

CRANFORD TOWNSHIP PLANNING BOARD

**HARTZ MOUNTAIN INDUSTRIES, INC.
750 WALNUT AVENUE
BLOCK 541, LOT 2**

APPLICATION NO. PB-22-002

**RESOLUTION MEMORIALIZING GRANT OF PRELIMINARY AND FINAL
SUBDIVISION AND SITE PLAN APPROVAL WITH “C” VARIANCES AND
EXCEPTIONS TO ALLOW CREATION OF TWO (2) LOTS AND CONSTRUCTION
OF AN INCLUSIONARY DEVELOPMENT CONSISTING OF TWO (2) RESIDENTIAL
BUILDINGS ON ONE LOT AND A COMMERCIAL DEVELOPMENT CONSISTING
OF TWO (2) COMMERCIAL BUILDINGS ON THE OTHER LOT**

WHEREAS, Hartz Mountain Industries, Inc. (the "**Applicant**") made application to the Cranford Township Planning Board (the "**Board**") for preliminary and final major subdivision and site plan approval (the "**Application**") to redevelop a 30.8-acre lot located at 750 Walnut Avenue, designated on the Township of Cranford (the "**Township**") Tax Map as Block 541, Lot 2 (the "**Property**"), by creating two (2) lots, a 13.5-acre residential lot (the "**residential lot**") on which would be constructed an inclusionary development consisting of two (2) residential buildings (the "**Residential Project**"), and a 17.3-acre commercial lot (the "**commercial lot**") on which would be constructed two (2) commercial buildings (the "**Commercial Project**") (the Residential Project and the Commercial Project together are referred to as the "**Proposed Development**"), all in accordance with the 750 Walnut Avenue Redevelopment Plan (the "**WARP**") which was adopted by Ordinance No. 2021-18 on December 14, 2021 and amended by Ordinance No. 2022-02 adopted on March 8, 2022, which supersedes the prior C-3 Zone and establishes two (2) separate subdistricts in the 750 Walnut Avenue Redevelopment Area (the "**WARA**"); and

WHEREAS, The WARP provides the following principally permitted uses in each of the following two subdistricts: (1) Subdistrict 1 – Residential: “Dwelling, Multi-family” and “Privately-Owned Public Open Space”, and (2) Subdistrict 2 – Commercial/Industrial: “Ambulatory Healthcare Services, Limited Assembly, Office/Executive/Corporate, Headquarters, Office/Professional/Business Administrative, Office Distribution Centers, Privately-Owned Public Open Space, Research Laboratory, and Self-Storage”; and

WHEREAS, in accordance with the WARP, the Applicant seeks to: (1) construct the Commercial Project which consists of two (2) commercial “flex” buildings on the commercial lot which is situated in Subdistrict-2 which will house a variety of tenants conducting principally permitted uses, consisting of approximately 241,200 square feet of flex building space and on-site vehicle parking spaces (and a total of 32 loading docks with the potential to construct an additional 14 loading docks) and related on-site and off-site improvements ; and (2) construct the Residential Project consisting of two (2) inclusionary residential buildings on the residential lot situated in Subdistrict-1 consisting of a total of 250 residential dwelling units, including 38 units set aside for low and moderate income households (the "**Affordable Units**"), and related on-site parking

spaces, as well as a minimum of 100,000 square feet of “Privately-Owned Public Space,” and related on-site and off-site improvements and landscaping; and

WHEREAS, because the proposed uses of the Property are principally permitted uses and no "d" type variances are required (see N.J.S.A. 40:55D-70d), and because subdivision and site plan approval are sought, the Board has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20 by operation of N.J.S.A. 40:55D-46, 48, 50, 51, 60a, and 70c, as well as N.J.A.C. 5:21-3.1(a) by operation of N.J.S.A. 40:55D-40.5; and

WHEREAS, a number of documents were submitted with regard to the application by the Applicant, the Board's professionals, various Township departments and professionals, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which the Applicant seeks Board approval, which plans, drawings and documents have been on file and available for public inspection for at least ten (10) days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Preliminary and Final Major Site Plan and Major Subdivision Plan for Hartz Mountain Industries, Inc, Proposed Mixed-Use Redevelopment Plan” prepared by Stonefield Engineering & Design, consisting of twenty (20) sheets, dated 5/23/2022, revised 10/3/2022 (the "**Site Plans**"),
2. Plans entitled “Preliminary Subdivision Plan of Block 541, Lot 2”, prepared by Control Layouts, Inc, dated 11/15/21, revised 4/30/202 (the “**Subdivision Plans**”),
3. Architectural Plans for proposed commercial buildings, prepared by Vincent Antonacci, Jr. consisting of two (2) sheets dated 1/14/22, revised 5/20/22 (the "**Commercial Project Architectural Plans**"),
4. 750 Walnut Residential Architectural Package prepared by Minno Wasko Architects and Planners consisting of twelve (12) sheets dated 1/28/22, revised 5/20/2022 (the “**Residential Project Architectural Plans**”)
5. Stormwater Management Report prepared Stonefield Engineering & Design dated 5/23/22, revised 10/4/22 (the "**Stormwater Management Report**"),
6. Environmental Impact Statement prepared by Stonefield Engineering & Design dated 4/4/22, revised 10/4/22 (the "**EIS**"),
7. “Vehicle Maneuvering Exhibit”, prepared by Stonefield Engineering consisting of fifteen (15) sheets, dated 9/21/2022 (the “**Vehicle Maneuvering Exhibit**”), and
8. Landscaping & Fixtures Plans, prepared by Arterial Streets, dated 1/28/22, revised 10/5/2022, consisting of twenty-three (23) sheets (the “**Landscaping Plans**”);

WHEREAS, the Board held a duly noticed public hearing on the application pursuant to N.J.S.A. 40:55D-12 on the dates listed below, with proofs of service and publication of the notices of the hearing being on file with the Board, thereby conferring procedural jurisdiction over the Application with the Board, during which hearing the Applicant was represented by Henry Kent-Smith, Esq. (of Fox Rothschild, LLP) and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC):

1. July 20, 2022,
2. August 17, 2022,
3. September 7, 2022,
4. September 21, 2022,
5. October 19, 2022 (hearing adjourned at request of Applicant),
6. November 30, 2022,
7. December 7, 2022,
8. December 14, 2022, and
9. January 18, 2023 (deliberation and vote on application); and

WHEREAS, the following Applicant and Board witnesses testified under oath during the hearing, were subject to cross examination, and the testimony is part of the record in this matter:

1. James P. Rhatican (Applicant Representative),
2. Zachary Chaplin, PE (Applicant's civil engineering expert),
3. Matthew Seckler, PE (Applicant's traffic engineering expert),
4. Vincent Antonacci, RA (Applicant's architectural expert for the commercial buildings),
5. Bruce Englebaugh, AIA (Applicant's architectural expert for the residential buildings),
6. David Lustberg, LLA (Applicant's landscape architect expert),
7. Paul Devitto III, LLC (Applicant's landscape architect expert),
8. Keenan Hughes, PP, AICP (Applicant's planning expert),
9. Nicholas A. Dickerson, PP, AICP (the Board's planning expert),
10. Jacqueline Dirmann, PE (the Board's engineering expert), and
11. Maurice Rached, PE (the Board's traffic engineering expert);

WHEREAS, the following members of the public appeared during the hearing to ask questions of witnesses, submit exhibits C-1 through C-22 and L-1 through L-7 into evidence, and/or testify regarding the application, as identified below:

1. Rita LaBrutto asked questions and testified and submitted the "L" exhibits,
2. Christine Esposito asked questions and testified,
3. Angela Leary asked questions and testified,
4. Don Smith asked questions and testified,
5. Loretta Smith asked questions and testified,
6. George Collins asked questions and submitted the "C" exhibits,
7. Tom Roettker asked questions,

8. Finnegan Saber asked questions,
9. Bill Krame asked questions,
10. Mark Zucker asked questions,
11. Dawn Beresford asked questions,
12. Pat Gallagher asked questions,
13. Terrence Curran asked questions, and
14. Don Smith, II asked questions;

WHEREAS, the following exhibits were submitted into evidence during the hearing, are on file with the Board, and are part of the record in this matter:

- A-1 Overall Aerial Exhibit, Sheet 1 of 2, dated 7/19/2022,
- A-2 Overall Aerial Exhibit, Sheet 2 of 2, dated 7/19/2022,
- A-3 Overall Site Plan Rendering Exhibit, dated 7/19/2022,
- A-4 Park Area Exhibit, dated 2/18/2022,
- A-5 Photographs of Walnut Avenue Frontage, Sheet 1 of 2, dated 7/19/2022,
- A-6 Photographs of Walnut Avenue Frontage, Sheet 2 of 2, dated 7/19/2022,
- A-7 Landscape Area Map, dated 5/23/2022,
- A-8 Signal Improvement Exhibit, Sheet 1 of 1, dated 8/15/2022,
- A-9(a) Walnut Avenue Roadside Features, Sheet 1 of 3, dated 8/17/2022,
- A-9(b) General Photos of Walnut Avenue Frontage, Sheet 2 of 3, dated 8/17/2022,
- A-9(c) General Photos of Walnut Avenue Frontage, Sheet 3 of 3, dated 8/17/2022,
- A-10 Allowable Turn Exhibit, Sheet 1 of 1, dated 8/15/22,
- A-11 Stop Sign Exhibit, Sheet 1 of 1, dated 8/15/22,
- A-12 Speed Hump Exhibit, Sheet 1 of 1, dated 8/15/22,
- A-13 Crosswalk Exhibit, Sheet 1 of 1, dated 8/15/22,
- A-14 Left Turn Lane Exhibit, Sheet 1 of 1, dated 8/15/22,
- A-15 Basin Extension Exhibit, Sheet 1 of 1, dated 9/1/22,
- A-16 Sidewalk Expansion Exhibit, Sheet 1 of 2, dated 9/6/22,
- A-17 Sidewalk Expansion Exhibit, Sheet 2 of 2, dated 9/6/22,
- A-18 Industrial Driveway Adjustment Exhibit, Sheet 1 of 3, dated 9/21/22,
- A-19 Industrial Driveway Adjustment Exhibit, Sheet 2 of 3, dated 9/21/22,
- A-20 Industrial Driveway Adjustment Exhibit, Sheet 3 of 3, dated 9/21/22,
- A-21 Concept Building Section Residential Building A and B, dated 7/19/22,
- A-22 Concept Elevation Façade Diagram, Building A, dated 9/29/22,
- A-23 Concept Elevation Façade Diagram, Building B, dated 9/29/22,
- A-24 Materials, dated 7/19/22,
- A-25 Illustrative Concept Prospectus, dated 6/22/21,
- A-26 Color Rendered Version of Site Plan showing Proposed Landscaping,
- A-27 Images of plant materials and outdoor furnishings,
- A-28 Overall Site Plan, Sheet C4 with color-coded markup, dated 10/3/22,
- A-29 Landscape Plan, Sheet C14 with color-coded markup, dated 10/3/22,
- A-30-1 Landscape Berm Analysis, Sheet 1 of 3, dated 12/13/22,
- A-30-2 Landscape Berm Analysis, Sheet 2 of 3, dated 12/13/22,

- A-30-3 Landscape Berm Analysis, Sheet 3 of 3, dated 12/13/22,
- C-1 Photograph of an alleged Hartz Mountain property at 900 Secaucus Rd,
- C-2 Photograph of an alleged Hartz Mountain property,
- C-3 Aerial photograph of an alleged Hartz Mountain property,
- C-4 Photograph of a truck,
- C-5 Aerial photograph of existing condition of 750 Walnut Avenue,
- C-6 Aerial photograph of surrounding area of 750 Walnut Avenue,
- C-7 Aerial photograph of surrounding area of 750 Walnut Avenue,
- C-8 Photograph of Walnut Avenue Southbound,
- C-9 Photograph of Lexington intersection,
- C-10 Photograph of a trailer,
- C-11 Photograph from a tractor trailer northbound toward Walnut Avenue,
- C-12 Photograph of Amazon delivery truck outside of 5 Behnert Place,
- C-13 Photograph of the front of a tractor and brother of Mr. Collins,
- C-14 Photograph from inside a tractor,
- C-15 Photograph of a truck on Walnut Avenue
- C-16 Photograph of a truck exiting 750 Walnut Avenue,
- C-17 Photograph of tractor exiting 750 Walnut Avenue,
- C-18 Photograph of tractor exiting 750 Walnut Avenue,
- C-19 Photograph of tractor at proposed site driveway location,
- C-20 Photograph of tractor turning onto Walnut Avenue,
- C-21 Photograph of tractor turning onto Walnut Avenue
- C-22 Photograph of pedestrians crossing Walnut Avenue
- L-1 Photograph of Berm at Walnut Avenue Frontage from Lexington Avenue,
- L-2 Photograph of Berm at Walnut Avenue Frontage by Behnert Place,
- L-3 Photograph of Berm at Walnut Avenue Frontage from Lexington Avenue,
- L-4 Photograph of Berm at Walnut Avenue Frontage by Behnert Place,
- L-5 Photograph of Berm at Walnut Avenue Frontage beyond Behnert Place before Lexington Ave,
- L-6 Photograph of Berm at Walnut Avenue Frontage from railroad, and
- L-7 Photograph of Berm at Walnut Avenue Frontage from Behnert Place;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBITS REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO ALL OF THE SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10G(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. **The Property, Surrounding Uses, and Zoning.** The Property is a triangular shaped lot, approximately 30.8 +/- acres in size, and is located on the west side of Walnut Avenue. The Property is located immediately south of the main stem of the Consolidated Rail Corporation (Conrail) railroad tracks. The municipal boundary with Clark Township is located to the south and west of the Property. Adjacent Lot 1 is part of the Hyatt Hills Golf complex which is located in both the Township and Clark. The predominant land uses on the opposite side of Walnut Avenue from the property are single family residential, with some commercial uses near Walnut Avenue's intersection with Raritan Road. The Property is currently vacant and formerly contained an approximately 400,000 square foot complex of office, research labs, limited assembly and warehouse space which has been demolished. The Property is situated in the WARA and, as set forth above, is subject to the WARP which was adopted by Ordinance No. 2021-18 on December 14, 2021 and amended by Ordinance No. 2022-02 adopted on March 8, 2022. The WARP established the following two Subdistricts in the WARA which allow as principally permitted use the following: Subdistrict 1 – Residential which allows: “Dwelling, Multi-family” and “Privately-Owned Public Open Space” as principally permitted uses, and Subdistrict 2 – Commercial/Industrial which allows: “Ambulatory Healthcare Services, Limited Assembly, Office/Executive/Corporate, Headquarters, Office/Professional/Business Administrative, Office Distribution Centers, Privately-Owned Public Open Space, Research Laboratory, and Self-Storage” as principally permitted uses. The definition of “Office Distribution Centers” in Township ordinance section 255-1 “includes the warehousing and distribution of goods, provided that up to 10% of the gross floor area of any office distribution center may be used for executive and administrative office uses ancillary to the warehouse and distribution uses.” The definition also states that “office distribution centers shall not include mini warehouses or similar use or truck depots or similar uses.” The Board agrees with, and the Applicant did not take issue with, the opinion of its planning expert which was expressed during the hearing that “truck depots” relate to the storage of trucks.

2. **The Proposed Development.** As set forth above, the Proposed Development is the creation of two (2) lots in accordance with the WARP: (a) the proposed 13.5-acre residential lot on which would be constructed the Residential Project, an inclusionary development consisting of two (2) residential buildings; and (b) the proposed 17.3-acre commercial lot on which would be constructed the Commercial Project consisting of two (2) commercial buildings. The proposed Residential Project will consist of two (2) inclusionary residential buildings consisting of a total of 250 residential dwelling units, including 38 Affordable Units, and related on-site parking spaces, as well as a minimum of 100,000 square feet of “Privately-Owned Public Space,” and related on-site and off-site improvements and landscaping on the lot situated in Subdistrict-1. The proposed Commercial Project will consist of two (2) commercial buildings containing “flex” building space which will house a variety of tenants conducting principally permitted uses, consisting of approximately 241,200 square feet of flex building space and on-site vehicle parking spaces (and a total of 32 loading docks with the potential to construct an additional 14 loading docks) and related on-site and off-site improvements. The Applicant’s representative, James Rhatican, Esq., testified that the “flex” buildings will be operated as office distribution centers as defined in Township ordinance section 255-1. Mr. Rhatican explained that the office distribution centers proposed would be for the warehousing and distribution of goods and that no more than

10% of the gross floor area of any office distribution center would be used for executive and administrative office uses ancillary to the warehouse and distribution uses. Further, he testified that the proposed office distribution centers would not include mini warehouses or similar use or truck depots or similar uses. As set forth above, “truck depots” relate to the storage of trucks. Finally, Mr. Rhatican testified that the Applicant understood that the storage of goods must be contained within the enclosed buildings and he also confirmed that there will be dock seals for all loading docks so that noise generated from the movement of good onto or off of trucks would not be heard from outside the buildings.

3. **The Required and Requested Relief.** In order to construct the Proposed Development, the applicant requires preliminary and final subdivision and site plan approval along with “c” variances from certain Township zoning ordinance regulations, exceptions from certain Township development requirements, and a de minimis exception from a Residential Site Improvement Standard (“RSIS”) requirement. The specific relief requested by the Applicant, as amended during the course of the hearing on the Application, is as follows:

a. “C” variance from paragraph 4.2.B.2.c.ii of the WARP, which requires a minimum 100-foot front yard setback for commercial buildings to property lines, to allow a 63.2-foot setback between one of the two commercial buildings and the proposed property line separating the commercial lot from the residential lot. The Applicant sought a “c(2)” or so-called “benefits v. burdens” variance and not a “c(1)” or so-called “hardship” variance.

b. “C” variance from paragraph 4.7.D.12 of the WARP, which requires a full-size (92’ x 50’) basketball court and equipment with appurtenant parking facilities, to allow the elimination of the basketball court and equipment and appurtenant parking. The Board suggested that the Applicant seek this relief in response to concerns expressed by neighbors living across Walnut Avenue from the Property, and the Applicant sought a “c(2)” or so-called “benefits v. burdens” variance and not a “c(1)” or so-called “hardship” variance.

c. Exception from paragraph 4.7.F.2 of the WARP, which requires a dedicated pedestrian zone along the sidewalk adjacent to Walnut Avenue be provided with a minimum unobstructed width of 8-feet at all points, to allow 1,268 lineal feet of the sidewalk (62% of the sidewalk) to be 6-feet wide and 785 lineal feet of the sidewalk (38% of the sidewalk) to remain 4-feet wide.

d. Exception from site plan ordinance section 255-26.G(9), which requires lighting in parking areas to be a minimum of 1.5 footcandles, to allow the lighting in the parking areas on the commercial lot to be decreased to 0.5 footcandles.

e. Exception from site plan ordinance section 255-26.G(9), which restricts the height of site lighting fixtures to 16-feet above grade, to allow site lighting fixtures up to 25-feet high on the commercial lot.

f. Exception from site plan ordinance section 255-26.J(4)(b)[3], which prohibits façade mounted signage facing residentially zoned areas within 150-feet of a residentially zoned area, to allow façade mounted signs on the proposed commercial building on the commercial

lot which will face the residential zones to the north as close as 100-feet of the residentially zoned area.

g. Exception from paragraph 4.6.C.2.a.ii of the WARP, which requires 35% of the ground level primary façade of the residential buildings to have door and window transparency, to allow the ground level of both of the residential buildings to have 34% of the ground levels of the primary facades to have door and window transparency.

h. De minimis exception from N.J.A.C. 5:21-4.14(b), the RSIS provision which requires more than the 1.8 parking spaces per multifamily unit proposed by the Applicant (the RSIS provision at issue requires 1.8 spaces per 1-bedroom unit, 2.0 spaces per 2-bedroom unit, and 2.1 spaces per 3-bedroom unit), to allow the Applicant to provide 1.8 spaces per multifamily unit regardless of the number of bedrooms for a total of 450 parking spaces for the residential lot, which is the amount required by paragraph 4.3.A.3 of the WARP.

i. Preliminary and final subdivision approval to divide the Property into the commercial lot and the residential lot, and preliminary and final site plan approval to allow construction of the commercial development on the commercial lot and the residential development on the residential lot.

4. **Standards for Considering the Requested “C” Variances.** N.J.S.A. 40:55D-70c authorizes the Board, through ancillary jurisdiction pursuant to N.J.S.A. 40:55D-60a, to grant “c” variances from zoning ordinance regulations under two criteria; (a) the “c(1)” or so-called “hardship” criteria; and (b) the “c(2)” or co-called “benefits v. detriments” criteria. Here, the Applicant requests “c(2)”, not “c(1)”, variances so the Board will address the requested “c” variances under the “c(2)” criteria only. Under N.J.S.A. 40:55D-70c(2), “c” variances may be granted “in an application or appeal relating to a specific piece of property” where “the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.” This is the co-called “positive” criteria of a “c(2)” variance. The determination of whether a lot is a “specific piece of property” within the meaning of the MLUL involves consideration of the conditions of the lot as distinguished from other properties in the zone. If all lots in the area are subject to the same conditions as the lot at issue, the appropriate remedy is revision of the ordinance and not a variance. Beirn v. Morris, 14 N.J. 529, 535-536 (1954). Significantly, the zoning benefits resulting from permitting the zoning ordinance deviation(s) at issue must be for the community (“improved zoning and planning that will benefit the community”) and not merely for the private purposes of the owner. Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). In this regard, the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation(s) can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, only those purposes of zoning that are actually implicated by the variance relief sought. Ten Starý Dom v. Mauro, 216 N.J. 16, 32-33 (2013). Finally, while “c(1)” or so-called hardship variances are not available for self-created situations, our courts have held that an intentionally created situation does not serve to bar a “c(2)” variance because the focus of a “c(2)” variance is not on hardship but, rather, on

advancing the purposes of zoning. Ketcherick v. Mountain Lakes Board of Adj., 256 N.J. Super. 647, 656-657 (App. Div. 1992); Green Meadows v. Montville Planning Board, 329 N.J. Super. 12, 22 (App. Div. 2000). Significantly, however, a “c(2)” variance can be denied where it does not provide a benefit to the community and would “merely alleviate a hardship to the applicant which he himself created.” Wilson v. Brick Twp. Zoning Board, 405 N.J. Super. 189, 199 (App. Div. 2009). The Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... 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 purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1,4,21 (1987).

5. **Findings as to the Requested “C(2)” Front Yard Setback Variance to Allow One of the Commercial Buildings to be Closer than 100-feet to the Residential Lot Line.** As set forth above, the Applicant requests a “c(2)” variance from paragraph 4.2.B.2.c.ii of the WARP, which requires a minimum 100-foot front yard setback for commercial buildings to property lines, to allow a 63.2-foot setback between one of the two commercial buildings and the proposed property line separating the commercial lot from the residential lot. The Board finds that granting the requested “c(2)” variance will advance the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a because allowing construction of the building at issue in the location proposed will be consistent with the underlying intent of the design as set forth in the WARP in that the front portion of the commercial building at issue is oriented towards the property line, there is adequate landscaping and buffering between the commercial lot and the residential lot, and the 63.2-foot setback would comply with the setback regulation if applied towards the property line along Walnut Avenue and not the property line that will be established to create the two lots to effectuate the Proposed Development. Provided that the conditions set forth below are imposed and complied with, the Board further finds that these zoning benefits that will result from the grant of the requested “c(2)” variance are public benefits – and do not merely provide private benefits to the Applicant – and the zoning benefits will substantially outweigh the detriments, with the detriments being minimal. Finally, the Board finds that the requested “c(2)” variance 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 (the WARP) provided that the conditions set forth below are imposed and complied with. For the foregoing reasons, the Board finds that granting the requested variance is warranted provided that the conditions set forth are imposed and complied with.

6. **Findings as to the Requested “C(2)” Variance to Relieve the Applicant from the Requirement of Providing a Basketball Court on the Commercial Lot.** As set forth above, at the suggestion of the Board, the Applicant requested a “c(2)” variance from paragraph 4.7.D.12 of the WARP, which requires a full-size (92’ x 50’) basketball court and equipment with appurtenant parking facilities, to relieve the Applicant from the requirement of providing a basketball court and equipment and appurtenant parking on the commercial lot. Provided that the conditions set forth below are imposed and complied with, the Borad finds that granting the requested “c(2)” variance will advance the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a because the request was made by neighboring single family residential lot

owners who did not want to have to deal with the noise that would be expected from use of the courts and the elimination of the basketball court would eliminate impervious coverage which would be replaced with additional stormwater management measures. The Board further finds that these zoning benefits that will result from the grant of the requested “c(2)” variance are public benefits – and do not merely provide private benefits to the Applicant – and the zoning benefits will substantially outweigh the detriments, with the detriments being non-existent. Finally, the Board finds that the requested “c(2)” variance can be granted without any detriment, let alone substantial detriment, to the public good. As to the second prong of the negative criteria, the Board finds that the requested “c(2)” variance can be granted without substantial impairment of the intent and purpose of the master plan and zoning ordinance (the WARP) but if and only if the conditions set forth below are imposed and complied with. In this regard, the Board notes that the requirement for a basketball court is a specific requirement set forth in the WARP and not a general requirement in the WARP for recreational space. That notwithstanding, the Board finds that eliminating the basketball court under the circumstances where neighboring single family lot owners have requested same and replacement of the impervious coverage related to the basketball court and parking with additional stormwater management measures does not substantially impair the intent and purpose of the WARP. For the foregoing reasons, the Board finds that granting the requested variance is warranted provided that the conditions set forth are imposed and complied with.

7. **Standards for Considering the Requested Ordinance Exceptions.** N.J.S.A. 40:55D-51a and b provide that the Board, “when acting upon applications for preliminary [subdivision or site plan] approval, shall have the power to grant such exceptions from the requirements for [such] approval as may be reasonable and within the general purpose and intent of the provisions for [subdivision and site plan] review and approval . . . 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.” While neither “impracticable” nor “undue hardship” is defined in the MLUL, “undue hardship” has been defined in numerous land use and zoning cases in New Jersey. Our courts have held that to qualify for “c(1)” variance relief, the “undue hardship” at issue does not have to rise to the level of confiscation. If the ordinance provisions at issue “inhibit . . . the extent” to which the property can be used, our courts have held that “undue hardship” to warrant a “c(1)” variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). Thus, the standard for determining whether the literal enforcement of the ordinance requirement will exact “undue hardship” requires the Board to consider whether the literal enforcement of the requirement at issue will “inhibit the extent to which the property at issue can be used. Unlike “undue hardship,” however, “impracticable” has not been defined in any published land use or zoning case. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), “impracticability” for purposes of considering an exception under the MLUL should focus on the dictionary definition of “impractical,” which is the root of “impracticability.” The dictionary definition of “impractical” is “not wise to put into or keep in practice or effect”; an inability to deal “sensibly or prudently with practical matters.” Merriam-Webster’s Collegiate Dictionary (11th Ed. 2004). Thus, the standard for determining whether the literal enforcement of the ordinance requirement is issue is impracticable requires the Board to consider whether it is sensible or prudent or wise to insist on its literal enforcement in light of the peculiar conditions at issue.

8. **Findings as to the Requested Exception from the 8-Foot Sidewalk Width Requirement.** As set forth above, the Applicant requested an exception from paragraph 4.7.F.2 of the WARP, which requires a dedicated pedestrian zone along the sidewalk adjacent to Walnut Avenue be provided with a minimum unobstructed width of 8-feet at all points, to allow 1,268 lineal feet of the sidewalk (62% of the sidewalk) to be 6-foot wide and 785 lineal feet of the sidewalk (38% of the sidewalk) to remain 4-foot wide. The Board's findings as to the requested exception are as follows. First, the Board finds that literal enforcement of the 8-foot width requirement is impracticable as being imprudent and unwise because, while an 8-foot wide sidewalk is the best option in theory (and is required by the WARP for that reason), not all situations could be anticipated when the requirement was enacted, and the literal enforcement of the 8-foot width requirement in this particular case would result in a negative impact on the berm and the existing trees on the berm, both of which are supposed to be preserved to the extent possible under the WARP. Second, the Board finds that granting the requested exception from the sidewalk width requirement as proposed by the Applicant (to allow 1,268 lineal feet of the sidewalk – 62% of the sidewalk – to be 6-foot wide and 785 lineal feet of the sidewalk – 38% of the sidewalk – to remain 4-foot wide) is reasonable and within the general purpose and intent of the WARP provided that the conditions set forth below are imposed and complied with, especially the landscaping and planting conditions set forth below. Third, the Board notes that, while a 6-foot-wide sidewalk can be provided in most areas along the Walnut Avenue Property frontage, there are certain areas along the frontage of the Property where it is physically not possible to expand the sidewalk beyond the existing 4-foot sidewalk width. While the Board acknowledges that, technically, a 3-foot-wide concrete swale which runs adjacent to the existing 4-foot-wide sidewalk near the train trestle / bridge could be removed to widen the sidewalk in that area, the Board finds that removing the 3-foot-wide swale would negatively impact stormwater management and create a hazardous condition for pedestrians and traffic, especially in the winter during precipitation events. For the foregoing reasons, the Board finds that granting the requested exception is warranted, provided that the conditions set forth are imposed and complied with.

9. **Findings as to the Requested Exception from the Parking Lot Lighting Intensity Requirement on the Commercial Lot.** As set forth above, the Applicant requested an exception from site plan ordinance section 255-26.G(9), which requires lighting in parking areas to be a minimum of 1.5 footcandles, to allow the lighting in the parking areas on the commercial lot to be decreased to 0.5 footcandles. The Board's findings as to the requested exception are as follows. First, the Board finds that literal enforcement of the minimum 1.5 footcandle requirement is impracticable as being imprudent and unwise because 0.5 footcandles is bright enough to provide for public safety and literally enforcing the 1.5 footcandle requirement would be only for ordinance compliance purposes, not for public safety purposes. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested exception is reasonable and within the purpose and intent of the Township ordinance because the proposed light intensity will provide for safety while, at the same time, ensuring that the area will not be overly bright which could negatively impact residents of both the Residential Project and residents residing in single family homes in the neighborhood. For the foregoing reasons, the Board finds that granting the requested exception is warranted, provided that the conditions set forth are imposed and complied with. .

10. **Findings as to the Requested Exception from the Maximum 16-Foot High Site Lighting Fixture Requirement on the Commercial Lot.** As set forth above, the Applicant requested an exception from site plan ordinance section 255-26.G(9), which restricts the height of site lighting fixtures to 16-feet above grade, to allow site lighting fixtures up to 25-feet high on the commercial lot. The Board's findings as to the requested exception are as follows. First, the Board finds that literal enforcement of the maximum 16-foot-high site light fixture requirement is impracticable as being imprudent and unwise because in order to comply the Applicant would have to almost double the number of site lighting fixtures on the commercial lot. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested exception is reasonable and within the purpose and intent of the Township ordinance because the proposed site lighting fixtures will provide for safety while, at the same time due to the decrease in light intensity from 1.5 footcandles to 0.5 footcandles, ensuring that the area will not be overly bright which could negatively impact residents of both the Residential Project and residents residing in single family homes in the neighborhood. For the foregoing reasons, the Board finds that granting the requested exception is warranted, provided that the conditions set forth are imposed and complied with.

11. **Findings as to the Requested Exception from Commercial Building Wall Mounted Signage Within 100-Feet from a Residential Property Line.** As set forth above, the Applicant requested an exception from site plan ordinance section 255-26.J(4)(b)[3], which prohibits façade mounted signage facing residentially zoned areas within 150-feet of a residentially zoned area, to allow façade mounted signs on the proposed commercial building on the commercial lot which will face the residential zones to the north as close as 100-feet of the residentially zoned area. The Board's findings as to the requested exception are as follows. First, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested exception is reasonable and within the purpose and intent of the site plan ordinance requirement at issue because the wall signage at issue will be located further than 150 feet from the nearest residential neighbor even though it will be located within 100-feet of the residential property line. Second, the Board finds that literal enforcement of the wall mounted sign setback requirement is impracticable as being imprudent and unwise because, again, it will be located further than 150 feet from the nearest residential neighbor even though it will be located within 100-feet of the residential property line. For the foregoing reasons, the Board finds that granting the requested exception is warranted, provided that the conditions set forth are imposed and complied with.

12. **Findings as to the Requested Exception to Allow a Deviation from the Minimum 35% Transparency Requirement for the First Floor of the Two Residential Buildings.** As set forth above, the Applicant requested an exception from paragraph 4.6.C.2.a.ii of the WARP, which requires 35% of the ground level primary façade of the residential buildings to have door and window transparency, to allow the ground level of both of the residential buildings to have 34% of the ground levels of the primary facades to have door and window transparency. The Board's findings as to the requested exception are as follows. First, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested exception is reasonable and within the purpose and intent of the site plan ordinance requirement at issue because the Applicant agreed as a condition of approval to provide one (1) faux window on the ground floor of each of the two (2) residential buildings so that it will appear

as if each building has 35% transparency on the ground floor. Second, the Board finds that literal enforcement of the requirement at issue is impracticable as being imprudent and unwise because there is no reason other than ordinance compliance to insist on providing one (1) additional window on the ground floor or each building and the window at issue would be into a utility room which is the ideal location for a faux window. In this regard, the Board stresses that the purpose of the transparency requirement is not to provide a certain amount of sunlight into the buildings but to enhance the aesthetics of the exterior of the buildings. For the foregoing reasons, the Board finds that granting the requested exception is warranted, provided that the conditions set forth are imposed and complied with.

13. **Standards for Consideration of the Requested De Minimis Exceptions.** In accordance with N.J.A.C. 5:21-3.1(a), local land use boards have the power to grant “such de minimis exceptions from the requirements of the [RSIS] as may be reasonable, and within the general purpose and intent of the standards,” but if and only if “the literal enforcement of one or more provisions of the standards is impracticable, or will exact undue hardship because of peculiar conditions pertaining to the development in question.” N.J.A.C. 5:21-3.1(g) further provides that the grant of a request for a de minimis exception “shall be based on a finding that the requested exception meets the following [four] criteria:” a. It is consistent with the intent of the Act establishing the RSIS; b. It is reasonable, limited, and not unduly burdensome; c. It meets the needs of public health and safety; and d. It takes into account existing infrastructures and possible surrounding future development. While not containing a definition of de minimis, N.J.A.C. 5:21-3.1(f) provides four examples of de minimis exceptions, which “include, but are not limited to, the following”: (a) Reducing the minimum number of parking spaces and the minimum size of parking stalls; (b) Reducing the minimum geometrics of street design, such as curb radii, horizontal and vertical curves, intersection angles, centerline radii, and others; (c) Reducing cartway width; and (d) Any changes in standards necessary to implement traffic calming devices. As noted in Cox and Koenig, *New Jersey Land Use Administration* (Gann 2019), §23-8(c), “de minimis exceptions are limited exceptions of minor nature and, where an applicant wishes to deviate from other requirements of the RSIS which cannot be considered a minor design variation as characterized in the examples set forth in the regulation,” an applicant must seek a waiver from the RSIS from the Site Improvement Advisory Board.

14. **Findings as to the Requested Exception from the RSIS Parking Requirement.** As set forth above, the Applicant requested a de minimis exception from N.J.A.C. 5:21-4.14(b), the RSIS provision which requires more than the 1.8 parking spaces per multifamily unit proposed by the Applicant (the RSIS provision at issue requires 1.8 spaces per 1-bedroom unit, 2.0 spaces per 2-bedroom unit, and 2.1 spaces per 3-bedroom unit), to allow the Applicant to provide 1.8 spaces per multifamily unit regardless of the number of bedrooms, for a total of 450 parking spaces for the residential lot, which is the amount required by paragraph 4.3.A.3 of the WARP. While the 450 parking spaces will comply with the WARP requirements for the number of off-street and electric vehicle parking spaces, the application of the RSIS requirements would require a total of 482 parking spaces as a result of the different number of spaces required for different bedroom counts. The Board’s findings as to the requested de minimis exception from the RSIS requirements at issue are as follows. First, the Board finds that granting the requested exception is reasonable and within the general purpose and intent of RSIS because the deviation in the number of spaces required and provided is 32 spaces, or a mere 6.6% less than the required number, and the

Applicant's traffic engineering expert and the Board's traffic engineering expert both testified that the 450 spaces required by the WARP – and proposed to be provided – would be more than adequate for the parking needs generated by the Residential Project so will meet the needs of public health and safety. Second, the Board finds that the literal enforcement of the RSIS requirements at issue is impracticable as imprudent and unwise because the result would be nothing more than adding to the amount of impervious coverage on the residential lot for no reason other than compliance with RSIS requirements. Third, the Board finds that the requested de minimis exception is consistent with the intent of the provisions of the MLUL authorizing the creation of the RSIS requirements, specifically, consistent with N.J.S.A. 40:55D-40.2 in the following specifics: (a) it will eliminate increased housing construction costs without degrading the protection of public health and safety; (b) it will avoid construction costs that are not necessary to protect public health and safety; (c) it will streamline the development process; and (d) it will provide design freedom but still be based on uniform site improvement standards (although based on local municipal standards instead of the RSIS standards). Finally, the Board finds that the exception at issue, the reduction in the number of parking spaces, fits within the first of four examples of de minimis exceptions listed in N.J.A.C. 5:21-3.1(f). For the foregoing reasons, the Board finds that the exception from the RSIS requirement at issue is de minimis and warranted.

15. **Standards for Preliminary and Final Subdivision and Site Plan Review.** N.J.S.A. 40:55D-46b, -48b, and 50a are the focal points for consideration of preliminary and final subdivision and site plan applications. N.J.S.A. 40:55D-46b and -46b provide that the Board "shall" grant preliminary subdivision approval and preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance provisions, the Board must grant approval. Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219, 232 (1994). If the application does not comply with all ordinance requirements, the Board must engage in the following analysis.

a. First, where a subdivision and/or site plan application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions, the Board then must review the application and site plan and subdivision plan against all remaining ordinance requirements and grant approval if there is compliance with all such remaining requirements. If the application complies with all remaining zoning ordinance and site plan ordinance requirements, the Board must grant preliminary and final subdivision and site plan approval.

b. Second, where a subdivision and/or site plan application does not comply with all ordinance requirements, but a condition can be imposed requiring a change that will satisfy the ordinance requirements, the Board can either (a) grant subdivision and site plan approval on the condition that the application and/or plans are revised prior to signing the plans to comply with the ordinance requirements, or (b) adjourn the hearing to permit the applicant the opportunity to revise the application or plans to comply with the ordinance requirements prior to the Board granting preliminary approval.

As the Application requires a number of variances and exceptions from zoning and site plan ordinance requirements, the Board was not able to find that the Application and subdivision and site plan comply with all zoning and site plan ordinance requirements, so the Applicant is not entitled to preliminary and final subdivision and site plan approval. However, just because the Application does not comply with all ordinance requirements does not mean the Board must deny approval. The Board must determine, after any variances and/or exceptions have been granted from the ordinance provisions at issue, whether the Application and subdivision and site plan comply with all remaining zoning and site plan ordinance requirements. If the Application and subdivision and site plan comply with all remaining ordinance provisions, then preliminary and final approval should be granted, subject to the imposition of conditions as will be discussed below. Conversely, if the Application and subdivision and site plan do not comply with all remaining ordinance requirements, the Board must then determine whether any conditions can be imposed to bring the Application and subdivision and site plan into ordinance conformance. Only if the Board determines that no conditions can be imposed to bring the Application and subdivision and site plan into ordinance compliance should the Board deny preliminary and final approval.

Finally, even if all ordinance requirements are complied with by the subdivision and site plans as submitted, or as will be revised in accordance with conditions, the Board cannot grant subdivision or site plan approval unless the four essential elements of a development are determined to be feasible, which are the following matters vital to the public health and welfare: stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D'Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the subdivision or site plan review process, approval must be denied. Id.

16. Findings as to Preliminary and Final Major Subdivision and Site Plan Review.

The Board's findings as to preliminary and final major subdivision and site plan review are as follows. First, other than the variances from the zoning ordinance regulations set forth above, the exceptions from the site plan ordinance requirements set forth above, and the de minimis exception from the RSIS requirement set forth above, the Board finds that the following plans and documents which the Applicant submitted for approval will comply with all remaining applicable zoning ordinance regulations, site plan requirements and RSIS requirements provided they are revised in accordance with the conditions set forth below and provided that the Applicant complies with all the conditions set forth below: Site Plans, Subdivision Plans, Commercial Project Architectural Plans, Residential Project Architectural Plans, Landscaping Plans, Stormwater Management Report, EIS and Vehicle Maneuvering Exhibit. Second, provided that the conditions set forth below are imposed and complied with, the Board also finds that the four essential elements of a development (matters vital to the public health: water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the Proposed Development. For the foregoing reasons, the Board's ultimate finding is that preliminary and final major subdivision and site plan approval is warranted to allow the Proposed Development provided that the conditions set forth below are imposed and complied with.

17. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See also, Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review "typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, *New Jersey Zoning and Land Use Administration* (Gann 2022), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by board experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center. Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205- 206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The conditions set forth below have been imposed on all of the foregoing bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON JANUARY 18, 2023 AS FOLLOWS:

B. RELIEF GRANTED

1. **"C(2)" Front Yard Setback Variance to Allow One of the Commercial Buildings to be Closer than 100-feet to the Residential Lot Line.** Subject to the conditions set forth below, the Board grants a "c(2)" variance from paragraph 4.2.B.2.c.ii of the WARP, which requires a minimum 100-foot front yard setback for commercial buildings to property lines, to allow a 63.2-foot setback between one of the two commercial buildings and the proposed property line separating the commercial lot from the residential lot.

2. **“C(2)” Variance to Relieve the Applicant from the Requirement of Providing a Basketball Court on the Commercial Lot.** Subject to the conditions set forth below, the Board grants a “c(2)” variance from paragraph 4.7.D.12 of the WARP, which requires a full-size (92’ x 50’) basketball court and equipment with appurtenant parking facilities, to allow the elimination of the basketball court and equipment and appurtenant parking.

3. **Exception from the 8-Foot Sidewalk Width Requirement.** Subject to the conditions set forth below, the Board grants an exception from paragraph 4.7.F.2 of the WARP, which requires a dedicated pedestrian zone along the sidewalk adjacent to Walnut Avenue be provided with a minimum unobstructed width of 8-feet at all points, to allow 1,268 lineal feet of the sidewalk (62% of the sidewalk) to be 6-feet wide and 785 lineal feet of the sidewalk (38% of the sidewalk) to remain 4-feet wide.

4. **Exception from the Parking Lot Lighting Intensity Requirement on the Commercial Lot.** Subject to the conditions set forth below, the Board grants an exception from site plan ordinance section 255-26.G(9), which requires lighting in parking areas to be a minimum of 1.5 footcandles, to allow the lighting in the parking areas on the commercial lot to be decreased to 0.5 footcandles.

5. **Exception from the Maximum 16-Foot High Site Lighting Fixture Requirement on the Commercial Lot.** Subject to the conditions set forth below, the Board grants an exception from site plan ordinance section 255-26.G(9), which restricts the height of site lighting fixtures to 16-feet above grade, to allow site lighting fixtures up to 25-feet high on the commercial lot.

6. **Exception from Commercial Building Wall Mounted Signage Within 100-Foot from a Residential Property Line.** Subject to the conditions set forth below, the Board grants an exception from site plan ordinance section 255-26.J(4)(b)[3], which prohibits façade mounted signage facing residentially zoned areas within 150-feet of a residentially zoned area, to allow façade mounted signs on the proposed commercial building on the commercial lot which will face the residential zones to the north as close as 100-feet of the residentially zoned area.

7. **Exception to Allow a Deviation from the Minimum 35% Transparency Requirement for the First Floor of the Two Residential Buildings.** Subject to the conditions set forth below, the Board grants an exception from paragraph 4.6.C.2.a.ii of the WARP, which requires 35% of the ground level primary façade of the residential buildings to have door and window transparency, to allow the ground level of both of the residential buildings to have 34% of the ground levels of the primary facades to have door and window transparency.

8. **Exception from the RSIS Parking Requirement.** Subject to the conditions set forth below, the Board grants a de minimis exception from N.J.A.C. 5:21-4.14(b), the RSIS provision which requires more than the 1.8 parking spaces per multifamily unit proposed by the Applicant (the RSIS provision at issue requires 1.8 spaces per 1-bedroom unit, 2.0 spaces per 2-bedroom unit, and 2.1 spaces per 3-bedroom unit), to allow the Applicant to provide 1.8 spaces per multifamily unit regardless of the number of bedrooms for a total of 450 parking spaces for the residential lot, which is the amount required by paragraph 4.3.A.3 of the WARP.

9. **Preliminary and Final Subdivision and Site Plan Approval.** Subject to the conditions set forth below, the Board grants preliminary and final subdivision approval to divide the Property into the commercial lot and the residential lot, and preliminary and final site plan approval to allow construction of the commercial development on the commercial lot and the residential development on the residential lot, and approves the following documents: the Site Plans, the Subdivision Plans, the Commercial Project Architectural Plans, the Residential Project Architectural Plans, the Landscaping Plans, the Stormwater Management Report, the EIS and the Vehicle Maneuvering Exhibit.

BE IT FURTHER RESOLVED THAT THE ABOVE RELIEF IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

C. CONDITIONS

1. The Hartz entities responsible for the maintenance and upkeep of the Residential site and the Commercial site shall enter into an Operation and Maintenance Agreement that will be recorded after review and approval by the Township Attorney. (Applicant consented to this condition.) (Applicant shall comply within 30 days following the perfection of the subdivision, and this condition shall also be a condition precedent to the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project) (See related condition #29 below)
2. Phasing plan shall be submitted for review and approval by the Township Attorney and Township Engineer. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
3. All suggestions contained in Township traffic engineer's report shall be made part of any approval. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project, except specific recommendations in conditions 8-12 below)
4. The applicant shall comply with all requirements of the Walnut Avenue Redevelopment Plan ("WARP") and the Township land development ordinance unless a variance or exception is granted from a requirement. (Applicant consented to this condition.) (on going condition)
5. The applicant shall sign all documents necessary to provide for Title 39 enforcement on both the residential lot and the commercial lot. (Applicant consented to this condition.) Applicant shall comply as condition precedent to the issuance of the first Certificates of Occupancy for the Residential Project and/or the Commercial Project)

6. The applicant shall comply with all suggestions set forth in the Fire Official memorandum dated July 13, 2022. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these suggestions as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
7. The applicant shall comply with all comments set forth in the Board engineering expert's report dated July 18, 2022. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these comments as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
8. If Township wishes to pursue, the applicant shall deposit funds with the Township in an escrow account which shall be established to pay for all reasonable costs associated with the Township installation of all off-site traffic improvements, including all-way stop signs on nearby roads and striping, markings, and signage associated with same at the locations as recommended in Mr. Rached's Traffic Review Letter dated May 9, 2022. (Applicant consented to this condition.) (Applicant shall comply within 30 days following Township approval of traffic improvements)
9. If Township wishes to pursue, the applicant shall deposit funds with the Township in an escrow account which shall be established to pay for all reasonable costs associated with the Township installation of off-site speed hump(s) and signage and striping associated with same at the locations as recommended in Mr. Rached's Traffic Review Letter dated May 9, 2022. (Applicant consented to this condition.) (Applicant shall comply within 30 days following Township approval of traffic improvements)
10. If the Township wishes to pursue lowering the speed limit along frontage of the property, the Township shall apply for County approval for same and, in the event that the County lowers the speed limit along the frontage of the property, the applicant shall deposit funds with the Township in an escrow account which shall be established to pay for all reasonable costs associated with Township studies and installation of new speed limit signage to be installed by Township. (Applicant consented to this condition.) (Applicant shall comply within 30 days following County approval of speed limit change)
11. If Township wishes to pursue having the applicant install striped median/left-turn lanes into Lexington Avenue and Behnert Place down the middle of Walnut Avenue, and subject to County review and approval, the applicant shall deposit funds with the Township in an escrow account which shall be established to pay for all reasonable costs associated with Township planning and design efforts and installation of striped median/left-turn lanes into Lexington Avenue and Behnert Place down the middle of Walnut Avenue in accordance with that reflected on exhibit A-14. (Applicant consented to this condition.) (Applicant shall comply within 30 days following Township approval of traffic improvements))

12. The Board traffic engineering expert shall determine the amount of initial escrow deposits to be made to any escrow account(s) established as set forth above, which deposit(s) shall be based on the Board traffic engineering expert's estimate of the total cost(s) of the traffic improvements at issue. (Applicant consented to this condition.) (Applicant shall comply within 30 days following Township approval of traffic improvements)
13. In the event that the applicant disputes any of the charges to its escrow account(s) established as set forth above, applicant shall follow the procedures prescribed by N.J.S.A. 40:55D-53.2a and, in the event that the County Construction Board of Appeals declines to accept jurisdiction over any such dispute that is not resolved between the applicant and the governing body of the Township, the dispute shall be subject to an action filed in the Law Division of the Superior Court of New Jersey, Union County vicinage. (Applicant consented to this condition.) (on going condition)
14. The applicant shall at its sole cost and expense to install a crosswalk along with a flashing light sign device on Walnut Avenue near Benhart Place in accordance with that reflected on exhibit A-13, subject to review and approval by the County, and subject to review and approval by the Township professionals. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)
15. The applicant shall at its sole cost and expense to make and complete the signal-timing change and upgrade the existing vehicle detection installation at Raritan Road/Walnut Avenue, subject to review and approval by the County. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)
16. The applicant shall at its sole cost and expense to install signage enforcing the turning-movement restrictions and prohibition of through movements from the on-site driveways to Behmert and Lexington, respectively, prohibiting truck and cut-through vehicular traffic. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)
17. The applicant shall perform a traffic study post approval and analyze the results of the post-approval study with the pre-approval traffic study that was presented to the Board as part of the application and submit the post-approval study and analysis to the Township Engineer and the Township traffic engineering expert. (The supplemental report shall be undertaken and submitted following substantial completion of the project, specifically, the Applicant shall comply with this condition within one year of the issuance of a Certificate of Occupancy for the last residential unit in the Residential Project and of 90% occupancy of the Commercial Project)
18. The applicant shall submit a design for a second crosswalk along with a flashing light sign device on Walnut Avenue near Lexington in accordance with that reflected on

exhibit A-13. The need for this crosswalk and the design shall be subject to review and approval by the Township professionals and the County. In the even the Township professional and County concur that this crosswalk proposed for this location is desirable, the applicant shall, at its sole cost and expense, install a second crosswalk along with a flashing light sign device on Walnut Avenue near Lexington in accordance with that reflected on exhibit A-13. (Applicant consented to this condition.) (Applicant shall comply within 30 days following Township and County approval of traffic improvements)

19. Applicant shall revise the site plans to incorporate the stormwater management improvements reflected on exhibit A-15. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these improvements as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
20. The applicant shall comply with all comments set forth in the Board engineering expert's report dated November 21, 2022, subject to the engineer's review and confirmation. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these comments as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
21. Except for the design of the bicycle racks which were previously approved by a straw poll of the Board, applicant shall comply with all comments set forth in the Board planning expert's report dated November 4, 2022, subject to the planner's review and confirmation. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these comments as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
22. The applicant shall contact Hyatt Hills Golf Club to discuss repair and/or replacement of the protective netting installed adjacent to the property line between the property and the golf course. Notwithstanding the foregoing, applicant shall have no obligation to replace or install a new protective net along the boundary of the golf course. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)
23. No mechanical equipment shall be visible from any street. (Applicant consented to this condition.) (on going condition)
24. If solar panels are added to the roof, no solar panels and no related equipment shall be visible from any street. (Applicant consented to this condition.) (on going condition)
25. The applicant shall revise the architectural drawings to reflect that one of the stair towers of each of the residential buildings facing the service drive shall provide interior access

- to roofs. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating this condition as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
26. The applicant shall revise the architectural drawings to reflect the color and material of the roof leaders proposed for the residential buildings, which shall be a dark gray color and aluminum material. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these requirements as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
 27. There shall be no rentals of the residential building amenities (rooms, outdoor areas, etc.) to non-residents. (Applicant consented to this condition.) (on going condition)
 28. The applicant shall comply with all recommendations of the Cranford Environmental Commission. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these recommendations as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
 29. In addition to the condition that the Hartz entities responsible for the maintenance and upkeep of the Residential site and the Commercial site shall enter into an Operation and Maintenance Agreement that will be recorded after review and approval by the Township Attorney (which the applicant consented to and is set forth above as a condition #1), the applicant shall not only include maintenance of the berm and landscaping in the Operation and Maintenance Agreement but a Maintenance Easement shall be recorded over the berm and landscaping areas (Applicant consented to this condition.) (Applicant shall comply within 30 days following the perfection of the subdivision, and this condition shall also be a condition precedent to the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
 30. In addition to decreasing the lighting level for the loading area between the commercial buildings from 1.5- footcandles to 0.5-foot candles in accordance with exception relief the applicant agreed to apply for at the suggestion of the Board, the applicant shall install motion detectors for overnight lighting control, subject to the review and approval of Township Engineer. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)
 31. The applicant shall supplement the landscaping in the northwest corner of the property (the rear of the commercial lot) by replacing dead trees and filling in gaps. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)

32. The applicant shall add landscaping along the northern corner of the property along the adjacent to the railroad tracks after the Township vacates its easement in that area if said easement has not already been vacated. (Applicant consented to this condition.) (Applicant shall comply within 6 months following Township confirmation that easement is vacated)
33. The applicant shall revise the site plans to reflect that the two (2) freestanding signs shall comply with all applicable ordinance provisions as the plans show the signs exceeding the allowable height and size. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating this requirement as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
34. The Applicant shall utilize low phosphorous fertilizer and green friendly products on the site. (Applicant consented to this condition.) (on going condition)
35. The Applicant shall select plantings that are deer resistant. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating this requirement as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
36. The applicant shall implement the landscaping represented on exhibits A-30.1, A-30.2 and A-30.3 with the maximum quantities of new plantings being as follows, subject to review and approval by the Board's landscaping expert as to locations and heights at planting: (a) 100 evergreen trees; (b) 30 subcanopy trees; and (c) 200 shrubs. (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these requirements as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
37. The applicant shall revise the site plans to reflect that the all signs shall comply with all applicable ordinance provisions (with one exception being the façade signs on one of the commercial buildings which face a residentially zoned area and are 100-feet from the residential zone if the Board grants an exception to allow this deviation). (Applicant consented to this condition.) (Applicant shall submit revised plans incorporating these requirements as a condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
38. The applicant shall submit a revised Community Impact Statement ("CIS") which fully complies with the Township ordinance requirements as the existing CIS does not include the PILOT (payment in lieu of taxes) agreement. (Applicant consented to this condition.) (Applicant shall comply as condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)

39. Any approval by the Board shall be subject to approval by the Union County Planning Board (but if the County approval contains any condition(s) that require a substantial change to the improvements reflected on the site plan approved by the Board, the applicant shall be required to apply for and obtain an amended approval from the Board). (Applicant consented to this condition.) (Applicant shall comply as condition precedent to sign off on the site plans, the commencement of any and all site work, and the issuance of the first construction permit for the Residential Project and/or the Commercial Project)
40. There shall be no smoking in the residential buildings. Smoking shall be restricted to areas outside the buildings at least 25-feet from the buildings in accordance with the WARP requirements, with such areas to be identified and marked, subject to review and approval by the Board planning expert. (Applicant consented to this condition.) (on going condition)
41. The “flex” buildings proposed by the Applicant on the commercial lot shall be operated as office distribution centers as defined in Township ordinance section 255-1 for the warehousing and distribution of goods. No more than 10% of the gross floor area of an office distribution center shall be used for executive and administrative office uses ancillary to the warehousing and distribution uses. Storage of goods shall be contained within the two buildings on the commercial lot and there shall be dock seals installed and in good working order at all loading docks so that noise generated from the movement of goods onto and off of trucks will not be heard outdoors. There shall be no mini warehouse uses or similar uses and no truck depot uses or similar uses. As set forth above, “truck depots” relate to storage of trucks. (Applicant consented to all aspects of this condition) (Installation of dock seals in a condition precedent to the issuance of the first certificate of occupancy for the Commercial Project.) (All aspects of the within condition are on-going conditions.)
42. All of the above relief is also granted subject to the Board’s standard conditions as set forth in the Board Rule 2:4-9 which are reprinted below (Applicant consented to these conditions):

1. **Revisions to Plans/Plats.** The Applicant shall be required to make the revisions to the plan(s) and other documents referenced in the Board’s experts’ reports, and as required by the above conditions, and obtain signatures on the Site Plans and Subdivision Plan, by October 12, 2023 (which is within six months of the adoption of the within resolution) to the satisfaction of the Board expert(s) who filed the report as well as to the satisfaction of the Board engineering expert and Board planning expert. In the event that the Applicant fails to revise the plan(s) and other documents as required and/or fails to obtain signatures on the Site Plans and Subdivision Plan as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an Application for no more than a six month period to provide the Applicant with the opportunity to revise the plan(s) and other documents and, failure by the Applicant to resubmit same to the Board within that period or

submission within that period but failure of the Applicant to make all the required revisions, would result in denial of the Application.)

2. **Design, Construction and Location of Improvements.** The Applicant shall be required to design, construct and locate the Proposed Development in substantial conformity with the plan(s) and other documents as approved and signed by, and conditions imposed by, the Board as well as to the exhibits submitted into evidence during the hearing (to be complied with as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project).

3. **Landscaping.** The following landscaping conditions are imposed on the within approvals:

a. All landscaping, as installed, shall conform to and be in accordance with the landscaping plan approved and signed by the Board, and which landscape plan shall include any and all the landscaping changes required by the conditions above. (on-going condition)

b. All landscaping shall be installed and a two (2) year maintenance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. (to be complied with as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)

c. If the Applicant applies for a certificate of occupancy during a non-planting season, the Applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the Applicant posts a performance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance bond.

4. **Enforcement and Maintenance of Parking.** The Applicant shall strictly monitor and enforce parking as permitted and reflected on a signed Site Plans. This means that parking shall be permitted only in those areas and in those spaces designated on the Site Plans for same. The owner of the Property shall include provisions in all leases to this effect. The Applicant shall identify on the site through pavement markings and signage (as approved by the Township Engineer) all parking spaces and fire lanes/zones. The Applicant shall have a continuing obligation to maintain all parking areas, which shall include but not be limited to repainting and reinstalling signage for all required spaces.(on going condition)

5. **Night-Light Test.** There shall be a night-light test conducted by the Township Engineer, and the Applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the night-light test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and the traveling public from glare, unnecessary brightness and glow. (to be complied with as condition precedent to the issuance of the first Certificate of Occupancy for the Residential Project and/or the Commercial Project)

6. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance by May 19, 2023 (which is within 30 days of the adoption of the within resolution), within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the Site Plans and/or Subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy. Failure to abide by this condition shall result in all of the relief granted automatically terminating and becoming null and void. (to be complied with as specified in the condition)

7. **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Township which are proposed on the Site Plans and/or Subdivision plat and/or required as a condition of the within resolution shall, in addition to being identified on the Applicant's plan(s), be contained in separate documents to be prepared by the Applicant and approved by the Township Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Township Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township. (to be complied with as condition precedent to the issuance of the first construction permit for the Residential Project and/or the Commercial Project)

8. **Time to Obtain Construction Permits and Commence and Complete Construction.** The Applicant shall apply for and obtain a construction permit for each of the projects (i.e., the Commercial Project and the Residential Project) by April 19, 2025 (which is within two years of the adoption of the within resolution). If during said two (2) year period, or extension thereof as granted by the Board, the Applicant fails to obtain a construction permit, the within approvals shall automatically expire and become null and void. The Applicant shall also have two (2) years from the date of issuance of the first construction permit for each project to commence construction and obtain a permanent certificate of occupancy for each project (i.e., the Commercial Project and the Residential Project). If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained for each of the projects, the within approvals shall automatically expire and become null and void.

9. **Specific Approvals and Permits.** The approval shall be conditioned upon the Applicant obtaining permits and/or approvals from all applicable agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments, which permits and/or approvals shall be obtained as a condition precedent to commencement of any and all site work and the issuance of the first construction permit for the Residential Project and/or the Commercial Project:

- a. Township Board of Health approval of any aspect of the development within its jurisdiction,

- b. Union County Department of Health approval of any aspect of the development within its jurisdiction,
- c. Union County Soil Conservation Service certification of the soil erosion and sediment control plan,
- d. Union County Planning Board approval of all aspects of the proposed development within its jurisdiction,
- e. NJDOT highway access permit if the proposed development is on a road within NJDOT’s jurisdiction, and
- f. NJDEP approval of any aspect of the proposed development within its jurisdiction.

10. **Subject to Other Laws and Approvals.** The within approvals and the use of all property subject to the within approvals are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or conditions of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application. (on going condition)

VOTE ON MOTION DULY MADE AND SECONDED ON JANUARY 18, 2023:

THOSE IN FAVOR: DIDZBALIS, GAREIS, LEBER, NORDELO, PEDDE, PRUNTY, RAPP, SEN ¹ & TAYLOR.

THOSE OPPOSED: NONE.

¹ Board member Sen stated after the conclusion of voting on the motion to grant the Application and after the hearing was concluded and after the Applicant’s representatives had left the hearing room that she had inadvertently voted in favor of the motion to grant the Application and had intended to vote to deny the Application but got confused and thought she was voting on the conditions to be imposed on any approval of the Application. She explained that she was opposed to granting the preliminary and final subdivision and site plan approval for the reasons she placed on the record during deliberations. In light of the fact that Board member Sen had intended to vote to deny the Application, she will not vote on the adoption of the within memorializing resolution.

The above memorializing resolution was adopted on April 19, 2023 by the following vote of eligible Board members:

<u>Members</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
DIDZBALIS	✓			✓
GAREIS				
LEBER	✓			
NORDELO				✓
PEDDE				✓
PRUNTY	✓			
RAPPA	✓			
TAYLOR	✓			

ATTEST:


KATE RAPPA
Board Chair Pro Temp