



LEBANON BOROUGH
PLANNING BOARD & BOARD OF ADJUSTMENT
MINUTES
Tuesday June 29, 2021

The Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Chairman at 7:00 P.M.

The meeting was convened in compliance with the Open Public Meetings Act of 1975. Three local newspapers were notified, and a notice is posted at Borough Hall.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all.

MOMENT OF SILENCE

Chairman Saharic called for a moment of silence for our fallen soldiers.

ROLL CALL:

Members Present: Alexander Saharic, Dr. Christopher Uchrin,,Henry Hopkins, David Abeles, Mayor Pittinger, Joseph Hauck, Robert Weingart, Councilman Berger and James Newman,

Absent: William Skene and William Wilson

Also present: Karen M. Romano Planning Board Sec.

Abstain:

MINUTE APPROVAL:

Dr. Uchrin moved, and Mayor Pittinger seconded, a motion to approve the Minutes of June 9, 2021.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Hauck, Newman, Abeles, Pittinger, Weingart, Hopkins, Berger,

Absent: Skene, and Wilson

Abstain:

OPENING PUBLIC SESSION TOWN CENTER APPLICATION:

Chairman Saharic requested a motion to open the Public Hearing to Public comments and questions. Mr. Hauck made the motion to open the floor to public comment with a second by Mr. Abeles.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Hauck, Newman, Abeles, Pittinger, Weingart, Hopkins, Berger,

Absent: Skene, and Wilson

Abstain:

There being no Public Comment the floor was close.

TOWN CENTER AT LEBANON, LLC

**BLOCK 4, LOTS 1.03 AND 1.04
400 AND 500 CORPORATE DRIVE**

APPLICATION NO. 2021-03

PRELIMINARY SITE PLAN APPROVAL WITH “C(1)” AND “C(2)” VARIANCES FROM CERTAIN ZONING ORDINANCE REGULATIONS AND EXCEPTIONS FROM CERTAIN RESIDENTIAL SITE IMPROVEMENT STANDARDS TO ALLOW CONSTRUCTION OF AN INCLUSIONARY AFFORDABLE FAMILY RENTAL HOUSING DEVELOPMENT KNOWN AS “TOWN CENTER AT LEBANON”

Town Center at Lebanon, LLC (the “**Applicant**”) is the owner of an approximately 22.2-acre property designated on the Borough of Lebanon (the “**Borough**”) tax maps as Block 4, Lots 1.03 and 1.04 (the “**Property**”), which Property is located at 400 and 500 Corporate Drive, a private road connecting Cokesbury Road with Route 22 and primarily owned by the Applicant and located on the Property, and is situated in the R-MF-12 zoning district (the “**R-MF-12 zone**”), which zone permits multifamily inclusionary affordable family housing;

The Applicant submitted an application (the “**Application**”) to the Lebanon Borough combined Planning Board / Board of Adjustment (the “**Board**”), which Application seeks preliminary site plan approval with “c(1)” and “c(2)” variances from certain zoning ordinance regulations and exceptions from certain residential site improvement standards (“**RSIS**”) to allow for construction of an inclusionary affordable family rental housing development consisting of four (4) multifamily residential buildings containing a total of two hundred and eighty (280) rental units, of which 20%, 56 rental units, shall be deed restricted to remain affordable to low and moderate income households, along with related site improvements such as stormwater facilities, street improvements, parking and landscaping (the “**Proposed Development**”);

The Board is a combined planning board / zoning board of adjustment constituted in accordance with N.J.S.A. 40:55D-25c and, sitting as a planning board, has exclusive subject matter jurisdiction over the Application pursuant to N.J.S.A. 40:55D-20 by virtue of 46, 51, 60a and 70c as well as N.J.A.C. 5:21-3.1;

A number of documents were submitted with regard to the Application by the Applicant and the Applicant's experts, as well as by the Board's expert, , all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which the Applicant seeks Board approval, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the Application in accordance with N.J.S.A. 40:55D-10b:

1. "Preliminary Major Site Plan", prepared by Engineering & Land Planning Associates, Inc., dated December 8, 2020, last revised May 13, 2021, consisting of thirty-nine (39) sheets, (together referred to as the "**Preliminary Site Plans**"), individually titled as follows:

- a. Sheet 1 entitled "cover sheet",
- b. Sheet 2 entitled "legend and notes",
- c. Sheet 3 entitled "demolition plan",
- d. Sheet 4 entitled "phasing plan",
- e. Sheet 5 entitled "site plan-phase 1",
- f. Sheet 6 entitled "site plan-phase 2",
- g. Sheet 7 entitled "preliminary realignment plan for corporate drive",
- h. Sheet 8 entitled "grading plan-phase 1",
- i. Sheet 9 entitled "grading plan-phase 2",
- j. Sheet 10 entitled "drainage plan-phase 1",
- k. Sheet 11 entitled "drainage plan-phase 2",
- l. Sheet 12 entitled "utility plan-phase 1",
- m. Sheet 13 entitled "utility plan-phase 2",
- n. Sheet 14 entitled "landscaping plan-phase 1",
- o. Sheet 15 entitled "landscaping plan-phase 2",
- p. Sheet 16 entitled "lighting plan-phase 1",

- q. Sheet 17 entitled “lighting plan-phase 2”,
- r. Sheet 18 entitled “storm sewer profiles-phase 1”,
- s. Sheet 19 entitled “sanitary sewer profiles-phase 1”,
- t. Sheet 20 entitled “storm sewer profiles-phase 2”,
- u. Sheet 21 entitled “sanitary sewer profiles-phase 2”,
- v. Sheet 22 entitled “clear sight distance plan and profiles”,
- w. Sheet 23 entitled “clear sight distance plan and profiles”,
- x. Sheet 24 entitled “clear sight distance plan and profiles”,
- y. Sheet 25 entitled “emergency vehicle circulation plan”,
- z. Sheet 26 entitled “soil erosion and sediment control plan-phase 1”,
- aa. Sheet 27 entitled “soil erosion and sediment control plan-phase 2”,
- bb. Sheet 28 entitled “soil erosion and sediment control plan-phase 1”,
- cc. Sheet 29 entitled “soil erosion and sediment control notes”,
- dd. Sheet 30 entitled “soil erosion and sediment control details”,
- ee. Sheet 31 entitled “construction details”,
- ff. Sheet 32 entitled “construction details”,
- gg. Sheet 33 entitled “construction details”,
- hh. Sheet 34 entitled “construction details”,
- ii. Sheet 35 entitled “construction details”,
- jj. Sheet 36 entitled “construction details”,
- kk. Sheet 37 entitled “construction details”,
- ll. Sheet 38 entitled “soil erosion and sediment control notes”, and
- mm. Sheet 39 entitled “construction details”;

2. Architectural plans prepared by Appel Design Group dated December 21, 2020, last revised February 04, 2021, consisting of 14 sheets (together referred to as the “**Preliminary Architectural Plans**”), individually titled as follows:

- a. Sheet C-01 entitled “Cover sheet”,
- b. Sheet PB1-1.1 entitled “BLDG 1 and 2 – GROUND FLOOR PLANS”,
- c. Sheet PB1-1.2 entitled “BLDG 1 & 2 – 2nd FLOOR PLANS”
- d. Sheet PB1-1.3 entitled “BLDG 1 & 2 – 3rd FLOOR PLANS”
- e. Sheet PB1-1.4 entitled “BLDG 1 & 2 – 4TH FLOOR PLANS”
- f. Sheet PB1-1.5 entitled “BLDG 3 & 4 – GROUND FLOOR PLANS”,
- g. Sheet PB1-1.6 entitled “BLDG 3 & 4 – 2nd FLOOR PLANS”,
- h. Sheet PB1-1.7 entitled “BLDG 3 & 4 – 3RD FLOOR PLANS”,
- i. Sheet PB1-1.8 entitled “BLDG 3 and 4 – 4TH FLOOR PLANS”,
- j. Sheet PB1-2.1 entitled “TYPICAL UNIT PLANS”,
- k. Sheet PB1-3.1 entitled “BUILDING 1 ELEVATIONS”,
- l. Sheet PB1-3.2 entitled “BUILDING 2 ELEVATIONS”,
- m. Sheet PB1-3.3 entitled “BLDG 3 Elevations”, and
- n. Sheet PB1-3.4 entitled “BLDG 4 Elevations”;

3. Environmental Impact Statement prepared by DuBois, dated December 21, 2020 (the “**EIS**”),

4. Traffic Impact Study prepared by Atlantic Traffic, dated January 18, 2021 (the “**Traffic Report**”), and

5. Stormwater management Report prepared by E&LP, dated December 28, 2020, revised May 13, 2021 (the “**Stormwater Management Report**”);

The Board held a duly noticed public hearing on the Application on April 13, 2021, April 27, 2021, May 25, 2021 (to carry notice only) and June 29, 2021, and an affidavit of service of notice and an affidavit of publication of notice being submitted by the Applicant to, and being on file with, the Board, thereby conferring procedural jurisdiction over the Application with the Board, during which hearing the Applicant was represented by Henry L Kent-Smith, Esq. and the Board was represented by Jonathan E. Drill, Esq.;

The Application was deemed to be complete after the Board granted certain completeness waivers on April 13, 2021 prior to the commencement of the hearing on the Application;

The following individuals testified during the hearing on the Application, were subject to cross examination, and the testimony is part of the record in this matter:

1. Steven Patron (one of the Applicant's representatives),
2. Sam Gershwin (another of the Applicant's representatives)
3. John Hansen, PE (one of the Applicant's civil engineering experts),
4. Kelly O'Such, PE, (another of the Applicant's civil engineering experts),
5. Larry Appel, AIA, (Applicant's architectural design expert),
6. John Harter, PE (Applicant's traffic engineering experts),
7. David Roberts, PP (Applicant's planning expert),
8. Robert Brightly, PE (one of the Board's civil engineering experts),
9. Paul Ferriero, PE (another of the Board's civil engineering experts),
10. Harold Maltz, PE (Board's traffic engineering expert), and
11. Stan Slachetka, PP, AICP (Board's planning expert);

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

- A-1 "Existing Conditions Exhibit" prepared by John Hansen, PE dated April 13, 2021,
- A-2 Prior approved site plan for office building #3 on Lot 1.03 prepared by Studer & McEldowney last revised November 14, 2003,
- A-3 Prior approved site plan for office building #4 on Lot 1.04 prepared by Studer & McEldowney last revised November 14, 2023,
- A-4 "Lebanon Town Center Phase 1 Exhibit" prepared by E&LP dated April 9, 2021,
- A-5 "Lebanon Town Center Phase 2 Exhibit" prepared by E&LP dated April 9, 2021,
- A-6 Color rendered sheet 11 of 34 of the Site Plans,
- A-7 Color rendered sheet 12 of 34 of the Site Plans,

- A-8 Color rendered sheet 7 of 34 of the Site Plans,
- A-9 Color rendered sheet 8 of 34 of the Site Plans,
- A-10 Highlighted lighting plan sheet 15 of 34 of the Site Plans,
- A-11 Highlighted lighting plan sheet 16 of 34 of the Site Plans,
- A-12 “Artistic Conceptual Rendering” of the building prepared by Appel Design dated April 12, 2021,
- A-13 “Sign Comparison” exhibit, identified as sheet PB-2, prepared by Appel Design last dated April 13, 2021,
- A-14 “Height Analysis” exhibit, identified as sheet PB-3, prepared by Appel Design dated April 13, 2021,
- A-15 “Typical Unit Plans”, identified as sheet PB1-2.2, prepared by Appel Design dated April 13, 2021,
- A-16 “Unit Distribution” chart prepared by Appel Design dated January 27, 2021,
- A-17 Memo to Stan Slachetka from Matthew Martinique of Appel Design dated April 23, 2021, regarding ADA and FHA requirements for handicap accessible spaces,
- A-18 “Sidewalk Exhibit” showing on-site and off-site sidewalks to be constructed by the Applicant,
- A-19 ”Corporate Drive Realignment Concept A” Exhibit showing the Applicant’s proposed realignment of Corporate Drive to accommodate installation of sidewalks,
- A-20 Atlantic Traffic & Design letter dated April 27, 2021, responding to Board traffic engineering expert Harold Maltz’s traffic review memo,
- A-21 “Lebanon Town Center Deviations & Justification” chart,
- A-22 Michael Gross, Esq. Opinion letter dated June 14, 2021,
- A-23 E & LP letter dated June 25, 2021, responding to the following Board expert reports: (1) Harold K. Maltz, PE traffic review report dated April 5, 2021, (2) Robert C. Brightly, PE engineering review report dated April 9, 2021, and (3) Stanley C. Slachetka, PP, planning report dated April 13, 2021,
- A-24 Revised sidewalk plan for off-tract sidewalk dated June 11, 2021, last revised June 29, 2021, and
- B-1 Email chain from Keri Green, Science Manager at the New Jersey Highlands Council, to Jonathan E. Drill, Esq., starting on June 2, 2021 and ending on June 11, 2021, concluding that if thBoard

The Board determined that the Borough's stormwater ordinance did not apply to the Application, it would not affect the Highlands Council's consistency determination;

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

A. FACTUAL FINDINGS

1. **The Property, Zoning, Existing Features, and Surrounding Uses.** As set forth above, the Property is an approximately 22.2-acre lot situated in the R-MF-12 zone that fronts on 400 and 500 Corporate Drive, a private road located on the property connecting Cokesbury Road and Route 22 and primarily owned by the Applicant. The property is irregular in shape and includes some area on the south side of Corporate Drive between Corporate Drive and Route 22. The Property was recently rezoned to the R-MF-12 (Residential Multifamily Housing Zone 12) by Borough Ordinance 2020-08 which was adopted on October 21, 2020 as part of the Borough's compliance with its Third Round Mount Laurel affordable housing obligations, in compliance with a settlement agreement entered into between the Borough and Fair Share Housing Center ("FSHC") (the "Settlement Agreement") as well as a memorandum of settlement entered into between the Borough and Lebanon Town Center, LLC (the "MOS"), both of which were approved by the Superior Court of New Jersey, Law Division in an order entered on December 3, 2019 in litigation titled In re: Borough of Lebanon Compliance with Mount Laurel Third Round Affordable Housing Obligation, Docket No. HNT-L-321-15, after which a final judgement of compliance and repose was entered by the court in that litigation on May 20, 2021. (The Board takes "quasi-judicial" notice of the Settlement Agreement and the MOS as well as the court order and judgment.) The Property is currently a farm field with a stream and associated stream corridor that bisects the Property and forms the common boundary between lots 1.03 and 1.04 on the Property. The Property slopes towards the stream corridor on both lots 1.03 and 1.04. The slope is significant and requires a substantial amount of grading to accommodate the proposed development. The Property is bounded to the north by I-78, to the east by an existing office, to the west by an existing hotel and to the south by Corporate Drive and existing offices also fronting on the opposite side of Corporate Drive.

2. **The Application and Summary of the Proposed Development.** As set forth above, the Application is for preliminary site plan approval with "c(1)" and "c(2)" variances from various zoning ordinance regulations and exceptions from certain residential site improvement standards ("**RSIS**") to allow construction of the Proposed Development, consisting of four (4) multifamily residential buildings containing a total of two hundred and eighty (280) rental units, of which 20% - 56 rental units – shall be deed restricted to remain affordable to low and moderate income households. The Proposed Development also consists of construction of related site improvements such as stormwater facilities, landscaping, recreational amenities and parking. The specifics of the Proposed Development, and the specific variances and exceptions which have been requested as well as the Board's findings as to the variances and exceptions, are set forth below in the following paragraphs.

3. **Specifics of the Proposed Development.** The specifics of the Proposed Development are as follows:

a. **Existing Use and Structures and Prior Approvals.** As set forth above, the Property is currently a farm field with a stream and associated stream corridor that bisects the Property and forms the common boundary between lots 1.03 and 1.04 on the Property. The Property was previously approved for an office building on each of the two lots. There was some initial grading and some retaining walls were constructed pursuant to the original approval.

b. **Phased Construction of the Proposed Development.** As set forth above, the Proposed Development consists of four (4) multifamily residential buildings containing a total of two hundred and eighty (280) rental units, of which 20% - 56 rental units – shall be deed restricted to remain affordable to low- and moderate-income households. The Proposed Development also consists of related site improvements such as stormwater facilities, street improvements, parking and landscaping. The Proposed Development will be constructed in two phases. The first phase of the Proposed Development will consist of two buildings totaling 155 units on Lot 1.03. The Phase 1 buildings will include a leasing office, a club room/conference room, fitness center and other related amenities including an outdoor pool and other outdoor recreation areas. The second phase of the Proposed Development will consist of two buildings totaling 125 units on Lot 1.04. The Phase 2 site amenities will include an outdoor patio and sitting areas, a dog park and pocket park with play equipment. The affordable housing units will be integrated with market rate units in all four buildings, will be constructed pursuant to the Settlement Agreement phasing requirements, and a condition to these effects will be imposed on any site plan approval. All of the existing retaining walls on both sides of the stream corridor will be removed as part of the riparian zone mitigation plan for the Property.

c. **Vehicular Access, Off-Street Parking and On-Site Vehicular Circulation.** The Applicant's traffic engineering expert reviewed in detail the investigation and findings provided in his January 18, 2021 Traffic Engineering Report. He described the existing traffic conditions at the intersections of Corporate Drive with both Route 22 and Cokesbury Road. He addressed the signalized Route 22 intersection as providing appropriate ingress and egress movements without impairing the function of the existing traffic signal. He addressed the adequacy of the left turn aisle, which was of sufficient length to accommodate the additional traffic associated with the Proposed Development. He concluded that the Proposed Development would function without detrimental impact on the adjoining road system. Provided certain revisions are made to the Site Plans as set forth below in the conditions section of the within resolution, the Board's traffic engineering expert agreed, and the Board agreed, with all of the Applicant's traffic engineering expert testimony as to the adequacy of vehicular access to the Proposed Development. As to on-site parking, the phase 1 development of Lot 1.03 includes 318 parking stalls, some of which will be located beneath the proposed buildings in parking garages and some of which will located on grade. The parking stalls will include handicapped accessible stalls as well as tandem stalls. Each tandem stall will be dedicated to a specific two-bedroom unit. Ingress to and egress from Lot 1.03 will be via access driveways to and from Corporate Drive. The phase 2 development of Lot 1.04 will utilize the existing common access driveway for ingress and egress from Corporate Drive constructed pursuant to the prior approval. The phase 2 development of Lot 1.04 will include 247 parking stalls, some of which will be located beneath the proposed buildings in parking garages and some of which will located on grade. The parking stalls will include handicapped accessible stalls as well as tandem stalls. Each tandem stall will be dedicated to a specific two-bedroom unit. Each of the two phases of the Proposed Development will provide parking in compliance with RSIS requirements. The Property will be appropriately graded with a maximum 5% grade on parking areas and all ADA stalls will have less than 2% grading. Retaining walls are necessary to make the grade transition between the developed areas and the preserved stream corridor areas. As to on-site vehicular circulation, the Board finds that the Site Plans provide adequate circulation not only for the vehicles which will service the tenants of the buildings but also visitors,

emergency vehicles, and solid waste and recycling pickup through an interior trash room where trash is compacted, then wheeled out for pickup by a private hauler. Finally, the Board notes that the Applicant agreed to provide electronic vehicle charging stations inside the parking garages (and a condition to this effect will be imposed on any approval).

d. **Utilities.** Water service will be provided from the Town of Clinton water department, with meter pits located underground and backflow preventers installed in each building (there will be no exterior “hot boxes”). The Applicant has agreed to the imposition of a condition that hydrant flow tests will confirm adequate pressure for fire systems. Sewer conveyance will be provided by the Lebanon Borough Sewage Authority (“LBSA”) and sewer treatment will be provided through the Readington Lebanon Sewage Authority (“RLSA”). The Applicant has secured confirmation of adequate sewer capacity for Phase 1 of the Proposed Development. As a condition of any preliminary approval, the Applicant will be required to secure confirmation of adequate sewage flow for Phase 2 of the Development prior to the time Phase 2 is granted final site plan approval. Natural gas service will be provided by Elizabethtown. Electric service will be provided by JCP&L. The location of transformers will be provided in accordance with JCP&L plans but if any transformer location requires variance relief, the Applicant will be required to apply for and obtain such relief from the Board prior to installation of the transformer.

e. **Stormwater Management.** The stormwater management system on Lot 1.03 will include porous pavement areas, a bio-retention basin, and an underground manufactured treatment device. The stormwater management system has been designed to infiltrate, detain and attenuate the 2-year, 10-year and 100-year storm events. According to the testimony of the Applicant’s engineering witnesses, the stormwater management system has been designed so that the rate of runoff from the site under proposed conditions will be reduced as compared to existing conditions to at least 50, 75 and 80% respectively for the storm events as required in the Borough ordinances. In fact, the reductions achieved are greater than the minimum required. The stormwater management system on Lot 1.04 will include porous pavement areas, a bio-retention basin system, and two (2) underground manufactured treatment devices. The system on Lot 1.04 is also designed to treat, detain and attenuate the 2-year, 10-year, and 100-year storm events. The Lot 1.04 system also has been designed to reduce the rate of runoff to a greater extent than what is required by ordinance. The Board finds that the stormwater management system has been designed in accordance with standards acceptable to NJDEP and the Highlands Council. The Board finds that the stormwater management system design will need to be found acceptable to the Borough Engineer once plan revisions are made to the satisfaction of the Borough Engineer. The Board finds, on the basis of the opinion provided by the Applicant’s environmental expert Michael Gross, Esq. (see Exhibit A-22), as confirmed by the advice provided by Keri Green, Science Manager of the New Jersey Highlands Council (see Exhibit A-24), that the Application is not subject to the Borough stormwater management regulations adopted in November, 2020. Further, because the Application was submitted and deemed complete prior to March 1, 2021, and the Application is not subject to the new NJDEP stormwater regulations. The Board finds that the Applicant’s stormwater management design will meet the requirements for water quality and infiltration under prior NJDEP standards which apply to the Application for the reasons set forth by the Applicant’s environmental expert Michael Gross, Esq. (see Exhibit A-22). The Preliminary Site Plans as well as the Stormwater Management Report, however, shall be revised as a condition of any approval to incorporate any and all changes required to bring it into 100% compliance with the Borough stormwater management regulations in effect prior to November, 2020 as well as the NJDEP stormwater regulations in effect prior to March, 2021.

f. **Lighting.** The Applicant agreed during the hearing that all lighting will comply with Board professional comments and that the following lighting conditions would be imposed: (a) site

lighting primarily with 20-foot-high decorative light stanchions, with standard 25-foot light stanchions installed closer to I – 78; (b) decorative wall mounted lighting on the buildings; (c) supplementation for the courtyards and sidewalk areas of the property with bollard type lighting to ensure adequate lighting with aesthetically pleasing fixtures; and (d) All lighting shall be with LED bulbs.

g. **Signage.** The Applicant proposes to install two freestanding monument signs, one at each entrance into the Proposed Development, with each sign having a maximum height of 5 feet. As reflected on Exhibit A-13, the monument signs will be 26 square feet in size and will be supported by decorative stone pillars. As also reflected on Exhibit A-13, the Applicant also proposes to install a building mounted sign of 33.7 square feet in size on each of the four buildings that will display the building’s number and the numbers assigned to each unit within the building. Applicant agreed that Corporate Drive will be renamed “Town Center Boulevard” and the Proposed Development will be named “Town Center East” and “Town Center West” so that visitors and emergency services can appropriately identify the buildings in each project phase.

h. **On-Site, On-Property and Off-Property Sidewalks.** In light of the large size of the Proposed Development, the Board was very concerned about safe walkability of the Proposed Development from nearby services. Further, the Borough was also concerned about this issue when it entered into the Settlement Agreement with FSHC and the MOS with the Applicant as there are provisions addressing same in those agreements. As part of its submissions in support of the Application, and also in support of its separate request outside the scope of the Application to have its property designated as a non-condemnation area in need of redevelopment, the Applicant submitted sidewalk plans reflecting proposed sidewalks both within the two-phase site containing the four buildings, on-site along Corporate Drive, and off the property. See Exhibits A-18 and A-19, as revised by Exhibit A-24. In fact, the Applicant agreed to the imposition of a condition of any approval that it will be obligated to extend sidewalks off-site and off the property in accordance with the sidewalk plan submitted as Exhibits A-18 and A-19, as revised by Exhibit A-24. The Board understands that the Applicant’s obligation to construct sidewalks off the property will be subject to the Borough’s acquisition of easements as may be necessary to accommodate any off-property sidewalks. The obligation to extend sidewalks includes the obligation to provide cross-walks with signals to provide a safe crossing of Cokesbury Road at its intersection with Route 22. The Applicant agreed to provide a safe crossing at Clark Road as may be required by a Redevelopment Plan if one is adopted.

i. **Building Height.** The Board was satisfied with the design of the buildings but was concerned about the height of the buildings because the recently adopted ordinance establishing the R-MF-12 zone provides that the maximum building height in the zone is 55-feet, measured to from finished grade to the midpoint of the pitched roof. As will be discussed below, the applicant applied for “c(2)” height variances to allow the highest points of the four buildings to be as follows: 58.28-feet for Building 1; 57.64-feet for Building 2; 58.88-feet for Building 3; and 57.16-feet for Building 4. The Applicant applied for “c(2)” (so-called “benefits v. detriments” variances), and not “c(1)” or so-called “hardship” variances, because the Applicant can technically comply with the height limitations if it altered the roof slopes but wished to maintain the roof slopes as designed for aesthetic purposes. Thus, technically any “hardship” would be self-created which would bar the grant of a “c(1)” variance. As to the “c(2)” variance, the Applicant’s architectural design expert testified, and the Board agreed and found, that the proposed height of the buildings is a function of creating aesthetically pleasing and appropriate roof slopes which will make the buildings much more attractive than if the roof slopes of the buildings were altered to achieve ordinance compliance.

j. **Building Length, Design and Materials.** Proposed buildings 1 and 2 on Lot 1.03 are 354-feet long, which is slightly longer than the 350-foot maximum length allowed by the bulk zoning

regulations established in the R-MF-12 zone. As will be discussed below, the Applicant applied for “c(2)” variances to allow the 4-foot deviation in the buildings’ length, The Board notes and finds in this regard that the additional length constitutes an “overhang” and the foundation plate conforms to the building length regulation. Further, the Board finds that the overhang provides for a more attractive façade treatment for the buildings than if the overhangs were eliminated to achieve ordinance compliance. The Board also notes and finds that the architectural treatment of the buildings and, specifically, the use of fenestration and other architectural features, appropriately breaks up the mass of the buildings. Finally, the Board reviewed the materials proposed to be used in construction, and the various façade treatments, and finds that they will result in harmonious and attractive buildings. A condition requiring the buildings to be constructed substantially similar to that depicted on Exhibit A-12 and the Architectural Plans after revisions as required below will be imposed on any approval. Additionally, a condition will be imposed on any approval requiring the Site Plans to be revised to conform to the Architectural Plans where there are discrepancies between the two plans.

4. **Variance Relief Requested.** The Applicant requests variance relief from the following zoning ordinance regulations to allow the following deviations:

a. §295-115.D.(6) provides that the maximum Building façade length is 350-feet where 354 feet is proposed for buildings 1 and 2 on Lot 1.03. As set forth above, the Applicant applied for a “c(2)” variance to allow this deviation.

b. §295-115D(9) provides that the maximum building height is: 55 feet from finished grade measured to midpoint of pitched roof where the proposed building heights are: Building 1=58.28’; Building 2= 57.64’; Building 3= 58.88’; and Building 4= 57.16’. As set forth above, the Applicant applied for a “c(2)” variance to allow this deviation.

c. §295-115.F.(2) provides that parking lot lighting fixtures shall be no more than twenty (20) feet in height, whereas 25 feet is proposed along Corporate Drive near I-78 (as measured from finished grade to bottom of luminaire). The Applicant applied for a “c(2)” variance to allow this deviation.

d. §295-115.G.(1) provides that all parking spaces shall measure no less than nine (9) feet in width by eighteen (18) feet in length, whereas a number of spaces will have dimensions of 8.5 feet in width by 16 feet in length, since these spaces will be designated as compact spaces. The Applicant applied for a “c(2)” variance to allow this deviation.

e. §295-115.G.(6) provides that no greater than 4% of the total number parking spaces can be designed for compact cars, whereas up to 10% or fifty-six (56) compact parking spaces are proposed (total for both phases) for compact cars. The Applicant applied for a “c(2)” variance to allow this deviation.

f. §295-115.G.(4) provides that hairpin striping shall be used to delineate parking spaces, whereas the Applicant proposes conventional striping instead of hairpin striping for all parking spaces. The Applicant applied for a “c(2)” variance to allow this deviation.

g. §295-115.G.(5) provides that off-street parking shall be designed to prohibit vehicles from backing up into any access driveway within fifty (50) feet of the curb line of an intersecting street, whereas the southeasterly most parking stall on Lot 1.03 (Phase 1) is located on an access driveway for which the point of back up is 42 feet from the curb line of Corporate Drive. The Applicant applied for

a “c(2)” variance to allow this deviation.

h. §295-115.K.(3) provides that one (1) landscaped area of at least 162 square feet shall be provided for every twenty (20) surface parking spaces, and that the landscaped area shall contain one (1) tree with a caliper of at least three (3) inches or three (3) shrubs planted at a height of at least two and a half (2.5) feet, whereas the landscaping proposed is not located within a designated area of 162 square feet on either phase of the project. Additionally, this ordinance section provides that parking areas visible from streets shall be screened by landscaping at least four (4) feet in height at the time of planting, except within sight triangle easements, whereas parking areas visible from Corporate Drive will not be so screened.

i. §295-115.-K.(5)-a provides that street trees shall be provided along the street, planted at an average of fifty (50) feet oncenter, whereas shade Trees are provided along Corporate Drive, however, the spacing requirement is not met along the entire frontage of Lot 1.03 or Lot 1.04.

j. §295-115.O.(1) provides that fences and walls between the building facade and the street shall be a maximum of four (4) feet in height, whereas the proposed retaining walls on Lot 1.04 (phase 2) are at maximum 12.50 feet in height, as measured from finished grade to top of wall, plus an additional 4-foot height for safety fence mounted directly behind the top of wall, for a total height of 16.50 feet. The retaining wall height for walls not facing Corporate Drive are not regulated under the Ordinance. The Applicant applied for a “c(1)” variance to allow this deviation.

k. §7.13 governs signs in all zone of the Borough (including all multifamily affordable housing zones) and §7.13-2 allows one nameplate sign for each building in a development for identification purposes, with residential nameplate signs limited to 2 square feet in size (non-residential nameplate signs are limited to 6 square feet in size). §7.13-3 allows an unlimited number of non-commercial on-site directional signs on a property with each sign limited to 4 square feet in area. The Applicant proposes a 33.6 square foot (5’-2” wide by 6’-6” high) nameplate sign on each building, whereas nameplate signs on residential buildings are limited to 2 square feet each. The Applicant applied for “c(2)” variances to allow these deviations. (The Applicant also proposes directional signage but all such directional signage will comply with the ordinance.)

5. **RSIS Exception Relief Requested.** The Applicant requests exception relief from the following RSIS requirements to allow the following deviations:

a. N.J.A.C. 5:21-4.5(a) requires sidewalks and/or graded areas, depending on road classification and intensity of development, in accordance with the requirements set forth in Table 4.3 in N.J.A.C. 5:21-4.2., whereas sidewalks are not currently proposed along both sides of the Corporate Drive frontage for each project phase (but sidewalks will be provided as explained above).

b. N.J.A.C. 5:21-4.15 provides that each off-street parking space shall measure nine feet in width by 18 feet in length, whereas up to fifty-six (56) compact parking stalls are proposed with dimensions of 8.5 feet in width by 16 feet in length (fifty-six is maximum parking stalls inclusive of both phases of the project).

c. N.J.A.C. 5:21-4.19(b)4 provides that intersections shall be designed with a flat grade wherever practical, whereas the existing intersection with Corporate Drive and the common access drive along property boundary of Lot 1.04 and Lot 1.05 does not provide for a flat grade.

d. N.J.A.C. 5:21-4.19 (b)5 (Table 4.6) provides that the minimum centerline radius required for roadway is 100 feet, whereas the minimum centerline radius for the roadway on Lot 1.03 (phase 1) is 27 feet and the minimum centerline radius for roadway on Lot 1.04 (phase 2) is 21 feet. (Note that these are radii within the parking area loops.)

e. N.J.A.C. 5:21-4.19(c) provides that pavement shall be designed using either Figures 4.2 through 4.5, the structural number method, or an alternate pavement design methods referenced in (c)3, whereas the proposed pavement sections differ in material (for porous pavement sections) and thickness of surface course layer proposed for both project phases.

f. N.J.A.C. 5:21-5.2(d) provides that the average daily residential water consumption shall be computed in accordance with the housing unit type and size data shown in Table 5.1, whereas the demand has been calculated in accordance with the Town of Clinton Water Requirements for both phases.

g. N.J.A.C. 5:21-6.1(a) provides that sanitary sewer systems, where installed, shall conform to the standards contained in the RSIS, whereas the sewer system has been designed in accordance with Lebanon Borough Sewer Authority for both phases.

6. **Findings as to the “C(1)” Variance from Ordinance §295-115.O.(1) to Allow the Proposed Retaining Wall Height.** As set forth above, ordinance §295-115.O.(1) provides that fences and walls between the building facade and the street shall be a maximum of four (4) feet in height, whereas the proposed retaining wall on Lot 1.04 (phase 2) is 12.50 feet in height, as measured from finished grade to top of wall, plus an additional 4-foot height for safety fence mounted directly behind the top of wall, for a total height of 16.50 feet. The Applicant applied for a “c(1)” variance to allow this deviation. The Board’s findings as to the positive and negative criteria of the “c(1)” retaining wall height variance are as follows:

a. **Positive Criteria of the “C(1)” Retaining Wall Height Variance.** As to the positive criteria of the “c(1)” variance, the Board finds that the existing conditions of the Property constitute an exceptional topographic condition and physical feature which uniquely affects the Property and the development of the Property such that conforming retaining wall cannot be provided. The specific condition and feature at issue is the existing grade of the Property and area adjacent to the street corridor and I -78. The Board finds that if the retaining wall regulation at issue is strictly enforced the grading condition and feature will inhibit the extent to which the Property can be used and, most significantly, will inhibit the development of the Property for the Proposed Development and reduce the scope of the Proposed Development, contrary to that envisioned by the Borough when it re-zoned the Property as R-MF-12 Zone via Ordinance #2020-08 adopted on October 21, 2020. As such, the Board’s ultimate findings is that “c(1)” variance is warranted to relieve the hardship, subject, however, to satisfaction of the negative criteria.

b. **Negative Criteria of the “C(1)” Retaining Wall Height Variance.** As to the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds that “c(1)” variance to allow greater retaining wall height can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following two reasons. First, allowing the higher retaining wall in this particular case will not result in an unsafe condition so there will be no resulting detriment to the public good. Second, allowing

the higher retaining wall in this particular case will not impair the intent or purpose of the master plan and zoning ordinance in as much as the intent and purpose of the ordinance is both to provide for safety and to provide an inclusionary affordable housing development, and both of those intents and purposes that will be achieved in this particular case.

7. **Findings as to the “C(2)” Variances for Building Height and Length.** As set forth above, ordinance §295-115.D.(6) provides that the maximum Building façade length is 350-feet where 354 feet is proposed for buildings 1 and 2 on Lot 1.03, and §295-115D(9) provides that the maximum building height is: 55 feet from finished grade measured to midpoint of pitched roof where the proposed building heights are: Building 1=58.28’; Building 2= 57.64’; Building 3= 58.88’; and Building 4= 57.16’. The Applicant applied for a “c(2)” variance to allow these deviations. The Board’s findings as to the positive and negative criteria of the “c(2)” building height and length variances are as follows:

a. **Findings as to the Positive Criteria of the “C(2)” Building Height and Length Variances.** As to the positive criteria of the “c(2)” variances, as set forth above, the Board was satisfied with the design of the buildings but was concerned about the height of the buildings as the height did not comply with the recently adopted height regulations established for the R-MF-12 zone. As also set forth above, the Applicant applied for “c(2)” (so-called “benefits v. detriments” variances), and not “c(1)” or so-called “hardship” variances, because the Applicant can technically comply with the height limitations if it altered the roof slopes but wished to maintain the roof slopes as designed for aesthetic purposes. Thus, technically any “hardship” would be self-created which would bar the grant of a “c(1)” variance. As to the requested “c(2)” height variances,¹ the Applicant’s architectural design expert testified, and the Board agreed and found, that the proposed height of the buildings is a function of creating aesthetically pleasing and appropriate roof slopes which will make the buildings much more attractive than if the roof slopes of the buildings were altered to achieve ordinance compliance. The Board thus finds that granting the height variances will advance the aesthetic purposes of the Municipal Land Use Law (the “MLUL”) as enunciated in N.J.S.A. 40:55D-2i (promoting a desirable visual environment through a creative design technique). Further, the Board finds that this aesthetic zoning benefit will substantially outweigh any detriment provided that the conditions set forth below are imposed and complied with.

b. **Findings as to the Positive Criteria of the “C(2)” Building and Length Variances.** As to the negative criteria, as set forth above, the Board notes and finds that the additional 4-foot length of each the buildings constitutes an “overhang”, with the foundation plate conforming to the building length regulation. As also set forth above, the Board finds that the overhang provides for a more attractive façade treatment for the buildings than if the overhangs were eliminated to achieve ordinance compliance. The Board also notes and finds that the architectural treatment of the buildings and, specifically, the use of fenestration and other architectural features, appropriately breaks up the mass of the buildings. Finally, the Board reviewed the materials proposed to be used in construction, and the various façade treatments, and finds that they will result in harmonious and attractive buildings. As with the height of the buildings, the Board thus finds that granting the variances to allow the additional 4-feet of building length for buildings 1 and 2 on Lot 1.03 will advance the aesthetic purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2i (promoting a desirable visual environment through a creative design technique). Further, the Board finds that this aesthetic

¹ The Board notes that the height variances at issue are “c” variances, and not “d(6)” variances, because the proposed heights of the principal buildings at issue will not exceed by 10-feet or 10% the maximum height limitation of 55-feet. See N.J.S.A. 40:55D-70d(6). If the height variances had been “d” variances, the Board would be required to sit as a zoning board of adjustment, in which case the Class I and Class III members of the Board would have not been able to participate in the hearing on the application. See N.J.S.A. 40:55D-25c.

zoning benefit will substantially outweigh any detriment provided that the conditions set forth below are imposed and complied with.

c. **Findings as to the Negative Criteria of the “C(2)” Building Height and Length Variances.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” building height and length variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, granting the height and length variances as proposed, with the conditions imposed as set forth below, will result in an aesthetically pleasing development, more so than if the additional height and length were eliminated to strictly comply with the ordinance regulations at issue, so will not result in any detriment to the public good. Additionally, the Applicant presented testimony that the Borough fire equipment can readily access the building at the proposed height so that there is no safety concern associated with the increased building height. Second, granting the variances will not substantially impair the intent or purpose of the master plan and zoning ordinance, one of which is to provide adequate light, air, open spaces and an aesthetically pleasing environment, because granting the variances will result in aesthetically pleasing buildings and an aesthetically pleasing environment.

8. **Findings as to the “C(2)” Variances for Parking Space Size, Number of Compact Parking Spaces, Parking Space Striping and Parking Setback.** As set forth above, deviations are proposed from the following ordinance provisions regulating parking: (a) §295-115.G.(1) which provides that all parking spaces shall measure no less than nine (9) feet in width by eighteen (18) feet in length, whereas a number of spaces will have dimensions 8.5 feet in width by 16 feet in length; (b) §295-115.G.(6) which provides that no greater than 4% of the total number parking spaces can be designed for compact cars, whereas up to 10% or fifty-six (56) compact parking spaces are proposed (total for both phases) for compact cars; (c) §295-115.G.(4) which provides that hairpin striping shall be used to delineate parking spaces, whereas the Applicant proposes conventional striping instead of hairpin striping for all parking spaces; and (d) §295-115.G.(5) which provides that off-street parking shall be designed to prohibit vehicles from backing up into any access driveway within fifty (50) feet of the curb line of an intersecting street, whereas the southeasterly most parking stall on Lot 1.03 (Phase 1) is located on an access driveway for which the point of back up is 42 feet from the curb line of Corporate Drive.. The Applicant applied for “c(2)” variances to allow all of these deviations. The Board’s findings as to the positive and negative criteria of the “c(2)” variance relief sought are as follows.

a. **Findings as to the Positive Criteria of the “C(2)” Variances.** As to the positive criteria of the “c(2)” variances, the Board finds as follows. First, because the Proposed Development is a residential development, parking stall usage will be much more limited than traditional standards associated with office buildings or retail development. Therefore, the need for larger spaces is substantially reduced. In this regard, the proposed decreased parking space size and the increased number of compact parking stalls is appropriate and will preserve more green space by reducing impervious coverage. This advances the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (guiding the appropriate use or development of land in a manner which will promote the general welfare). Second, again because the Proposed Development is a residential development and parking stall usage will be much more limited than traditional standards associated with office buildings or retail development, hairpin striping is not needed (hairpin striping is associated with more intensive parking stall use) which will result in a more residential look which advances the aesthetic purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2i (promoting a desirable visual environment through good civic design and arrangement). Third, the Board finds that the parking lot configuration and potential conflicts are minor in nature and that it makes better planning sense to provide for

more parking spaces rather than providing more backing space vis-à-vis the access driveways. This advances the general welfare purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (guiding the appropriate use or development of land in a manner which will promote the general welfare). Lastly, provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the “c(2)” variances will substantially outweigh any resulting detriment.

b. **Findings as to the Negative Criteria of the “C(2)” Variances.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, because the Proposed Development is a residential development, parking stall usage will be much more limited than traditional standards associated with office buildings or retail development so that parking space size can be reduced as proposed, the number of compact parking spaces can be increased as proposed, and there is no need for hairpin parking space striping as proposed, all without substantial detriment to the public good provided that the conditions set forth below are imposed and complied with. As to the parking setback deviation, the Board finds that the proposed deviation, while not de minimis, is minor in the context of the Application, and will not negatively impact safe and efficient vehicular circulation provided that the conditions set forth below are imposed and complied with. Finally, in balancing any detriments against the zoning benefits arising from the grant of the “c(2)” variances, the Board finds that if the variances are not granted, less parking spaces would be constructed and that the benefits of having the number of parking spaces proposed substantially outweighs the detriments arising out of the parking deviations proposed.. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” variances can be granted without substantial impairment of the intent and purpose of the master plan and zoning ordinance, one of which is to provide adequate and safe parking and vehicular circulation, because granting the variances will result in adequate and safe parking and vehicular circulation.

9. **Findings as to the “C(2)” Variance for Parking Lot Light Stanchion Height.** As set forth above, §295-115.F.(2) provides that parking lot lighting fixtures shall be no more than twenty (20) feet in height, whereas 25 feet is proposed along Corporate Drive near I-78 (as measured from finished grade to bottom of luminaire). The Applicant applied for a “c(2)” variance to allow this deviation. The Board’s findings as to the positive and negative criteria of the “c(2)” to allow this deviation are as follows.

a. **Findings as to the Positive Criteria of the “C(2)” Variance.** As to the positive criteria of the “c(2)” variance to allow the deviation from the 20-foot light stanchion height limitation, the Board finds as follows. To begin with, the Board finds that allowing higher light stanchions will result in a decreased number of stanchions which is an aesthetically pleasing result. That said, the Board also finds that the higher the stanchions, the more visible the light emanating from the light fixtures will be to neighboring buildings at night. Balancing the aesthetic benefits of higher stanchions during the day versus lower stanchions at night, and provided that a condition is imposed and complied with that requires the Applicant to install the vast majority of light stanchions at 20-feet high and then transition to 25-foot light stanchions adjacent to Corporate Drive, the Board finds that this will allow for appropriate lighting and beneficial aesthetics. Provided that the conditions set forth below are imposed and complied with (specifically, the condition regarding the Board retaining jurisdiction over lighting for a year after issuance of certificates of occupancy and occupancy of units in the Proposed Development), the Board finds that granting the variance will advance the aesthetic purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2i (promoting a desirable visual environment through good civic design and arrangement) and that this aesthetic zoning benefit will substantially outweigh the detriment.

b. **Findings as to the Negative Criteria of the “C(2)” Variance.** As to the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds that the “c(2)” variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, provided that a condition is imposed and complied with that requires the Applicant to install the vast majority of light stanchions at 20-feet high and then transition to 25-foot light stanchions adjacent to Corporate Drive towards I-78, the Board finds that the variance can be granted without substantial detriment to the public good in terms of aesthetics. Second, provided that the condition just referenced is imposed and complied with, the Board also finds that the variance can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance, which includes providing adequate light and an aesthetically pleasing environment.

10. **Findings as to the “C(2)” Variance for Landscaping and Street Trees.** As set forth above, the Applicant applied for “c(2)” variances to allow certain landscaping and street tree deviations. Specifically, ordinance §295-115.K.(3) provides that one (1) landscaped area of at least 162 square feet shall be provided for every twenty (20) surface parking spaces, and that the landscaped area shall contain one (1) tree with a caliper of at least three (3) inches or three (3) shrubs planted at a height of at least two and a half (2.5) feet, whereas the landscaping proposed is not located within a designated area of 162 square feet on either phase of the project. Additionally, this ordinance section provides that parking areas visible from streets shall be screened by landscaping at least four (4) feet in height at the time of planting, except within sight triangle easements, whereas parking areas visible from Corporate Drive will not be so screened. Further, ordinance §295-115.-K.(5)-a provides that street trees shall be provided along the street, planted at an average of fifty (50) feet on center, whereas shade trees are provided along Corporate Drive, however, the spacing requirement is not met along the entire frontage of Lot 1.03 or Lot 1.04. The Board’s findings as to the positive and negative criteria of these “c(2)” variances are as follows.

a. **Findings as to the Positive Criteria of the “C(2)” Variances for Landscaping and Street Trees.** As to the positive criteria of these “c(2)” landscaping and shade tree variances, the Board starts its discussion by noting that there is a Council on Affordable Housing (“COAH”) Third Round rule that was not invalidated under Mount Laurel IV, which provides that municipalities must eliminate development standards and requirements that are not essential to protect public welfare in general. See, N.J.A.C. 5:97-10.1. Further, N.J.A.C. 5:97-10.2(a).3 provides that municipalities “shall give special attention” to landscape, buffering, tree replacement and reforestation requirements in this regard. Moreover, N.J.A.C. 5:97-10.3(b) provides that municipalities are required to “cooperate with developers of affordable housing developments in granting reasonable variances”, especially where the variances are for relief from cost generative features not essential to protect public welfare such as landscaping and tree requirements, and not for relief from features that are related to protecting public health and safety. The Board finds that granting “c(2)” variances to allow the proposed deviations from the landscaping and street tree requirements will facilitate construction of the Proposed Development, which includes 56 units of affordable housing, which will promote the general welfare purposes of the MLUL enunciated in N.J.S.A. 40:55D-2a (promoting the general welfare) and -2g (providing residential housing to meet the needs of all New Jersey citizens). The Board further notes and finds that the Applicant’s proposal meets the spirit of the landscaping and shade tree requirements of the ordinance. In this regard, the Board notes and finds that the lack of street trees along a portion of Corporate Drive reflects that area being part of the stream corridor and therefore preserved. Moreover, in those areas outside of the flood hazard area, street trees will be provided. In the same vein, the Applicant is providing sufficient landscaping along the perimeter of the parking area to meet the intent of the ordinance. In light of the above, and provided

that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the “c(2)” variance will substantially outweigh any detriment.

b. **Findings as to the Negative Criteria of the “C(2)” Variances for Landscaping and Street Tree** As to the negative criteria of the “c(2)” variances, provided that the conditions set forth below are imposed and complied with, the Board finds that the variance relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that the requested variance relief will detrimentally impact public health or safety or the appearance of the Corporate Drive corridor. As set forth above, street trees are not proposed along the portion of Corporate Drive located within the flood hazard area, which is and will remain in its natural state. Additionally, the parking lot landscaping is appropriate for the Proposed Development. Finally, the variances can be granted without substantially impairing the intent or purpose of the master plan and zoning ordinance, which is to provide adequate light and an aesthetically pleasing environment.

11. **Findings as to “C(2)” Name Plate Wall Signage Variances.** As set forth above, ordinance §7.13 governs signs in all zone of the Borough (including all multifamily affordable housing zones) and §7.13-2 allows one nameplate sign for each building in a development for identification purposes, with residential nameplate signs limited to 2 square feet in size (non-residential nameplate signs are limited to 6 square feet in size). §7.13-3 allows an unlimited number of non-commercial on-site directional signs on a property with each sign limited to 4 square feet in area. The Applicant proposes a 33.6 square foot (5’-2” wide by 6’-6” high) nameplate sign on each building, whereas nameplate signs on residential buildings are limited to 2 square feet each. The Applicant applied for “c(2)” variances to allow these deviations. (The Applicant also proposes directional signage but all such directional signage will comply with the ordinance.) The Board’s findings as to the positive and negative criteria of the “c(2)” name plate wall signage variances are as follows.

a. **Findings as to the Positive Criteria of the “C(2)” Variance.** As to the positive criteria of the “c(2)” variances, the Board finds from its review of Exhibit A-13 that conforming 2 square foot wall signs on the proposed buildings would not be visible to vehicular traffic circulating on the property which would result in unsafe conditions for vehicular and pedestrian circulation on the property. Further, the Board finds from its review of Exhibit A-13 that granting “c(2)” variances to allow the proposed 33.6 square feet (5’-2” wide by 6’-6” high) wall signs would make the wall signage visible and thereby promote the public safety purposes of the MLUL enunciated in N.J.S.A. 40:55D-2a (promoting public safety). Provided that the conditions set forth below are imposed and complied with, the Board also finds that the public safety benefits resulting from the grant of the variances will substantially outweigh any aesthetic detriment because the Board finds based on its review of Exhibit A-13 that the proposed wall signage will be aesthetically pleasing and proportional to the size of the proposed buildings.

b. **Findings as to the Negative Criteria of the “C(2)” Variance.** As to the negative criteria of the “c(2)” variances, provided that the conditions set forth below are imposed and complied with, the Board finds that the variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance for the following reasons. First, as set forth above, the Board finds based on its review of Exhibit A-13 that the proposed wall signage will be aesthetically pleasing and proportional to the size of the proposed buildings. And, the Board finds that the proposed wall signage will not be distracting; to the contrary, the Board finds that the proposed signage will promote vehicular and pedestrian safety. As such, the Board finds that the variances can be granted without substantial detriment to the public good. Second, as set forth above, based on its review of Exhibit A-

13, the Board finds that the proposed wall signage is proportional to the size of the proposed buildings. And, the Board finds that the proposed wall signage will be effective for communications, aesthetics, safety and integration with the architectural design of the proposed buildings. In this regard, the Board finds that these are purposes of the signage ordinance and the master plan. As such, the Board finds that the variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance.

12. **Design Exceptions from RSIS standards.** As set forth above, the Applicant has requested exception relief from various RSIS requirements to allow certain deviations. The Board's findings as to the requested exceptions are as follows.

a. **Sidewalk Exceptions.** N.J.A.C. 5:21-4.5(a) requires sidewalks and/or graded areas, depending on road classification and intensity of development, in accordance with the requirements set forth in Table 4.3 in N.J.A.C. 5:21-4.2., whereas sidewalks are not currently proposed along both sides of the Corporate Drive frontage for each project phase. That said, the Applicant does propose sidewalks as follows. The Applicant submitted sidewalk plans reflecting proposed sidewalks both within the two-phase site containing the four buildings, on-site along Corporate Drive, and off the property. See Exhibits A-18 and A-19, as revised by Exhibit A-24. The Board finds that the literal enforcement of the sidewalk requirement is impracticable due to the two-phased proposed development of the property. And, the Board finds that it is reasonable, and within the general purpose and intent of the standards, to grant the requested exception provided that the following condition is imposed. The Board notes in this regard that the Applicant agreed to the imposition of the condition of any approval that the Applicant will be obligated to extend sidewalks off-site and off the property in accordance with the sidewalk plan submitted as Exhibits A-18 and A-19, as revised by Exhibit A-24. (The Board understands that the Applicant's obligation to construct sidewalks off the property will be subject to the Borough's acquisition of easements as may be necessary to accommodate any off-property sidewalks.) Additionally, the obligation to extend sidewalks includes the obligation to provide crosswalks with signals to provide a safe crossing of Cokesbury Road at its intersection with Route 22. The Applicant agreed to provide a safe crossing at Clark Road as may be required by a Redevelopment Plan if one is adopted. Finally, the Board specifically finds that the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructures and possible surrounding future development.

b. **Parking Space Size Exception.** N.J.A.C. 5:21-4.15 provides that each off-street parking space shall measure nine feet in width by 18 feet in length, whereas up to fifty-six (56) compact parking stalls are proposed with dimensions of 8.5 feet in width by 16 feet in length (fifty-six is maximum parking stalls inclusive of both phases of the project). Similar to the Board's findings above as to the positive criteria of the "c(2)" parking space variance, the Board finds that, because the Proposed Development is a residential development, parking stall usage will be much more limited than traditional standards associated with office buildings or retail development. Therefore, the need for larger spaces is substantially reduced. In this regard, the proposed decreased parking space size and the increased number of compact parking stalls is appropriate and will preserve more green space by reducing impervious coverage. Based on the above these findings, the Board further finds that the literal enforcement of the parking space size requirement is impracticable in this particular application. Further, the Board notes and finds that N.J.A.C. 5:21-3.1(f) provides four examples of de minimis exceptions, one of which is: (a) Reducing the minimum number of parking spaces and the minimum size of parking stalls. Provided that the conditions set forth below are imposed and complied with (specifically, a condition regarding the pedestrian circulation plan being subject to further review at the time of final site plan review and approval), the Board finds that the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome;

meets the needs of public health and safety; and takes into account existing infrastructures and possible surrounding future development.

c. **Flat Grade for Intersection Exception.** N.J.A.C. 5:21-4.19(b)4 provides that intersections shall be designed with a flat grade wherever practical, whereas the existing intersection with Corporate Drive and the common access drive along property boundary of Lot 1.04 and Lot 1.05 does not provide for a flat grade. The Board finds that the literal enforcement of this requirement is impracticable because the intersection grade is a condition and the only way to create a flat grade would be to rip out the road and reconstruct it, and the existing grade does not present a traffic safety concern. The Board further finds that the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructures and possible surrounding future development.

d. **Centerline Radius Exception.** N.J.A.C. 5:21-4.19 (b)5 (Table 4.6) provides that the minimum centerline radius required for a roadway is 100 feet, whereas the minimum centerline radius for the proposed roadway on Lot 1.03 (phase 1) is 27 feet and the minimum centerline radius for the proposed roadway on Lot 1.04 (phase 2) is 21 feet. The Board finds that the literal enforcement of this requirement is impracticable because the proposed centerline radius does not present a traffic safety concern. The Board further notes and finds that N.J.A.C. 5:21-3.1(f) provides four examples of de minimis exceptions, one of which is: (b) Reducing the minimum geometrics of street design, such as curb radii, horizontal and vertical curves, intersection angles, centerline radii, and others. The Board further finds that the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructures and possible surrounding future development. Finally, the Board notes that the roadways at issue are internal parking lot loops.

e. **Pavement Design Exception.** N.J.A.C. 5:21-4.19(c) provides that pavement shall be designed using either Figures 4.2 through 4.5, the structural number method, or an alternate pavement design methods referenced in (c)3, whereas the proposed pavement sections differ in material (for porous pavement sections) and thickness of surface course layer proposed for both project phases. The Board begins its discussion of this exception by noting and finding that the porous pavement which does not comply with the requirement has been proposed to enhance stormwater management and recharge on the property. As such, the Board finds that the literal enforcement of this requirement is impracticable where the benefit from complying is outweighed by the stormwater management benefits of not complying. Further, the Board finds that the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; meets the needs of public health and safety; and takes into account existing infrastructures and possible surrounding future development.

f. **Water Consumption Computation Exception.** N.J.A.C. 5:21-5.2(d) provides that the average daily residential water consumption shall be computed in accordance with the housing unit type and size data shown in Table 5.1, whereas the demand has been calculated in accordance with the Town of Clinton Water Requirements for both phases. The Board finds and notes that water for the Proposed Development will be provided by the Town of Clinton Water Department and that the Town of Clinton utilizes a different method to calculate water consumption than the RSIS. The Board finds that the literal enforcement of the RSIS requirement to calculate water consumption is impracticable where the water purveyor uses a different method of calculation. The Board also finds that, because the intent and purpose of the RSIS requirement is for a developer to obtain water for its development, the requested exception: is

consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; and takes into account existing infrastructures and possible surrounding future development. The Board also finds that using the Town of Clinton method for the water consumption computation meets the needs of public health and safety.

g. **Sewer Design Exception.** N.J.A.C. 5:21-6.1(a) provides that sanitary sewer systems, where installed, shall conform to the standards contained in the RSIS, whereas the sewer system has been designed in accordance with Lebanon Borough Sewer Authority (“LBSA”) for both phases. The Board finds and notes that sewer flow requirements for the Proposed Development will be determined by the LBSA and that the LBSA utilizes different standards for design than the RSIS. The Board finds that the literal enforcement of the RSIS requirement for sewer design is impracticable where the sewer purveyor uses a different design standard. The Board also finds that, because the intent and purpose of the RSIS requirement is for a developer to obtain sewer for its development, the requested exception: is consistent with the intent of the Act establishing the RSIS; is reasonable, limited, and not unduly burdensome; and takes into account existing infrastructures and possible surrounding future development. The Board also finds that using the LBSA sewer design standards meets the needs of public health and safety.

13. **Finding that the Preliminary Plans and Documents are Sufficient for Purposes of Preliminary Site Plan Approval.** The Applicant has applied for preliminary site plan approval only at this time and has indicated that, if it obtains preliminary approval, it will subsequently apply for final approval. As set forth in the legal conclusions below, the MLUL provides that the plans submitted for preliminary approval need only be in “tentative form” for “discussion purposes”, whereas the plans submitted for final approval need to be “detailed.” The Board finds that the Preliminary Site Plans, Preliminary Architectural Plans, EIS, Traffic Report and Stormwater Management Report referenced above for which approval is sought, are sufficient for purposes of preliminary site plan review and approval.

14. **Findings as to Preliminary Site Plan Review.** The Board’s findings as to preliminary site plan review are as follows:

a. **Ordinance Compliance in General.** With the exception of the variances from the zoning ordinance regulations and the exception from the RSIS requirements set forth above from which the Applicant seeks relief, the Board finds that the Preliminary Site Plans, Preliminary Architectural Plans, EIS, Traffic Report and Stormwater Management Report referenced above for which approval is sought, will comply with all other applicable zoning ordinance regulations, all applicable site plan ordinance requirements and all other applicable RSIS requirements, provided, however, that the conditions set forth below are imposed and complied with.

b. **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development.

c. **Ultimate Finding.** For all of the foregoing reasons, the Board’s ultimate finding is that preliminary site plan approval is warranted provided that the conditions set forth below are imposed and complied with.

B. LEGAL CONCLUSIONS

1. **The “C(1)” Variance.** The Board’s conclusions as to the “c(1)” variance are as follows:

a. **Standards Applicable to the “C(1)” Variance.** The Board has the power to grant “c(1)” or so-called “hardship” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(1) where “(a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.” The “hardship” that the applicant must prove is not inutility, meaning that without the variance the property would be zoned into inutility. Inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property. The Board may – but is not required to – grant a “c(1)” variance where the hardship at issue is not confiscatory but, rather, inhibits “the extent” to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board may not exercise its power to grant a “c(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions to Grant the “C(1)” Variance.** As set forth in the factual findings above, the Board found that the existing conditions of the Property constitute an exceptional topographic condition and physical feature which uniquely affects the Property and the development of the Property such that retaining walls in excess of the height permitted by the ordinance are required in order for the proposed development to proceed. Further, the Board found that this exceptional condition and feature inhibits the extent to which the property can be used and, most significantly, inhibits the development of the property for the Proposed Development and will. reduce the scope of the Proposed Development, contrary to that envisioned by the Borough when it re-zoned the Property as R-MF-12 Zone via Ordinance #2020-08 adopted on October 21, 2020. As also set forth in the factual findings set forth above, the “c(1)” variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance, provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that it can and should grant the requested “c(1)” variance subject to the conditions set forth below.

2. **The “C(2)” Variances.** The Board’s conclusions as to the “c(2)” variances are as follows:

a. **Standards Applicable to the “C(2)” Variance.** The Board has the power to grant “c(2)” or so-called “benefits v. burdens” variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D-70c(2) where “in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment.” The zoning benefits resulting from permitting the deviation must be for the community (“improved zoning and planning that will benefit the community”) and not merely for the private purposes of the owner. Kaufmann v. Warren Borough Planning Board, 110 N.J. 551, 563 (1988). The zoning benefits

resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). It must also be noted that, while “c(1)” or so-called hardship variances are not available for self-created situations and/or for mistakes, our courts have not held that an intentionally created situation or a mistake serves to bar a “c(2)” variance because the focus of a “c(2)” variance is not on hardship but, rather, on advancing the purposes of zoning. Ketcherick v. Mountain Lakes Board of Adj., 256 N.J. Super. 647, 656-657 (App. Div. 1992); Green Meadows v. Montville Planning Board, 329 N.J. Super. 12, 22 (App. Div. 2000). Significantly, however, a “c(2)” variance can be denied where it does not provide a benefit to the community and would “merely alleviate a hardship to the applicant which he himself created.” Wilson v. Brick Twp. Zoning Board, 405 N.J. Super. 189, 199 (App. Div. 2009). Finally, the Board may not exercise its power to grant a “c(2)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Conclusions to Grant the “C(2)” Variances.** As set forth in the factual findings above, the Board found that granting each of the requested “c(2)” variances would advance certain purposes of the MLUL and that, provided that the conditions set forth below are imposed and complied with, the zoning benefits resulting from the grant of the “c(2)” variances would substantially outweigh any resulting detriment. The Board further found that, again provided that the conditions set forth below are imposed and complied with, the “c(2)” variances could be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance. As such, the Board concludes that it can and should grant the requested “c(2)” variances subject to the conditions set forth below.

3. **Preliminary Site Plan Review.** The Board’s conclusions as to preliminary site plan review are as follows:

a. **While Preliminary Site Plans are Allowed to be in Tentative Form, They Must Sufficiently Address Matters Vital to the Public Health and Welfare.** While N.J.S.A. 40:55D-46a allows the site plans and engineering documents required to be submitted for preliminary site plan review to be in “tentative form for discussion purposes for preliminary approval,” the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan. ² The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and

² N.J.S.A. 40:55D-46b also provides that, if any architectural plans are required to be submitted in the preliminary site plan review process, “preliminary plans and elevations shall be sufficient.” For preliminary site plan review, neither the site plans, engineering plans or architectural plans need to be “detailed” or in “final” form as is required for final site plan review and approval pursuant to N.J.S.A. 40:55D-50a.

approval as part of the preliminary site plan review process, preliminary approval must be denied. Id.

b. **Standards Applicable to Preliminary Site Plan Review.** N.J.S.A. 40:55D-46b, which contains the standard the Board must utilize in reviewing the application for preliminary site plan approval, provides that the Board “shall” grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. As such, if the application complies with all ordinance provisions, the Board must grant approval. Conversely, if the application does not comply with all ordinance provisions, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions:

(1) The first exception is where an application does not comply with all ordinance provisions but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance provisions and grant approval if the application complies with all such remaining provisions.

(2) The second exception is where the application does not comply with all ordinance provisions but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application is revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance provisions prior to the Board granting approval.

c. **Conclusions to Grant of Preliminary Site Plan Approval.** As set forth in the factual findings above, the Board found that the Preliminary Site Plans, Preliminary Architectural Plans, Traffic Report, EIS, and Stormwater Management Report will comply with all other applicable zoning ordinance regulations, all applicable site plan ordinance requirements, and all other RSIS requirements provided that the conditions set forth below are imposed and complied with. The Board’s ultimate finding was that preliminary site plan approval was warranted but subject to the conditions set forth below being imposed and complied with. As such, the Board concludes that preliminary site plan approval can and should be granted subject to the conditions set forth below.

4. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approvals they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Borough of Randolph, 137 N.J. 216, 232-233 (1994). See also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162

N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by board experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The conditions set forth below have been imposed on all of the foregoing bases.

THE BOARD, BY MOTION DULY MADE AND SECONDED ON JUNE 13, 2021 AS FOLLOWS:

C. RELIEF GRANTED

1. **“C(1)” Variance from Ordinance §295-115.O.(1) to Allow the Proposed Retaining Wall Height.** Subject to the conditions set forth below, a “c(1)” variance is granted from zoning ordinance §295-115.O.(1) which provides that fences and walls between the building facade and the street shall be a maximum of four (4) feet in height, to allow the proposed retaining wall on Lot 1.04 (phase 2) to be 12.50 feet in height, as measured from finished grade to top of wall, plus an additional 4-foot height for safety fence mounted directly behind the top of wall, for a total height of 16.50 feet.

2. **“C(2)” Building Height Variances.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance section §295-115D(9), which provides that the maximum building height shall be 55 feet (as measured from finished grade to the midpoint of a pitched roof) to allow the following buildings to have the following heights: Building 1=58.28’; Building 2= 57.64’; Building 3= 58.88’; and Building 4= 57.16’.

3. **“C(2)” Building Length Variance.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance section 295-115D(6), which provides that the maximum building façade length shall be 350 feet, to allow the building façade length of proposed buildings 1 and 2 on Lot 1.03 to be 354 feet.

4. **“C(2)” Parking Lot Lighting Stanchion Height Variance.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance §295-115 F (2), which limits parking lot lighting stanchions to no more than twenty (20) feet in height (as measured from finished grade to bottom of luminaire) to allow certain of the parking lot lighting stanchions to be 25 feet in height.

5. **“C(2)” Parking Stall Number and Size Variances.** Subject to the conditions set forth

below, “c(2)” variances are granted from ordinance §295-115 G (1) and (6), which require that all parking stalls shall measure no less than nine (9) feet in width by eighteen (18) feet in length, and place a 4% cap on the number of compact stalls, to allow a maximum of fifty-six (56) compact parking stalls (total for both phases) with dimensions of 8.5 feet in width by 16 feet in length.

6. **“C(2)” Hairpin Striping Variance.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance §295-115 G (4), which requires hairpin striping to delineate parking stalls to allow conventional single line parking stall striping.

7. **“C(2)” Parking Setback Variance.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance §295-115 G (5), which requires that all off-street parking shall be designed to prohibit vehicles from backing up into any access driveway within fifty (50) feet of the curb line of an intersecting street, to allow the southeasterly most parking stall on Lot 1.03 (Phase 1) to be located on an access driveway for which the point of back up is 42 feet from the curb line of Corporate Drive.

8. **“C(2)” Parking Lot Landscape Area Variances.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance §295-115 K (3), which provides that one (1) landscaped area of at least 162 square feet shall be provided for every twenty (20) surface parking spaces and that the landscaped area shall contain one (1) tree with a caliper of at least three (3) inches or three (3) shrubs planted at a height of at least two and a half (2.5) feet, to allow the proposed landscaping to not be located within a designated area of 162 square feet on either phase of the project.

9. **“C(2)” Parking Lot Landscape Screening Variance.** Subject to the conditions set forth below, a “c(2)” variance is granted from ordinance §295-115 K (3) c, which provides that parking areas visible from Corporate Drive shall be screened by landscaping at least four (4) feet in height at the time of planting (except within sight triangle easements) to allow deviations from that requirement.

10. **“C(2)” Street Tree Variances.** Subject to the conditions set forth below, ordinance §295-115 K (5) a, which requires that street trees shall be provided along Corporate Drive, planted at an average of fifty (50) feet on center, to allow the spacing requirement for the proposed shade trees to deviate from the requirement along the entire frontage of Lot 1.03 and Lot 1.04.

11. **“C(2)” Name Plate Wall Signage Variances.** Subject to the conditions set forth below, “c(2)” variances are granted from ordinance §7.13-2, which allows one nameplate sign for each building in a development for identification purposes, with residential nameplate signs limited to 2 square feet in size (non-residential nameplate signs are limited to 6 square feet in size), to allow a 33.6 square foot (5’-2” wide by 6’-6” high) name plate wall sign on each building.

12. **Exception from RSIS Sidewalk Requirement.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-4.5 (a), which requires sidewalks and/or graded areas, depending on road classification and intensity of development, in accordance with the requirements set forth in Table 4.3 in N.J.A.C. 5:21-4.2, to allow a deviation from this requirement along the Corporate Drive frontage for each project phase.

13. **Exception from RSIS Parking Space Size Requirement.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-4.15, which requires that each off-street parking stall to be nine

(9) feet in width by 18 feet in length, to allow up to fifty-six (56) compact parking stalls with dimensions of 8.5 feet in width by 16 feet in length (fifty-six is maximum parking stalls inclusive of both phases of the project).

14. **Exception from RSIS Intersection Design Requirement.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-4.19 (b) 4, which provides that intersections shall be designed with a flat grade wherever practical, to allow the existing intersection with Corporate Drive and the common access drive along property boundary of Lot 1.04 and Lot 1.05 to remain as is which does not provide for a flat grade.

15. **Exception from RSIS Centerline Radius Requirement.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-4.19 (b) 5 (Table 4.6), which provides that the minimum centerline radius required for roadway is 100 feet, to allow the following: (a) the minimum centerline radius for the roadway on Lot 1.03 (phase 1) is 27 feet; and (b) the minimum centerline radius for the roadway on Lot 1.04 (phase 2) is 21 feet.

16. **Exception from RSIS Pavement Requirement.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-4.19 (c), which provides that pavement shall be designed using either Figures 4.2 through 4.5, the structural number method, or the alternate pavement design methods referenced in (c)3, to allow the proposed pavement to differ in material (for porous pavement sections) and thickness of surface course layer proposed for both project phases.

17. **Exception from RSIS Daily Residential Water Consumption Computation.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-5.2 (d), which provides that the average daily residential water consumption shall be computed in accordance with the housing unit type and size data shown in Table 5.1, to allow the water demand to be calculated in accordance with the Town of Clinton Water Requirements for both phases of the Proposed Development.

18. **Exception from RSIS Sewer System Design Requirements.** Subject to the conditions set forth below, an exception is granted from N.J.A.C. 5:21-6.1 (a), which provides that sanitary sewer systems, where installed, shall conform to RSIS requirements, to allow the sewer system to be designed in accordance with the standards and requirements established by the LBSA for both phases of the Proposed Development.

19. **Preliminary Site Plan Approval.** Subject to the conditions set forth below, preliminary site plan approval is granted to the Preliminary Site Plans, Preliminary Architectural Plans, Traffic Report, EIS and Stormwater Management Report as referenced above.

D. CONDITIONS

1. **Revisions to Preliminary Site Plans, Preliminary Architectural Plans and Stormwater Management Report.** Revisions to the Preliminary Site Plans, Preliminary Architectural Plans, and Stormwater Management Report shall be made to incorporate the following comments emanating in the following letters and/or memos prepared by the following Board professionals and/or as discussed by the Board on the record during the hearing on the Application, and to the satisfaction of the Board expert(s) who filed the report or testified, as well as to the satisfaction of the Borough Engineer and Borough Planner, with the revisions being made to all of the documents and the Preliminary Site Plans being signed no later than February 24, 2022 (which is six (6) months from the date the within resolution is adopted on August 24, 2021), and only after the revisions have been made to all of the documents. In the event that the applicant fails to revise the documents as required and/or fails to obtain signatures on the Preliminary Site Plans within said time period, or extension thereof as granted by the Board, the approvals granted in the within resolution shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an

application for no more than a six month period to provide the applicant with the opportunity to revise the site plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the site plans and documents may be brought to the Board for resolution by written letter application submitted by the applicant without the necessity for public notice but on written notice to the Borough Engineer and Borough Planner. The required revisions are as follows:

a. **From the following comments in the Robert C Brightly, PE engineering review report dated April 9, 2021:** If not already done, revise the Preliminary Site Plans in accordance with the comments under section “B”, the Construction Details in accordance with the comments under section “C” (to the extent said comments were not exclusively made under the assumption that the Borough’s new stormwater management ordinance was applicable), the Stormwater Management plan in accordance with the comments under section “D” (to the extent said comments were not exclusively made under the assumption that the Borough’s new stormwater management ordinance was applicable), and the Preliminary Architectural Plans and Garage Parking plans in accordance with the comments under section “E”, as follows:

B. Site Plan Drawings

1. The table of zoning requirements on sheet 1 of the plans should be revised to include the following standards:
 - a. Minimum distance between buildings, where 22 feet is required and 28.8 feet and 53.0 feet is provided for Lots 1.03 and 1.04 respectively.
 - b. Maximum building length of any façade, where 350 feet is required and 354 feet and 250 feet is provided for Lots 1.03 and 1.04 respectively.
 - c. Maximum number of principal buildings, where two per lot, four per zone is permitted and two principal buildings are proposed for both Lots 1.03 and 1.04.
2. The variance required under §295-115.D(6) from the maximum building façade length for Lot 1.03 should be added to the list of variances required on sheet 1 of the site plan drawings.
3. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
4. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
5. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
6. There appears to be a significant difference in the impervious coverage figures listed in the table of zoning requirements for both lots when compared to the stormwater management report. Also, it appears that the existing parking area at the westerly end of Lot 1.03, as well as the portion of Corporate Drive that exists on both lots, is not included in the impervious coverage figures. *(These developed areas are included in the lot density calculations.)*
7. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
8. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)

9. The minimum setback dimensions indicated in the zoning table are not consistent with the dimensions shown on site plan sheets 5 and 6. It appears that some of the dimensions may be to recessed areas or not to the closest point of the building.
10. There is a discrepancy between the bedroom distribution count shown in the parking schedule on sheet 5 and the architectural plans for both buildings 1 and 2. Based on the architectural plans, we count 18 one-bedroom units; 54 two-bedroom units and; 3 three-bedroom units for building 1 and 19 one-bedroom units; 58 two-bedroom units and; 3 three-bedroom units for building 2. This count assumes that the loft, which is proposed for several units, does not count as a bedroom. (*Floor plans for the loft units are not included on architectural sheet PB1-2.1.*)
11. Based on the bedroom distribution count discussed above, we calculate that 147 parking spaces are required for building 1 and 156 parking spaces are required for building 2. Allowing for 6 tandem parking spaces in the parking garage for each building, plus 73 spaces in the existing, westerly parking area, we calculate 327 parking spaces are provided for buildings 1 and 2. This represents a surplus of 24 parking spaces. (*This provided figure assumes that 65 parking spaces in the westerly parking area, formerly dedicated to Lot 1.01 are in fact available. If the agreement remains in effect, there would be a shortfall of 41 spaces.*)
12. There is a discrepancy between the bedroom distribution count shown in the parking schedule on sheet 6 and the architectural plans for both buildings 3 and 4. Based on the architectural plans, we count 15 one-bedroom units; 45 two-bedroom units and; 3 three-bedroom units for building 3 and 13 one-bedroom units; 46 two-bedroom units and; 3 three-bedroom units for building 2. This count assumes that the loft, which is proposed for several units, does not count as a bedroom.
13. Based on the bedroom distribution count discussed above, we calculate that 123 parking spaces are required for building 3 and 116 parking spaces are required for building 4. Allowing for 4 tandem parking spaces in the parking garage for each building, we calculate 239 parking spaces are provided for buildings 3 and 4. This represents a parking surplus of 15 spaces.
14. Typical dimensions of the parking area on the north side of building 1 and the parking area on the south side of building 4 should be added to the plans. The site plan drawings should indicate the number and location of any proposed compact spaces.
15. The parking spaces located near the overhead garage doors will have constrained access due to the doorway and the adjacent car and or column. The architectural drawings indicate that the parking spaces closest to the garage doors in building 3 will be compact, which we find problematic.
16. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
17. The number and distribution of the barrier-free/ADA parking spaces will need to be clarified. The garage parking spaces within each building should be considered separate lots since guests will not have access to the garage parking stalls. Based on the site plan drawings, buildings 1 and 2 appear to meet the ADA parking requirements with 4 garage spaces each. Buildings 3 and 4 appear to require 3 ADA garage spaces, while 5 and 4 are provided respectively. Based on RSIS standards for guest parking, it appears that at least 1 exterior ADA parking space is required for building 3 use.

18. The flush curb ramp shown near the main entrance to building 3 appears to be partially blocked by a parking space. Once the required ADA space is added, the ramp will be accessible, and available for use during move-ins.
19. The plans should include a sidewalk along Corporate Drive from the signalized intersection at Route 22 to Cokesbury Road. A minimum width of 5 feet is recommended for the sidewalk along Corporate Drive. The sidewalk should be set back as far as feasible from the curb line of Corporate Drive. While the alignment will need to be finalized, the sidewalk should continue along Cokesbury Road in order to allow pedestrian access to local business and the Borough's Main Street sidewalk.
20. Sidewalk connections from the buildings to the Corporate Drive sidewalk should be required. Crosswalks will be required at the driveway crossings. Stop signs and stop bars should be setback at least 4 feet from these crosswalks.
21. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
22. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
23. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
24. (Intentionally omitted as addressed in the May 13, 2021 revisions to the Site Plans)
25. Testimony should be provided with regard to the exterior staircase shown at the northwest corner of building 1. The staircase is not shown on the architectural drawings.
26. Details and additional information and calculations will need to be provided by the Applicant in order to demonstrate compliance with §295-115.I, recreation and open space.
27. The following comments are offered for discussion regarding the proposed site plan amenities:
 - a. We anticipate there will be noise complaints will be an issue from the popping sound that comes from pickleball paddles. The courts are only 10 feet from building 2 and the sound could be worsened by being within the court yard area. Consideration should be given to moving the pickleball courts to the northeast corner of Lot 1.04, where the noise will normally be muffled by the sound of Route 78.
 - b. The parking plan for Lot 1.03 has a surplus of 24 spaces. Consideration should be given to eliminating some of the westerly most spaces within the appended parking area in order to provide a pocket park or perhaps a relocation of the dog park.
28. The following comments pertain to the grading plans, sheets 7 and 8:
 - a. The TW 262.75 spot grade for the top of wall at the outer curb line near the northeast corner of building 1 should be adjusted to match the top of curb elevation.

- b. The crosswalk across the southerly garage driveway of building 4 should have a maximum cross slope of 2%.
- c. It appears crosswalks will be necessary at both of the garage driveways for building 2, which will also require a maximum cross slope of 2%. Similarly, crosswalks will be required at the driveway connections to Corporate Drive. Barrier-free ramps and crosswalk slopes will need to conform to ADA requirements.
- d. The retaining wall proposed between Corporate Drive and building 4 will have a maximum height of approximately 12 feet, excluding the 4-foot fence, where a maximum height of 4 feet is permitted. The highest point of the retaining wall will be at the southwest corner of the front yard parking area, approximately 8 feet from the easement line of Corporate Drive

29. The following comments pertain to the drainage plans, sheets 9 and 10.

- a. Stormwater Manhole A 14 should be moved to be outside of the sidewalk area. Similarly, A inlet A13 should be moved outside of the patio area or fitted with a grate suitable for pedestrians and ADA compliant.
- b. Cleanouts or suitable risers should be indicated at all angle and end points along the 8" HDPE leader drain lines.
- c. B Inlet/OCS A4 should be located at the corner of the parking area, where there will be a low-point.
- d. It should be specified that the un-numbered storm manhole at the outfall from bioretention basin A6 must be precast or constructed with 12-inch-thick block walls.

30. The utility plans, sheets 11 and 12, should indicate the location of the gas and electric meters, backflow preventors, transformer pads.

31. The utility plans do not indicate separate fire and domestic water lines to the buildings. The plans should confirm that the fire line includes a backfill preventor and that it will be located within the building water rooms and not within an exterior hot box in front of the building.

32. We question the proposed location of the water meter for building 2. The placement will result in an access cover located in the sidewalk, with air vent risers on each side of the sidewalk.

33. The rim and invert information for the existing sanitary sewer Manhole MAR-1 (island area of Corporate Drive) is not legible due to building 2 being depicted by shading. It appears that the invert out of proposed sanitary sewer manhole A2 is higher than the existing invert of Manhole MAR-2. The plans indicate the same invert for Manholes MAR-1 and MAR-2. The inverts need to be confirmed since the proposed relocated sanitary sewer line is designed at the minimum allowable slope.

34. While we would defer to the Board's Planner with regard to the proposed landscaping plans, sheets 13 and 14, we do offer the following:

- a. The plans should show the existing trees along Corporate Drive. It will need to be determined if the existing trees will need to be removed for sidewalk construction.
- b. The landscaping plans propose large shade trees (White Oak and Green Mountain Sugar Maple) in front of building 2, along Corporate Drive. These trees may not be appropriate so close (9 feet) to the building, due to their large spread. If the existing street trees need to be removed for the sidewalk, perhaps the trees can be pulled away from the building, made part of the sidewalk plans and the spacing between trees decreased.
- c. We question the remaining landscape proposed along the Corporate drive façade of building 2. As indicated on the architectural drawings, 12 to 13 feet of foundation and parking garage window screens will be exposed. The landscaping plan includes some taller deciduous shrubs and some lower evergreens. There appears to be an opportunity to raise the finished grade along the façade and bolster the evergreen plantings.
- d. There is no landscaping proposed along the courtyard façades of buildings 1 and 2, which will contain a long, exposed foundation.

35. The following comments pertain to the lighting plans, sheets 15 and 16:

- a. We question the use of wall packs at a mounting height of 22 feet in the courtyard area between buildings 1 and 2. At this height and the spacing shown, the lights will be near the elevation of the third floor, directly above windows of second floor units. The details also indicate that the wall pack fixtures will have a color temperature of 4,000K. Lighting of the courtyard should be pedestrian scale. Bollards or pedestrian scale pole mounted fixtures with a color temperature of 2,700K should be provided. Is an average of 1.1 fc required in the courtyard?
- b. The parking area lights for buildings 1 and 2 are proposed with a 25-foot mounting height, where 20 feet is permitted. The proposed fixture is a roadway, cobra head style. A color temperature of 4000/5000 K is proposed. The parking area fixtures should be more decorative, lowered and provided with a maximum color temperature of 3000K. Generally, the residential window heights will be around 15-16 feet. Fixtures at this height that minimize vertical illuminance should be considered. Lighting of walkways leading from parking areas to entrances could be supplemented with bollards in order to create a warmer, pedestrian accent.
- c. The wall packs at the northwest corner of building 1 should be replaced with pole mounted fixtures, as discussed above, and fitted with house side shields.
- d. With a 15-foot mounting height, the wall pack shown at the entrance near the easterly end of the north façade, will be in conflict with the second-floor window. Wall sconces at and in scale with the entrances should be considered.
- e. We question whether or not the wall packs proposed at the westerly garage door of building 2; the westerly garage door of building 3; and the northerly garage door of building 4, with 15-foot mounting heights, can be replaced with 2 decorative wall sconces. We note that no lighting is proposed for the remaining garage doors.

- f. We also question the use and location of the wall packs proposed for buildings 3 and 4. With the 15-foot mounting heights, the wall pack shown at the entrances appears to conflict with the entryway roofs. Lighting of the parking lot, sidewalks and courtyard for buildings 3 and 4 should be modified as discussed above.

36. The stabilized construction access pad shown on the soil erosion and sediment control plans should be 100 feet long.

C. Construction Details (Sheets 28 through 34)

1. The monument sign detail should provide information to determine if the sign is to be lit, either internally or with ground mounted fixtures.
2. The B Inlet detail should specify that ECO-Messaging castings are required. A detail for the type A inlets, with similar messaging should be provided.
3. The water meter chamber detail does not include a backflow preventor within the structure. It will need to be confirmed whether or not the backflow preventors will be located inside the garages. If the backflow preventor will be located in an exterior hot-box, details will need to be provided.
4. The outlet control structure details should indicate that a copy of the shop drawings for these structures shall be submitted to the Borough Engineer, as well as to the design engineer.
5. A detail should be provided for the precast sanitary doghouse manhole, which should be subject to the approval of the LBSA Engineer.
6. The following comments pertain to the porous asphalt details on sheet 34.
 - a. The storage bed aggregate must be clean, open-graded rather than uniformly graded.
 - b. The detail for basins SWM-A2 and SWM-A3 must eliminate the bottom layer of filter fabric since these systems are intended for infiltration.
 - c. A note should be added to indicate that the porosity of the permeable asphalt surface course must be 15% to 25%.
 - d. A note should be added to specify polymer modified binder PG 64E-22 for the parking lot wearing surface.
 - e. A note should be added to indicate that the porosity of the permeable asphalt base course must be $\geq 25\%$.
 - f. A note should be added to indicate that post construction testing of the permeable asphalt is required in accordance with Chapter 9.6 of the BMP Manual and that the minimum tested infiltration rate of the surface course is 6.4 inches per hour. Systems designed to address quantity control must have a minimum tested infiltration rate of the surface course of 20 inches per hour.

- g. A note should be added to indicate that sealant, prime coat and other surface treatments that could reduce the rate of infiltration shall not be applied to the porous asphalt.
 - h. A note should be added to indicate that testing must be performed on the subsoil below the storage bed after excavation but prior to placement of the stone in accordance with the Construction and Post-Construction Oversight and Soil Permeability Testing section in Chapter 12: Soil Testing Criteria of the NJDEP BMP manual. Where as-built testing shows a longer drain time than designed, corrective action must be taken.
7. Additionally, at least one inspection port, with a removable cap, must be provided at the upstream and downstream ends of the perforated section of the network in accordance with Chapter 9.6 of the BMP Manual. The additional detailing should be shown on plan view as well as in the details for the porous asphalt. The cleanouts should be placed in cast iron boxes.
8. The following comments pertain to the bio-retention basin details on sheet 34:
- a. The minimum permeability rates for various components of the bio-retention basins need to be indicated.
 - b. A 6" minimum thick sand layer needs to be provided in accordance with then NJDEP BMP Manual.
 - c. The sand layer, which acts as a transition between the soil bed and the subsequent layers, must be at least 6 inches in depth and must consist of clean, medium-aggregate concrete sand (AASHTO M-6/ASTM C-33). To ensure proper system operation, the permeability rate of the sand layer must be at least twice the design permeability rate of the soil bed.
 - d. The gravel layer must have sufficient depth to provide at least 3 inches of gravel above and below the pipe network and must consist of 0.5 to 1.5-inch clean, broken stone or pea gravel (AASHTO M-43). To ensure proper system operation, the permeability rate of the gravel layer must be at least twice the design permeability rate of the sand layer.
 - e. Within the gravel layer, the network of pipes, excluding any manifolds and inspection ports, must be perforated. All remaining pipes must be non-perforated. All joints must be secure and watertight. To ensure proper system operation, the network of pipes must have a conveyance rate at least twice as fast as the design flow rate through the sand layer.
 - f. Inspection ports must be located at the upstream and downstream ends of the perforated section of the network of pipes and extend above the surface of the soil bed. The inspection port exterior must be covered in such a way as to prevent the migration of material into the structure. The depth of runoff generated by the maximum design storm must be marked on all inspection ports and those levels included in the design report and maintenance plan.
 - g. The overflow pipe should not be connected to the perforated portion of the underdrain pipe. However, the overflow pipe and the underdrain pipe may discharge to the same conveyance system down-gradient of the bioretention system, provided that the overflow discharge will New

Jersey Stormwater Best Management Practices Manual March 2021 Green Infrastructure BMPs with Waiver or Variance, Chapter 10.1: Bioretention Systems Page 11 not back up to the perforated portion of the underdrain pipe nor affect the drainage capacity of the underdrain pipe system.

- h. Flexible corrugated perforated plastic drainpipe should not be used as underdrain pipe.
 - i. The construction requirements listed in the BMP Manual should be included as part of the details for basins A6 and E5, including the notes regarding bioretention systems with underdrains as they pertain to basin A6.
9. A detail for the basin access road should be added to the plans.

D. Stormwater Management

1. Some of the time-of-concentration (Tc) calculations utilize a default minimum value of 6 minutes. According to Chapter 5 of the NJDEP BMP Manual, there is no longer a minimum or default value that may be used for the time of concentration. The Tc for pre- and post-construction conditions must be calculated based on the aforementioned requirements.
2. The sheet flow length of drainage area PDA-A4-Pervious should be limited to a total length of 100 feet in accordance with NJDEP post developed requirements.
3. Tc calculation needs to be provided for drainage area PRDA A6 – Post Dev (Pervious).
4. The Curve Number (CN) for drainage area PRDA-F2-Pervious used in the analysis (77) is not consistent with the calculated CN (78).
5. The report should include a description of the mapped soils and discussion to confirm that the default hydrologic soil group is consistent with the on-site field testing.
6. Soil Log SL-7 located within SWM E5 (bioretention basin) indicates mottling (ESHGW) above the bottom of the soil bed. A 2-foot minimum separation distance is required.
7. Soil Log SL-1 should be shown on the drainage plan. The soil log indicates mottling at 40” (approximately elevation of 248.6), which may indicate that the water table is above the top of the porous pavement, SWM-F1. An additional soil test should be provided at the northerly end of the basin to confirm the depth to the seasonal high groundwater table. A 1-foot minimum separation distance is required for an under-drained basin.
8. The additional inflow areas to basins A1, A2, A3, E2, E3 and F1 exceed the 3:1 maximum ratio of additional inflow drainage area to surface area for these pervious paving systems. A waiver(s) from the Green Infrastructure Standards pursuant to Section 252-4.O.(4) are required and must be justified in accordance with the requirements of the ordinance.
9. The two proposed bioretention basins do meet the requirements for “small-scale bioretention systems” since the contributory drainage area to each basin exceeds 2.5 acres. Therefore, the bioretention

basins do not meet green infrastructure requirements for groundwater recharge and stormwater runoff quality. Waivers are required and must be justified in accordance with the requirements of the ordinance.

10. Additional information is required in order for this office to comment on whether or not it is technically impracticable to meet the green infrastructure standards, which would allow for a waiver pursuant to N.J.A.C. 7:8-4.6(a). As currently designed, not all the porous pavement areas meet green infrastructure (GI) for water quality, water quantity, and groundwater recharge. The bio-retention basins do not meet GI for water quality and groundwater recharge. The proposed manufactured treatment device, (MTD) does not meet GI for water quality.
11. It does not appear that the required 1-foot separation distance between the groundwater level and the bottom of basin SWM-A6 has been met. Soil log 24 indicates a ground water elevation of approximately 249.6 while the bottom of the gravel layer is 249.42, or 248.92 when a 6-inch sand layer is incorporated as required.
12. The stormwater management report should include an overall analysis point that compares the combined runoff from both Lots 1.03 and 1.04, which are both tributary to the stream and culvert.
13. There is a low area located at the upper portion of EXDA-A that needs to be accounted for in the analysis. It appears any runoff from the low area would split between EXDA-A and EXDA-C around elevation 272.
14. We question whether or not the Tc flow path indicated for drainage area EDA-A is the hydraulically most distant. It appears the northwesterly portion of the drainage area would produce a more distant flow path.
15. Attachment D – Major Stormwater Summary must be completed by the applicant. The form is available on the NJDEP web site.
16. The routings of the porous pavement areas that do not rely on infiltration should exclude the volume associated with the stone below the lowest outlet (basins A1 and A4, E1-E4, F1). The hydrograph volume in should match the hydrograph volume out for each basin since there would be no volume loss due to infiltration.
17. The groundwater recharge analysis needs to demonstrate a minimum of 125% of the percentage of the average annual preconstruction groundwater recharge volume for the site in accordance with 252-4.P.(4)(a).
18. The groundwater recharge requirements need to be met within each drainage area pursuant to Section 252-4.L.
19. Clarification is required on how the recharge bmp input parameters (effective depth) within the BMP analysis were determined for each BMP. It appears the dEXC dimension within SWM-A2 should be 12” lower to account for the pavement thickness. Clarification on how the dEXC and the dBMPu were calculated for SWM-E5 should be provided. The land segments for the pervious pavement

systems should be specified as being in the impervious area segment. Also, it appears that the bio-retention basin land segment should be modeled with meadow.

20. Based on the soil testing provided, porous pavement areas A1, A3 and A4 are below or do not meet the minimum separation distances to the groundwater levels indicated within the soil logs. Additional information is required.
21. No permeability testing has been provided for porous pavement areas A2 and A3, which have been modeled to infiltrate (for groundwater recharge). Two soil logs with permeability testing should be provided within each porous pavement area that is intended to infiltrate. The soil logs need to extend at least 8 feet below the lowest point in each bmp, or two times the maximum water depth in the basins, whichever results in a deeper depth.
22. The tube permeameter test for SL-6 (located within bioretention basin SWM E5) indicates a permeability rate of 0.22 in/hr, which does not provide the minimum infiltration rate required for use with infiltration. The basin design needs to be revised.
23. Bioretention basin SWM-E5 requires a waiver or variance from NJAC 7:8-5.3 (Table 2 within the Section 252-4) for groundwater recharge and stormwater runoff quality.
24. Inlet/Outlet calculations need to be provided for the porous pavement discharge pipes since they ultimately discharge to the bio-retention basin, and any effect of tailwater, pipe losses etc. need to be included with the routings of the porous pavement areas.
25. Additional information should be provided for each of the outlet control structures used for the porous pavement areas. It is not clear if the inflow will bypass the storage beds.
26. It is not clear if any portion of the water quality design storm will bypass the porous pavement surfaces (for each system) and drain directly to the outlet control structure. Additional information is required.
27. The report should address the requirements of Chapter 9.6 of the NJDEP BMP Manual with regard to any roof runoff that bypasses the surface course. The BMP Manual indicates that the runoff must be pretreated by leaf screens, first flush diverters or roof washers.
28. Additional detailing/design features should be provided to eliminate the blind connections from the roof runoff to the porous pavement systems.
29. The outlet pipe from basin A1 was modeled with a one-foot length, which does not match the plans.
30. The outlet pipe from basin A2 was modeled with a slope of 1%, while the plan depicts a slope of 0.5%.
31. The outlet pipe from basin A4 was modeled with a slope of 0.6%, while the plan depicts a slope of 2.0%.

32. The porous pavement areas include a 20' weir within the routings. Clarification on where the weirs are being utilized should be provided. We note that the 100-year routed water surface elevation is below the crest of the weirs.
33. Is seepage through the retaining wall that runs along the easterly side of basin A2 a concern? The depth of the stone storage bed for the porous pavement sections are not indicated in the details.
34. Additional information how water quality is being achieved for the drainage areas that bypass the proposed BMP areas should be provided.
35. The routing calculations for basin A6 include two 20' weirs (one at elevation 257.20', and one at elevation 257.50'). It is not clear where the 20' weir at elevation 257.20' is located.
36. The 4" diameter underdrain (or bed/gravel material if permeability is slower) should be modeled in the routing analysis of bio-retention basin A6 since the underdrain will discharge through the control structure.
37. The plan and detail information provided for the outlet control structure of basin A6 are not consistent with the information used in the routing analysis.
38. The outlet pipes for bioretention basins A6 and E5 should account for any tailwater associated with the flood hazard area of the stream they discharge to. The current analysis assumes no tailwater was used in the calculations.
39. The emergency spillway for basin A6 is labeled as 75' wide on the Grading Plan Phase 1 (sheet 7) while it is identified as 65' in the calculations and elsewhere in the plans.
40. Basin A6 and E5 meet the classification of a dam and the berm width needs to be increased to 10' wide.
41. Clarification is required with regard to the storm distribution used in the analysis for basin A6 and E5. The NJDEP dam safety standards appear to require a 24-hour, 100-year frequency, Type III storm plus 50% for Class IV dams, while the analysis utilizes a Type C storm distribution.
42. The top of berm elevation (258.90) at Basin A6 and berm elevation (252.6) at Basin E5 are depicted as a line in the middle of the berms. The top of the berm elevation should extend across the full required width of the berm.
43. The crest length of the emergency spillway for basin E5 scales at 25' wide, while the calculations are based on a 30' wide crest length. The crest elevation of the emergency spillway should be corrected on the drainage plan, sheet 10. Also, the width of the spillway is labeled as 35' on detail sheet 34.
44. The invert of the 4" orifice shown on the drainage plan for SWM E1 should be corrected.
45. The weir and outlet pipe information for Basin E5 used in the calculations does not match the drainage plan and detail plan.

46. The outlet pipe information used in the routing of SWM E2 and E3 porous pavement does not match the drainage plan.
47. The length of the porous pavement for SWM E4 scales to 135' on the drainage plan, while the calculations utilize a length of 162'. Also, the 4" perforated pipe length is incorrectly identified as 72' on the drainage plan. The drainage plan should be revised to be consistent with the calculations.
48. The top of the gravel storage bed used in the calculations for porous pavement Basins A1-A4, E2, E3 and E4 is within the elevation of the choker course layer provided on the drainage plans.
49. While the basin bottom area appears to be correct, clarification is required with regard to the volume of SWM E5.
50. The length of the porous asphalt for SWM F1 scales to 80' on the drainage plan, while the calculations utilize a length of 90'. The width and length of each porous pavement area should be dimensioned on the plans.
51. The outlet pipe information used in the routing of SWM F1 porous pavement does not match the drainage plan.
52. The groundwater mounding analysis, indicated to be included in Appendix I, does not appear to have been included within the drainage report.
53. Based on the parking lot grades in the area of SWM E2, it appears a portion of the slope over the surface of the basin will exceed the 5% maximum. Additional elevations need to be provided to confirm the maximum permitted slope over the basin will not be exceeded.
54. Additional information is required in order for this office to determine if relief from the requirements under Section 252-4.L, which requires groundwater recharge, stormwater runoff quality, and stormwater runoff quantity standards at 252-4. subsections O, P, Q and R be met in each drainage area is reasonable. It will need to be confirmed that the runoff from the drainage areas converge onsite and no adverse environmental impact would occur as a result of compliance with any one or more of the individual standards being determined, utilizing a weighted average of the results achieved for that individual standard across the affected drainage areas.
55. Sizing calculations, including the tributary drainage area, runoff coefficients etc. should be provided for the proposed water quality MTD Up-Flo Filter EMC.
56. Since the water quality Up-Flo Filter is being utilized to meet water quality standards and is not considered green infrastructure, it should be determined whether an alternate MTD, certified by NJDEP for 80% TSS removal and certified as green infrastructure can be incorporated into the design.
57. The impervious coverage created by buildings should be provided (Section F, page A-9) within the LID.
58. The reference to the office building and warehouse within section 3.4 of the LID should be corrected.

59. The outlet pipe analysis included with the storm sewer system analysis from Basin A6 to the stream is not consistent with the plan information. Revise as necessary.
60. Additional information should be provided on how the starting HGL elevation was determined for the storm sewer system inflow point at the HW's located at the bio-retention basin inflow points. The tailwater elevations based on the routed storm events within the bio-retention basins are higher.
61. A final review of drain time calculations will be necessary once a revised stormwater management report is submitted.
62. The low-level outlet within bioretention basin A6 needs to be lowered to be just above the elevation of the water quality design storm as required by Chapter 10.1 of the NJDEP BMP Manual.
63. A review of the Stormwater Management Maintenance Manual has not been performed. This document will need to be reviewed and approved once the stormwater management design and plans have been finalized. A final review of the document will be required upon completion of construction and the submittal of as-built plans.

E. Architectural Drawings/Garage Parking

1. The garage floor plans are not consistent with the site plans with regard to the required number of accessible/ADA parking stalls.
2. Testimony should be provided to indicate if any pipe projections, (fire lines, sanitary sewers, ducts or other utilities) will be mounted on the interior walls of the underground parking garage, as well as any bollards that would be required to protect these facilities. Pipe projections and bollards could have an impact on the actual parking stall depth and or width.
3. Testimony should be provided with regard to parking maneuvers required for the spaces closest to the garage doors at building 3. Buildings 1, 2 and 4 have garage doors at both ends, which would at least allow an approach to these spaces from the far door, particularly if the spaces were assigned.
4. The parking level plans do not indicate any air ventilation systems. Will these be required or are the garage screens sufficient?
5. Testimony should be provided with regard to the location of HVAC units. Is air drawn from the outside or from the roof through the center corridors?
6. Testimony should be provided with regard to the minimum (by code) and proposed overhead height within the parking garage, including any under hanging ducts, piping and sprinkler systems.
7. Testimony should be provided to clarify the various entrance porticos depicted in the elevation views. It does not appear that the porticos are shown on the side views, where applicable or on the floor plan or site plan drawings. Setback dimensions should be drawn to the portico when applicable. The minimum side yard for Lot 1.03 appears to be ± 75 if measured to the portico.

8. Testimony should be provided to confirm the roof material on the portion of the garage/1st floor that extends beyond the upper levels. (Flat, metal canopy or asphalt shingles?)
9. Signature legends for the Board's approval should be added to the architectural plans.

b. **From the following comments in section "B" of the Harold K Maltz, PE traffic review report dated April 29, 2021 (reviewing the Traffic Report):**

(3) The site plan parking table shall be revised based on and to be consistent with the architectural plans.

c. **From the following comments in section "A" of the Harold K Maltz, PE traffic review report dated May 24, 2021 (reviewing the Preliminary Site Plans):**

(1.b) The site plan phase 1 parking table on sheet 5 of the Preliminary Site Plans shall be revised based on and to be consistent with the architectural plans.

(1.c) The site plan phase 1 parking table for Building 1 and Building 2 on sheet 5 of the Preliminary Site Plans shall be revised based on and to be consistent with the architectural plans.

(2.b) The site plan phase 2 parking table on sheet 6 of the Preliminary Site Plans shall be revised based on and to be consistent with the architectural plans.

(2.c) The site plan phase 2 parking table for Building 3 and Building 4 on sheet 6 of the Preliminary Site Plans shall be revised based on and to be consistent with the architectural plans.

(4.a) Revise sheet 6 of the Preliminary Site Plans to label all "Stop" signs as R1-1. Additionally, the "stop" sign at the end of the 10-parking space row by Building 3 shall be labeled R1-1.

(4.b) Revise sheet 6 of the Preliminary Site Plans to add a "Stop" sign (R1-1) and adjoining stop line should be installed facing exiting drivers. Also, as there is a pedestrian crosswalk shown at this location, add a 'Pedestrian Crossing' sign (W11-2) with supplemental downward pointing diagonal arrow plaque (W16-7P) assembly to be posted at the crosswalk location facing exiting drivers.

(6) At the proposed easterly site access drive serving Buildings 1 & 2, it is proposed to remove part of the Corporate Drive median, so as to provide an eastbound left turn lane. Add left turn pavement arrows and an "ONLY" pavement message. Also, add the width of the left turn lane to the site plans. The width of the yellow cross hatch lines shall be noted. Additionally, the construction note stating "4 Wide Double Yellow Line" shall have the "4 Solid White Lane Line" portion put into a separate construction note with a leader to the referenced white line.

(7.a) Review the existing pavement markings and signage at the several intersections along Corporate Drive and identify any modifications that have to be performed to conform with the MUTCD. ELP shall consult with the project traffic engineer ATD on this condition. There are numerous incorrect or missing signs and pavement markings along Corporate Drive and notes must be added to the site plans stating that the signs and pavement markings shall be restored.

(8) Revise the site plans by notes and drawings to reflect that the Applicant shall be obligated to extend sidewalks off-site and off the property in accordance with the sidewalk plan submitted as Exhibits A-18 and A-19, as revised by Exhibit A-24. (The Applicant's obligation to construct sidewalks off the property will be subject to the Borough's acquisition of easements as may be necessary to accommodate any off-property sidewalks.) The obligation to extend sidewalks includes the obligation to provide cross-walks with signals to provide a safe crossing of Cokesbury Road at its intersection with Route 22 as well as to provide a safe crossing at Clark Road. Additionally, the visibility of the pedestrian crosswalk across Corporate Drive at the Phase 2 access drive intersection with that roadway shall be heightened by adding "ladder" type cross hatching in the crosswalk. Further, pedestrian crossing sign assemblies shall be added to be installed at each end of the crosswalk, to face approaching vehicles. This shall consist of a "Pedestrian Crosswalk" sign (W11-2) and a diagonal downward arrow sign plaque (W16-7P). These sign assemblies shall be preceded by an "Advance Pedestrian Crossing" sign (W11-2) and an "AHEAD" sign plaque (W16-9P) or distance sign plaque (W16-2aP). The preceding required plan revisions related to striping and signage shall also apply to the crosswalk across Corporate Drive located just west of the Phase 1 westerly access drive intersection with that roadway.

d. **From the following comments in section "D" of the Harold K Maltz, PE traffic review report dated May 24, 2021 (reviewing the Preliminary Site Plans):**

(3) As to the sidewalks and crosswalks which have been added near the west end entrance of the parking garage to Building 2, "Stop" signs (R1-1) and adjoining stop lines shall be added to the east and west approaches from the garage lot and opposing parking lot, respectively. Also, pedestrian sign assemblies shall be added at the crosswalk on the north approach, at this on-site intersection location. The sign assembly shall consist of a "Pedestrian Crossing" sign (W11-2) and downward arrow sign plaque (W16-7P).

e. **From the following comments in the Stanley C. Slachetka, P P planning review report dated April 13, 2021:**

(D.3) Correct the discrepancy between the bedroom distribution count shown in the parking schedule shown on Sheet 6 of the site plans and the architectural plans.

(D.4) As the Applicant proposes shared access with the commercial property directly to the west of Phase 2 (600 Corporate Drive), a cross-access easement shall be provided between the properties to ensure access to the parking spaces located on the site. Add a note to the site plans referencing the cross-access easement. Additionally, all parking spaces along the easternmost row on the site (westernmost row related to the office building) shall be identified as being for the exclusive use of the residential development.

(D.5) Similarly, a cross-access easement also shall be provided between the hotel property to the west of Phase 1 and the Proposed Development. Add a note to the site plans referencing the cross-access easement.

(D.8) If not already reflected on the Preliminary Site Plans, benches shall be located throughout the site along the pedestrian network pursuant to ordinance section 295-115H(3). Specifically, benches shall be located at a minimum of one (1) for every six hundred (600) linear feet of

walkway. In addition to the benches the Applicant provide, street furniture, lighting, and pedestrian resting areas along Corporate Drive.

(F.1) Add a specific calculation of the landscaped areas for each of the two lots.

(F.4) Add foundation plantings to all the edges of the buildings pursuant to ordinance Section 295-115K(4),

(F.5) Add taller evergreen plantings along the property edge between Lot 1.03 and Lot 1.06 (the hotel site).

(G.1) Eliminate the corporate-style wall pack light fixtures proposed in the central court yards. Supplement the lighting for the courtyards and sidewalk areas of the property with bollard type lighting to ensure adequate lighting with aesthetically pleasing fixtures.

(G.3) Revise the plans to account for the lighting variances that have been granted and, at the same time, to provide adequate and safe lighting.

(G.4) Decorative wall mounted lighting shall be utilized on the buildings and decorative lighting stanchions and fixtures shall be utilized in parking areas.

(H.4) Add a note to the site plans and architectural plans stating that all sides of the buildings shall be architecturally designed to be consistent regarding style, materials, colors, and details. Additionally, add a note that the colors and materials of the proposed buildings shall be presented for review and approval at the time of final site plan review.

(H.5) If not already done, revise the roof of proposed Building 2 to comply with ordinance section 295-115J(6), which requires that roofline offsets, such as dormers and gables, shall be provided along any roof measuring more than ninety (90) feet in length to relieve the visual effect of a single long roof, and the maximum spacing between such offsets shall be forty-five (45) feet.

(H.8) If necessary, revise the plans to screen or otherwise be specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent lots the following structures pursuant to ordinance section 295-115J(11): heating, ventilating and air-conditioning systems, utility meters and regulators, emergency generators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices.

f. **From the following Board member comments made during the hearing:**

(1) Add notes to the site plans stating that there will be no “hot boxes” and that all backflow preventers will be located inside the proposed buildings.

(2) If not already done, revise the site plans and architectural plans to provide sprinklers and fire stations in all trash rooms in all buildings.

(3) Add a note on the site plans stating that the Applicant shall provide

interior trash rooms and shall be responsible for carting the trash containers out of the buildings for trash collection pick up. Add a further note stating that no trash containers shall be stored outside.

(4) Revise the site plans to conform to the architectural plans where there are discrepancies between the two sets of plans.

(5) Revise the site plans if necessary to comply with all laws and regulations applicable to handicap accessible spaces.

(6) Revise the site plans to add electronic vehicle charging stations inside each of the parking garages under each of the proposed buildings in the Proposed Development.

(7) Add notes to the site plans and architectural plans stating that all affordable housing units: (a) shall be integrated with market rate units in all four buildings; and (b) shall be constructed pursuant to the Settlement Agreement phasing requirements.

(8) Revise the site plans and architectural plans to reflect: (a) site lighting primarily with 20-foot-high decorative light stanchions, with standard 25-foot light stanchions installed closer to I – 78; (b) decorative wall mounted lighting on the buildings; (c) supplementation for the courtyards and sidewalk areas of the property with bollard type lighting to ensure adequate lighting with aesthetically pleasing fixtures; and (d) All lighting shall be with LED bulbs.

(9) Revise the site plans by notes and drawings to reflect that the Applicant shall be obligated to extend sidewalks off-site and off the property in accordance with the sidewalk plan submitted as Exhibits A-18 and A-19, as revised by Exhibit A-24. (The Applicant's obligation to construct sidewalks off the property will be subject to the Borough's acquisition of easements as may be necessary to accommodate any off-property sidewalks.) The obligation to extend sidewalks includes the obligation to provide cross-walks with signals to provide a safe crossing of Cokesbury Road at its intersection with Route 22 as well as to provide a safe crossing at Clark Road.

(10) Revise the site plans as well as the Stormwater Management Report to incorporate any and all changes required to bring them into 100% compliance with the Borough stormwater management regulations in effect prior to November, 2020 as well as the NJDEP stormwater regulations in effect prior to March, 2021. Any and all required stormwater mitigation shall be on-site and, only if the Borough consents, on Borough owned property.

2. **Restrictions on Affordable Housing Units.** All affordable housing units: (a) shall be rental units; (b) shall be integrated with market rate units in all four buildings; and (c) shall be constructed pursuant to the Settlement Agreement phasing requirements. Additionally, the Applicant shall record restrictive covenants in form(s) satisfactory to the Executive Director of Fair Share Housing Center and the Borough Attorney restricting the affordable housing rental units to occupancy by low- and moderate-income households in accordance with the Uniform Housing Affordability Control (UHAC) regulations, applicable affordable housing regulations, the Fair Housing Act, any applicable order of the Court.

3. **Restrictions on Market Rate Units.** Pursuant to ordinance section 295-115J(1), there shall be no market-rate units containing more than two bedrooms. The architectural plan shows 2-bedroom units with den are proposed in all four buildings. Any and all market-rate units proposed to include a den shall

include a lease restriction prohibiting the use of the den as a bedroom. Additionally, the Applicant shall record restrictive covenants in form(s) satisfactory to the Borough Attorney which prohibits the use of the den as a bedroom.

4. **Compliance with Redevelopment Plan.** In as much as the Property has been designated as a non-condemnation area in need of redevelopment and that the Borough Council is in the process of preparing a Redevelopment Plan, in the event that a Redevelopment Plan is adopted and the Applicant is designated as the Redeveloper of the Property, the Applicant shall comply with all regulations and requirements established in the Redevelopment Plan, as well as any and all obligations established in a redevelopment agreement.

5. **Water Connections.** There will be no “hot boxes” and all backflow preventers will be located inside the proposed buildings.

6. **Lighting** The following conditions shall apply to site lighting: (a) site lighting shall be primarily with 20-foot-high decorative light stanchions, with standard 25-foot light stanchions installed closer to I – 78; (b) decorative wall mounted lighting shall be utilized on the buildings; (c) supplementation of lighting for the courtyards and sidewalk areas of the property shall be provided with bollard type lighting to ensure adequate lighting with aesthetically pleasing fixtures; (d) all lighting shall be with LED bulbs; and (e) The Board shall retain jurisdiction over the review of lighting for one (1) year following: (1) activation of on-site lighting, (2) issuance of certificates of occupancy for units in phase 1 of the Proposed Development, and (3) move-in of tenants in phase 1 of the Proposed Development.

7. **Stormwater Management Operation and Maintenance Manual.** The Applicant shall submit to the Borough Engineer for review and approval a Stormwater Operation and Maintenance Manual and shall record same after approval as a deed restriction applicable to the Property.

8. **Fire Hydrant Flow Tests.** Fire hydrant flow test results shall be reviewed by the Borough Engineer or someone from his office and shall satisfy the Borough Engineer that there is adequate pressure for fire systems.

9. **Design, Construction and Location of Improvements.** The Applicant shall be required to design, construct and locate the Proposed Development in substantial conformity with the plans approved and signed by, and conditions imposed by, the Board as well as to the exhibits submitted into evidence during the hearing. Unless waived by the Board on a case-by-case basis, the applicant shall be required to submit an “as-built” survey after construction as a condition precedent to the issuance of a certificate of acceptance, approval, occupancy or use (as the case may be), which “as-built” survey shall show to the satisfaction of the Township Engineer that the above condition has been met. Additionally, and specifically, the buildings shall be substantially similar aesthetically to that reflected in Exhibit A-12. Further, all sides of the buildings shall be architecturally designed to be consistent regarding style, materials, colors, and details, and the colors and materials of the proposed buildings shall be presented for review and approval at the time of final site plan review.

10. **Handicapped Accessible Parking.** The Applicant shall comply with all laws and regulations applicable to handicapped accessible parking spaces. Except as to exceptions from RSIS requirements that have been granted by the Board as set forth above in this resolution, the Applicant shall comply with all parking and circulation requirements of the RSIS.

11. **Preliminary Site Plan Approval Only Granted Herein.** The within approval is a preliminary site plan approval only. No construction permits shall issue and no site work shall commence prior to the applicant obtaining final site plan approval from the Board.

12. **Subject to Final Site Plan Review and Approval.** The approvals granted herein are subject to the applicant applying for and obtaining final site plan approval by August 24, 2022 (which is within one (1) year of the date of the adoption of the within resolution memorializing the grant of preliminary site plan approval on August 24, 2022). If final site plan approval is not obtained within said one (1) year period, or extension thereof as granted by the Board, the within preliminary approval with all related relief granted herein shall automatically expire and become null and void. (While there is no express provision in the MLUL authorizing such a limitation on the “life” of an approval, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for municipalities to impose a “life” on an approval. The Court recognized the difference between the “life” of the approval and the period of protection against ordinance changes that are conferred on preliminary and final approvals and held that permitting a municipality to provide for the expiration of approvals “furthers the municipality’s ability to plan effectively. It prevents the possibility that a future tentative potential development, based on an earlier ... approval, would forever affect planning decisions concerning development in other areas.” Id. at 136).

13. **Sidewalks, Recreational Facilities and Other Issues Subject to Review and Approval at the Time of Final Site Plan Review.** In addition to the final site plans and final architectural plans being subject to review and approval at the time of final site plan review, which includes but is not limited to the colors and materials of the proposed buildings being presented for review and approval at the time of final site plan review, the issues related to sidewalks and sidewalk extensions and pedestrian circulation around the buildings and along all streets, as well as the provision of and access to recreational facilities shall also be subject to review and approval and/or re-approval at the time of final site plan review. Specifically, the Applicant shall construct at its sole cost and expense in accordance with the sidewalk plan submitted as Exhibits A-18 and A-19, as revised by Exhibit A-24, and as same may be modified in conjunction with the redevelopment plan. (The Applicant’s obligation to construct sidewalks off the property will be subject to the Borough’s acquisition of easements as may be necessary to accommodate any off property sidewalks,) The obligation to extend sidewalks includes the obligation to provide cross-walks with signals to provide a safe crossing of Cokesbury Road at its intersection with Route 22 and to also construct off-site sidewalk over an easement to be acquired by the Borough to connect the Route 22, Corporate Drive and sidewalk with Clark Road. The Applicant shall provide a safe crossing at Clark Road in accordance with the requirements of a Redevelopment Plan if one is adopted. The Applicant shall submit in conjunction with final site plan review the details of the off tract improvements including easements and sidewalk details. The Applicant shall also extend the sidewalk on Clark and add any other crosswalks necessary to connect the west side of Clark Road with the sidewalk system. The Applicant’s obligation to commence construction shall be subject to the Borough acquiring any right away necessary for the sidewalk improvements not located on the Property. The final site plans submitted to the Board as part of the final site plan review and approval process shall incorporate the sidewalk option chosen by the Borough Council as part of the redevelopment plan. Finally, pursuant to ordinance section 295-115I(2), due to the zone’s location on the opposite side of Route 22 as the Borough’s park, an active recreation area shall be provided for children living within the development. This recreation area shall include, at a minimum, three pieces of equipment. Examples include, but are not limited to swings, slide, nets, and climbers. The applicant proposes tot lot at Buildings 1 and 2 for phase I, however, the requirement must be satisfied for the Phase II as well. Most of the recreation facilities are in Phase 1 in

comparison to Phase 2. As discussed, concerns were raised over distribution of these facilities and the ability for all residents, including the residents of the affordable units, to have reasonable and equitable access to these facilities. This underscores the need for appropriate pedestrian connections between the two phases. Again, all of these issues are subject to review and approval at the time of final site plan approval.

14. **Amended Preliminary Site Plan Approval.** In the event that the redevelopment plan which is adopted requires substantial changes in the layout and/or extent of improvements approved by the within preliminary site plan approval, the Applicant shall be required to apply for and obtain amended preliminary site plan approval. The Applicant shall have the option of: (a) applying for amended preliminary approval first and final approval second or; (2) applying for amended preliminary approval simultaneously with final approval.

15. **Snow Removal.** Snow removal on the Property shall be by a contractor retained and paid for by the Applicant. The Applicant, subsequent owners and/or management companies shall direct the snow removal contractor to avoid damaging landscaping. If plant material is damaged, it must be replaced to the consistent with the approved site plan. Snow shall not be stacked in the landscape islands located in the parking lot.

16. **Trash Removal.** All trash and recycling bins shall be rolled out from the trash rooms within each building on the day of trash and or recycling pick up and returned to the trash rooms on the same day following trash and/or recycling pick up.. No trash and/or recycling containers shall be stored outside. Trash collection shall take place two times per week during weekdays only and between the hours of 8:00 a.m. and 4:00 p.m.

17. **Sprinklers.** Sprinklers shall be provided in each apartment unit and in all building rooms.

18. **Easements, Dedications and Conveyances.** Any and all easements, dedications and/or conveyances running to and in favor of the Borough which are proposed on the Preliminary Site Plan shall, in addition to being identified on said plan, be contained in separate documents to be prepared by the Applicant and reviewed and approved by the Borough Attorney after the metes and bounds descriptions of the easement, dedication and/or conveyance areas have been reviewed and approved by the Borough Engineer. Said documents shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. All such documents shall be recorded after the Applicant obtains Final Site Plan Approval and, upon completion of the recording process, be transmitted to the Borough Clerk for maintenance with other title documents of the Borough. Recording and transmittal to the Borough Clerk of the easements, dedications and/or easements shall be conditions precedent to the issuance of zoning and construction permits and the commencement of site work on the Property.

19. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to review of any and all compliance documents by any of the Board or Borough professionals, and prior to signing the Preliminary Site Plans. Failure to abide by this condition shall result in the within approvals automatically terminating and becoming null and void.

20. **Outside Agency Approvals and Permits.** The within approvals shall be conditioned upon the Applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

- a. Lebanon Borough Fire Department, Police Department and Emergency Service review and approval;
- b. Final water allocation from the Town of Clinton Water Department;
- c. Endorsement and approval of sewer extension permit by Lebanon Readington Sewage Authority and the LBSA;
- d. Hunterdon County Planning Department;
- e. Hunterdon County Soil Conservation Service certification; approval of the soil erosion and sediment control plan;
- f. New Jersey Department of Transportation approval;
- g. NJDEP approval of any and all aspects of the proposed development within its jurisdiction, including but not limited to flood hazard area, freshwater wetlands and treatment works approvals; and
- h. New Jersey Highlands Council approvals as may be required.

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

CHAIRMAN SAHARIC REQUEST A VOTE ON MOTION TO GRANT ALL OF THE ABOVE REFERENCED RELIEF DULY MADE AND SECONDED ON JUNE 13, 2021:

Mr. Hauck made the motion to grant all of the above referenced relief duly made and seconded on June 13, 2021, with a seconded by Mr. Ableles.

The motion passed with the following roll call vote:

Ayes: Saharic, Uchrin, Hauck, Newman, Abeles, Pittinger, Weingart, Hopkins, Berger,

Absent: Skene, and Wilson

Abstain:

Nays: None

PUBLIC COMMENT:

Chairman Saharic opened the floor for public comment. There being none the floor was closed.

MISCELLANEOUS:

ADJOURN

Mr. Weingart moved, Mr. Abeles seconded a motion to adjourn, there being no further business to come before the Board. The motion was passed by unanimous vote. The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

Karen Romano
Planning Board Secretary

LBPB
5-10-16
60

LBPB
5-10-16
61

LBPB
5-10-16
62

LBPB
PAGE 65
6-10-15