns, in lieu of available data derived from Cranford, that the proposed rezoning could yield as many as 353 school aged children. But Mr. Haber admitted during cross-examination that he relied on a variety of housing types in other towns, including single family homes, townhouses, and for-sale units, all of which are distinguishable from the mid-rise rental apartments proposed by Hartz (11T148:16 to 149:16, 153:4-16), rendering his opinion utterly uninformative and useless.¹⁹ Further undermining Mr. Haber's conclusion is the fact that he refused to consider actual comparable projects in Cranford (projects that he later admitted he knew nothing about) because they are transit village projects, (11T141:10 to 142:10), yet he relied at least in part on transit village projects in other towns, (11T149:10-12). Finally, Mr. Haber did not adjust his conclusion to account for school aged children that attend private schools or are home schooled. (11T157:1-8) The plethora of flaws in Mr. Haber's analysis and conclusions render his opinions—and, thus, the opinions of Dr. Rubin and Mr. Carfagno—utterly worthless. (13T91:14 to 97:6; 112:9 to 114:6)

Independent of Mr. Haber's fatally flawed conjecture and projections, the actual data doesn't support the speculation that a new school facility may be required. First, Mr. Haber acknowledged that the enrollment throughout the district has fallen by 153 students in the last two years, (11T136:20 to 137:25); thus, even assuming 135 additional students to result from a project developed pursuant to Hartz's proposed zoning, the district's total enrollment would be less than it was in the 2016-17 academic year. Mr. Haber also projects that the district-wide enrollment will continue to decline over the next five years. (11T138:12-25) Importantly, the School District's 2018 Comprehensive Annual Financial Report (Ex. School District 5), audited by an outside accounting firm and filed with the New Jersey Department of Education, notes that

Our courts have specifically held that a municipality has no right to refuse to grant approval for a building project merely because its school system would be unable to absorb the increase in students . . . or that it would increase taxes The court notes that such increases in student population are inevitable in any rapidly expanding community.

127 N.J. Super. at 100 (citations omitted). The court consequently dismissed the board of education's complaint. See also Midtown Properties, Inc. v. Madison, 68 N.J. Super. 197, 209-210 (Law Div. 1961) (holding that a municipality "has no right to refuse to grant approval for a building project merely because its school system would be unable to absorb the increase of students" or to require a residential developer to construct a school as a condition of approval). Thus, even if the Board accepts the fatally flawed opinions of the School District representatives, those opinions are irrelevant to the current application and should be disregarded.

¹⁹ Mr. Haber testified to his margin of error as calculated by himself, but this was for town-wide enrollment studies, not for studies performed for individual projects. (11T95:4-22, 159:13-16) Naturally, using aggregate unit count among a variety of unit types will be more accurate in projecting district-wide enrollment than projecting enrollment for one particular type of unit. But, using a district-wide enrollment projection methodology is worthless in predicting the number of school age children to be generated by a single type of housing unit, e.g. mid-rise apartments. (13T91:14 to 97:6)

Cranford High School, for example, is 573 students *below* capacity.²⁰ In the aggregate, the school system (consisting of four elementary schools, two middle schools and one high school) is 857 students (nearly 20%) *below* capacity according to the School District's 2018 Comprehensive Annual Financial Report filed with the State (see page 163).²¹ Consequently, any fearful speculation about the need for new facilities (based on flawed data to begin with) is undermined by the School District's own audited filings.

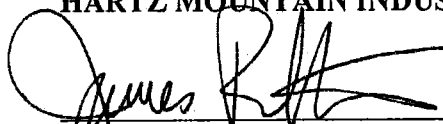
Thus, the conclusion should be evident that the rezoning would not burden municipal services. To the contrary, it will generate a net fiscal benefit to the community.

Based on the foregoing law and facts, when viewed in relation to the specific standards set forth in the Township's rezoning ordinance, there can be no conclusion other than that Hartz has amply demonstrated compliance with those standards. While much concern and worry has been expressed by the public and members of the Board about issues that are not within the parameters of the governing ordinance, an objective, dispassionate review of the record shows that the proposed rezoning will not cause the negative effects about which so many residents are worried. For all of the foregoing reasons, Hartz respectfully requests that this Planning Board recommend to the governing body that 750 Walnut Avenue be rezoned to permit multi-family use as proposed.

Hartz thanks you for your time and attention to this matter.

Very truly yours,

HARTZ MOUNTAIN INDUSTRIES, INC.



James P. Rhatican
Vice-President of Land Use and Development
Assistant General Counsel

cc: Kathy Lenahan (via email)
Mark Rothman, Esq. (via email)

²⁰ Mr. Haber projected that the High School's enrollment would drop further by 10% over the next five years. (11T138:12-17)

²¹ Robert Carfagno acknowledged that the audited Comprehensive Annual Financial Report is prepared by auditors using information provided by the school district and that the contents of the Report are accurate and are relied upon by the State. (12T83:22-25, 84:5-14, 85:9-14)