

EXHIBIT “A”

WEST WINDSOR TOWNSHIP PLANNING BOARD

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| In the Matter of the Application of |) | FINDINGS OF FACT |
| |) | AND |
| IV1 Windsor 8 Logistics Center, LLC |) | CONCLUSIONS OF LAW |
| (formerly JDN Enterprises) for |) | File No. PB 21-11 |
| <u>Preliminary and Final Major Site Plan</u> |) | Block 22, Lot 5 |
| <u>Approval with Variance and Waivers</u> |) | Approval granted: |
| |) | April 27, 2022 |
| |) | |
| |) | |

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on April 27, 2022 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site"), consisting of 27.9 acres (1,213,688 s.f.) on Block 22, Lot 5, is located in the easterly portion of the Township, immediately adjacent to West Windsor's shared municipal border with the Township of East Windsor, in the ROM-3 Zoning District, with an address of 399 Princeton-Hightstown Road (CR 571). It is irregular in shape and fronts along Princeton-Hightstown Road for approximately 1,140 feet.

2. Identified as qualified farmland, the Site is undeveloped and actively farmed, with four wetland areas: one along the westerly property line, one along the southerly (front) lot line, one near its center and one near its easterly (side) property line.

3. Surrounding land uses consist of open space to the north, undeveloped farmland in East Windsor to the east, a mix of commercial and residential uses to the south (on the opposite side of Princeton-Hightstown Road), and open space and residential dwellings to the west.

PROPOSED PLAN

4. The Applicant proposes to construct a 45-foot-high, single-story 325,710 s.f. warehouse facility, of which 11,880 s.f. is to be office space, consisting of three separate offices, ranging in size from 3,240 s.f. to 5,400 s.f. The facility's façade will consist of concrete wall panels, architectural accent reveals, metal coping, and metal and steel doors and color-wise will consist of a mix of greys, blue and tan.

5. Parking areas are to be located on all sides of the facility, north, south, east and west. Fifty-eight loading bays are proposed along the westerly side of the facility and 73 trailer parking spaces are to be located to the west of those loading bays. Two-hundred thirty-nine parking spaces are proposed, of which 73 are to be banked.

6. Other Site improvements include the installation of sewer and water lines and other utilities, storm water management facilities, and landscaping, with berming along the north and west perimeters and a variable-height fence on top of such berm on the westerly side, as further described herein.

7. Access to the Site will be provided via two driveways. The easterly driveway will be signalized, and the westerly driveway will be a right-in, right-out driveway. A cross access easement is being provided, as requested by the County, for a future access drive extending to adjoining Block 1, Lot 6 in East Windsor Township, provided however that the Applicant will not be constructing any such access driveway.

8. The development is a permitted use in the ROM-3 District.

RELIEF SOUGHT

9. The applicant seeks preliminary and final major site plan approval for the construction of the project. One variance and ten waivers are sought, six design waivers and four submission waivers, as follows:

Variance

- From Section 200-227B(2), which requires fences, which are required in the ROM-3 zoning district to buffer nonresidential uses from neighboring residential uses, to be no more than eight feet high, whereas a fence on the westerly side of the Site is on top of a berm which varies in height, and the fence is uniformly 34 feet from existing grade, with the fence height ranging from eight feet to 24 feet.

Design waivers

- From Section 200-28D(2)(b), requiring a waiver to exceed the minimum off-street parking and loading requirements, or 111 spaces, whereas 239 parking spaces (including 73 banked spaces) are proposed;
- From Section 200-27D(1), permitting 10 loading bays, whereas 58 loading bays are proposed;
- From Section 200-32A(2)(c)[1], permitting one ground-mounted project/tenant identification sign per site, whereas two such signs are proposed;
- From Section 200-32A(2)(c)[2], which permits a maximum sign area of 48 s.f., whereas each of the proposed signs has an area of 96 s.f.;
- From Section 200-31K(1), requiring light levels in parking lots to be an average of 0.5 footcandles throughout, whereas the proposed average parking lot light level is 0.65 footcandle; and
- From Section 200-31K(2), requiring light levels at intersections to be 3.0 footcandles, whereas the proposed light levels at intersections range from 2.61 to 3.46 footcandles.

Submission waivers

Site Plan Checklist

- From Section 200-13C(9), which requires wetlands location to be depicted with metes and bounds, whereas such information is not being provided on the plans;
- From Section 200-14C(1)(a), which requires a copy of the approved preliminary site plan and resolution, whereas these items are not being provided;
- From Section 200-14C(1)(b)[1], which requires construction details specified at the time of preliminary approval to be included with final plans for site development, whereas this application is for joint preliminary and final approval; and

- From Section 200-14C(1)(b)[5], which requires a final landscape plan conforming to the approved preliminary plan, whereas this application is for joint preliminary and final approval.

THE APPLICANT

10. The Applicant is IV1 Windsor 8 Logistics Center, LLC, a single purpose entity owned by Brookfield Properties. Brookfield acquired JDN Enterprises, the former developer of this application (itself formerly Sansone Group).

NOTICE AND HEARING

11. The Applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor and East Windsor Townships tax offices.

12. The applicant filed an affidavit stating that the notice was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication was made in accordance with legal requirements. Proper notice was given.

13. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for April 6, 2022. The hearing was had on that date and was carried to April 27, 2022, with no further notice being required.

14. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

15. At the hearing, the Board reviewed the following plans:
- Plans entitled “Preliminary and Final Site Plan for JDN Enterprises, LLC – Proposed Warehouse – 399 Princeton-Hightstown Road (CR 571) - Township of West Windsor, Mercer County, New Jersey” prepared by Dynamic Engineering (Brett W. Skapinetz, P.E. & Daniel T. Sehnal, P.E. – unsigned), consisting of 25 sheets dated September 2, 2021, revised through February 22, 2022

- Survey entitled “ALTA/NSPS Land Title Survey” prepared by Dynamic Survey, LLC (Craig Black, P.E., L.S., and James A. Conway, Jr., P.L.S. – unsigned) consisting of one sheet, dated May 20, 2021, revised through January 10, 2022
- Architectural plans consisting of a conceptual floor plan and elevations entitled “Proposed Warehouse” prepared by ARCO Design/Build Industrial, two sheets total, undated and unsigned

TOWNSHIP REPORTS

16. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memorandum from David Novak, P.P., A.I.C.P. to the Board dated March 29, 2022
- Memorandum from Francis A. Guzik, P.E. to the Board dated March 29, 2022
- Memorandum from Jeffrey L’Amoreaux, P.E. to the West Windsor Technical Review Committee dated January 12, 2022
- Memorandum from Dan Dobromilsky, L.L.A., to the West Windsor Technical Review Committee dated November 12, 2021
- Memorandum from Chris B. Jepson, P.E. to the West Windsor Technical Review Committee dated November 12, 2021

OBJECTOR’S REPORT

17. At the hearing, the Board considered the following report presented by the acoustical specialist, Ms. Carpenter, on behalf of the Objectors:

- Letter report by Sharon Paul Carpenter, dated April 27, 2022

EXHIBITS AND APPLICANT’S REPORTS AND SUBMISSIONS

18. At the hearing, the Board considered the following reports and submissions prepared by the Applicant’s consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

Exhibits

- Exhibit A-1 – Sheet 20/25 – “Aerial Map”
- Exhibit A-2 – “Site Plan Exhibit” – colorized site plan, with conditions
- Exhibit A-3 – Five sheets:
 - A-3A – Site Profile 1
 - A-3B – Site Profile 2 – view from Lot 20

- A-3C – Site Profile 3 – view from Lot 19
- A-3D – Site Profile 4 – view from Lot 18
- A-3E – Site Profile 5 – view from Lot 22 (furthest lot)
- Exhibit A-4 – Conceptual Floor Plan – dated April 4, 2022
- Exhibit A-5 – Conceptual Elevations – dated April 4, 2022
- Exhibit A-6 – Conceptual rendering aerial view – dated April 4, 2022
- Exhibit A-7 – Conceptual office rendering entrance – dated April 4, 2022
- Exhibit A-8 – Finished sample presentation – dated April 25, 2022
- Exhibit A-9 – Fence sample with color to be used
- Exhibit A-10 – Supplemental Acoustical Report by Mr. Zybura, dated April 27, 2022

Reports and submissions

- Memorandum report referenced “Access and Signalization Analyses – Proposed Warehouse, Block 22, Lot 5 – West Windsor Township, Mercer County, New Jersey,” prepared by Langan (Karl Pehnke, P.E., P.T.O.E.), dated April 9, 2021
- Report entitled “Traffic Impact Study for IV 1 Windsor 8 Logistics Center, LLC – Proposed Warehouse – Property Located at: 399 Princeton-Hightstown Road (CR 571) – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Traffic (Corey M. Chase, P.E. & Kevin M. Savage, P.E.) dated February 28, 2022, unrevised
- Report entitled “Stormwater Management Report Prepared for: JDN Enterprises, LLC – Proposed Warehouse - 399 Princeton-Hightstown Road (CR 571) – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Engineering (Daniel T. Sehnal, P.E.), dated September 2021, last revised March 2022
- Report entitled “Supplemental Stormwater Basin Area Investigation Report– Proposed Warehouse - Princeton-Hightstown Road – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Earth (Alicia Plinio, P.E. & Patrick J. Granitzki, P.E.) dated January 20, 2022, last revised February 4, 2022
- Report entitled “Report of Supplemental Geotechnical Investigation– Proposed Warehouse – 399 Princeton-Hightstown Road – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Earth (Patrick J. Granitzki, P.E. & Alicia Plinio, P.E.) dated January 7, 2022, last revised February 4, 2022
- Plan entitled “Stormwater Management Facilities Map,” prepared by Dynamic Engineering (Brett W. Skapinetz, P.E. & Daniel T. Sehnal, P.E. – unsigned), consisting of one sheet, dated February 24, 2022, unrevised
- Document entitled “Stormwater Management Measures – Maintenance Plan and Field Manuals,” prepared by Dynamic Engineering (Daniel T. Sehnal, PE) dated March 2022
- Report entitled “Environmental Impact Statement Prepared for: IV 1 Windsor 8 Logistics Center, LLC – Proposed Warehouse - 399 Princeton-Hightstown Road (CR 571) – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Engineering (Daniel T. Sehnal, P.E.) dated September 2021, revised through February 2022
- Report entitled “Site Photo Report Prepared for: IV 1 Windsor 8 Logistics Center, LLC – Proposed Warehouse - 399 Princeton-Hightstown Road (CR 571) – Block 22, Lot 5 – Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Engineering (Daniel T. Sehnal, P.E.), dated February 2022, unrevised
- Freshwater Wetlands Letter of Interpretation: Line Verification (LOI) – File No. 1113-14-0002.1 for Block 22, Lot 5 issued by NJDEP, dated July 10, 2015

- LOI Extension letter issued by NJDEP, dated October 28, 2020 extending the LOI until July 9, 2025
- Acoustical Evaluation, prepared by Jack A. Zybura, P.E. (Lewis S. Goodfriend & Associates), dated March 29, 2022, supplemented by report dated April 27, 2022
- Application package, including application forms, Site Plan Checklist, Green Development Checklist (contained within EIS)

TESTIMONY AND PUBLIC INPUT

19. The testimony presented by and on behalf of the Applicant was given by the following persons:

Frank J. Petrino, Esq. represented the Applicant. Justin Drysdale, Vice-President of Brookfield Asset Management; Daniel T. Sehnal, P.E., its civil engineer; Kyle Ferrier, R.A. and Joseph DiGiorgio, R.A., its project architects; Jack Zybura, P.E., its acoustical engineer; Cory Chase, P.E., its traffic engineer; and John McDonough, L.A., P.P., A.I.C.P., its planner, testified on the Applicant's behalf. The Applicant's witnesses' testimony is summarized below.

20. The following Township staff and professionals gave advice to the Board at the hearing:

Dan Dobromilsky, L.L.A., David Novak, P.P., A.I.C.P., Chris Jepson, P.E., Francis Guzik, P.E., CME, Jeffrey L'Amoreaux, P.E., and Gerald J. Muller, Esq.

21. The statements of the members of the public made during the course of the hearing may be summarized as follows:

- Objectors: Several interested parties appeared through counsel, Cynthia Hadjiyannis, Esq., in opposition to the proposed development: Poni Michaverisani (address not given); Zhi Wei, of 21 Kincaid; Chakrapani Dabbara, of 23 East Kincaid; Yu-Shing Tu, of 19 East Kincaid; Ben Li, of 29 Remington Circle; and Fuqian Shi, of 27 Remington Circle (collectively, the "Objectors"). Ms. Hadjiyannis summarized the Objectors' principal concerns as noise, air and light pollution, groundwater pollution and inadequate stormwater management, disruption of their peaceful enjoyment of property, and impairment of aesthetics. Sharon Paul Carpenter, an air emissions, noise and vibration specialist, testified on the Objectors' behalf, as summarized below.
- Lusheng Yan, 15 East Kincaid Drive. Asked how many trucks were used to model the sound. He asked if the Applicant was willing to limit the number of trucks on the Site at night to 10.

- Tirza Wahrman, 5 Stonlea Drive. Questioned the absence in the EIS of measurement for particulate matter and the absence in the traffic study of data as to the cumulative impact of the second warehouse opening in nearby East Windsor.
- Gary Greene, 20 Remington Circle. Questioned who would be measuring the noise in the middle of the night, and expressed deep skepticism about the reliability of the way the noise levels were calculated.
- Sankar Bhamidipaty, 14 Endicott Lane. Stated that the warehouse is not serving a public purpose, that there needs to be more thought about the long-term health and vision of West Windsor, that there needs to be an independent noise study, and that there is a significant litigation risk due to property devaluation.
- Joseph Ippolito, 1 Gates Court. Stated that he has 50 years of manufacturing and warehouse experience and that there will be noise pollution and congestion.
- Joon Yu, 386 Princeton-Hightstown Road. Wanted to know why his site was excluded from the noise study.
- Hiten Shah, 6 East Kincaid Drive. Has never seen a warehouse 200 feet from a house, and questioned why 10 trucks were used in the studies while 58 loading docks were being proposed.
- Atanu Khamaru, 2 Putnam Court. Questioned the impact of the berm on the neighboring residences and on storm water management.
- Mario Laurenti, 464 Hamilton Avenue, Trenton. Questioned how much traffic comes from the New Jersey Turnpike.
- Yingchao Zhang, 3 Findley Lane – Stated that West Windsor should be building a technology alley, not warehouses.

Testimony of Applicant Witnesses

Justin Drysdale, Vice-President of Brookfield Asset Management, Principal

22. Mr. Drysdale testified that he has worked for Brookfield Properties (the parent company of the Applicant) for about eight years. He described some of Brookfield's real estate projects, noting that it also owns renewable energy infrastructure and is one of the largest solar operators nationally. The company's portfolio includes 40 million square feet with over 500 tenants, including a 1.3 million s.f. warehouse facility in Monroe Township that is close to completion.

23. Mr. Drysdale testified that the Applicant is working with local utility companies to make the building solar-ready, providing it with one of the largest solar installations in the country,

capable of providing up to 12 megawatts, or enough to power 15,000-20,000 homes. He testified that, in addition to the solar energy to be provided, the project will provide electric vehicle charging stations in anticipation of electric trucks and is to be LEED certified.

24. Mr. Drysdale testified that the project was being developed on a speculative basis, meaning there was no identified tenant yet though demand for logistic facilities has increased with the pandemic and the project is designed to attract a variety of tenants. He testified that the facility could accommodate up to three tenants, but “best case scenario” would be one tenant. He testified that the building was designed with no demising walls, but if there was more than one tenant, demising walls would have to be put in.

25. Regarding hours of operation, Mr. Drysdale testified that the facility would run 24/7, but he anticipated that the warehouse operations would probably “wind down” by 10:00 or 11P.M., and if there are any night operations, they would be limited. Mr. Drysdale anticipated that the Site activity would not likely begin earlier than 6:00 or 7:00A.M., which avoids truckers having to sit in morning traffic. In response to a Board member’s question, Mr. Drysdale testified that while this is intended to be a warehouse facility, some light assembly could also take place, though additional employees would not be expected as a result if so.

Daniel T. Sehna, P.E. (Dynamic Engineering), Civil Engineer

26. *Qualifications.* Mr. Sehna testified that he is a licensed professional engineer in New Jersey and is licensed in several other states, is a graduate of the New Jersey Institute of Technology with a Bachelor of Science degree in civil engineering, and has over a decade of experience in the preparation of commercial, residential and industrial applications, including multiple warehouse projects. The Board accepted him as an expert witness.

27. *Environmental.* Mr. Sehna testified that there are 797 existing trees and several pockets of wetlands and drainage ditches, as identified by the NJDEP. He testified that the Site is actively farmed notwithstanding the wetlands, which are not functioning as “true wetlands” as they merely collect water. The centrally-located wetlands will be filled, while those wetlands straddling the western property line and towards the eastern property lines have 50-foot transitional buffers and are not being filled but rather reconstituted or reestablished through the planting of trees, to potentially support life and improve the present condition.

28. Mr. Sehnal addressed the impact of the proposed development on air quality by calculating that the estimated amount of carbon dioxide generated by the trucks onsite is far outweighed by the amount of oxygen generated by the existing and proposed new trees, offsetting the impacts of 93 trucks traversing the Site daily. He testified that there would be “no idling” signs, which is required by State law anyway. He noted that the prevailing winds come from the west so generally would be carrying pollutants from the Site away from the residential uses.

29. *Traffic, circulation, and pedestrian access.* Mr. Sehnal testified that the Site would be accessible via two driveways on Princeton-Hightstown Road, one, a full movement signalized intersection serving as the main driveway to be used by trucks, and which will include a dedicated 200-foot-long left-turn lane from Princeton-Hightstown Road and a dedicated deceleration right turn lane, as required by local ordinance; the other, a right-in, right-out driveway that is not signalized. Mr. Sehnal confirmed that the main signalized driveway would involve a widening of Princeton-Hightstown Road, and that both driveways had been conditionally approved by the County. In connection with that approval, the Applicant will be dedicating approximately 15 feet along the property’s frontage to the County to accommodate the road widening and signal improvements.

30. Mr. Sehnal testified that the signalized intersection could provide a “fourth leg” at a future date to a future development on the opposite side of Princeton-Hightstown Road, with potential regional benefits for development.

31. Having two driveways, Mr. Sehnal testified, gives truck drivers two opportunities to enter the Site, such that if the first driveway is missed, trucks would not have to go all the way into town to turn around. On the other hand, trucks will not be permitted to exit the unsignalized driveway and will have to loop back on the Site to exit at the signalized driveway. He testified that, at the Township’s request, the Applicant would facilitate a cross access to East Windsor Township at the signalized intersection, which could be constructed in future, but is not being done now.

32. Mr. Sehnal testified that there will be a two-way 30-foot-wide internal circulation road; a 190-foot-wide truck court featuring 60-foot-long truck bays and 12-foot-wide loading bays, as well as regular non-commercial vehicular parking. Pedestrian access is to be provided along the front of the Site, and there will be outdoor space for employees to use, for their lunch break, for example.

33. *Parking.* Mr. Sehnal testified that 239 spaces are being provided, triggering a waiver requirement to exceed the Township's requirement of 111 spaces. Of these, 166 will actually be constructed with 73 to be banked for possible future need, meaning they will be green space until then. This, he indicates, reflects the Applicant's experience with warehouses and parking needs, which is one space per 2,000 s.f. of office area, or 163 spaces, which the Applicant is exceeding slightly with 166 spaces. Four percent, or 11 spaces, will be compliant for electric vehicle charging.

34. *Landscaping and fence.* Mr. Sehnal testified that there will be substantial landscape berming, up to eight feet high along the frontage and a variable-height screening fence on the western portion of the Site intended to "completely shield or block the view of the proposed building and the loading bays from the residential uses to the west." He described how the berm along the frontage of the Site will be landscaped to block the view of the parking and building from Princeton-Hightstown Road. He described the proposed buffer along the western property line where the closest neighboring properties lie as follows: A berm with fencing on top and landscaping being provided along this western property line that will provide a double screen from the neighboring properties. The highest point of the berm will be 12 feet, the maximum possible height without impacting the existing trees along that property line. On top of the berm will be the fence designed to block "the view of the very top of the building" so that it cannot be seen from the second story windows of the westerly neighboring properties. At the highest point of the berm, the fence is 24 feet high, and its height will vary based on the height of the landscape berms. It will be constructed of solid, horizontal slats of PVC material, decorative and green shaded/earth tone, with steel posts that anchor the PVC slats. Mr. Sehnal testified that the fence will be capable of "withstanding any wind loads," noting that the Applicant is designing a similar fence for its Monroe Township project. He noted later in the hearing that the fence will be designed by a structural engineer. For the other part of the screening, Mr. Sehnal explained, the Applicant will be providing, on the residential side of the fence, dense 8-foot evergreen trees and deciduous trees, expected to grow to the height of the fence within a few years, and which will eventually block the view of the fence.

35. Mr. Sehnal presented several site profile renderings (Exhibits A-3A, A-3B, A-3C, A-3D, and A-3E) projecting the view of the Site from the perspective of several of the neighboring residences (more specifically, from their second floors) and also from Princeton-Hightstown Road in front of the Site. Mr. Sehnal testified that the sightline from Princeton-Hightstown Road of the building and onsite parking will be blocked by the trees landscaped along the front. He

testified that the sightline of the structure from second story windows of residential lots on the westerly side of the Site is similarly blocked by the “visual barrier that we’re proposing.” He specified that the sightline renderings show the proposed plantings at the time of planting, before they have grown to maturity. He emphasized that as the trees grow to maturity, they would block the view of the fence. He noted that the tree buffer would eventually become a “wooded area.”

36. Mr. Sehnal testified that other landscaping will consist of native plantings to enhance the natural aesthetics of the Site and soften the hard lines of improvements from surrounding perspectives; that the Applicant is proposing 208 new shade trees, 157 ornamental trees, 495 evergreen trees, 683 evergreen shrubs, 874 deciduous shrubs, and ornamental grasses and perennials, for a total of 2,698 new plants, 860 of which are trees.

37. *Coverage.* Mr. Sehnal testified that approximately 16 acres of new impervious surface coverage would result from the development, including certain pervious pavement, such as the banked parking spaces and “pervious concrete” which can support truck loading – i.e., 59% of the Site, where 70% is permitted. Mr. Sehnal clarified that 9.7% of the Site is pervious pavement, and 16.5% of the impervious calculation actually includes pervious pavement, which has the ability to support truck loading.

38. *Storm water management.* Mr. Sehnal testified that the increase in impervious coverage will be mitigated by a complex storm water management system, which includes six above-ground basins, all designed to accommodate the 100-year storm, three of which will be bio-retention, meaning they will have plantings that provide filtration for water leaving the Site, and three with a sand bottom designed to infiltrate water back into the ground, thereby reducing the amount of water leaving the Site. Mr. Sehnal testified that the 100-year storm runoff rates were being reduced by 66%, more than three times the reduction rate required by state and local regulations. In addition, there will be seven pervious pavement basins, for quantity, quality and ground water recharge, to capture water from pavement areas, which filters through that pavement and infiltrates back into the ground or discharges offsite. The Site will also have seven green infrastructure manufacture treatment devices, which in this case consist of boxes with trees in them, which capture water and filter it. Mr. Sehnal testified that the pervious surface cover results in more storm water leaving the Site more quickly. He indicated that the basins have been oversized due to the frequency of the larger storm events occurring, exceeding code requirements, resulting in less water leaving the Site.

39. *Signage.* Mr. Sehnal testified that two monument signs are proposed, to be located directly east of the driveways, and for which design waivers are being requested to permit more than one sign and to permit a larger square footage. There will also be a 50-square-foot building mounted sign for tenants.

40. *Bulk standards.* Mr. Sehnal went over the bulk standards and testified that all are being met by the proposed development.

41. *Loading.* Mr. Sehnal testified that users of the facility will need to be able to offload and onload as much product as possible, as efficiently as possible. Providing more bays will allow more trucks to load and unload at one time, versus having trucks back up and wait to access the bays. He testified that provide loading bays along the entire wall will make the operation more efficient and is consistent with the Applicant's experience. Asked how the Applicant came up with 58 loading bays, Mr. Sehnal responded that this is the number that fits on that particular wall. He noted that the Township ordinance does not distinguish between warehouse uses, basing the loading requirements on square footage. The Township's Planner, Mr. Novak, agreed with this view.

42. *Sewer.* Mr. Sehnal testified that due to sanitary sewer not being currently available on Princeton-Hightstown Road, the Applicant is working with the municipality to propose a main extension that would connect a sewer line from Southfield Road to the Site, to be included in the Southfield Road Pump Station upgrades being worked out by the municipality with another developer. He testified that this would be a public sewer line available for other developers to hook into. The Applicant would pay its share of the station upgrade. Mr. Sehnal noted that a warehouse does not generate as much sanitary sewer flow as a residential development.

43. *Lighting.* Mr. Sehnal testified that the proposed lighting complies with IES standards for warehouses while providing adequate lighting for safety and circulation, including full cut off fixtures designed to minimize glare offsite. The lights will be angled at 90 degrees at the ground and the footcandles will be zero at the property line, with a full 90 feet of darkness before the residential property line. Mr. Sehnal testified that two waivers are sought for lighting, in each case for essentially negligible differences, but due to the way lighting is measured, a waiver is needed, or, in the case of the parking areas, slightly more lighting improves safety. He emphasized that the light levels will not exceed the required levels at the property line.

44. *Site plan.* When asked whether consideration was given to re-orienting the dock doors so that they would not be on the western wall, Mr. Sehnal testified that due to the 300-foot setback requirement from the residential uses and including a 100 foot buffer as required, the only way to fit the building was to orient it such that the loading bays would be on the western side.

45. Mr. Sehnal concluded that the project would be a state-of-the-art, green and efficient warehouse facility with minimal impact on the property and surrounding areas.

Kyle Ferrier, R.A. (ARCO Design/Build), Architect

46. *Qualifications.* Mr. Ferrier testified that he is a project architect with the firm of ARCO Design/Build, has a Bachelor's degree in architecture and Master of Science in Construction Management, is a licensed, registered architect in New Jersey and is in good standing. The Board accepted Mr. Ferrier as an expert in architecture.

47. *Site Plans.* Mr. Ferrier described the floor plan of the proposed facility and construction materials, noting that the office space was laid out for potentially three tenants. Mr. Ferrier presented conceptual building elevations, noting some minor revisions in the plans. He testified that the color scheme is natural, neutral and is consistent with top building designs in the region and around the country. Mr. Ferrier guided the Board through a description of an aerial view of the facility, describing the visual barrier along the truck court.

48. Mr. Ferrier testified that the dock doors are between 10 and 14 feet wide, an average of 12 feet high, and some of the parked trailers would be hidden by a wing wall and by the vegetation and berming for others. Mr. Ferrier explained how the office space layout could vary depending on the number of tenants.

Joseph DiGiorgio, R.A. (ARCO Design/Build), Architect

49. *Qualifications.* Mr. DiGiorgio testified that he is Vice President of Architecture at the firm of ARCO Design/Build, has a Bachelor of Architecture and Master of Architecture and Environmental Design and holds architectural licenses in New Jersey and other states. The Board accepted Mr. DiGiorgio as an expert in architecture.

50. Mr. DiGiorgio presented several material boards to illustrate the texture colors and material being proposed for the building and the fence. Mr. DiGiorgio presented a sample of an STC 31 panel fence, showing a hollow structure. Mr. Zybura clarified that the STC 31 rating is achieved with a hollow structure, but a foam insert could increase the acoustical performance and increase the STC rating (as further summarized below).

Jack A. Zybura, P.E. (Lewis S. Goodfriend and Associates), Acoustical Engineer

51. *Qualifications.* Mr. Zybura testified that he is an associate principal at Lewis S. Goodfriend and Associates, an acoustical engineering consultant firm, has a Bachelor of Science in Acoustical Engineering, is a licensed professional engineer in New Jersey and other states, and is in good standing. He testified that he is Board Certified by the Institute of Noise Control Engineering. The Board accepted Mr. Zybura as an expert in acoustical engineering.

52. *Modeling.* Mr. Zybura explained that he was retained to evaluate the acoustical impact of the proposed development on the adjacent residential properties, to the west and northwest. He testified that a 3D acoustical model to calculate the total sound levels at the Site was prepared using the following inputs: the site and grading plans, data measured from other warehouses of trucking operations, loading, trailer hitching, backup alarms, trash compactors, and air handling equipment. “[W]e combine all this into our 3D acoustical model to calculate the total sound levels of all these things operating simultaneously at various points along the property.” Three locations of neighboring residences were evaluated, the southernmost house to the west, a house around the middle of where the tallest portion of the berm will be, and one in the northwest house further in the woods, and for each, sound was evaluated at the property line and at the first and second story windows, with the highest of these results being used for purposes of this application. He testified that he also considered the height of the berm and proposed fence, the height of which is for acoustical purposes. The proposed material, like wood, is “pretty hard material” and “fairly reflective,” and reflections were considered in the model. Mr. Zybura explained that the rating of a fence’s ability to be “acoustically sufficient” is called STC, or “sound transmission class.” He stated that his preferred rating for a sound wall is an STC 30 or higher and that the proposed fence has a rating of STC 31.

53. *Results.* Mr. Zybura explained that there are two types of sound regulated by ordinance, continuous sound, such as truck movements, compactors, and HVAC equipment, and “impulsive sound,” such as those emitted during loading activities, when trailers hitch to tractors. He noted that the continuous sound level limit is 65 decibels during the day and 50 at night, whereas the

impulsive sound level limit is 80 decibels (“dBs”) 24/7, except at night if such sound occurs more than four times in a nighttime hour, in which case it is 50 dBs. Mr. Zybura testified that he calculated that daytime noise levels would be 53 to 55 decibels and the nighttime level 49 to 47 dBs at the property line. He specified that this is the sound level that would be experienced by a resident located in the northwest along the western boundary of the Site. He further testified that the impulsive sound level recordings measurements were 44 to 50 dBs. These results are indicated on page 4 of his report, dated March 29, 2022. He clarified that, without the backup alarms, the Applicant is in compliance with the daytime standards for trucking operations, HVAC and trash compactors sounds, but in order to be compliant with the nighttime standard, the wall would be needed due to the backup alarms.

54. *Fence type.* Mr. Zybura testified that an STC 31 fence is hollow, and the STC rating can be boosted to 39 by filling the panel with high density foam. He testified that, if the Board wished, the Applicant would provide an STC 39 fence. However, he testified that in his view, increasing the STC rating does not matter at a certain point because the sound going over the top and side of the fence becomes the controlling factor. In answer to a Board member’s question why anybody would pick STC 39 over 31 if there is no difference in the noise absorption, Mr. Zybura explained that the performance of an STC 31 versus STC 39 panel fence depends on how the fence is used and that insulated panels have slightly better low-frequency performance, such as against the rumbling of a passing train, but for purposes of this application, STC 31 was assumed in the results that meet the noise standards. When pressed by the Board on whether the higher STC 39 fence would not be better to reduce the sound, Mr. Zybura again testified that the controlling factor is the sound going up and over the fence, and for this reason, his acoustical measurements with respect to the neighboring properties would not change whether an STC 31 or 39-rated panel were used “because it’s the sound that’s going over that’s creating those end results.” He testified that the height of the wall drives how much sound comes over the wall.

55. Mr. Zybura testified that the modeling does not take into account any foliage or tree shielding. To illustrate the actual experience of decibel range, he explained that for a human ear to hear a change in noise level, sound would have to vary by more than three dBs, meaning that “49 [dBs] is going to sound basically the same as 50 [dBs].” Mr. Zybura explained that the measurements presented were the combination of all sounds at once, i.e., several trucks throughout the Site, backup alarms and compactors, and that the main sound was that of the truck noise driving back and forth on the Site. He testified that the Applicant would agree to certain operational controls to mitigate noise levels, items that are addressed in the noise-related Conditions of this approval below.

56. In responding to the report of the Objectors' sound specialist, Ms. Carpenter, Mr. Zybura indicated that he had modeled dozens of warehouses for the types of issues involved with this application. He testified that he had been involved with compliance testing for dozens of warehouses, and apart from the size of the HVAC equipment, all of the data in his model was based on actual measurements at operating warehouses. Mr. Zybura prepared a report, dated April 27, 2022, marked as Exhibit A-10, that responds to the report prepared by the Objectors' air emissions, noise and vibration specialist, Ms. Sharon Paul Carpenter, and addressed each point for the Board.

57. *HVAC equipment.* With respect to the HVAC equipment, Mr. Zybura used the manufacturer's sound data and a comparable-sized warehouse facility to determine that the HVAC contribution ranges from 37 to 41 dBs overall, below the 50 dB nighttime limit, with the octave bands being around 10 dBs below the octave band limit (the limit of a range of frequencies). Mr. Zybura testified that in the case of HVAC, the maximum sound level is always used, not an average, as HVACs are considered a continuing sound.

58. *Dock levelers.* Mr. Zybura testified that he included pneumatic dock levelers in the acoustic model and that they lower slowly to meet up with whatever the height is of the dock bay, confirming that no spring-loaded levelers would be used. He testified that the Applicant would agree as a condition of approval to use pneumatic levelers.

59. *Backup alarms.* Mr. Zybura testified that the ultimate tenants of the facility will be responsible for monitoring and controlling the truck backup alarms. Mr. Zybura testified that the sound attenuation provided by the wall at the given frequencies ranges from 39 to 42 decibels, which is above the Applicant's estimated 20 dB required reduction from the proposed wall.

Corey Chase, P.E. (Dynamic Traffic), Traffic Engineer

60. *Qualifications.* Mr. Chase testified that he is a principal with the firm of Dynamic Traffic, a licensed professional engineer in New Jersey and other states, with a Bachelor of Science degree in civil engineering. The Board accepted Mr. Chase as an expert in traffic engineering.

61. *Traffic.* Mr. Chase reiterated the elements of the traffic plan that Mr. Sehnal outlined, describing the two access points and the pre- and post- development peak-hour traffic impact analysis. Mr. Chase explained that the traffic impact analysis is based on the intended user,

which in this case is speculative type warehousing. He testified that the projected trip generation for this type of user [land code 150] was based on data published by the Institute of Transportations Engineers (“ITE”) in the Trip Generation Manual, a state and nationally recognized standard for developing trip generation projections, including for warehouse uses. Mr. Chase testified that, based on this data, six trucks are projected to enter the site in the morning and two to exit, for a total of eight in the weekday morning peak, whereas on a weekday evening peak hour, three trucks are projected to enter and seven trucks to exit, i.e., 10.

62. Mr. Chase testified that, with respect to the two signalized intersections to the east and west of the Site, i.e., the Princeton-Hightstown Road intersection with Southfield Road and its intersection with Old Trenton Road, no degradation in the level of service is expected at either post-development. He testified that the proposed signalized intersection with Princeton-Hightstown Road is calculated to operate overall at level of service A during each of the peak hours; the proposed western driveway is calculated to operate at level of service B during peak hours. He explained that a minor traffic signal timing mitigation at the intersection of Princeton-Hightstown Road and Old Trenton Road would result in a reallocation of about three seconds of green time through some of the phases at the signalized intersection, a mitigation that has conditionally been approved by the County, which has jurisdiction over the signalized intersection.

63. Mr. Chase reiterated Mr. Sehna’s testimony that the proposed number of parking spaces, 166, based on one space for every 2000 s.f. of building area, is consistent with standards in other municipalities and with warehouse data for typical users, similar to other Brookfield facilities and designed to accommodate a variety of shifts at the facility and rolling trip generation. Mr. Chase referred to the ITE’s Parking Generation Manual in testifying that approximately 130 vehicles would be generated by the Site. Mr. Chase testified that trucks would be precluded from accessing passenger vehicle parking spaces and their use would be separated from pedestrian and passenger vehicle traffic. Separately, there would be 73 trailer parking spaces, which are needed to provide additional flexibility for operations, not extra storage space, so that a load can be loaded into a vacant trailer at any time. Condition 102nn addresses this aspect.

64. In response to a Board member’s question about why there seemed to be so many more parking spaces than actual parking need, Mr. Chase responded that it is because the numbers of employees could vary based on tenant, and, because trip generation is rolling, traffic generation is spread out throughout the day and parking supply is still needed to accommodate the demand. Mr. Chase explained that the reason for having banked parking spaces is because it is not known

who the end user is going to be, and the Applicant wanted the flexibility to be able to provide for future parking.

65. Mr. Chase testified that the road along the Site frontage would be widened to accommodate additional pavement and the turn lanes, but the existing lane widths would remain the same. This would entail some striping modifications, he said. In answer to a Board question about the directional source of most of the trucks, Mr. Chase testified that there would be “very little impact in terms of trucks coming off Route 130 and driving through town.”

John McDonough, L.A., P.P., Planner

66. *Qualifications.* Mr. McDonough testified that he is self-employed, holds a license in professional planning in New Jersey, has an educational background in planning and landscape architecture, and is a member of the American Institute of Certified Planners. The Board accepted Mr. McDonough as an expert witness.

67. *Variance Analysis.* Mr. McDonough noted the newness of the ROM 3 zoning as it pertains to the proposed use and that the application is a permitted use and largely conforms with the zoning requirements. He emphasized that this is a virtually variance free application and that the only variance being requested is to benefit the neighboring land uses. He testified that the additional fence height will protect the privacy and enjoyment of those properties. Mr. McDonough referred to the visual profiles presented by Mr. Sehnal (Exhibits A-3A, A-3B, A-3C, A-3D, and A-3E) and testified that it was typical to plan for 10-12-foot high trees to provide an evergreen screen at the property border. He noted the layering effect being provided by the Applicant, with an immediate screen as well as soft vegetation on both sides.

68. Mr. McDonough testified that the application should be considered as a whole in terms of justifying the relief. He testified that the importance of this particular land use is to “bring goods, wares, medicines, products to the public.” He noted that several U.S. government agencies consider warehousing “critical infrastructure,” noting that warehouse workers were exempt from stay home orders during the pandemic. He described the evolution of warehouse aesthetics and the abundance of landscaping being proposed by this application. He testified that the project would promote efficient land use with minimal tree clearing and that the project meets the planning goal of providing for a variety of land uses in appropriate locations with “excellent accessibility to the regional highway network.”

69. *Positive and Negative criteria.* Mr. McDonough testified that a “c2” -type variance would be needed, as noted in the findings below with respect to the variance. He testified that the negative impact was very minimal, noting that the buffer trees being planted would grow over time, but ultimately, the relief would improve, not detract, from the privacy, use and enjoyment of neighboring properties. Granting the relief, he concluded, would not contribute to additional traffic or any additional activity generation on the Site, the benefits of the application substantially outweigh the detriments, and the relief can be granted without substantial impairment to the intent and purpose of the zone plan.

70. *Design Waivers.* Mr. McDonough noted the lower standard required for a Board to grant design waiver relief under Section 51 [of the MLUL], and rather than a balancing test, a standard of reasonableness applies. With respect to the number of parking spaces and loading docks, Mr. McDonough emphasized the operational efficiencies that will be achieved by the proposed site plan, and that “all are necessary to effectuate the benefits of this beneficial use.” He testified that these elements are supported by the capacity of the land to support the use and that the numbers being sought are common for these types of applications. With respect to the sign waivers, he emphasized the two access points as well as the size of the Site as justifying the need for the waiver. He concluded that strict enforcement of the design standards would not serve any practical planning purpose, and the relief is therefore reasonable and appropriate.

Testimony of Objectors’ Expert Witness

Sharon Paul Carpenter, ASCE Grade PVII

71. *Qualifications.* Ms. Carpenter testified that she has a Bachelor of Science degree in meteorology and 35 years’ experience with quality, noise and vibration studies, a state certification to perform community noise enforcement, and is a member of the National Association of Acoustical Consultants and the Institute of Noise Control Engineering. She indicated that she did not hold a professional license. The Board was not asked to accept Ms. Carpenter as an expert witness, and the presentation proceeded without this being addressed.

72. Ms. Carpenter testified that she typically would seek to replicate results in an acoustical analysis based on data used in the report but that she could not find any data in the Applicant’s expert report that could be replicated. Ms. Carpenter’s report dated April 26 was marked as Exhibit O-1. She testified that, in her view, Mr. Zybura did not provide any assumptions and none of the information provided could be used to run the model and duplicate the results. Ms.

Carpenter highlighted, among other issues, that Mr. Zybura's report did not include the impulsive sound of metal on metal of the dock levelers (a point subsequently clarified by Mr. Zybura and also addressed in a condition of approval) and that Mr. Zybura did not recommend backup alarms or a limitation on backup alarms, whereas backup alarms are required for safety reasons. Ms. Carpenter testified that Mr. Zybura did not address the maximum noise level in his report or differentiate certain sound sources, such a truck (idling versus acceleration) or trash compactors.

73. Ms. Carpenter testified that, since she did not have Mr. Zybura's data, she did "back-of-the-envelope" calculations and determined that more than a 8-13 dB reduction would be needed, where 13 dBs is, in her view, the maximum that a noise wall with a concrete post and panel could provide. Ms. Carpenter testified that products give reductions per frequency, and each has different reductions for different frequencies. "So there is no guarantee that that product is going to do what it needs to do based on the source." She could not determine, therefore, whether the proposed product would provide the reduction needed in certain frequencies based on a particular source.

74. Ms. Carpenter testified that there was not enough data or analysis to determine that the noise level would be compliant and that, based on "simplistic physics and calculations, not models, just based on physics," a backup alarm alone would fail to meet the ordinance requirement, because "it needs more than what a noise wall is going to provide." She testified that she had never monitored a warehouse before. When asked by a Board member what distance she used to measure the decibel level for the residents, Ms. Carpenter testified that she used 50 feet in a "free field" documenting 80.5 dBs as the Lmax from this distance and also 125 feet from the source of the noise and the property. Based on this calculation, Ms. Carpenter estimated that a noise wall would need to be able to reduce noise by 22 decibels to meet the ordinance, a level that is not achievable by a noise wall, in her view, no matter what STC. "Unless you [are] fully enclosing a source, you cannot get 22 dBs, no matter what STC, on a noise wall."

75. When asked by the Board Chair whether there was enough data in the record to create sufficient credible evidence for the Board to approve the project, Ms. Carpenter responded, "I would have to say no. It's very risky."

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL

76. This was a difficult application for several reasons. It presents the challenges that can arise when two different types of land use, considered by those most affected to be incompatible, end up side by side, yet reflect the result of the legislative and public process that goes into every approved land use ordinance. As the Mayor indicated at the hearing, the ordinance in this case was specifically designed to fit the warehouse that has been proposed, representing a settlement of litigation around West Windsor's affordable housing plan, which resulted in the identification of the Site for an alternative use than the previously proposed high density multi-unit apartment complex the owner had proposed, a plan that arguably would have impacted the neighborhood far more adversely in terms of increased traffic and density and visually and aesthetically. It was deemed, and legislatively approved after the public hearing process, as a better land use alternative, consistent with the pre-existing mix of industrial and residential uses in this part of West Windsor and with the Master Plan goal to achieve a desirable balance of non-residential and residential land uses.

The Zoning

77. The zoning of the Site requires a 300-foot setback from the northwestern property line to ensure location of the warehouse as far away as possible from the neighboring residents on that side. Several Board members asked why the proposed facility could not be oriented the other way, so that the loading docks would face away from those neighbors. The explanation was that if flipped the other way around, the building would come within 100 feet of the housing, rather than 300 feet, and the height of the building could not be adequately blocked due to the presence of wetlands on that side, which would limit the height of the berm providing the buffer. As the Mayor indicated, all site design options were considered, and the preferred choice was to locate the building as far away as possible from those residences.

78. The height of the proposed fence triggered the one and only variance in this application. As Mr. Zybura, the Applicant's Acoustical Engineer, testified, the height of the fence is for acoustical purposes, and with it constructed, both daytime and nighttime noise level limits could be met, with one important proviso (discussed further below), that the Applicant would, in addition, implement certain operational controls to be able to meet the noise limits. While a variance-free application is generally preferable in any land use application, the Board notes the rather unusual nature of this variance in that it is triggered by the need to exceed the permitted fence height between residential and non-residential uses *in order to provide* a more substantial buffer, both visual and auditory. In other words, permitting the variance results in a much more substantial buffer than a variance-free application would have provided. The wall will serve not

only to attenuate the proposed facility's noise levels and meet the code's noise level requirements, but will provide a substantial visual buffer as well. Both of these factors are intended to protect the neighbors and reduce the detriment to the public good, where the public good means, first and foremost, those most directly impacted by granting the variance, in this case, the neighbors. The reasons for granting the variance are discussed in detail in paragraph 99.

Objectors

79. The Objectors who appeared through counsel, Cynthia Hadjiyannis, consisted of several immediate neighbors who expressed concerns about the noise pollution and disruption of their peaceful enjoyment of property as a result of the development. They also expressed concerns about air and light pollution and questioned the adequacy of the stormwater management plans, concerns similarly expressed by other members of the public. The Objectors presented Ms. Sharon Paul Carpenter as an air emissions, noise and vibration specialist to provide testimony with respect to the noise impact of the development.

Noise impact

80. The noise levels to be generated by the facility was the most complex and contentious issue in this application, and the Board assessed Mr. Zybura's testimony and acoustical report with great interest in light of the concerns raised. With similar interest and scrutiny, it also assessed testimony provided by the Objectors' sound specialist, Ms. Carpenter. For the reasons given below, the Board finds that Mr. Zybura's testimony and report provide a more rigorous and convincing basis for the Board's approval of this application. That said, the Board, many of whose members are engineers and possess scientific training and experience, recognizes the inherent limitations of any model to test real life conditions, particularly an acoustical one that involves many complex variables. It finds, based on the evidence and testimony presented (discussed further below), that there is no guaranteed way to determine whether the models are correct and accurate, or make a conclusive judgment as to the level of noise that will reach over the proposed fence. The Board concludes that the only way to determine compliance with certainty is for the fence to be built, the noise levels tested, and the regulations to be enforced as necessary.

81. The Board therefore approves this application with particular emphasis on the conditions that relate to noise, which are to be strictly observed by the Applicant, and will serve to ensure ongoing compliance with the noise regulations. Most importantly, the Township will, once the

facility is built and operating, perform a live acoustical test to ensure that the fence operates as designed and mitigates the noise levels in accordance with Mr. Zybura's testimony and report. The Township, through the Health Department, will be permitted to do additional testing whenever it desires, and if any test indicates that the State standards, regulated by DEP, or the Township Code, which mirrors those standards, are violated, then the Applicant must take corrective steps to comply.

82. While the Boards finds that Mr. Zybura's acoustical expertise, methodology and extensive experience with warehouse operations and noise compliance provided a reasonable and rational basis for accepting his testimony about the impact of the wall on the noise levels, imposing this, as well as the other conditions relating to the noise level, most appropriately obviates the real-world limitations of the acoustical modeling and issues presented in this Application.

83. It is noted that a new standard condition of land use approvals, including this one, is that this resolution of memorialization is to be recorded by the Applicant through a Deed to itself, to ensure that subsequent owners of the property will always be on record notice of the restrictions and conditions of use. Though not necessary for enforcement of noise levels or other regulatory matters, this practice will undoubtedly assist the Township in its ability to enforce the noise regulations against any subsequent owners of the property who will not be able to claim they did not know about the conditions of this approval due to the conditions not being reasonably discoverable.

Reconciling Conflicting Testimony

84. A board must assess the credibility of the witnesses and testimony and make a determination on the application based on the proofs and testimony provided. Though it is not bound to accept the testimony of an expert, the board's determination "must be made on a rational and reasonable basis." *Reich v. Fort Lee Zoning Bd.*, 414 N.J. Super. 483, 504-05 (App. Div. 2010).

29. A board may choose which witnesses, fact and expert, to believe. *El Shaer v. Planning Board*, 249 N.J. Super 323, 329 (App. Div. 1991). However, where a board rejects the testimony of facially reasonable witnesses, it must explain its choice. *Bd. of Education v. Zoning Board*, 409 N.J. Super. 389, 434-35 (App. Div. 2009). The board must then analyze the Applicant's

variance request in accordance with the statute in light of the municipality's master plan and zoning ordinance. (*N.J.S.A.* 40:55D-10(g)).

85. The only subject on which two witnesses provided conflicting testimony in this application was the noise impact of the development and the sufficiency of the proposed wall to mitigate the noise. Mr. Zybura presented data generated by a 3D acoustical model that took into consideration the site plan and grading and noise level data collected from other warehouse operations (the combination of sounds like truck loading, backup alarms, trash compactors, air handling equipment all operating simultaneously), which was then evaluated at three points, at the property line and the first and second stories, at the locations of three different neighboring residences. He testified that he calculated daytime noise levels at these locations of 53 to 55 dBs, nighttime levels of up to 49 dBs for continuous sound (things like backup signals, truck movement, compactors, and rooftop HVAC), and levels of 44 to 50 dBs for nighttime impulsive sounds. These numbers factor in the height of the existing berm and the proposed wall or "sound fence." Mr. Zybura testified that he considers an "acoustically sufficient" sound fence to have an STC rating of 30 or higher, with an STC 31 being proposed. He did not provide decibel levels without the wall, except with respect to the backup alarms, when he agreed with Ms. Carpenter that the level was 80.5 at 50 feet from the sound source.

86. Ms. Carpenter testified that there was not enough data in Mr. Zybura's report or testimony to be able to determine whether the permissible noise levels would be met by installing the proposed wall. She testified that, due to the absence of input data, assumptions, and analysis in Mr. Zybura's report, she was not able to replicate or model the data. She testified that she relied on her own measurements in the field and "hand"-calculated ("back-of-the-envelope" as she put it) noise levels to determine that more than a 13-dB reduction would be needed, where 13 dBs is, in her experience, the greatest reduction that a noise wall can provide, "and that's with a concrete post and panel," not the type of wall being proposed. Ms. Carpenter based her analysis on one sound source, a truck backup alarm, taken from her own measurements of this sound in the field. As to the distance she used to project the decibel level for the neighboring residents, she testified that she used 50 feet in a "free field" and also 125 feet from the source of the noise and the property, calculating that the maximum decibel level would be 80.5 at 50 feet, a number with which Mr. Zybura agreed for the backup alarm level, as noted. Ms. Carpenter calculated that, using these distances, and the "Lmax" (maximum level of a noise source) as 80.5 dBs, after factoring in a loss, a reduction of 22 dBs would be needed from a wall to meet the code's nighttime noise limits. In Ms. Carpenter's view, no wall can achieve a 22 dB reduction,

regardless of its STC rating. A sound source would have to be fully enclosed to achieve that amount of reduction, she concluded.

87. Mr. Zybura prepared a written response to Ms. Carpenter's testimony and report (Exhibit A-10), providing additional data and explanations to supplement his report and responding to her criticisms. He clarified, among other things, that his model used maximum noise levels (i.e., the most conservative), not averages, and included different types of truck sounds, not just idling but also acceleration. Mr. Zybura clarified that in measuring the sound at various points on the neighboring properties, "we do look at the entire property and expect to be in compliance across the property." Mr. Zybura provided a laboratory sound transmission class report for the proposed wall, providing information on how much sound is blocked by the wall and showing the performance based on different frequencies, and the performance of an STC 31-rated wall. In response to Ms. Carpenter's determination that the only way to achieve a 22 dB reduction is to enclose sound, Mr. Zybura testified that he measured both within and beyond the shadow zone (the area of noise level reduction immediately behind the wall), including the facades of the neighboring house, so his measurements captured the "worst level" of the noise that comes through, over and around the wall.

88. The main point of disagreement, therefore, appeared to be whether the proposed wall, or any acoustical wall for that matter, could provide sufficient noise attenuation for this type of warehouse operation. Mr. Zybura testified that the proposed wall could attenuate sounds from 39 to 42 dBs, more than the 20 dB limit he applied. In contrast, Ms. Carpenter testified that no wall, in her experience, can achieve more than a 13 dB noise level reduction (absent some kind of sound enclosure). Ms. Carpenter may have somewhat qualified this conclusion when she testified that there is no guarantee that a particular wall will reduce a particular kind of sound, as each wall reduces sound differently depending on the frequency, information that Mr. Zybura subsequently provided in the form of the manufacturer's laboratory sound transmission class report, as tested by Riverbank Acoustical Laboratories. Nevertheless, the experts were clearly far apart in their assessment of whether the proposed wall could sufficiently attenuate the sound.

89. In its own assessment of such conflicting testimony, the Board must carefully examine the basis of these conclusions and the methodologies used, factoring in the relative expertise and experience of the witnesses and then form its own conclusion as to the more persuasive testimony. Ms. Carpenter's probing questions and critical assessment of Mr. Zybura's report were extremely helpful. Her 35 years of experience in the field of acoustics, work with government agencies and construction of noise walls entitle her to a great degree of credibility.

However, she provided the Board with no probative evidence to support her view that no wall could provide more than a 13-dB noise attenuation. She intelligently challenged aspects of Mr. Zybura's report, such as what assumptions were made and what Lmax values were used, yet provided no counterfactual information drawn from her own experience or modeled for this or a similar project. She explained that without the CAD file for the proposed development she could not replicate the results, yet offered no alternative other than a basic "back-of-the-envelope" calculation to determine that more than a 13-dB reduction would be needed. The fact that Ms. Carpenter indicated that she does not hold a professional license or engineering degree unfortunately also weighs against her, many would say heavily, notwithstanding her many years of professional experience. Her testimony that she has never monitored a warehouse before made it even more difficult for the Board to accept her conclusions over Mr. Zybura's. Finally, it is noted that, whether due to oversight or to avoid a contentious and potentially embarrassing argument over Ms. Carpenter's credentials, counsel for the Objectors did not ask the Board to accept Ms. Carpenter as an expert witness, leaving open the question as to whether her testimony could be considered "expert," as opposed to factual, at all. This is not a question that the Board can resolve now.

90. Mr. Zybura, by contrast, testified that he had modeled "dozens" of warehouses for the types of issues involved with this application and has been involved with compliance testing with as many in his career. He testified that all of the warehouse operations, except the size of the HVAC equipment for which he provided the manufacturer's sound data, were based on actual measurements at operating warehouses. Mr. Zybura holds a degree in acoustical engineering and is a licensed professional engineer in not only New Jersey but also other states. He addressed, to the Board's satisfaction, all of the points of criticism raised by Ms. Carpenter by providing additional data and testimony, and provided a compelling explanation of his methodology for modeling the sound results based on real-world comparable data.

91. For the foregoing reasons, the Board accepts Mr. Zybura's testimony over that of Ms. Carpenter's and finds that it provides a reasonable basis to conclude that the proposed wall will attenuate noise to the required levels, as long as the Applicant abides by the conditions of approval.

STC 31 versus STC 39

92. There was extensive discussion of whether a fence rating of STC 31 or STC 39 should be used. As noted, the difference is that STC 39 has a boosted rating due to the high-density foam

filling. Mr. Zybura testified that he did not believe the higher rated fence made a difference because at a certain point the controlling factor is the sound going up and over the fence, rather than through it; the difference in performance, he indicated, depends on how the fence is used, because insulated panels have slightly better low-frequency performance. Three municipal staff members, Messrs. Guzik, Jepson and Dobromilsky, disagreed with this approach, recommending use of the higher rated product. Mr. Guzik testified that certain things could only be discovered in the event of a noise level violation, so it would be best to err on the side of caution and go with the more conservative product. To resolve the issue, the Board is imposing a condition, suggested by the Applicant itself, that the Township chose an acoustical engineering expert, to be paid for by the Applicant, and if such expert determines that there is a meaningful difference between the STC 39 and STC 31 rated product, that determination is to be submitted to Messrs. Guzik, Jepson and Dobromilsky, who will decide which type of fence to install. The Board finds this to be a reasonable and fair solution and will ensure that the neighboring residents will receive due consideration.

Environmental

93. For the reasons provided by the Applicant's engineer, Mr. Sehnal, the Board finds that the proposed development will not have an overall adverse impact on the natural environment. Mr. Sehnal testified that no areas of environmental concern were identified from a geo-physical survey, and while several pockets of wetlands are present on Site, they have already been actively disturbed and farmed over so are not capable of supporting life. The wetlands straddling the western and eastern property lines, however, have 50-foot transitional buffers and are actually being reconstituted through the planting of trees designed to reestablish the wetlands buffer and potentially support life.

Storm water management

94. The Township Engineer determined that that the Applicant's storm water management plan meets all of the Township's Stormwater Control Ordinance. Mr. Sehnal testified that the increase in impervious coverage will be mitigated by a complex system that includes six above-ground basins meeting water quantity, water quality and groundwater recharge requirements. He testified that of the impervious coverage, 16.5%, or 2.6 acres, is actually "pervious pavement" that can support truck loading. The Board finds the Applicant's storm water management plan to be reasonable.

Traffic

95. Traffic is often a major concern of any large development, especially when located near a residential neighborhood, as this one is. The Applicant's Traffic Engineer, Mr. Chase, testified that, with respect to the signalized intersections to the east and west of the Site, no degradation in the level of service is expected at either post-development, with each operating at high levels of service during peak hours. Having two access points will reduce congestion onto the Site and improve overall safety by giving truckers two opportunities to enter the Site. He testified that in his view, there would be "very little impact in terms of trucks coming off [Route] 130 and driving through town." The Applicant also committed to widening the road along the Site frontage to accommodate additional pavement and a left-turn lane, without widening the existing lane widths, all of which will alleviate the increase in traffic resulting from the construction. Based on the testimony provided and the advice of its Municipal Traffic Consultant, the Board finds that the proposed development will not cause significant degradation to the traffic conditions around the Site.

96. Findings and conclusions re: preliminary and final major site plan approval. The Board finds that, with the variance and waivers granted and conditions imposed, the Applicant has met all Township major site plan standards. Preliminary and final major site plan approval, accordingly, are granted.

FINDINGS AND CONCLUSIONS RE: VARIANCE

97. The application necessitates one variance. The Applicant provided testimony in support of a c(2) "flexible c" variance.

98. *Standard for "Flexible c" Variance (N.J.S.A. 40:55D-70c(2)).* To obtain a "flexible c" variance, the Applicant must show that one or more purposes of the MLUL would be advanced by a deviation from the zoning ordinance and that the benefits of such deviation substantially outweigh any detriment. The Applicant also has to meet the negative criteria, that such variance can be granted without substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance. Relief under c(2) "must be rooted in the purposes of zoning and planning itself and must advance the purposes of the [Municipal Land Use Law]." *Ketcherick v. Mountain Lakes Bd. of Adjustment*, 256 N.J. Super. 647, 657 (App. Div. 1992).

The grant must benefit the community in that it represents a better zoning alternative for the property and may not be granted merely to advance the purposes of the owner. Thus, the focus in a c(2) case is not whether the current zoning Ordinance creates a “hardship” on the owner warranting a relaxation of the standard, but on the characteristics of the land that presents an opportunity for improved zoning and planning that will benefit the community. *Id.*

99. The variance and the Board’s action on it is as follows:

a. *Variance:* From Section 200-227B(2), requiring fences, which are required in the ROM-3 zoning district to buffer nonresidential uses from neighboring residential uses, to be no more than eight feet high, whereas a fence on the westerly side of the Site is on top of a berm which varies in height, and the fence is uniformly 34 feet from existing grade, with the fence height ranging from 8 feet to 24 feet high.

Variance granted: The Applicant provided testimony in support of a c(2), or “flexible c,” variance (*N.J.S.A. 40:55D-70c(2)*). Its Planner, Mr. McDonough, testified that granting the variance would advance the following purposes of the Municipal Land Use Law: purpose “a,” which is to provide for the appropriate development of land (*N.J.S.A. 40:55D-2(a)*); purpose “g,” which is to provide sufficient space in appropriate locations for a variety of uses, including commercial and industrial, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens (*N.J.S.A. 40:55D-2(g)*); purpose “i,” which is to promote a desirable visual environment through creative development techniques and good civic design and arrangement (*N.J.S.A. 40:55D-2(i)*); and purpose “m,” which is to encourage land development with a view to lessening the cost of such development and the more efficient use of land (*N.J.S.A. 40:55D-2(m)*). Mr. McDonough testified that the public good served by the proposed development is the provision and distribution of goods and products. He testified that warehousing is considered “critical infrastructure” by several U.S. agencies; the location is appropriate as the use is permitted and the zone district has superior access to the regional highway network; and the project is an efficient land use with minimal tree clearing and abundant landscaping and an aesthetically sensitive design. The Township’s Planner, Mr. Novak, agreed with Mr. McDonough’s testimony and the basis for granting the variance.

The Board accepts these findings in granting the variance, but is equally persuaded by the measure of the public good more specifically in terms of the immediate neighborhood. The reasoning may be found in the ordinance itself, which requires a fence (or landscape strip) to be provided and maintained where a nonresidential use abuts residential property, requiring such fence to be “of such a type and designed in such manner as to *obscure*

from view at ground level such nonresidential property from the contiguous or abutting or neighboring residential properties...” (emphasis added). The height limitation to eight feet is rather at odds with this purpose in an application such as the present one, where a large structure will be constructed on a large tract, the need for a buffer is great, and, importantly, the fence serves not just the purpose of providing a visual buffer, as contemplated by the ordinance, but also a sound barrier. Moreover, because it is the height of the fence that determines how much sound travels over the wall, as Mr. Zybura testified, a higher fence will better mitigate the noise impact of the development. A higher than eight-foot fence serving the dual purposes of a sound and visual barrier, therefore, will actually increase the public protection, providing not only a “complete visual barrier from the properties” to the west of the Site, in Mr. Sehnal’s words, but also ensure that the Applicant is compliant with the nighttime noise level requirement, as, without the wall, this requirement could not be met. Without this variance, the Applicant would be in violation of the noise regulations, and would either not be able to construct the facility it desires (and which is permitted under the zoning), or would have to so drastically curtail the proposed operation as to eviscerate the economic value of the project. What would be far worse for the neighbors, in the Board’s view, would be a warehouse facility that meets the fence height limitation (obviating the need for a variance) but thereby becomes, if not more audible (as the facility would still have to meet the same noise level regulations), but significantly more visible to the neighbors. Not granting the variance could therefore impact the neighbors far more negatively. The positive impacts of granting the variance therefore substantially outweigh the potential negative impact.

The negative criteria are satisfied as well. The Applicant has demonstrated for the foregoing reasons that the variance can be granted without substantial detriment to the public good. The Applicant must meet the noise level requirements, which are intended to protect neighboring land uses and continued peaceful enjoyment of property, and granting the variance will increase the likelihood that it can do so. Nor will granting the variance impair the intent and purpose of the zone plan, which includes the goal to achieve a desirable balance of non-residential and residential land uses, or the zoning ordinance, which is to ensure that a sufficient buffer is established between residential and nonresidential land uses, and such a buffer is being provided.

Accordingly, this variance is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

100. The application necessitates ten waivers, consisting of six design waivers and four submission waivers. The Board may grant exceptions from the site plan approval requirements “as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval” if “the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship.” (*N.J.S.A.* 40:55D-51(b)).

101. The waivers and Board’s action on them are as follows:

Design waivers

a. *Waiver:* From Section 200-28D(2)(b), requiring a waiver to exceed the off-street parking requirement, or 111 spaces, whereas 239 parking spaces (including 73 banked spaces) are proposed.

Waiver granted. The Applicant’s Civil and Traffic Engineers testified that the number of proposed parking spaces was driven by the Applicant’s experience with warehouses and parking needs, which is only one space per 2,000 s.f. of building area, or 166 spaces, with 73 additional spaces to be banked, whereas the Township requires one space per 5,000 s.f. of warehouse space as well as one space per 250 s.f. of office area, a much higher ratio. The Applicant testified that because the construction is being done on a speculative basis and the end user will not be known until the facility is rented, it is hard to predict a tenant’s employee shift structure or number of employees, which could vary based on tenant, and trip generation will be rolling. Consequently, being able to provide additional parking spaces will give the Applicant more flexibility to meet present as well as future demand. For these reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to ensure adequate parking, and adequate parking is being provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from providing parking that is adequate for the proposed size of the facility. This waiver is therefore granted.

b. *Waiver.* From Section 200-27D(1), permitting 10 loading bays, whereas 58 loading bays are proposed.

Waiver granted. The Applicant’s Engineer, Mr. Sehnal, testified that the number of loading bays is driven by the Applicant’s need to be able to offload and onload as much product as possible, as efficiently as possible. Providing more bays will increase the number of

trucks that can load and unload at one time, rather than having the trucks back up and wait on the Site to access the bays when they become available. Fifty-eight loading bays is the number that fits along the western wall and would maximize the efficiency of the operation. It is noted in this context that the size of the facility is permitted, and it is therefore reasonable that the Applicant would seek to optimize its utility, which it could not do without this waiver. The Applicant's Planner opined that the standard provided in the ordinance was outdated because contemporary industrial use typically employs a lower ratio of loading bays to square footage and a warehouse of the sort proposed was not necessarily envisioned by the ordinance when loading standards were put in place. The Township's Planner, Mr. Novak, concurred with this point, confirming that the ordinance does not regulate the number of warehouse loading bays depending on the type of use. He testified, "[t]here are certain loading standards that were built into the ordinance that pre-existed prior to the Township amending the ordinance to allow for these types of facilities. They do group them together. So I don't think a warehouse like this was really envisioned when the loading standards were put into place. At least in the existing regulations." For the foregoing reasons, the Board finds this waiver request reasonable and within the general purpose and intent of the ordinance, which is to ensure that sufficient loading bays are provided for warehouse facilities, and a sufficient number is being provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from providing an adequate number of loading bays in proportion to the size of the facility and to accommodate the proposed operations. Accordingly, this waiver is granted.

c. *Waiver.* From Section 200-32A(2)(c)[1], permitting one ground-mounted project/tenant identification sign per site, whereas two such signs are proposed.

Waiver granted. The Applicant provided testimony that the additional signage is principally for identification purposes, not advertising, to enhance the safety of the Site by making the entrance from a high-speed roadway more visible for trucks and reducing the risk that trucks could miss the entrance and end up in the middle of town. There are two access points, and each would have a sign. The Board finds this waiver request reasonable and within the general purpose and intent of the ordinance, which is to ensure that adequate but not excessive signage is provided, and two signs would not be excessive in this instance. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from enhancing the visibility and accessibility, and therefore the safety, of the Site. Accordingly, this waiver is granted.

d. *Waiver.* From Section 200-32A(2)(c)[2], which permits a maximum sign area of 48 s.f., whereas each proposed sign would have an area of 96 s.f. (excluding their base).

Waiver granted. The Board grants this waiver for reasons similar to those given for the immediately preceding waiver for more than one sign. Having two signs, which the Board deems reasonable for the reasons given above, doubles the overall area of the total signage. This is reasonable given the size of the Site and the need for visibility of the signage from the road. As the Applicant's Planner pointed out, the lot size requirement is 5 acres, whereas the Site is five times that minimum, and could, if divided into separate lots, have five signs as of right, so it would not be fair to penalize the Applicant for the size of the lot. Accordingly, this waiver request is reasonable and within the general purpose and intent of the ordinance, which is ensure there is adequate signage. Literal enforcement of the ordinance provision would work an undue hardship on the Applicant by preventing it from having an additional sign, potentially compromising Site safety, visibility from the road, and operational efficiency. This waiver is therefore granted.

e. *Waiver.* From Section 200-31K(1), requiring light levels in parking lots to be an average of 0.5 footcandles throughout, whereas the proposed average parking lot light level is 0.65 footcandle.

Waiver granted. The requested waiver is for a *de minimis* difference of 0.15 footcandles that will, if anything, increase Site safety and efficiency by offering slightly more illumination without impacting neighboring properties and is consistent with the proposed use. Accordingly, this waiver request is reasonable and within the general purpose and intent of the ordinance, which is ensure there is sufficient illumination without adversely impacting neighboring properties, which is achieved in this case. Literal enforcement of the ordinance provision would work an undue hardship on the Applicant by requiring it unnecessarily to alter its lighting plan with no obvious benefit and a possible downside by lessening the optimal illumination. This waiver is therefore granted.

f. *Waiver.* From Section 200-31K(2), requiring light levels at intersections to be 3.0 footcandles, whereas the proposed light levels at intersections range from 2.61 to 3.46 footcandles.

Waiver granted. Mr. Sehnal testified that this minor waiver will enhance safety of operations and provide better lighting for pedestrians and drivers entering and exiting the site. He

indicated that the Applicant was willing to work to get closer to compliance if that were necessary, as provided in Condition 102ff. For these reasons, the Board finds this waiver request reasonable and within the general purpose and intent of the ordinance, which is ensure there is sufficient illumination without adversely impacting neighboring properties, which is the case here. Literal enforcement of the ordinance provision would, similar to waiver request “e” above, work an undue hardship on the Applicant by requiring it unnecessarily to alter its lighting plan with no obvious benefit and a possible downside. This waiver is therefore granted.

Submission waivers

d. Four submission waivers are sought as described below. The Board finds these waiver requests to be reasonable and within the general purposes and intent of the ordinance for the reasons set forth below. Literal enforcement of these requirements would exact undue hardship upon the Applicant by requiring information that either does not pertain to this application or that is being provided by the Applicant at the appropriate time. Accordingly, these waivers are granted.

Site Plan checklist

| | | |
|---|---|---|
| 1 | <u>Waiver:</u> From Section 200-13C(9), which requires wetlands location to be depicted with metes and bounds, whereas such information is not being provided on the plans. | <u>Temporary waiver granted.</u> The depiction of all wetland areas with surveyor’s metes and bounds for the outbound areas shall be provided at the time of compliance review. |
| 2 | <u>Waiver:</u> From Section 200-14C(1)(a), which requires a copy of the preliminary site plan approval resolution, whereas no such resolution is being provided. | <u>Waiver granted.</u> This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application. |
| 3 | <u>Waiver:</u> From Section 200-14C(1)(b)[1], which requires construction details specified at the time of preliminary approval to be included with final plans for site development, whereas no such details are being provided. | <u>Waiver granted.</u> This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application. |
| 4 | <u>Waiver:</u> From Section 200-14C(1)(b)[5], which requires a Final Landscape Plan | <u>Waiver granted.</u> This item relates to a situation where preliminary and final major site plan |

conforming to the approved preliminary plan, whereas such plan is not being provided.

approvals are sought separately, whereas concurrent approvals are sought in this application.

CONDITIONS REQUIRED

102. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the Applicant's legitimate requirements, the relief granted is subject to the following conditions:

Site plan

- a. The final site plan shall be consistent with the exhibits submitted by the Applicant and by the testimony of its witnesses.
- b. A security fence surrounding the loading/service area is not proposed with the submission. Frequently, this type of fencing may be added as a tenant is determined. These elements shall, if installed, be implemented in a manner that is aesthetically compatible with the architectural and landscape architectural design (e.g., aluminum picket fence and gates along the front view; dark color chain link along sides and back; and use of building materials and colors similar to the main building).
- c. Construction details or notes shall be added to the plans to indicate that any security fencing, gates and guard houses shall be aesthetically compatible with the architecture and landscape architectural design.
- d. On the site plan, Sheet 4, general note 5 refers to Code Section 200-211A(8), which refers to ROM-2 permitted uses. The ROM-3 section should be cited instead.
- e. The architectural plans shall indicate the location and screening of mechanical equipment and meters.
- f. The architectural plans shall depict the loading dock screen wall depicted on the site plan, between the front building façade and the loading docks and the height of the

wall shall be noted on the plan and be approved by the Landscape Architect to verify inclusion of the wall with the building construction.

Landscape

g. The planting schedule shall be amended to include additional plant size range specifications, including the height for caliper trees and height and spread for shrubs. A note shall be added to the plans indicating that any additional ground level utility elements are to be screened by landscape plantings.

h. An automatic irrigation system designed by a Certified Irrigation Designer shall be specified in the plans for the landscaped buffer along Rt 571, the rear residential zone line buffer and the landscaped area in front of the building. Several hose bibs or yard hydrants shall be provided around the building or property to facilitate the manual watering of plantings for all other landscaped areas of the property.

Noise

i. A live test will be performed by the Township upon completion of the development to ensure that the fence operates as designed and mitigates noise as per the report of the Applicant's acoustical expert. The Health Department shall have access to do further testing whenever it desires without notice to the Applicant or the tenants. If the original test or a subsequent test indicate that State code standards are violated, the Applicant shall take corrective steps to comply. Those steps shall be subject to the review and approval of the Township Engineer.

j. The Applicant shall use pneumatic dock levelers to slowly lower the dock to the trailer bed. They should operate smoothly to reduce adjustment noise.

k. As an administrative control, trucks shall be prohibited from idling for prolonged periods of time, and no longer than that permitted by the State of New Jersey.

l. During nighttime hours, audible backup signals use shall be prohibited, or the truck shall be equipped with audible backup signal that are limited to 100 dB output sound power level.

m. There shall be a deed notice subject to the review and approval of the Board Attorney and recorded by him indicating when testing of the fence and berm for compliance with State noise standards will occur as per Condition 102i and containing the requirement of remedial action if such standards are violated.

n. The fence, including structural supports, shall be designed by a structural engineer, and the specifications shall be submitted to the Township staff. The specifications shall be subject to the staff's review and approval.

o. If the operation of trucks at night results in a violation of State noise standards, the number of trucks in operation at night shall be limited to a number that will not result in any violations.

p. The sound barrier, consisting of the berm and fence, and trees to be planted on the berm, shall be completed before the first tenant occupies the building.

q. With respect to the fence, the Township will pick an acoustical engineering expert that the Applicant will pay for. The choice will be the Township's alone. If such acoustical expert determines that there is a meaningful difference between an STC 39 and STC 31 fence, he or she shall present his or her findings to Messrs. Guzik, Dobromilsky and Jepson for a decision by those three staff members as to whether an ST39 or ST31 fence shall be installed.

r. The color of the fence shall be the color of the fence section marked as Exhibit A-9.

s. The trash compactors shall be turned off from 7:00 p.m. to 7:00 a.m.

t. Any noise complaints received from members of the community will be investigated by the Township as promptly as possible.

u. The fence shall be fully constructed and installed prior to any occupancy and start of operations.

Storm water management

- v. The Applicant shall submit the mounding analysis to the Township Engineer.
- w. The proposed green-infrastructure mechanical treatment devices that are adjacent to CR 571 may ultimately fall within the County jurisdiction pending Mercer County's dedication requirements. Approval of these GIMTDs by Mercer County and disposition of maintenance responsibilities for same will be addressed as part of the County approval process. Should the County require changes to the proposed design, the revised design shall be submitted to the Township administrative staff for review and approval.
- x. Due to groundwater issues, significant fill will be imported to raise the site and allow for storm water management measures to be implemented. This must be done under the direction and supervision of a NJ-licensed geotechnical engineer. A note to this effect shall be added to the plans in combination with the note with respect to porous pavement required by the Conditions with respect to access, circulation and parking below.
- y. The submitted Stormwater BMP Maintenance Plan shall be subject to such revisions as the Township Engineer proposes during resolution compliance.
- z. When increasing pipe sizes in storm sewer runs, the pipe crown elevations are matched with a drop in invert elevations for best efficiency. Several pipe runs instead show matching inverts and require hydraulic grade line calculations to demonstrate that the design storm remains within the system.

Utilities

- aa. The Applicant shall pay its fair share for the sanitary sewer capacity improvements in the drainage area within which it is located in accordance with the Township's reimbursement ordinance, Ordinance 2022-03. The specific costs to the Applicant will be based on total sewer demand, including any process wastewater generated.
- bb. The Applicant shall make a formal request for a sewer allocation from Township Council.
- cc. The Applicant shall provide a design of the connection of its site to the existing sanitary sewer system and shall secure such approvals that as are necessary therefor.

dd. Such rights as the Applicant may have for reimbursement by other users of the sewer main the Applicant builds along CR 571 shall be determined by Administrative staff and Township Council.

Lighting

ee. The Mongoose lighting on single poles and on the building shall have full cutoff features and be angled at 90 degrees to the ground. They may not be tilted, and a note shall be added to the plans so providing. The location of the Mongoose lighting, designated with the "Tag" B1, and of the D1 WallPack fixtures shall be clearly shown on the Lighting Plan.

ff. With respect to the two lighting waivers, the Applicant shall make whatever adjustments are feasible to get as close to the Township standards as it can. The Township understands that it may not be able to comply. Any adjustments shall be subject to the review and approval of the Township Engineer.

gg. The hours of illumination for the lighting shall be dawn to dusk, and the means of lighting control shall be by timer or photocell.

hh. A note shall be added to the plans indicating that the egress and loading dock lighting shall be subject to review by Township Land Use Staff with the building code submissions to help confirm that there will be no glare-producing lighting.

Building

ii. The building shall be consistent with the conceptual floor plan shown on Exhibit A-4 with a 36-foot internal clear height.

jj. Clear windows in areas of warehouse use with the potential of future office use within the buildings can become sources of excessive glare and unsightly views of racks, equipment, or materials. Such windows shall have opaque glazing until the office use is added. A note shall be added to the plans indicating that the glass in these areas will be opaque unless office uses are added.

kk. The Applicant shall install a wing wall screening the loading bays from CR 571. The walls should be of sufficient height to do so and shall be made of the same materials that the building façade is made of.

Access, circulation and parking

ll. The Applicant shall work with Mercer County with the aim of a timing adjustment for the signal to be installed at the easterly access point that yields an acceptable level of service. That signal should permit left hand turns only with a left turn arrow (“protected left”). Signage shall be provided so that left turns in shall not be permitted when the green arrow is not on and only the green bulb is on (which otherwise would be “permitted left”). The Board understands that the final decisions on all of these matters is solely within the discretion of Mercer County.

mm. In order to install any or all of the banked parking spaces, the Applicant shall engage with the Municipal staff to justify doing so. Installation shall be subject to the approval of the Municipal staff. Some or all of the spaces shall also be installed at the administrative staff’s request.

nn. The 73 trailer spaces shall only be used for trailers. The trailers shall be currently licensed and kept in working order and not used for storage.

oo. Barrier free parking spaces shall be located as close as possible to the accessible entrances they service. The spaces at the southeast corner shall be switched with the EV spaces to satisfy this requirement.

pp. Signs to prohibit left turns into and out of the westerly driveway will be needed to make the right-in right-out condition enforceable. The signs’ location, size and design shall be subject to review and approval of the Township Traffic Engineer. Trucks shall not exit the unsignalized driveway.

qq. The proposed westbound right turn lane at the traffic signal may not be helpful. The WB-67 turning maneuver shown indicates that the WB-67 strays into the adjacent through lane to complete the turn. The Applicant shall provide a document, subject to the review and approval of the Township Traffic Engineer, showing that a WB-67 can turn right

without straying into the adjacent through lane. Right turns at the intersection shall not be permitted if this cannot be shown.

rr. The electrical vehicle sign shall use the MUTCD Sign D9-11b's "California alternate" where the EV symbol looks more like a gas pump with EV on it with a plug upright. The plans shall be modified accordingly.

ss. Fire lanes shall be provided and appropriately marked at the direction of Chief Lynch, WWFES.

tt. A note shall be added to plans providing that all porous pavement construction shall be supervised and certified by a N.J.-licensed Geotechnical Engineer.

uu. The sidewalks shall be made of pervious material and shall not at any point be covered over with impervious material.

vv. The portion of the cross-access easement shown on the plans on the subject property shall be subject to the review and approval of the Township Engineer and Township Traffic Consultant and Board Attorney. The Applicant shall not be responsible for constructing the portion of the connection on its property. Its only responsibility is to maintain the easement.

ww. All crosswalks shall be 10 feet wide. With driveway signalization, crosswalks, pushbuttons and curb ramps with detectable warning surfaces shall be installed.

xx. The Applicant shall arrange for Title 39 enforcement on the Site.

Other

yy. The facility shall not be a refrigerated warehouse, and there shall be no refrigeration units or refrigeration trucks on site.

zz. The project shall be LEED certified.

aaa. The Applicant shall install signs prohibiting idling. The number, location, size, and design shall be subject to the review of the Township Planner and Landscape Architect.

bbb. The site will be maintained, including trash removal, landscaping, and the storm water management system, by a property management firm, which will be the property manager and will be retained by the Applicant. The Applicant may choose at its discretion to retain a different property manager at any time.

ccc. The Applicant shall prepare a Deed to itself attaching thereto this resolution of memorialization. Such Deed shall be subject to the review and approval of the Board Attorney, who will also record the Deed.

ddd. The roof and building shall be solar ready, and solar panels shall be installed if the electric utility approves the return of electricity not necessary to service the project to the grid. If the electric utility does not so approve, the solar panels will be installed by the tenants if they so desire.

eee. The depiction of all wetland areas to remain after construction with surveyor's metes and bounds for the outbound areas shall be provided at the time of compliance review.

fff. All construction details, including final design of the storm water management BMPs and their amenities, shall be subject to the review and approval of the Township Engineer.

ggg. The Applicant shall provide two engineer's estimates of probable construction costs for this project. One shall include all site improvements for the purpose of establishing the required construction inspection escrow fees, while the other will be used for the purpose of establishing the required performance guarantee amounts. The latter will consist solely of those improvements in the Township right-of-way and improvements ultimately to be dedicated to the Township as well as any proposed buffer landscaping berming.

hhh. The Applicant shall provide, via both hard copy and electronic format, approved site plans being submitted for signature and as-built surveys upon project completion should the project be constructed.

iii. Electronic copies of the Stormwater Management Report and Maintenance Manual shall also be provided.

jjj. The Applicant shall submit to the Township Engineer the anticipated refuse and recycling operations of the site.

kkk. The building shall be equipped with full automatic fire sprinklers.

lll. A lock box to allow immediate access by the Fire Department shall be installed at the front of the building.

mmm. The position of the Fire Department connection that supports the fire sprinkler system shall be at the front of the building.

nnn. The Applicant, in accordance with instructions from the Construction Official, shall conduct a radio signal strength survey of the building while under construction, and if deemed necessary, a radio signal amplification system shall be installed.

ooo. The following approvals shall be obtained, if required:

- Mercer County Planning Board
- Mercer County Soil Conservation District
- NJDEP (Treatment Works Approval)
- NJDEP (LOI, GP and TAW-buffer averaging)
- Delaware & Raritan Canal Commission

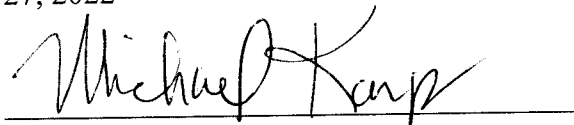
CONCLUSION

Based on the foregoing, the Board at its April 27, 2022 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on July 27, 2022 by a vote of those who voted to grant the relief sought by the Applicant.

The date of decision shall be April 27, 2022 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the Applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on July 27, 2022 This resolution memorializes formal action taken by the Board at its regular meeting held April 27, 2022


Michael Karp, Chair


Lisa Komjati, Secretary

Gene O'Brien, Former Chair – Yea
Michael Karp, Former Vice Chair – Yea
Sue Appelget – Yea
Anis Baig – Absent
Curtis Hoberman – Yea
Andrea Mandel – Yea
Hemant Marathe – Yea
Simon Pankove – Absent
Allen Schectel – Yea
Jyotika Bahree, Alternate No. 1 – Yea
Robert Loverro, Alternate No. 2 – Nay

EXHIBIT “B”

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Atlantic Realty Development
Corporation

ATLANTIC REALTY DEVELOPMENT
CORPORATION,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR AND THE
TOWNSHIP OF WEST WINDSOR,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY-LAW DIVISION**

CIVIL ACTION

DOCKET NO.: MER-L-1947-18

**STIPULATION OF SETTLEMENT AND
CONSENT ORDER**

Recital: This Stipulation and Consent Order ("SCO"), dated December 28, 2020, is executed by Plaintiff Atlantic Realty Development Corporation ("Atlantic") and by Defendant Township of West Windsor ("Township"), referred to together as "the Parties", in intended final settlement of the above-captioned zoning and land use action ("the Action"), in concert with the Parties' final settlement regarding the Superior Court of New Jersey declaratory judgment

action captioned: I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15, (“the Township DJ Action”) and the related appeal, captioned: I/M/O The Township of West Windsor (Mount Laurel Declaratory Judgement Action), Docket No. A-005412-18 (“the Appeal”), each involving the same Atlantic real property located within the Township that is in issue in the captioned Action, with resolution of the Appeal being provided for within Section 24. hereof through separate Stipulation of Dismissal to be filed under the Appeal Docket immediately upon entry of the instant SCO;

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A. THE PARTIES

Through their respective undersigned counsel, Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr., counsel of record) appearing for Plaintiff Atlantic, and Miller, Porter, and Muller, P.C. (Gerald J. Muller, Esq., counsel of record) appearing for the Defendants), the Parties have hereby entered the instant SCO, stipulating and agreeing as follows:

1. Pursuant to Order of Substitution of Parties entered in the Action on December 2, 2019 (copy attached as Exhibit A), Atlantic has been substituted as the real-party-in-interest under Rule 4:34-3, superseding the original plaintiff in the Action, Princeton Land, LLC ("PL"), an affiliate of The Howard Hughes Corporation ("HHC"), and pursuant to Orders of the Appellate Division, entered in the Appeal on January 22, 2020 (attached

hereto as Exhibit B), Atlantic has also been recognized as a Party-Appellant, and successor-in-interest to HHC and to HHC's affiliate titleholder, PL.

B. THE SETTLED LAND USE ACTION

2. The Action was commenced through complaint filed by HHC's affiliate PL, on September 13, 2018 ("the Complaint"), as titleholder to contiguous lots within the southwestern section of the Township, fronting on US Route 1, comprised of approximately 650 acres, formally used by the American Cyanamid Corporation, principally as an industrial agricultural research facility ("the HHC Site"), acquired in 2010 in its entirety by HHC, with the intention of development for predominantly residential uses, including approximately 1,976 units of inclusionary family housing, as set forth in the concept plans filed by PL, and later adopted by Atlantic in the Action in which Atlantic has succeeded PL as Party Plaintiff-in-Interest;

i. Pre-Settlement Litigation of Non-residential Zoning

3. Following hearing on April 5, 2019 on motion by the Township for dismissal of Counts One, Four and Five of the Complaint, the Court issued an order, dated June 26, 2019, granting dismissal with prejudice of Counts One, Four and Five of the Complaint, which sought statutory Redevelopment planning of the HHC Site and other related relief compelling zoning revision, with

remaining Counts Two and Three of the Complaint, respectively contending that the existing use zoning of the HHC site (effectively precluding any residential development of the property in Atlantic's view) is arbitrary and contrary to the Municipal Land Use Law ("MLUL"), and is confiscatory in its application to the HHC site in violation of the State and Federal Constitutions, remaining in contest by the Township and therefore being scheduled for pretrial discovery;

4. Further pre-trial discovery and litigation activity in the Action was suspended through successive Case Management Orders at the request of the Parties in order to discuss possible settlement of the Action;

5. Atlantic acquired title to the entirety of the HHC Site on or about October 29, 2019, with the intention of developing the HHC Site principally for residential uses;

ii. Presentation of HHC Site Development Plans

6. Prior to commencement of the Action, on or about September 13, 2018, on referral by the Township Council, on May 10, 2017 and July 26, 2017, the Township Planning Board ("Planning Board") heard the presentation by Atlantic's predecessor-in-title of concept plans for the redevelopment of the HHC Site for inclusionary housing and other non-industrial uses, following which the Planning Board declined to take action at that time in

furtherance of either designation of any or all portions of the HHC Site as a redevelopment area, or, alternatively, designation of the HHC site as a statutory area in need of renewal, and otherwise declined to advance rezoning of the HHC site, with the Township Council thereafter similarly declining requests for zoning revision;

7. On or about November 6, 2019, in contrast to the Planning Board presentation by Atlantic's predecessor-in-title of concept plans for residential development of the HHC Site, the Township Planning Board published drafts of contemplated Township Master Plan revisions which did not include residential use of the HHC Site;

iii. Resolution of Township Affordable Housing Litigation

8. On or about July 2, 2019, within the Township's aforementioned Township DJ Action, that is now the subject of the Appeal being maintained by Atlantic (which is being concurrently settled together with the Action), the Presiding Judge issued a Final Judgment of Compliance and Repose, resolving the Township DJ Action and approving the Township's affordable housing compliance plan, which the Township views as satisfying and discharging any Township obligation to rezone and site plan for inclusionary family housing, other than as to inclusionary housing development sites included in the Township's Court-approved affordable Housing

Element and Fair Share Plan ("HEFSP"), which does not include the HHC Site.

9. In appearances and submissions in both the above captioned Action and the Appeal, the Parties have held divergent land use views, with Atlantic maintaining, on the one hand, that the HHC Site is suitable for residential use and that there exists need for market-rate housing within the regional housing market, within which the HHC Site and the Township are situated, such that, in Atlantic's view, market-rate housing constitutes the highest and best use of the HHC's Site, and the Township maintaining, on the other hand, that the Township's provision of constitutionally sufficient affordable housing does not require use of the HHC Site as the Township has made constitutionally sufficient provision for residential zoning, with affordable units included in the Township's approved HEFSP, together with the Hilton/Toll Bros. Project, thereby satisfying the Township's affordable housing obligation while avoiding burdens of additional residential development;

C. COURT-AUTHORIZED SETTLEMENT CONFERENCING OF PARTIES

10. In effort to resolve their differences regarding zoning and development of the HHC Site, during Case Management teleconferences conducted in the Action on January 6, 2020 and March 9, 2020, the Parties requested that the Court grant a further

suspension of discovery and litigation proceedings, and the Court's April 13, 2020 Case Management Order ("CMO"), entered contemporaneously with case management telephonic conference, therefore tolled discovery pending further Case Management teleconference, initially scheduled thereunder for June 16, 2020, and thereafter, rescheduled for July 1, 2020, with the aforesaid tolling of discovery being thereafter further extended through December 16, 2020 pursuant to CMO's entered in succession on September 10, 2020 and November 12, 2020;

D. TERMS OF CONDITIONAL SETTLEMENT

11. The Parties, having since conferred both directly and through their respective counsel, and having reviewed and approved the instant SCO, have now presented the instant SCO to the Court and have hereby advised the Court, through their respective counsel, of the following terms of settlement:

i. Opportunity to Review and Comment on the Terms of the Agreement

12. The Parties have had due opportunity to consider the terms and conditions of the instant SCO and exhibits referenced herein and attached hereto, review of the SCO having been conducted with the benefit of advice of respective counsel for the Parties, and, in the case of the Township, with the benefit of the advice and recommendations of the Township's Independent Planning Consultants, the Township's Real Estate Manager, and the Planning

Board, conveyed through unanimous vote at the Planning Board's December 9, 2020 regularly scheduled meeting;

ii. Resolution Approving Settlement

13. The Township Council has considered the operative terms of settlement set forth in instant SCO and annexed exhibits, both in executive session as authorized under the Open Public Meetings Act (N.J.S.A. 10:4-6 to-21) for settlement discussion, and in public session at regularly scheduled meeting of November 30, 2020 during which by resolution the Township Council unanimously approved the substantive terms of settlement set forth in the SCO and authorized execution of the SCO by counsel on behalf of the Township (a copy of the Township Council's memorializing Resolution is attached hereto as Exhibit C), the instant SCO has accordingly been signed by counsel for the respective parties below;

E. DISMISSAL OF ACTION WITHOUT PREJUDICE TO BECOME WITH PREJUDICE DISMISSAL UPON FULFILLMENT OF CONDITIONS OF SETTLEMENT

14. The Parties having reached accord, with due authorizations of the respective Parties having been obtained for the execution hereof by their respective counsel, and, as further described herein, certain rezoning ordinances contemplated in settlement of the Action and the Appeal (copies of which are respectively attached hereto as Exhibits E and F) having been given

first reading at Township Council meeting of November 30, 2020 and finally adopted by the Township Council at second reading on December 14, 2020, subject only to publication as adopted ("the Rezoning Ordinances"), the executed SCO and annexed Exhibits has therefore been submitted for entry by the Court on consent of the Parties to pursuant to R.4:42-1 (b) in full settlement of the Action, and the Parties hereby further **Stipulate and Agree, as follows:**

15. The Action shall be, and hereby is voluntarily dismissed without prejudice, through entry of the instant SCO without costs in favor of or against either Party, with the instant dismissal becoming a final dismissal with prejudice, immediately upon satisfaction of the rezoning finality condition defined immediately below ("Rezoning Finality"), with the entry of dismissal with prejudice forever precluding Atlantic, or any successors-in-interest thereto, from: a) applying to the Planning Board for recommendation or authorization of residential use of the HHC Site; b) petitioning the Township Council for residential-use rezoning; or c) initiating litigation, or otherwise seeking governmental or judicial relief authorizing residential use of the HHC Site;

i. Rezoning Finality Condition: Final Non-appealable Rezoning Ordinance

16. Rezoning Finality, requiring entry of dismissal of the Action with prejudice, shall be deemed to occur upon the earlier event of either expiration of the time for judicial review of the Rezoning Ordinances pursuant to New Jersey Court Rule 4:69-6, or the entry of final non-appealable judgment, sustaining the Rezoning Ordinances as adopted by the Township Council at its regularly scheduled meeting of December 14, 2020, rezoning the HHC Site in form consistent with development of the HHC Site as shown on the Conceptual Site Plan attached hereto as Exhibit D, which, subject to site plan approvals and all other applicable regulatory approvals, permits development of the HHC Site with not less than 5.5 million square feet of modern warehouse use ("Warehouse Rezoning"), and development of up to 150,000 square feet of retail use calculated exclusively of other commercial uses, without authorization of any residential development of the entire 650+ acre HHC Site, conforming with the Bulk and Dimensional regulations incorporated in Exhibit E ("Warehouse Rezoning Code");

17. Upon attainment of Rezoning Finality of Warehouse Rezoning Code under Section 14. hereof, an order of dismissal of the Action with prejudice and without costs shall be entered on notice pursuant to Rule 4:42-1(c) (Settlement on Notice).

F. REACTIVATION OF ACTION IN THE EVENT OF FAILURE OF REZONING FINALITY

18. In the event that Rezoning Finality condition set forth in Section 14. hereof shall not be fulfilled as a result of judicial determination in any action by any Third Party not party hereto, that is adverse to the final non-appealable adoption of Warehouse Rezoning Code ("Failure of Rezoning Finality"), then, in such event, Atlantic may apply to the Court, on notice duly served on counsel for the Township pursuant to Rule 4:42-2, for the issuance of an order reactivating the Action, and upon entry of such order, the Parties shall resume their respective litigation positions in the Action as of the date thereof, subject to further CMO, provided, however, that reactivation of the Action hereunder due to Failure of Rezoning Finality shall not affect the finality and non-appealable status of either the July 2, 2019 Judgment of Immunity and Repose entered in the Township's Mount Laurel IV DJ Action or the dismissal of the Appeal with prejudice pursuant to Section 24. hereof;

i. Election of Acceptance of Partial Warehouse Rezoning

19. If as a result of an adverse decision of a reviewing Court in any action brought by a Third Party not party hereto, Failure of Rezoning Finality shall occur, then, in such event, Atlantic may, at its election, opt for either the reactivation of the Action on notice pursuant to Rule 4:42-1(c) as provided for in Section 16. hereof, with Atlantic and the Township thereby resuming their respective litigation position therein, or, Atlantic may

accept such portions of Warehouse Rezoning of the HHC Site that may survive an adverse judicial determination that may otherwise constitute Failure of Rezoning Finality hereunder, provided however, that as set forth in Section 16. hereof, Atlantic's acceptance of Failure of Rezoning Finality shall have no effect on either the Township's Judgment of Repose and Immunity or the final dismissal of the Appeal hereunder;

ii. Township Retention of All Defenses in Event of Non-Approval of Warehouse Rezoning and Reactivation of Litigation of Contested Zoning Areas

20. In any instance of reactivation of litigation under the terms of Section 16. hereof, the Township shall have available to it all defenses at law and equity assertible in good faith, and the entry of this SCO shall be without prejudice to the Township;

G. REVIEW OF SITE PLANNING CONFORMING (WITHOUT VARIANCE) TO WAREHOUSE REZONING CODE

i. Nonsupport of Objectors

21. Neither the Township nor the Planning Board nor Atlantic shall support or fund, any challenge, contest, or appeal (including prerogative writ actions pursuant to Rule 4:69-1), seeking relief from Warehouse Rezoning hereunder or from any Site Plan approval relief that would: i) allow Atlantic to make market rate residential use of such portions of the HHC site that may be subject to such adverse site planning decision; ii) allow the substitution of areas of the HHC Site for sites included within

the Township's HEFSP; or iii) relief that would allow inclusionary housing development of HHC Site areas for application toward satisfaction of any later round ("Round IV") Mount Laurel compliance obligations of the Township.

ii. Rejection of Conforming Warehouse Site Plan Application as Cause for Claim for Residential Uses of HHC Site

22. Any site plan application conforming to Warehouse Rezoning Code without necessity of variance ("Conforming Site Plan Application"), and complying with all other applicable regulations, will be presumptively entitled to approval and, in the event of non-approval of a Conforming Site Plan Application, in addition to seeking judicial review of such adverse site planning decision, notwithstanding anything to the contrary herein, Atlantic shall also be entitled to initiate litigation, seeking regulatory and/or judicial relief that would: i) allow Atlantic to make market rate residential use of such portions of the HHC site that may be subject to Non-Approval of Conforming Site Plan Application; ii) allow the substitution of areas of the HHC Site for sites included within the Township's HEFSP ; or iii) allow inclusionary housing development of HHC Site areas for application toward satisfaction of any later round ("Round IV") Mount Laurel compliance obligations of the Township. (The Township shall retain all defenses as provided in Section 18. hereof, provided however, non-Approval of Conforming Site Plan Application

hereunder shall otherwise have no effect on either the finality of the July 2, 2019 Judgment in the Township Mount Laurel IV Declaratory Judgment Action or the dismissal of the Appeal under Section 22. upon entry of the instant SCO.);

H. ENTRY OF DISMISSAL WITH PREJUDICE OF ACTION UPON SATISFACTION OF REZONING FINALITY CONDITION

23. Upon attainment of Rezoning Finality of Warehouse Rezoning Code, final dismissal of the Action with prejudice shall be entered on notice pursuant to Rule 4:42 - 1(c), on application of either Party hereto, without costs in favor of or against either Party;

i. Dismissal of Appeal upon entry of SCO

24. Upon entry of the instant SCO, Atlantic shall cause Stipulations of Settlement and Dismissal of the Appeal, in form annexed hereto as Exhibit F, to be entered by the Office of the Clerk of the Appellate Division of New Jersey Superior Court pursuant to R. 2:8-2 in final resolution of the Appeal as set forth in the Recital hereto;

ii. No Tax Abatement Applications

25. Subject to Section 14. hereof, Atlantic is foregoing and relinquishing any application for: arrangements for payments in lieu of taxes ("PILOT"); Financial Agreements under the Housing

and Redevelopment Laws; or other form of abatement of ad valorem municipal real estate taxes.

I. COUNTERPARTS

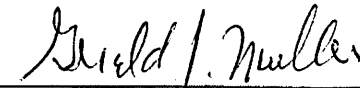
26. This SCO may be executed by the Parties, through their respective counsel, in counterparts.

Waters, McPherson, McNeill, P.C.
Counsel for Plaintiff
Atlantic Realty Development Corporation

By: 
Kenneth D. McPherson, Jr.

Dated: December 28, 2020

Miller, Porter, and Muller
Special Counsel to Defendant
Township of West Windsor

By: 
Gerald J. Muller, Esq.
Dated: January 6, 2021

The foregoing is So Ordered.

By: s/Mary C. Jacobson
Mary C. Jacobson, A.J.S.C.

Table of Exhibits

Order of Substitution of Party-Plaintiff-in-InterestA

Orders of Appellate Division recognizing Atlantic Realty as
Appellant.....B

Resolution of Township Council Approving Form of Settlement and
Consent OrderC

Conceptual Site Plan.....D

Warehouse Rezoning.....E

Stipulations of Settlement and Dismissal of the AppealF

Exhibit A

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
 Lauren H. Sobotka, Esq. (Attorney ID No. 273992018)
 WATERS, McPHERSON, McNEILL, P.C.
 300 Lighting Way
 P.O. Box 1560
 Secaucus, NJ 07096
 Tel. (201) 863-4400
 Email kmj@lawmmm.com
 Attorneys for Movants Atlantic Realty Development Corporation and
 Affiliate Title Holders, Scholar's Meadow LLC and Clarksville
 Center LLC

FILED
 12/02/2019
 SUPERIOR COURT OF NJ
 MERCER VICINAGE

PRINCETON LAND LLC,

 Plaintiff,

 v.

 THE MAYOR AND COUNCIL OF THE
 TOWNSHIP OF WEST WINDSOR AND
 THE TOWNSHIP OF WEST WINDSOR,

 Defendants.

SUPERIOR COURT OF NEW JERSEY
 MERCER COUNTY-LAW DIVISION

DOCKET NO. MER-L-1947-18

CIVIL ACTION

ORDER OF SUBSTITUTION OF
 PARTY-PLAINTIFFS

The above-captioned action ("the Action") having been brought before the Court by Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr. and Lauren H. Sobotka, appearing), as counsel for movant Atlantic Realty Development Corporation ("ARDC") and ARDC's affiliated title holders identified herein, on notice of motion, served on counsel for parties of record, Pepper Hamilton, LLC (Thomas M. Letizia, appearing), attorneys for Original Party-Plaintiff, Princeton Land LLC ("PL"), and Miller, Porter & Muller, P.C. (Gerald J. Miller, appearing), Special Counsel for Defendants, Mayor and Council of the Township of West Windsor and the Township of West Windsor (together, "Defendants"), seeking an

Order pursuant to Rule 4:34-3 (Real-Party-in-Interest/Substituting Parties-Plaintiff), and the Court having received no objections to the form of the Proposed Order, submitted with the moving papers, and for good cause shown in the moving papers;

It is on this 2nd day of ~~November~~ December, 2019, hereby ORDERED:

1. Having acquired title and development rights to the property that is the object of the Action, ARDC, as holder of development rights, and its affiliate title holders, Scholar's Meadow LLC and Clarksville Center LLC, (together, "Movants"), are now the Real-Parties-Plaintiffs-in-Interest in the captioned matter;
2. Movants shall be and hereby are substituted for PL as Parties-Plaintiffs pursuant to Rule 4:34-3;
3. Further filings in the Action may be captioned, and should be accepted by the Office of the Clerk for filing, showing Movants as Parties-Plaintiffs in the following manner: "Atlantic Realty Development Corporation, Scholar's Meadow LLC, and Clarksville Center LLC, Plaintiffs, through substitution as Real-Parties-in-Interest Pursuant to Rule 4:34-3;
4. A true, but uncertified, copy of this Order shall be served on the offices of counsel of record for all the other parties within 7 days of the date hereof.

Mary C. Jacobson, A.J.S.C.

Mary C. Jacobson, A.J.S.C.

Opposed

Unopposed

1155521.3

Exhibit B

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003007-19

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003007-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

I/M/O THE TOWNSHIP OF WEST
WINDSOR

MOTION FILED: 12/20/2019 BY: TOWNSHIP OF WEST WINDSOR

ANSWER(S)
FILED:

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

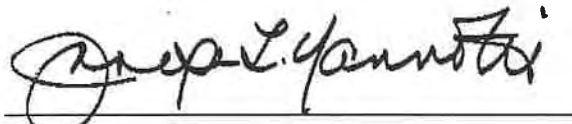
MOTION BY RESPONDENT

MOTION TO AMEND SCHEDULING ORDER DENIED AND OTHER

SUPPLEMENTAL:

The motion to amend the scheduling order is denied. All parties to the trial court proceedings are deemed to be parties on appeal. Atlantic Realty is the appellant, and all other parties are respondents. Unless it has already done so, any respondent that does not intend to participate in the appeal shall within ten (10) days after the date of this order inform the Clerk of the Court of its non-participation. Any amicus curiae that has been granted leave to appear in the trial court proceedings may, without seeking further leave, file a brief on appeal. R. 1:13-9(d). The Township's motion to bar Atlantic Realty from raising arguments regarding the site formerly owned by Howard Hughes is denied.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003206-19

ORDER ON MOTION

I/M/O THE TOWNSHIP OF WEST WINDSOR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003206-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

MOTION FILED: 12/30/2019
ANSWER(S) FILED: 01/10/2020

BY: ATLANTIC REALTY
BY: TOWNSHIP OF WEST WINDSOR

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

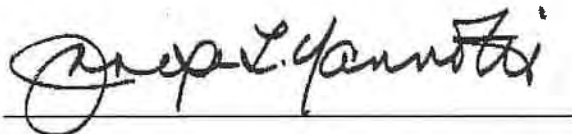
MOTION to SUBSTITUTE
REAL-PARTY-IN-INTEREST

DENIED AND OTHER

SUPPLEMENTAL:

The motion is denied as moot. See Order entered on M-3007-19.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

Exhibit C

2020-R247

RESOLUTION

- WHEREAS, the Township of West Windsor (“Township”) filed a declaratory judgment action, pursuant to In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) in July of 2015, captioned I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15 (“Township Declaratory Judgment Action”), in which the Township sought immunity from builders’ remedy lawsuits; and
- WHEREAS, in 2016, Atlantic Realty Corporation (“Atlantic Realty”), as owner of the parcel of land, known as the H&B Site (“H&B Site”), intervened in the Township’s Declaratory Judgment Action; and
- WHEREAS, in the Fall of 2018, the Township entered into settlement discussions with Intervener Fair Share Housing Center (“FSHC”) in the Township Declaratory Judgment Action; and
- WHEREAS, a settlement agreement between the Township and FSHC was ultimately reached in the Township Declaratory Judgment Action, which was subsequently approved by this Council; and
- WHEREAS, on or about July 2, 2019, the presiding Mount Laurel Judge entered a Final Judgment of Compliance and Repose in the Township Declaratory Judgment Action based on the Township – FSHC settlement; and
- WHEREAS, in August of 2019, as developer of lands within the Township referred to as the “H&B Site”, and as intervenor in the Township Declaratory Judgment Action, Atlantic Realty appealed the July 2, 2019 Order of the Superior Court of New Jersey, Appellate Division, captioned I/M/O The Township of West of Windsor, Docket No. A-005412-18 (“the Appeal”); and
- WHEREAS, on September 13, 2019, Howard Hughes Corporation, through its affiliate Princeton Lands, LLC (“PL”), titleholder to approximately 650 acres (the “HHC Site”), filed a prerogative writ action, captioned: Atlantic Realty Development Corporation v. The Mayor and Council of the Township of West Windsor and the Township of West Windsor assigned Docket No. MER-L-1947-18, as titleholder to approximately 650 acres (“the HHC Action”) seeking residential rezoning of the HHC Site ; and
- WHEREAS, Atlantic Realty acquired title to the HHC site on or about October 29, 2019, and through Court Orders, succeeded to the positions of Howard Hughes Corporation and PL in the Appeal and in the HHC Action; and

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2020-R247

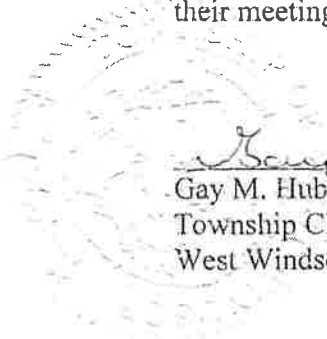
WHEREAS, Atlantic Realty and the Township have, through respective legal counsel, negotiated terms of settlement agreement providing for the dismissal of the Appeal and the HHC Action regarding the H&B Site and the HHC Site under terms and conditions set forth in a proposed Stipulation of Settlement with Consent Order (“SCO”) resolving both the Appeal and the HHC Action; and

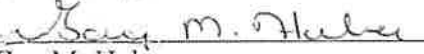
WHEREAS, the Council has: reviewed the SCO, has consulted with its professionals, heard comment by the public and has determined that it would be in the best interests of the Township to approve the SCO and terms of the settlement agreement memorialized therein.

NOW THEREFORE BE IT RESOLVED, on this, the 30th day of November, 2020 by the West Windsor Township Council, that the Township’s counsel is hereby authorized and directed to execute the SCO attached hereto, or in a form substantially equivalent thereto, approved by Township Council, and the Mayor, and the Township Clerk, are hereby authorized to execute on behalf of the Township all documents contemplated within the SCO and to otherwise do all things necessary or convenient to implement the terms of the settlement agreement memorialized therein

ADOPTED: November 30, 2020,

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 30th day of November, 2020.




Gay M. Huber
Township Clerk
West Windsor Township

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Exhibit D



zoning requirements (Ordinance 10/2018)

| Requirement | Project | Code | Value |
|--------------------------|---------------|---------------|---------------|
| Maximum Building Height | 15.00' | 15.00' | 15.00' |
| Maximum Floor Area Ratio | 0.25 | 0.25 | 0.25 |
| Maximum Lot Coverage | 100% | 100% | 100% |
| Minimum Lot Area | 10,000 sq ft | 10,000 sq ft | 10,000 sq ft |
| Minimum Setback | 10.00' | 10.00' | 10.00' |
| Maximum Density | 10 units/acre | 10 units/acre | 10 units/acre |

Public Department/Utility Requirements

| Department/Utility | Requirement | Project Value | Code Value |
|--------------------|-----------------|---------------|------------|
| Fire Department | Fire Hydrant | 100.00' | 100.00' |
| Police Department | Police Station | 100.00' | 100.00' |
| Public Works | Street Lighting | 100.00' | 100.00' |
| Water Utility | Water Main | 100.00' | 100.00' |
| Sewer Utility | Sewer Main | 100.00' | 100.00' |

Parking Requirements (Ordinance 10/2018)

| Category | Requirement | Project Value | Code Value |
|-----------------|-------------|---------------|------------|
| Minimum Parking | 100.00' | 100.00' | 100.00' |
| Maximum Parking | 100.00' | 100.00' | 100.00' |
| Minimum Access | 100.00' | 100.00' | 100.00' |
| Maximum Access | 100.00' | 100.00' | 100.00' |

Yield Data (Ordinance 10/2018)

| Category | Requirement | Project Value | Code Value |
|----------------|-------------|---------------|------------|
| Minimum Yield | 100.00' | 100.00' | 100.00' |
| Maximum Yield | 100.00' | 100.00' | 100.00' |
| Minimum Access | 100.00' | 100.00' | 100.00' |
| Maximum Access | 100.00' | 100.00' | 100.00' |

General Requirements (Other Building)

| Requirement | Project Value | Code Value |
|--------------------------|---------------|---------------|
| Minimum Building Height | 10.00' | 10.00' |
| Maximum Building Height | 15.00' | 15.00' |
| Minimum Floor Area Ratio | 0.25 | 0.25 |
| Maximum Floor Area Ratio | 0.25 | 0.25 |
| Minimum Lot Coverage | 100% | 100% |
| Maximum Lot Coverage | 100% | 100% |
| Minimum Lot Area | 10,000 sq ft | 10,000 sq ft |
| Minimum Setback | 10.00' | 10.00' |
| Maximum Density | 10 units/acre | 10 units/acre |

Public Department/Utility Requirements

| Department/Utility | Requirement | Project Value | Code Value |
|--------------------|-----------------|---------------|------------|
| Fire Department | Fire Hydrant | 100.00' | 100.00' |
| Police Department | Police Station | 100.00' | 100.00' |
| Public Works | Street Lighting | 100.00' | 100.00' |
| Water Utility | Water Main | 100.00' | 100.00' |
| Sewer Utility | Sewer Main | 100.00' | 100.00' |

Parking Requirements (Other Building)

| Category | Requirement | Project Value | Code Value |
|-----------------|-------------|---------------|------------|
| Minimum Parking | 100.00' | 100.00' | 100.00' |
| Maximum Parking | 100.00' | 100.00' | 100.00' |
| Minimum Access | 100.00' | 100.00' | 100.00' |
| Maximum Access | 100.00' | 100.00' | 100.00' |

Yield Data (Other Building)

| Category | Requirement | Project Value | Code Value |
|----------------|-------------|---------------|------------|
| Minimum Yield | 100.00' | 100.00' | 100.00' |
| Maximum Yield | 100.00' | 100.00' | 100.00' |
| Minimum Access | 100.00' | 100.00' | 100.00' |
| Maximum Access | 100.00' | 100.00' | 100.00' |

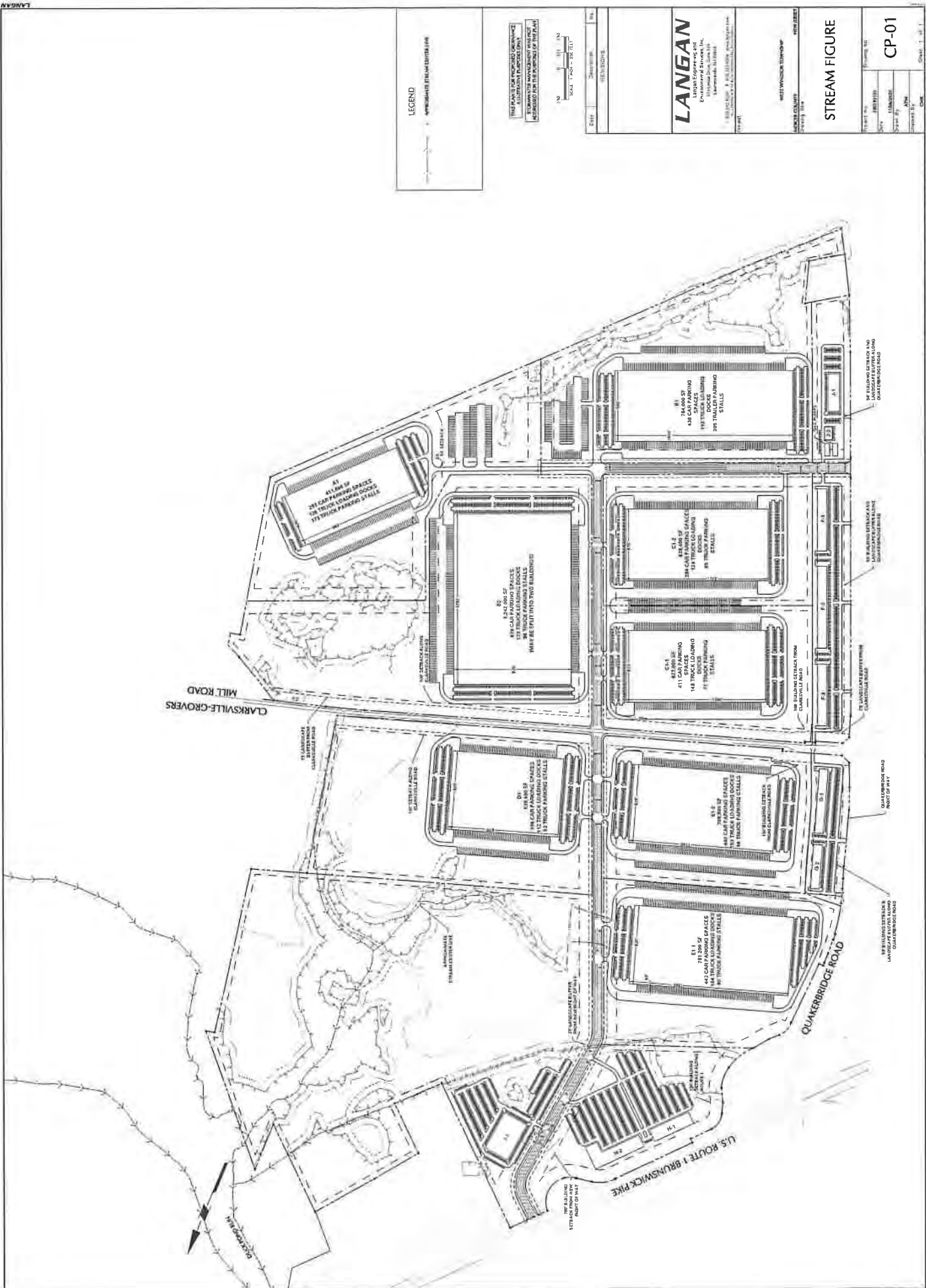
LANGAN
 CONSULTING ENGINEERS, INC.
 1000 BRUNSWICK PIKE, SUITE 100
 BRUNSWICK, GA 31009
 (770) 263-1111
 www.langan.com

ILLUSTRATIVE SITE PLAN

Project No. _____
 Revision No. _____
 Date _____

Sheet No. **CP-01** of 1

THIS PLAN IS FOR INFORMATION ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL GOVERNMENT. THE CLIENT IS ALSO RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES INFORMATION FROM THE LOCAL GOVERNMENT.



LEGEND
 APPROPRIATE SYMBOLS FOR THE PLAN

THIS PLAN IS THE PROPERTY OF LANGAN ENGINEERING AND CONSULTANTS, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. ANY REUSE OR MODIFICATION OF THIS PLAN WITHOUT THE WRITTEN PERMISSION OF LANGAN ENGINEERING AND CONSULTANTS, INC. IS STRICTLY PROHIBITED.

SCALE: 1"=25'-0"

LANGAN
 Langan Engineering and Consultants, Inc.
 10000 Old York Road
 Lanham, MD 20641
 Phone: 410-326-7000
 Fax: 410-326-7001
 www.langan.com

WEST WINDSOR TOWNSHIP
 HUNTERDON COUNTY
 PROJECT TITLE

STREAM FIGURE

CP-01
 SHEET NO. 1 OF 1

Exhibit E

ORDINANCE 2020-25

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 200 OF THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999) BY CREATING THE PLANNED COMMERCIAL DISTRICT (PCD)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends a Planned Commercial District encompassing lots commonly referred to as the Howard Hughes Tract which are identified by municipal tax records as Block 8 Lots 1, 2, 2 (QFarm), 3, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, and 49 as well as Block 15.14 Lots 18, 18 (QFarm), 19, 19 (QFarm), 20, 20 (QFarm), 22 (QFarm), 26 (QFarm), and 75; and

WHEREAS, the 2020 Land Use Plan Element recommends a variety of research, industrial, and commercial land uses to be permitted in this PCD; and

WHEREAS, the intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 1, Site Plan Review, Article II, Terminology, Section 200-4, Definitions, Subsection B is amended by adding the following NEW definitions.

DISTILLERY – A facility which produces by distillation spirits for consumption, the sales and distribution of which are subject to regulation by the State of New Jersey.

OUTPATIENT SURGICAL FACILITY – A facility providing surgical treatment to patients not requiring hospitalization. It is not part of a hospital but is organized and operated to provide medical care to out-patients. Patients shall be served solely on an out-patient basis, and no patients shall be kept overnight on the premises.

PERFORMING ARTS FACILITY – A multi-use establishment that is intended for use by various types of the performing arts, including but not limited to dance, music, and theater.

PET DAY CARE FACILITY – A facility where dogs, cats, and other domestic household pets are temporarily boarded for pay or remuneration of any sort. A pet day care service is distinguished from a kennel in that pets are typically boarded for the day,

although overnight may be available. A pet day care establishment may also offer accessory services, such as retail sales of pet care supplies, veterinary services, and animal grooming. The breeding and/or selling of animals at these facilities is not permitted.

SPA – A commercial establishment offering health and beauty treatment through such means as steam baths, message, and similar services.

WINERY – A licensed facility comprising the building or buildings used to convert fruit or fruit juices to wine, and to age, bottle, store, distribute, and sell said wine. A winery includes crushing, fermenting and refermenting, bottling, blending, bulk and bottle storage, aging, shipping, receiving, laboratory equipment and maintenance facilities, sales, and administrative office functions, and may include tasting and promotional events.

Section 2. Chapter 200 of said Code, Land Use, Part 4, Zoning, Article XXVI, Titles, Purposes, Establishment of Districts; General Conditions, Section 200-143, Zoning Map, is amended to read as follows:

The boundaries of said zoning district is hereby established as shown on the Zoning Map, Township of West Windsor, dated August 17, 2020, and revised through December 14, 2020, which, with all explanatory matter thereon, is hereby adopted and made part of this Part 4. An official copy of said Map, indicating the latest amendments shall be kept up-to-date in the office of the Land Use Manager for the use and benefit of the public and shall have the most current revision date shown thereon. The Zoning Map for that shall be the official reference as to the current zoning classification of the land within the boundaries of the Township of West Windsor.

Section 3. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.3, PCD Planned Commercial District use regulations, is hereby created as follows.

§ 200-207.3 PCD Planned Commercial District use regulations.

- A. Intent. The intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor. Retail, service commercial, entertainment and hospitality uses are to be located along Quakerbridge Road and US Route 1 in order to maintain the commercial character of those corridors. Warehouse and distribution uses are encouraged within the remainder of the district. The PCD is also intended to

promote an attractive comprehensive integrated design and encourage a high level of investment.

B. Permitted uses. In the PCD, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter unless otherwise noted.

- (1) General, corporate, administrative, and professional offices.
- (2) Research, testing, analytic laboratories.
- (3) Product development laboratories.
- (4) Pilot plant facilities.
- (5) Warehousing and distribution facilities.
- (6) Finishing and assembly of products.
- (7) Limited manufacturing.
- (8) Data processing and computer centers.
- (9) Business support uses.
- (10) Banks with or without drive-through lanes.
- (11) Retail stores and shops.
- (12) Personal service establishments.
- (13) Restaurants, including but not limited to establishments offering indoor dining, outdoor dining, take out, delivery, curbside pickup, and drive-through lanes.
- (14) Taverns offering alcoholic beverages for sale and consumption on the premises.
- (15) Brew pubs.
- (16) Fast food restaurants with or without drive-through lanes.
- (17) Gas stations in conjunction with a convenience store and/or vehicle wash.
- (18) Health clubs.
- (19) Fitness centers.
- (20) Commercial recreation facilities.
- (21) Spas.
- (22) Performing art facilities.
- (23) Legitimate theaters.
- (24) Motion-picture theaters.
- (25) Cultural facility buildings or structures.
- (26) Hotels with one hundred (100) or more guest rooms.

- (27) Conference centers.
- (28) Child care centers.
- (29) Senior day care centers.
- (30) Medical offices.
- (31) Urgent care medical facilities.
- (32) Outpatient surgical facilities.
- (33) Breweries.
- (34) Wineries.
- (35) Distilleries.
- (36) Veterinary clinics.
- (37) Pet day care facilities.
- (38) Mixed use planned developments pursuant to Section 200-209A.(8), except for affordable housing.
- (39) A community landmark sign serving as a gateway to the community and which may include an electronic sign with changeable type, which shall display information regarding municipal, civic, and community events as well as emergency messaging. It may also display on-premises and off-premises advertising.
- (40) Any existing wastewater treatment plant or electrical substation which existed prior to the date of the adoption of this ordinance.
- (41) Any kennel which existed prior to the date of the adoption of this ordinance.
- (42) Any combination of the above permitted uses in one or more principal buildings on a lot.

C. Accessory uses. In the PCD, the following uses may be permitted as accessory uses.

- (1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.
- (2) Outdoor and rooftop dining for restaurants, hotels, taverns, breweries, brewpubs, and wineries.
- (3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.
- (4) In-service training schools for employees.
- (5) Custodial living quarters.
- (6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

- (7) Assembly halls for meetings incidental to the business of the principal use.
 - (8) Maintenance, utility, and storage facilities incidental to the principal use.
 - (9) Guard houses.
 - (10) Public and private utility (e.g. electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. Such facilities shall be subject to the requirements contained in Article XXVII, Section 200-156B, except that the requirements of Section 200-156B(6)b shall not apply.
 - (11) Electric vehicle charging stations.
- D. Conditional uses. In the PCD, the following uses may be permitted as conditional uses.
- (1) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.
 - (2) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

Section 4. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.4, PCD Planned Commercial District bulk and area regulations, is hereby created as follows.

§ 200-207.4 PCD Planned Commercial District bulk and area regulations.

- A. Minimum lot area: None.
- B. Minimum lot frontage: 300 feet.
- C. Minimum lot width: 300 feet.
- D. Minimum lot depth: None.
- E. Minimum front yards:
 - (1) Along Quakerbridge Road: 50 feet.
 - (2) Along Clarksville Road: 100 feet.
 - (3) Along US Route 1: 100 feet.
 - (4) Along proposed roads generally consistent with the Master Plan: 100 feet.
 - (5) Along other roadways: 50 feet.
- F. Minimum rear yard: 40 feet.
- G. Minimum side yard:
 - (1) For buildings less than or equal to 40 feet in height: 25 feet.
 - (2) For buildings greater than 40 feet in height: 40 feet.
- H. Yards abutting residential districts. The above yards shall be increased by 25 feet in those instances where they abut, in whole or in part, a residential zone district or lot line.
- I. Minimum building setback from US Route 1 or Quakerbridge Road for warehouse and distribution facilities: 300 feet.
- J. Minimum distance between buildings: 25 feet.
- K. Maximum improvement coverage: 70%
- L. Maximum building height:
 - (1) The maximum building height shall be three (3) stories and forty-five (45) feet for all uses except warehouse and distribution facilities as well as hotels located along US Route 1.
 - (2) The maximum building height shall be two (2) stories and sixty (60) feet for warehouse and distribution facilities.
 - (3) The maximum building height shall be six (6) stories and seventy-five (75) feet for hotels along US Route 1 provided that:

- (a) Four (4) or more storied buildings shall be located only within a band one thousand and eight hundred (1,800) feet in width as measured from the right of way line of US Route 1.
 - (b) The minimum setback requirements shall be increased an additional three (3) feet of setback for one (1) foot of building height which exceeds forty-five (45) feet.
- M. **Maximum Retail Building Space.**
 - (1) The maximum size of a retail building shall be twenty-five thousand (25,000) square feet.
 - (2) The total combined retail area of the PCD shall not exceed one hundred and fifty thousand (150,000) square feet, not including restaurants and/or shops associated with the hotel use.
- N. **Parking in yards.** Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:
 - (1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse and distribution facility.
 - (2) Parking shall not be permitted in any landscape buffer required by this chapter.
- O. **Parking for warehouse and distribution facilities.** Parking at warehouse and distribution facilities shall be computed as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:
 - (1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.
 - (2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.
- P. **PCD Performance Standards.** All uses permitted in the PCD shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.
 - (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the PCD may be constructed of impervious materials.
 - (2) The provisions of Section 200-28.D(1) shall not apply.

- (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
- (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted in landscaped buffer as required herein.
- (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
- (6) Acceleration and deceleration lanes shall not be required at warehouse and distribution facility entrances along the master plan road located between US Route 1 and Quakerbridge Road.
- (7) Impervious cover, including but not limited to buildings, sidewalks, or other constructed surface, shall be permitted within two hundred (200) feet of the centerline of any stream, ditch, or watercourse not identified on Attachment A. The construction of any such impervious cover shall be in accordance with all outside agency regulations as applicable.
- (8) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
- (9) Bicycle parking shall not be required for warehouse and distribution facilities.

Q. Additional standards pertaining to banks and fast-food restaurants with drive-through lanes. The following additional standards shall apply to drive through lanes in the PCD.

- (1) The minimum distance between the edge of a drive-through lane and any property line shall be thirty (30) feet, or fifty (50) feet if the property adjoins a residential district.
- (2) Direct access to and from drive-throughs shall not be permitted from public streets. Such access shall be provided from within the lot or the internal road system servicing the primary use. Ingress and egress points shall be coordinated so as not to impede the main traffic flow to, from, or passing by the drive-through lanes.
- (3) For banks, no more than four (4) drive-through teller windows shall be provided, not including an ATM drive-up lane.

R. Additional standards pertaining to veterinary clinics. The following additional standards shall apply to veterinary clinics in the PCD.

- (1) The veterinary clinic building shall be sited at least one hundred and fifty (150) feet from any residential use or zoning district.
- (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction,

such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.

- (3) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (4) Animals may be kept overnight for medical reasons only.
 - (5) Animals shall be housed indoors and may be allowed outside only for short periods under staff supervision for hygienic or medical reasons. When they are outside, they shall be kept in a completely enclosed area.
 - (6) A maximum percentage of floor area for overnight holding of animals shall be limited to 30% of the gross floor area of the veterinary clinic/hospital building.
 - (7) No cremation or disposal of dead animals is allowed on the premises. Disposal of used and contaminated veterinary medical supplies shall meet low-level hazardous waste disposal requirements.
 - (8) The curbing of pets shall be addressed.
- S. Additional standards pertaining to pet day care facilities. The following additional standards shall apply to pet day care facilities in the PCD.
- (1) All buildings and structures, including outdoor play areas or other enclosures in which the animals are to be kept, shall be located at least one hundred fifty (150) feet from any residential use or zoning district.
 - (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction, such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.
 - (3) All buildings shall be of adequate construction, maintained in good repair, and secured in order to protect animals from injury or escape.
 - (4) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (5) All animals housed in the facility shall be kept within the confines of a building between the hours of 9:00 p.m. and 8:00 a.m.
 - (6) Outdoor facilities:
 - (a) A wall or fence shall be installed to secure the pets from other domestic animals and unauthorized individuals.
 - (b) Outdoor animal areas shall be sufficient to protect the animal from sunlight, rain, snow or weather detrimental to the animal's health or shall allow indoor access.

- (c) Provisions shall be made for the removal and proper disposal of animal food, waste, bedding, and debris.
 - (d) All outdoor areas where animals are kept shall have impermeable flooring that can easily be cleaned and sanitized or shall have a minimum of six inches of animal-appropriate gravel which is replaced on a regular schedule which is consistent with the maintenance of sanitary conditions.
- T. Additional standards pertaining to community landmark signs. The following additional standards shall apply to community landmark signs in the PCD.
 - (1) One (1) Community Landmark Sign shall be permitted along Quakerbridge Road, and one (1) Community Landmark Sign shall be permitted along the US Route 1 corridor
 - (2) A Community Landmark Sign shall serve as a gateway sign into the community and as such, such sign shall provide sufficient availability for community information.
 - (3) A Community Landmark Sign shall provide availability and display time for municipal, civic or emergency messaging use and may display on-premises and off-premises advertising.
 - (4) The nearest edge of the Community Landmark Sign display face shall have a setback of thirty-five (35) feet from any right-of-way.
 - (5) No Community Landmark Sign shall exceed fifty (50) feet in height measured from the top of the sign to the grade at the base of the sign.
 - (6) Each Community Landmark sign may have up to two display faces, placed either back to back or in a V-shaped configuration. Each display face shall have a maximum area of three hundred and seventy-eight (378) square feet.
 - (7) Community Landmark Signs shall be permitted to operate twenty-four (24) hours a day.
 - (8) All message or copy change of the Community Landmark Sign display face shall be instantaneous. Scrolling, fading, animated, flashing or moving messages or copy is prohibited. No display face shall change message or copy more than once every eight (8) seconds.
 - (9) A Community Landmark Sign display face may not message or advertise adult or sexually oriented businesses or materials, hate speech, or use any form of profane language or promotion of any message that would be obscene in nature.
 - (10) All Community Landmark Signs shall incorporate ambient light sensors that measure the levels of surrounding light and automatically reduce the intensity of illumination during periods of darkness or increase the intensity of illumination during periods of brightness. No Community

Landmark Sign display face shall exceed a maximum illumination intensity of 500 nits during nighttime hours (dusk until dawn) and 7,500 nits during daytime hours (dawn until dusk) when the display face is in direct sunlight. A Community Landmark Sign display face shall not spill light or glare exceeding 0.3-foot candles of light above the ambient light level.

- (11) The architecture of a Community Landmark Sign shall incorporate visual art or architecture elements in addition to its messaging function thereby creating a unique or distinctive architectural design. A Community Landmark Sign design shall incorporate one or more of the following architectural elements: natural or reproduced stone, stucco, wood, brick, ornamental iron or decorative steel. Any Community Landmark Sign design that incorporates landscaping shall require the operator (the entity, person, or individual who owns the New Jersey Department of Transportation outdoor advertising sign permit for the specific Community Landmark Sign display area) to permanently maintain the landscaping. The owner or operator of the Community Landmark Sign shall continuously maintain the structure and surrounding associated area. The Township may require a Community Landmark Sign to display the name of the municipality, county or local identifiable community area as part of the structure.
- (12) Community Landmark Signs shall not be considered a principal use or structure on a lot and shall be allowed on lots that already have principal uses or structures.

U. Buffers. Landscape buffers in the PCD shall be provided as follows.

- (1) Landscape transition buffer. A landscape transition buffer of not less than twenty-five (25) feet in width shall be provided and maintained by the owner or lessee of a property between any nonresidential use and contiguous residentially zoned districts.
- (2) A landscape buffer of fifty (50) feet in width shall be provided along US Route 1 and Quakerbridge Road.
- (3) A landscape buffer of seventy-five (75) feet shall be provided along Clarksville Road.
- (4) A landscape buffer of twenty-five (25) feet shall be provided along the master plan road located between US Route 1 and Quakerbridge Road.
- (5) No parking or loading shall be permitted in a landscape buffer.
- (6) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.

- (7) Suitably landscaped and bermed stormwater basins in the PCD may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 5. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Section 6. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction: November 30, 2020
Planning Board Approval: December 9, 2020
Public Hearing: December 14, 2020
Adoption: December 14, 2020
Mayor Approval: December 15, 2020
Effective Date: January 7, 2021

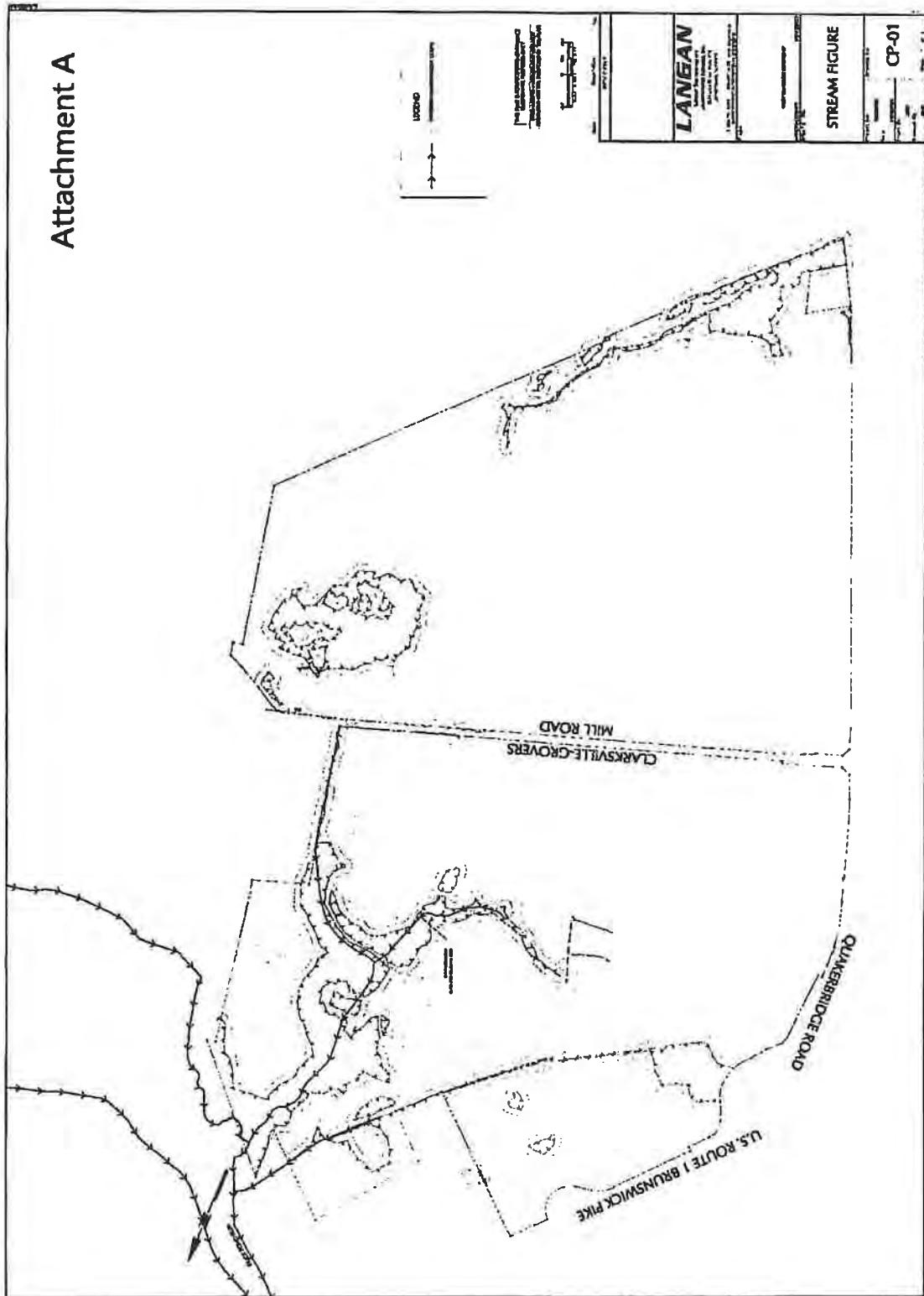


Exhibit F

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Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
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jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

I/M/O THE TOWNSHIP OF WEST WINDSOR : SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-005412-18 T2
:
: Civil Action
:
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY

(Mount Laurel Declaratory :
Judgement Action) : DOCKET NO. MER-L-1561-15
:
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
:
:
:

STIPULATION OF SETTLEMENT OF APPEAL

WHEREAS the captioned appeal ("the Appeal") was commenced on Notice of Appeal, filed by Intervener-Appellant Atlantic Realty Development Corporation ("Atlantic"), on August 14, 2019, seeking relief from the Orders of the Trial Court below, dated January 11, 2019 and July 2, 2019, entered in Plaintiff-Respondent Township of West Windsor's ("Township") Mount Laurel IV Declaratory Judgment action, commenced under the caption: I/M/O Declaratory Judgment Action of Township of West Windsor, Mercer County Superior Court,

Law Division, assigned Docket No. MER-L-1561-15 ("Township DJ Action"),

WHEREAS following Settlement Fairness and Compliance Hearings the Court below entered the foregoing Orders on appeal, which respectively:

- a) Approved the Township's settlement agreement with Intervener-Respondent Fair Share Housing Center ("FSHC"), through which the Township and FSHC had stipulated to a Housing Element and Fair Share Plan ("HEFSP") in satisfaction of the Township's constitutional affordable housing obligation, as set forth in Order dated January 11, 2019 on appeal; and
- b) Granted the Township Judgment of Immunity and Repose from Builder's Remedy suits, as set forth in Order on appeal dated July 2, 2019;

WHEREAS within the Appeal, Atlantic sought relief from the terms of the foregoing Orders, which, in effect, accepted the Township's HEFSP without inclusion of certain properties intended for development by Atlantic as inclusionary housing sites, located within the Township, respectively referred to as:

- a) the H&B Site, comprised of approximately 28 acres, located in the Eastern quadrant of the Township, more specifically

identified in Atlantic's filings within the Township DJ Action, and

b) the Howard Hughes Corporation ("HHC") Site, comprising approximate 660 acre site, also located within the Township, with frontage on US Route 1, as also more specifically described in filings below, the rights to develop of the HHC Site having been acquired by Atlantic following the filing of the Appeal, with the Appellate Division thereafter entering Orders recognizing Atlantic's appeal position as encompassing both the H&B and the HHC Sites;

WHEREAS, the Appeal was referred to the Hon. Robert A. Fall, P.J.A.D. (Retired, Temporarily Assigned) under the Civil Appeal Settlement Program ("CASP") of the Appellate Division of New Jersey Superior Court, and the Presiding CASP Judge having administratively suspended briefing on the Appeal on application made on behalf of Appellant-Intervener Atlantic by Waters, McPherson, McNeill, P.C., (Kenneth D. McPherson, Jr., appearing), on notice given to Miller, Porter and Muller, P.C. (Gerald J. Muller, appearing), counsel for Plaintiff-Respondent Township, and to Intervener-Respondent FSHC, through its Counsel and Executive Director, Adam Gordon;

WHEREAS, Atlantic had requested suspension of briefing of the Appeal so that settlement negotiations between Atlantic and the Township might be completed in a separate, related action, commenced in Mercer County Superior Court Law Division, under the caption: Princeton Land, LLC v. The Township of West Windsor, Docket No. MER-L-1947-18, to which Atlantic had succeeded as a Party-Plaintiff-in-Interest through order of substitution entered following Atlantic's aforesaid acquisition of rights to development of the HHC site ("the HHC Action"), with settlement of the HHC Action potentially also resolving the matters in dispute in the Appeal;

WHEREAS, contemporaneously with the conduct of CASP process in the Appeal, pretrial discovery in the HHC Action was similarly suspended with leave of the Assignment Judge presiding in the HHC Action, in order to facilitate settlement negotiations, culminating in the Court's entry of a Stipulation of Settlement and Consent Order ("SCO") in the HHC Action, executed by Atlantic as Plaintiff and by the Township as Defendant in the HHC Action, pursuant to which the entry and execution of the instant stipulation by Atlantic and the Township, providing for Atlantic's voluntary withdrawal and dismissal of its Appeal ("Appeal Withdrawal Stipulation") was made a term and condition of SCO, the SCO having resolved zoning and permitted use of the HHC Site and H&B Site which were also in issue in the Appeal;

Accordingly, it is on this 2nd day of December, 2020, Atlantic and the Township stipulate and agree as follows:

1. Immediately upon the Township's execution of the instant Appeal Withdrawal Stipulation, through its counsel as authorized and resolved at November 30, 2020 meeting of the Township Council, a counterpart of which executed on behalf of Atlantic has already been tendered to counsel for the Township, Atlantic shall forthwith sign, and cause to be filed with Court, the form of stipulation voluntarily withdrawing and dismissing the Appeal, with prejudice and without costs, in the form attached hereto as Exhibit A ("Appeal Dismissal Stipulation");

2. Atlantic and the Township further stipulate and agree herein that the terms of the SCO shall be deemed to be incorporated and made part hereof by reference as though set forth herein in their entirety, and consistent with the terms of the SCO, both the SCO and the instant Appeal Withdrawal Stipulation shall constitute and effectuate a self-executing releases of all claims of Atlantic and any successors thereof, to residential uses of the H&B Site and HHC Site, precluding Atlantic under the terms hereof from contesting either the settlement of the Township's total affordable unit obligation or the award of immunity from Builder's Remedy suits within the Township DJ Action; and

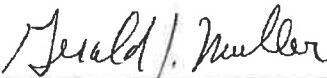
3. **Counterparts.** This Appeal Settlement Stipulation may be signed in counterparts with service of an electronic reproduction thereof being effective as though it were an original.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: /s/ Kenneth D. McPherson Jr.
Kenneth D. McPherson, Jr.

Dated: December __, 2020

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor


By: 
Gerald J. Muller, Esq.

Dated: December 22, 2020

1211756

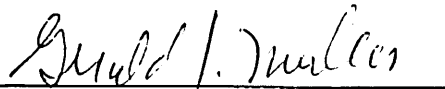
3. **Counterparts.** This Appeal Settlement Stipulation may be signed in counterparts with service of an electronic reproduction thereof being effective as though it were an original.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: 
Kenneth D. McPherson, Jr.

Dated: December 22, 2020

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor

By: 
Gerald J. Muller, Esq.

Dated: ~~December~~ January 6, 2021

1211756

EXHIBITS TO BE APPENDED

| | |
|------------------|-------------------------------------|
| EXHIBIT A | Appeal Dismissal Stipulation |
| EXHIBIT B | Settlement Zoning Code for H&B Site |
| EXHIBIT C | H&B Site Concept Plan |

Exhibit A

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
WATERS, MCPHERSON, MCNEILL, P.C.
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P.O. Box 1560
Secaucus, New Jersey 07096
Tel. (201) 863-4400
kmj@lawwmm.com
jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

I/M/O THE TOWNSHIP OF WEST WINDSOR
(Mount Laurel Declaratory Judgement Action)
: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-005412-18 T2
:
: Civil Action
:
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY
: DOCKET NO. MER-L-1561-15
:
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
:
: STIPULATION OF DISMISSAL OF
: APPEAL PURSUANT TO RULE 2:8-2

Appellant-Intervener, Atlantic Realty Development Corporation ("Atlantic") having filed notice of appeal ("the Appeal") of orders dated January 11, 2020 and July 2, 2020, entered below in the subcaptioned matter, and Appeal having been referred to Civil Appeal Settlement Program (the Hon. Robert A. Fall, P.J.A.D., Retired, Temporarily Assigned), prior to the filing of briefs by Plaintiff-Respondent, Township of West Windsor ("Township") and , on notice to the Parties of record below through e-Court's filing of the instant stipulation of pursuant to Rule

2:8-2, Atlantic does hereby voluntarily withdraw and dismiss the Appeal with prejudice and without costs.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: _____
Kenneth D. McPherson, Jr.

Dated: _____, 202_

1211759

Exhibit B

ORDINANCE 2020-24

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 200 OF THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999) BY MODIFYING PROVISIONS PERTAINING TO THE ROM-3 INDUSTRIAL DISTRICT – (Research, Office, Limited Manufacturing)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends expanding the list of permitted uses in the ROM-3 District to include self-storage and warehousing; and

WHEREAS, the intent of the ROM-3 District is to promote a high-quality level of development at a scale that will also provide substantial compatibility with the residential and agricultural nature of the surrounding area, protect any associated existing or proposed areas of Township Greenbelt and limit both environmental impacts and potential conflicts with surrounding neighborhoods to the greatest degree possible.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-213, ROM-3 Industrial District (research, office, limited manufacturing) use regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is ~~struck-through~~.

§ 200-213 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

- A. Permitted uses. In an ROM-3 District, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter.
- (1) All those permitted uses as listed for an ROM-2 District.
 - (2) Research-office. Limited manufacturing park developments, notwithstanding any other requirements of this chapter, shall be subject to those special requirements as listed herein for a ROM-1 Park District, except as changed herein:
 - (a) Minimum park area: 12 acres in contiguous parcels.
 - (b) Minimum lot area: three acres.

(c) Minimum park and lot frontage: 250 feet.

(d) Maximum building height: three stories, but not to exceed 45 feet.

(3) Warehousing and distribution facilities.

(4) Finishing and assembly of products.

(5) Self-storage facilities.

B. Accessory Uses. In the ROM-3 District, the following uses may be permitted as accessory uses.

(1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.

(2) Uses and buildings incidental to permitted uses within the same zoning district permitting the principal use.

(3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.

(4) In-service training schools for employees.

(5) Custodial living quarters.

(6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

(7) Assembly halls for meetings incidental to the business of the principal use.

(8) Maintenance, utility and storage facilities incidental to the principal use.

(9) Guard houses.

(10) Public and Private utility (e.g., electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. The facilities shall be subject to the requirements contained in Article XXVII, §200-156B, except that the requirement of 200-156B(6)b shall not apply.

(11) Electric vehicle charging stations.

B. C. Conditional uses. In an ROM-3 District, the following uses may be permitted as conditional uses:

(1) Any use permitted by condition in an ROM-2 District, with the exception of §§ 200-211B(3).

(2) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.

(3) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

Section 2. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-214, ROM-3 District bulk and area regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is ~~struck through~~.

§ 200-214 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

The following shall be the standards for the ROM-3 District

- A. Minimum lot area: five acres.
- B. Minimum lot area for warehouse and distribution facilities: twenty-five (25) acres.
- ~~B. C.~~ Minimum lot frontage: 300 feet.
- ~~C. D.~~ Minimum lot width: 300 feet.
- ~~D. E.~~ Minimum lot depth: not applicable.
- ~~E. F.~~ Minimum Yards
 - (1) Front yard: 125 feet, ~~with a seventy-five foot landscape area at the street right-of-way.~~
 - (2) Rear yard: 40 feet.
 - (3) Side yard: ~~There shall be two side yards with a minimum of 40 feet each.~~
 - (a) For buildings less than or equal to forty (40) feet in height: twenty-five (25) feet.
 - (b) For buildings greater than forty (40) feet in height: forty (40) feet.
 - (c) For warehouse and distribution facilities, a side yard setback of three hundred (300) feet shall be provided from the westerly boundary line of the ROM-3 District.
 - (4) Yards abutting residential districts. ~~The above yard, including the landscape transition buffer and screen requirements, shall be increased by 20 feet in those instances where they abut, in whole or in part, a residential district or lot line.~~ Side and rear yards shall be increased by twenty-five (25) feet in those instances where they abut, in whole or in part, a residential zone district or lot line. This provision shall not apply to the aforementioned three hundred (300) foot setback from the westerly boundary line of the ROM-3 District established for warehouse and distribution facilities.
- G. Minimum distance between buildings: 25 feet.

F. H. Maximum FAR. There shall be no FAR for the ROM-3 District. The maximum permitted FAR shall be allowed to vary according to the following schedule, depending on the intended use and building height:

| | |
|--|-------------|
| Primarily [†] Research/Office Uses [†] | Maximum FAR |
| In one-story buildings | 0.22 |
| In multistory buildings | 0.30 |
| Primarily [†] Manufacturing/Warehousing Uses [†] | Maximum FAR |
| In one-story buildings | 0.30 |
| In multistory buildings | 0.40 |

NOTE:

[†]"Primarily" shall mean more than 80% of total building use on a lot. The maximum FAR shall be adjusted proportionately where less than 80% of the designated building uses are proposed for a lot.

G. I. Maximum improvement coverage: ~~50%~~ 70%.

H. J. Maximum building height: ~~three stories, but not to exceed 45 feet.~~

(1) The maximum building height shall be three stories and forty-five (45) feet for all uses except warehouse and distribution facilities.

(2) The maximum height shall be two (2) stories and forty-five (45) feet for warehouse and distribution facilities.

K. Parking in yards. Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:

(1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse distribution facility.

(2) Parking shall not be permitted in any landscape buffer required by this chapter.

L. Parking for warehouse and distribution facilities. Parking at warehouse and distribution facilities shall be computed on a pro rata basis as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:

(1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.

(2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.

- M.** ROM-3 District Performance Standards. All uses permitted in the ROM-3 District shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.
- (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the ROM-3 District may be constructed of impervious materials.
 - (2) The provisions of Section 200-28.D(1) shall not apply.
 - (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
 - (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted within any landscaped buffer as required herein.
 - (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
 - (6) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
 - (7) Bicycle parking shall not be required for warehouse distribution facilities.
- O.** Buffers. Landscape buffers in the ROM-3 District shall be provided as follows.
- (1) A landscape buffer of seventy-five (75) feet shall be provided at the street line.
 - (2) For warehouse and distribution facilities, a landscape buffer of one hundred (100) feet shall be provided from the westerly boundary line of the ROM-3 District.
 - (3) No parking or loading shall be permitted in a landscape buffer.
 - (4) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.
 - (5) Suitably landscaped and bermed stormwater basins in the ROM-3 District may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 3. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Section 4. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction: November 30, 2020
Planning Board Approval: December 9, 2020
Public Hearing: December 14, 2020
Adoption: December 14, 2020
Mayor Approval: December 15, 2020
Effective Date: January 7, 2021

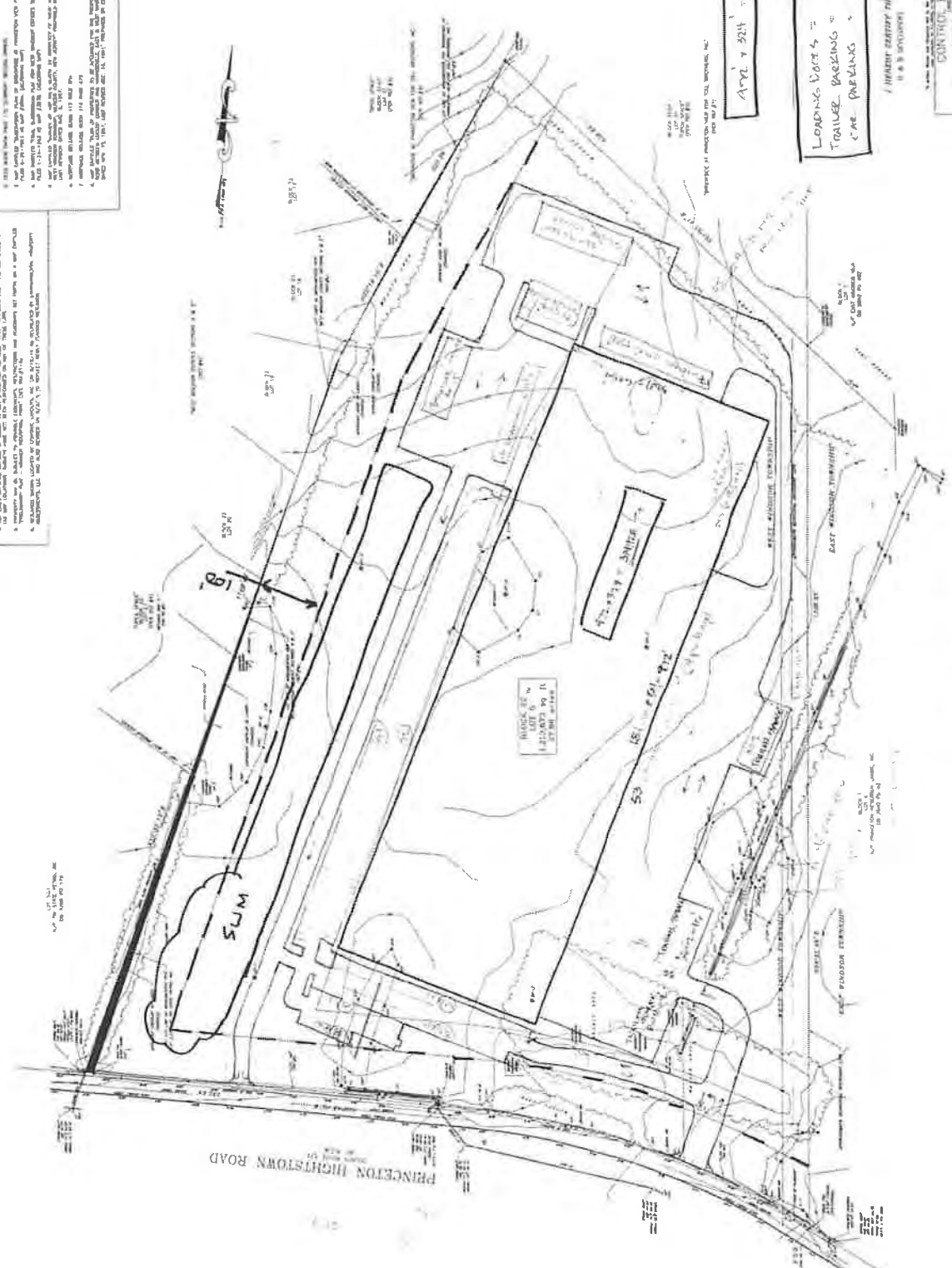
Exhibit C

NOTES

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
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REFERENCES

1. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.
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APR 11 2024 - 10:00 AM '16

LOADING DOCKS = 60
TRAILER PARKING = 75
CAR PARKING = 200

LEGAL & TOPOGRAPHIC SURVEY
BLOCK 22 LOT 5

DATE: 04/11/2024

1" = 100'

| NO. | DESCRIPTION | DATE | BY |
|-----|-------------------------|------------|--------|
| 1 | PREPARED FOR THE CLIENT | 04/11/2024 | JAN/AT |
| 2 | REVISIONS | | |
| 3 | DATE | | |
| 4 | BY | | |
| 5 | DATE | | |
| 6 | BY | | |
| 7 | DATE | | |
| 8 | BY | | |
| 9 | DATE | | |
| 10 | BY | | |