

2025

Master Plan Element Section IV

Housing Element & Fair Share Plan

Appendices Book 03

Adopted June 25, 2025

Township of West Windsor | Mercer County, New Jersey



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Appendix D: Third Round Documents

Appendix D-12: Resolution re: Meridian Walk

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of <u>West</u>	)	FINDINGS OF FACT
<u>Windsor Duck Pond Associates, LLC</u>	)	AND
<u>(Duck Pond) for Preliminary and Final</u>	)	CONCLUSIONS OF LAW
<u>Site Plan Approval with Waivers and</u>	)	File No. PB 20-07
<u>Di Minimis RSIS Exception</u>	)	Block 8, Lot 8
	)	Approval granted:
	)	November 18, 2020

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on November 18, 2020 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site"), consisting of approximately 62.89 acres on Block 8, Lot 8, is located in the northwesterly portion of the Township, along the easterly side of the U.S. Route 1 corridor, in the R-5C Residence Affordable Housing District. The Site connects to U.S. Route 1 via a stem that has a width of approximately 450 feet and depth of approximately 900 feet.

2. The Site is vacant, but significant site improvements were completed as part of a prior approval, in 2007 ("Prior Approval"), when the site was zoned ROM-1, for a Hilton Garden Inn Hotel and office complex with access through the adjoining Windsor Woods Apartments complex and the Square at West Windsor shopping center to Old Meadow Road. These improvements, mostly in the northerly portion of the Site, include: tree removal, grading and earthwork, a detention basin, retaining walls, berms and the long driveway to U.S. Route 1.

3. The southerly portion of the Site contains several environmental constraints, including a stream, wetlands, a floodway and a flood hazard area. A conservation easement comprises a significant portion of the Site. The Duck Pond Run lies in the westerly portion of the tract and a portion of the Site is located in the Township's proposed greenbelt. Environmental permits were obtained by the prior developer to permit the extent of the proposed

development, and limited construction was undertaken to grandfather and vest the rights granted in those permits.

4. Surrounding land uses consist of the Princeton Service Center and The Square at West Windsor commercial centers to the north; the Windsor Woods multifamily development to the northeast; and undeveloped wooded areas to the south and southeast.

5. The Site is identified in the Township's February 2019 Housing Element and Fair Share Plan ("HEFSP") as a site to address the Township's affordable housing obligation. The HEFSP stated that it would be rezoned to a new R-5C Affordable Housing District to permit mid-rise apartments and garden apartments at a maximum density of 10 units per acre with a minimum 25% set aside for affordable housing. Ordinance 2019-04 creating the R-5C District was adopted by the Township Council on March 18, 2019 and became effective on April 8, 2019.

JURISDICTION AND RELIEF SOUGHT

6. The subject of this application is within the jurisdiction of this Board and public notice was provided in accordance with law. The Board acted within the time required by law.

7. The applicant seeks preliminary and final major site plan approval to construct a multifamily development (the "Project") consisting of 360 garden apartment units, located in 22 buildings concentrated in the northerly portion of the Site, including 100 affordable garden apartment units, equivalent to 27.77%, exceeding the 25% required affordable unit set-aside. Of the market-rate units, all will be three-bedroom. Of the affordable units, 13 will be one-bedroom, 42 two-bedroom, and 45 three-bedroom. The 13 affordable one-bedroom units will consist of 2 very low, 3 low and 8 moderate units. The 42 affordable two-bedroom units will consist of 7 very low, 17 low and 18 moderate units. The 45 affordable three-bedroom units will consist of 3 very low, 12 low and 30 moderate units. The affordable units will be located within five buildings that will be dispersed throughout the 22 buildings. The affordable units themselves will not be in the same buildings as the market-rate units. In accordance with the R5-C District, the residential development may be in a condominium form of ownership at the discretion of the developer.

8. Also proposed are a 2,475 s.f. clubhouse, a 750 s.f. storage building that will be connected to the clubhouse by a breezeway, a pool, a play lot, a pedestrian path encircling the existing wet pond, and other related site improvements as depicted on the submitted plans. The Project will have 38.24 acres – more than 60% of the Site— of preserved open space.

9. 813 parking spaces are proposed, consisting of 177 surface spaces, 318 garage spaces and 318 driveway spaces.

10. The Project has right in and right-out vehicular access from and to U.S. Route 1 and full vehicular access to and from Old Meadow Road through easements located on the Square Property and Windsor Woods Property. Reciprocal emergency access easements for emergency vehicles are also created over the Windsor Woods Property, and additional access and landscaping easements over the Square Property.

11. A reciprocal recreation agreement is proposed with the adjacent Windsor Woods apartment complex to the east that would allow for sharing of the play lot on Lot 8 with the Windsor Woods residents in exchange for West Windsor Duck Pond residents having access to Windsor Wood's basketball court, tennis court, tot lot and playing fields.

12. A *de minimis* RSIS exception, a design waiver, and four submission waivers are requested. The exception and design waiver are as follows:

- From Section 200-189.2C(1), to exceed the number of required parking spaces required by RSIS for residential uses, 748, whereas 813 parking spaces are proposed; and
- From Section 200-31K (4), to exceed the maximum average light intensity throughout the Site, with 0.6 footcandles required whereas a 0.9 footcandle is proposed.

13. Most of the submission waivers relate to items that would be required if preliminary and final approvals were sought separately, while the application seeks these approvals concurrently.

THE APPLICANT

14. The applicant is West Windsor Duck Pond Associates, LLC. The owner, tenants-in-common WWW West Windsor, LLC and JAB West Windsor LLC, has consented to the application.

NOTICE

15. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

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

17. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for November 18, 2020.

THE HEARING

18. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS AND REPORTS SUBMITTED

19. At the hearing, the Board reviewed the following plans and reports:

- Plans entitled “Preliminary and Final Site Plans – West Windsor Duck Pond – Tax Map Sheets 13.01, 13.02, 13.02, & 13.04 - Block 8; Lots 8, 10.02, and 10.03, Township of West Windsor, Mercer County, New Jersey,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.), dated June 8, 2020, revised through October 16, 2020, consisting of 81 sheets
- Survey entitled “Resolved Final Boundary and Topographic Survey – Block 8, Lot 8 – West Windsor Township, Mercer County, New Jersey - ALTA/NSPA (2016) Land Title Survey,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.), dated December 24, 2019, unrevised

- Report entitled “West Windsor Duck Pond – Boundary Survey Report – Lot 8, Block 8 – West Windsor Township, Mercer County N.J.,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.), dated June 3, 2020, revised 9/4/20
- Architectural Plans entitled “West Windsor Duck Pond – West Windsor, NJ” consisting of Floor Plans and Elevations, prepared by Appel Design Group (Laurance D. Appel, R.A.), dated March 19, 2020, revised through October 16, 2020, consisting of 21 sheets
- Landscape Architecture Plans entitled “West Windsor Duck Pond – West Windsor, New Jersey,” prepared by Sikora Wells Appel Landscape Architecture (Joseph T. Sikora, C.L.A.), dated June 11, 2020, revised through September 4, 2020, consisting of 16 sheets, revised 9/4/20
- Several single sheet plans, dated June 8, 2020 and revised through October 16, 2020, prepared by Pennoni (Robert Melvin, AICP, PP), including:
 - Bicycle / Pedestrian Plan
 - Open Space Plan
 - Snow and Waste Removal Plan
 - Signage Plan
 - Architectural Diversity Plan
- “Parking Plan11x17” color exhibits prepared by Pennoni (Robert Melvin, AICP, PP) consisting

of an aerial photograph of the site and surrounding areas with the proposed development superimposed and identifying existing and proposed easements for the development with adjoining properties, including:

 - All Easements – Duck Pond Site Area”
 - “Amended & Restated Easement Access (Block 8; Lot 10.03 to Block 8; Lot 8 and Block 8; Lots 10.02 and 54)”
 - “Amended & Restated Easement Access (Block 8; Lots 10.02 and 54 to Block 8: Lot 8)”
 - “Amended & Restated Route 1 Easement Access (2-Way) (Block 8: Lot 8 to Block 8; Lots 10.02 and 54)”
 - “Amended & Restated Easement Drainage (Block 8: Lot 8 to Block 8; Lots 10.02, 10.03 and 54)”
 - “Conditional 1-Way Access in from Meadow Road (Block 8; Lots 10.03, 10.02, 8 to Block 8; Lots 30, 17, 24)”
 - “Pedestrian Path Easement (Block 8, Lot 10.03 to Block 8, Lot 8)”
 - “Reciprocal Recreation Facilities Easement Agreement (Block 8; Lot 8 and Block 8, Lots 10.02 and 54)”
 - “2-Way Access to Route 1 (Block 8; Lot 8 to Block 8; Lot 18)”
 - “1-Way Access (Drainage) (Block 8; Lot 8 to Block 8; Lot 18)”
 - “Drainage Easement (Block 8; Lot 8 to Block 8; Lot 30)”
 - “Road Access Easement (Block 8; Lot 10.03 to Block 8; Lot 8)”
 - “Overview Plan (Duck Pond Site: Block 8, Lot 8)”
 - “Emergency Access Easement (Block 8; Lot 10.02 and 54 to Block 8; Lot 8)”
 - “Lowe’s Landscaping Easement (Block 8; Lot 10.03 to Block 8; Lot 8)”

- “Windsor Woods Landscaping Easement (Block 8; Lot 10.02 and 54 to Block 8; Lot 8)”
- Two undated 11x17” color exhibits prepared by Pennoni (Robert Melvin, AICP/PP) consisting of an overall site layout exhibit and an enlargement of the pool/clubhouse area
- Report entitled “Stormwater Management Report – West Windsor Duck Pond – Block 8, Lot 8 – West Windsor Township, Mercer County, New Jersey,” prepared by Kleinfelder, Inc. (James F. Cosgrove, Jr., P.E.), dated June 12, 2020, revised through September 4, 2020
- Report entitled “Stormwater Management Report – Supplemental Stormwater Conveyance Calculations - Preliminary and Final Site Plans – West Windsor Duck Pond Apartments – Tax Map Sheets 13.01, 13.02, 13.03, & 13.04 - Block 8; Lots 8, 10.02, and 10.03,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.), dated June 8, 2020, revised through October 16, 2020
- Document entitled “Stormwater Management System Operations & Maintenance Manual - West Windsor Duck Pond – Block 8, Lot 8 - West Windsor Township, Mercer County, New Jersey,” prepared by Kleinfelder, Inc. (James F. Cosgrove, Jr., P.E.), dated June 12, 2020, revised through September 4, 2020
- Report entitled “Report of Geotechnical Investigation – Proposed Residential Development – 3478 Brunswick Pike – Block 8, Lot 8 - Township of West Windsor, Mercer County, New Jersey,” prepared by Dynamic Earth (Francis Van Cleve, P.E. & Peter H. Howell, P.E.), dated December 16, 2019, revised through June 11, 2020
- Report entitled “Soils Permeability Investigation Report – Proposed Residential Development – 3478 Brunswick Pike – Block 8, Lot 8 - Township of West Windsor, Mercer County, NJ,” prepared by Dynamic Earth (Patrick J. Granitzki, P.E. & Francis Van Cleve, P.E.), dated May 15, 2020, revised through June 11, 2020
- Report entitled “Sanitary Sewer Report – West Windsor Duck Pond Preliminary and Final Site Plan,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.) dated June 5, 2020, revised through October 16, 2020
- Letter from T&M Associates (Richard A. Moralle, PE, PLS, PP, CME) to the West Windsor Township Engineering Department, dated September 2, 2020, revised through October 16, 2020
- Report entitled “Water Service Report – West Windsor Duck Pond Preliminary and Final Site Plan,” prepared by T&M Associates (Richard A. Moralle, P.E. & L.S.), dated June 5, 2020, revised through October 16, 2020
- Draft legal instruments, including:
 - One Way Access Easement Agreement between Block 8, Lot 8; Block 8, Lots 10.02 & 54; Block 8, Lot 10.03; and Block 8, Lots 17, 24 & 30
 - Conditional Access and Drainage Easement Agreement between Block 8, Lot 8 and Block 8, Lot 18
 - Amended and Restated Easement Agreement between Block 8, Lot 8; Block 8, Lot 10.03; and Block 8, Lots 10.02 & 54
 - Roadway Construction and Access with Landscaping Easement Agreement between Block 8 Lot 10.03 and Block 8, Lot 8

- Drainage Easement Agreement between Block 8, Lot 8 and Block 8, Lots 17, 24 & 30
- Reciprocal Recreation Facilities Easement Agreement between Block 8, Lots 10.02 & 54 and Block 8, Lot 8
- Reciprocal Emergency Access Easement Agreement between Block 8, Lots 10.02 & 54 and Block 8, Lot 8
- Pedestrian Access Easement Agreement between Block 8, Lot 10.03 and Block 8, Lot 8
- Landscaping Easement Agreement between Block 8, Lots 10.02 & 54 and Block 8, Lot 8; and
- Storm Water Management and Conservation Easement between Block 8, Lot 8 and the Township of West Windsor
- Legal descriptions with accompanying plan exhibits prepared by T&M Associates (Michael S. Finnegan, P.P., P.L.S), dated June 5, 2020, revised through September 3, 2020 (except as noted), including:
 - Description of Landscape Easement Area “A” over a Portion of Lot 10.02 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Landscape Easement Area “B” over a Portion of Lot 10.02 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Pedestrian Easement, Portion of Lot 10.03 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Access Easement over a Portion of Lot 10.02 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of One-Way Access Easement over Portion of Lot 10.02 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Emergency Access Easement over Portion of Lots 10.02 and 54 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of One-Way Access Easement over Portion of Lot 8 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Access and Landscape Easement over a Portion of Lot 10.03 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Water Main Easement over a Portion of Lot 10.02 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of One-Way Access Easement over a Portion of Lot 10.03 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Access Easement over a Portion of Lot 10.03 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey
 - Description of Drainage Easement over a Portion of Lot 8 in Block 8 Located in the Township of West Windsor, Mercer County, New Jersey for Drainage from Lot 30 in Block 8, revised through October 16, 2020

- Description of Drainage Easement over a Portion of Lot 8 in Block 8
Located in the Township of West Windsor, Mercer County, New Jersey for Drainage from Lot 10.03 in Block 8, revised through October 16, 2020
 - Description of Drainage Easement over a Portion of Lot 8 in Block 8
Located in the Township of West Windsor, Mercer County, New Jersey for Drainage from Lot 18 in Block 8, revised through October 16, 2020
 - Description of Access Drive Easement over Portion of Lot 8 in Block 8
Located in the Township of West Windsor, Mercer County, New Jersey, dated September 24, 2020, unrevised
 - Description of Connector Road Easement over Portion of Lot 8 in Block 8
Located in the Township of West Windsor, Mercer County, New Jersey, dated September 24, 2020, unrevised
- Overall exhibit map prepared by T&M Associates (Michael S. Finnegan, P.P., P.L.S), dated June 8, 2020, unrevised, showing all easements
- Letter to Samuel J. Surtees, West Windsor Township Division of Land Use Manager, from Kleinfelder, Inc. (James F. Cosgrove, P.E.), referenced “Environmental Constraints and Land Use Permitting Summary on Garden Homes/Duck Pond Development Site,” dated June 12, 2020
- Letter to Samuel J. Surtees, West Windsor Township Division of Land Use Manager, from Hill Wallack LLP (Thomas F. Carroll, III), referenced “Site Plan Application of West Windsor Duck Pond Associates, LLC – Unit Count, Density and Affordable Units,” dated June 8, 2020
- Owner’s Consent letters from the following entities authorizing West Windsor Duck Pond Associates, LLC to make Site Plan application to the Board:
 - West Windsor Plaza Associates, LLC (Block 8, Lot 10.03), dated June 9, 2020
 - West Windsor Developers, LLC (Block 8, Lots 10.02 and 54), dated June 10, 2020
 - WWW West Windsor, LLC and JAB West Windsor, LLC (tenants-in-common owners of Block 8, Lot 8), dated June 9, 2020
- Color 11x17 architectural renderings showing an “Alley View” and “Courtyard View” of the proposed development, prepared by Appel Design Group, dated September 3, 2020, consisting of two sheets
- Color 11x17 architectural rendering entitled “Affordable Buildings #1, 3, 4, 13, and 14 – Entrance Alley View,” prepared by Appel Design Group, dated October 16, 2020, consisting of one sheet
- Color 11x17 architectural elevations of Market Rate Buildings #9, #8, and #7 prepared by Appel Design Group, dated March 19, 2020, revised through September 3, 2020, consisting of three sheets
- Submission letters from Pennoni to each of the Board’s professionals, dated October 16, 2020
- Document referenced “Supplement #1 – Supporting the Project Density, Affordable & Market Building Locations” prepared by Pennoni and addressed to Sam Surtees, West Windsor Township Land Use Manager, dated September 4, 2020

- Document referenced “Supplement #2 – Potential to Add 13 Affordable Units” prepared by Pennoni, addressed to Sam Surtees, West Windsor Township Land Use Manager, dated September 4, 2020
- Document referenced “Supplement #3 – Design Waiver / Exception Request” prepared by Pennoni and addressed to Sam Surtees, West Windsor Township Land Use Manager, dated October 16, 2020
- Letter from Robert F. Melvin, AICP/PP of Pennoni to Samuel J. Surtees, Manager – Division of Land Use for West Windsor Township, dated October 16, 2020, regarding proposed full address list of each unit in each building in tabular format
- Sketch entitled “Elevation and Section Diagram at Closet for Trash/Recycling and Bike Storage” prepared by Appel Design Group, dated August 11, 2020
- Letter from MRC to Bob Melvin of Pennoni, dated October 17, 2020, regarding suitability of existing and proposed playground equipment
- Memo from Mr. Muller to Sam Surtees re “Windsor Woods Apartments and Square at West Windsor Easements – MIC Question” dated 10/5/20.
- Traffic Impact Study by Dynamic Engineering, Nick Verderese, P.E. dated 7/7/17, last revised 10/16/20
- Architect cover letter from Laurence Appel P.A. dated 6/9/20
- “Will-Serve” letters from the following public utilities:
 - Public Service Electric and Gas, dated May 14, 2020
 - Verizon New Jersey, Inc., dated May 18, 2020
- Development Application Package, including
 - Development Application form
 - Site Plan Checklist
 - Environmental Impact Statement Worksheet
 - Green Development Practices Checklist

TOWNSHIP REPORTS

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

- Memorandum from David Novak, P.P. to the Board dated November 10, 2020
- Memorandum from Dan Dobromilsky, L.L.A. to the Board dated November 9, 2020
- Memorandum from Francis A. Guzik, P.E. to the Board dated November 10, 2020
- Memorandum from Jeffrey A. L’Amoreaux, P.E. to the Board dated November 10, 2020
- Memorandum from Timothy M. Lynch, West Windsor Township Fire & Emergency Services, dated November 10, 2020
- Memorandum from West Windsor Affordable Housing Committee to the Board dated November 9, 2020
- Memorandum from Christopher B. Jepson, P.E. to the Board dated November 9, 2020

EXHIBITS

21. At the hearing, the Board considered the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – color-rendered illustrative site plan by Pennoni, undated
- Exhibit A-2 – color rendering of buildings; color palette; chart showing where the palettes will land by Pennoni Associates, dated 6/8/2020, last revised 10/16/20
- Exhibit A-3 –market Building 4, color-rendered by Appel Design Group dated 3/19/20, last revised 9/3/20
- Exhibit A-4 – market Building 8, color rendered by Appel Design Group dated 3/19/20, last revised 9/3/20
- Exhibit A-5 – market Building 5, color rendered by Appel Design Group dated 3/19/20, last revised 9/3/20
- Exhibit A-6 – market Building floor plan (Sheet PB1) by Appel Design Group, dated 3/19/20, last revised 6/9/20.
- Exhibit A-7 – affordable units floor plan (Sheet PB6) by Appel Design Group, dated 3/19/20, last revised 10/16/20
- Exhibit A-8 – market unit, courtyard view, color-rendered by Appel Design Group dated 9/3/20
- Exhibit A-9 – affordable unit, entrance alley view, color-rendered by Appel Design Gorup dated 10/16/20
- Exhibit A-10 – perspective view down alley by Appel Design Group dated 9/3/20
- Exhibit A-11 – recreation and open space on site – location map and photos by Pennoni Associates, dated 6/8/20, last revised 10/16/20
- Exhibit A-12 – overall site plan (Sheet CSP-1) by T&M Associates dated 10/16/20
- Exhibit A-13 – parking plan by Pennoni Associates, dates 6/8/2020, last revised 10/16/20
- Exhibit A-14 – signage plan by Pennoni Associates, dated 6/8/2020, last revised 10/16/20
- Exhibit A-15 – bike storage analysis by Appel Design Group, dated 8/11/20

TESTIMONY AND PUBLIC INPUT

22. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Thomas F. Carroll, Esq. represented the applicant. Robert Melvin, A.I.C.P., P.P., its planner, Anthony Marchetta, P.P., a specialist in financing of affordable housing for sale

units; Richard A. Moralle, P.E. and James F. Cosgrove, Jr., P.E., its engineers; Nicholas Verderese, P.E., its traffic engineer; Lawrence Appel, R.A., its architect; and Joseph T. Sikora, C.L.A., its landscape architect were sworn in. Messrs. Melvin, Marchetta, Verderese and Appel testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: Francis Guzik, P.E.; Dan Dobromilsky, L.L.A.; David Novak, P.P.; Jeffrey A. L'Amoreaux , P.E.; Christopher B. Jepson, P.E.; and Gerald J. Muller, Esq.

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

Alison Miller stated that she was satisfied with the Marchetta explanation of why, given the possibility for homeowner mortgage financing of affordable units, the affordable units and market units in this instance could not be integrated in the same buildings.

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

24. The Site is part of the Township's court-approved HEFSP prepared in accordance with a Settlement Agreement between the Township and Fair Share Housing Center, entered on October 9, 2018, as amended, setting forth the Township's affordable housing obligations and mechanisms to satisfy them. The Township rezoned the Site, with the passage of Ordinance 2019-04, to a new R-5C Residence Affordable Housing District to permit a gross density of 10 units per acre and 25% affordable housing set-aside, which was proposed by this application. The applicant is voluntarily increasing the set-aside to 27.77% and has submitted an application substantially in accordance with the zoning requirements that seeks no variances and only minor waiver approval and *di minimis* RSIS exception, as further noted below. Given this background and the importance of meeting the Township's affordable housing obligations, to which this project makes a significant contribution, the Board starts with a keen interest to ensure that the project is designed in such a way as to merit approval.

25. The Board appreciates that the applicant is providing more than the required 25% affordable unit set-aside. It was noted that the proposed 100 affordable units is 57 units less than the 157 affordable units presented in the concept plan for the Site in the HEFSP. This may be explained by the fact that the Project presented quite substantially reduces the

overall density of the development from that in the concept plan to ensure, the applicant contended, a realistic opportunity to construct an inclusionary affordable housing project in the current market conditions, whereas the percentage of affordable units is actually now greater. The Project meets the required bedroom distribution for affordable units.

26. Concern was expressed that the affordable units and market units are not being integrated within the same buildings. The applicant demonstrated that the affordable unit buildings are dispersed among all the buildings taking into consideration the location of amenities and open space so that the affordable units benefit equally from these aspects.

27. The applicant proposes 813 parking spaces, of which 636 will be in a garage or tandem driveway and the remaining 177 will be surface spaces, including 6 ADA-accessible, available to visitors and the affordable housing residents who do not have access to a garage or driveway.

28. The area of construction of the residential units and two access points is generally the same as was previously approved in the Prior Approval. Additionally, the environmental permitting to allow the extent of the proposed development was obtained by the prior developer for the Prior Approval, and limited site construction was undertaken to grandfather and vest those approvals. No further environmental permitting from NJDEP is anticipated.

29. The project will disturb more than one acre of land and result in the addition of more than one quarter of an acre of new impervious surfaces. Therefore, the applicant must meet all aspects of the storm water management ordinance, which the Board finds the applicant has done satisfactorily. The Board particularly appreciates the inclusion of three rain gardens in the Project, which will serve as valuable storm water quality structures as well as an aesthetic enhancement for the Site.

30. The Board finds that the proposed plan offers an efficient layout and design to create a functional inclusionary development with vehicular and pedestrian connections to adjoining residential and commercial properties, such as the Square Property shopping center. It promotes walkability and a small-scale neighborhood character, with consideration given to the preservation and conservation of woodland natural features, and avoids boredom of visually repeated elements in its design, as required by ordinance. It offers residents an active recreation area with features such as a pool, pedestrian path around the wetpond, and children's play areas.

Residents will, by virtue of the reciprocal recreation agreement, also have access to the basketball court, tennis court, tot lot and playing field recreational amenities at the Windsor Woods Apartments, as will the residents of that development similarly have access to the Duck Pond Project play lot.

31. The Board finds that the development will benefit the community with the enhancement of the economy, new residents to support existing retail establishments, and the provision of a significant number of affordable housing units.

32. As is described in detail in a September 11, 2020 email from Kevin J. Moore, Esq., an attorney for the applicant, the R-5C zoning ordinance relating to the Duck Pond inclusionary development requires that easements be granted by the owner of the Windsor Woods Apartments property for vehicular access and emergency access in favor of the Duck Pond Property, such easements totaling 6,499 square feet, and by the owner of the Square at West Windsor property for vehicular access (three easements) and pedestrian access in favor of the Duck Pond Property, such easements totaling 10,900 square feet. As confirmed in an October 5, 2020 memorandum from Gerald J. Muller, Esq., attorney for the Board, said easements do not benefit the grantors, and the impervious cover that will be installed within them should not be counted for maximum impervious coverage purposes if there are future development applications for the Windsor Woods Apartments property and Square at West Windsor property.

33. The Board further recognizes that *N.J.S.A. 40A:26A-11.3.a* requires a local unit operating a municipal sewerage facility, such as the West Windsor Township, to provide a 50% percent reduction in the fees related to new sewer connections charged for affordable units in inclusionary projects, such as the Project, and that *N.J.S.A. 40A:31-11.3.a* requires a local unit operating a municipal water supply facility to provide a 50% percent reduction in the fees related to new water connections charged for affordable units in inclusionary projects, such as the Project.

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

FINDINGS AND CONCLUSIONS RE: WAIVERS AND *DE MINIMIS* RSIS EXCEPTION

35. The application necessitates a *de minimis* exception from RSIS requirements, a design waiver, and four submission waivers. The Board's action on them are as follows:

a. *De Minimis* Exception. From Section 200-189.2C(1), which provides that the RSIS govern the required number of parking spaces. 748 parking spaces are required, whereas 813 parking spaces are proposed.

De minimis exception granted. The Board finds that the number and proposed location of the excess parking spaces are acceptable. The 65 parking spaces in excess of the RSIS requirement support the neighborhood with visitor parking, handicap accessible parking and parking with EV charging stations while maintaining the walkability and aesthetic of the layout. These spaces are dispersed throughout the Site to provide convenient locations for these elements. Given these reasons, an exception from the RSIS requirement is reasonable. Permitting no more than 748 parking spaces would be impracticable because the irregular shape of the Site necessitates dispersing the parking spaces, which necessitates providing more overall spaces in order to provide the necessary occupant, handicap and EV parking. This exception is therefore granted.

b. *Waiver.* From Section 200-31K(4), which requires an average 0.6 footcandle in residential areas whereas average footcandles of 0.9 are proposed.

Waiver granted. The proposed lighting is necessary to eliminate dark spots on roadways and sidewalks, resulting in better-lit, safer residential areas. The excess in required footcandles at these locations is minimal and will not negatively impact the Site or surrounding neighborhood. For these reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to provide adequate and safe lighting. Literal enforcement of this requirement would exact undue hardship upon the applicant because it would require the lighting plan to be redesigned, which is not feasible without impacting the safety of the Site or compromising appropriate levels of visibility. This waiver is therefore granted.

c. Submission waivers. Three submission requirements for which waivers or partial waivers are sought, as described below, pertain when preliminary and final approvals are sought separately, whereas preliminary and final approval are sought concurrently. The other submission requirement for which a waiver is sought is to provide metes and bounds for all wetlands, whereas no such metes and bounds have been provided because the wetlands are contained in an already recorded conservation easement. Given this, the Board finds these waiver requests to be reasonable and within the general purposes and intent of the ordinance. Literal enforcement of these requirements would exact undue hardship upon the applicant by requiring information that does not pertain to this application or is already available. Accordingly, these waivers are granted.

Waiver granted: From Section 200-13C(9), which requires all wetlands areas to be depicted on plans with metes and bounds and an NJDEP LOI indicating the presence or absence of Freshwater Wetlands, whereas no such metes and bounds or LOI have been provided.

All wetlands on the Site are within the conservation easement, which was recorded as part of the previous development and environmental permitting.

Waiver granted: From Section 200-14C(1)(a), which requires submission of the approved preliminary site plan, whereas no separate preliminary site plan is submitted.

Not applicable when preliminary and final approvals are sought together.

Waiver granted for partial submission waiver: From Section 200-14C(1)(b)[1], which requires final plans for site development and site improvement, including those construction details as may be specified at the time of preliminary approval, whereas such construction details have not been provided.

Not applicable when preliminary and final approvals are sought together.

Waiver granted: From Section 200-14C(1)(b)[5], which requires a final landscape plan, whereas such plan has not been submitted.

Not applicable when preliminary and final approvals are sought together.

CONDITIONS REQUIRED

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

Site plan

a. A corrective variable width easement within the subject Lot 8 shall be granted, subject to the approval of the Township Engineer and Board Attorney, centered on the as-built location of the sanitary sewer trunkline piping and structures for the portion of the sewer trunkline easement located along the driveway coming into the subject site from Route 1.

Note: A portion of the corrective easement described in this condition a shall be located on Lot 18, resulting in a "variable-width" Lot 8 easement. The remainder of the easement shall be obtained from the Lot 18 property owner (Onyx 3490, LLC) as part of that developer's proposed redevelopment plans for Lot 18. Obtaining an easement on Lot 18 is not the responsibility of the applicant and not a condition of this approval.

b. Retaining walls, as shown on the site plans, shall be constructed around the Site, including at the northerly embankment of the pond where the sidewalk to Building 21 is located, around the rain garden perimeters, and along most of the common property line with Windsor Woods. A note shall be added to the plans providing that detailed designs of retaining walls shall be submitted for review and approval by the Township Engineer as part of the building permit application.

c. A note shall be added to the plans providing that any imported soil (including topsoil) shall be tested for contaminants and proven to meet the limits permissible for residential use.

d. The Architectural Diversity Plan shall be revised to show the correct number of units on the Site Plan.

e. A provision for snow storage and removal shall be added to the plans.

Landscaping & Environmental

f. The applicant shall confirm that dedication of the Township Greenbelt and conservation easement done as part of the Prior Approval is complete, or shall complete them, subject to the approval of the Township Engineer and Board Attorney. The Board recognizes that obligations imposed on the applicant with respect to the Township Greenbelt must be consistent with the previously recorded conservation easements benefitting the New Jersey Department of Environmental Protection and the Delaware and Raritan Canal Commission of the State of New Jersey.

g. Masonry walls, constructed to a height of approximately eight foot around the refuse compactors, shall be implemented in lieu of fencing around the refuse compactors.

h. Low level planting shall be provided at the monument sign at U.S. Route 1 and along the street side facades of buildings #2, 4, 5, 7, 10, 14, 18, and 19.

i. Landscape modifications and additions, and maintenance and irrigation (if any) specifications/details shall be subject to final review with resolution compliance and site plan acceptance.

j. Garages and driveways shall not be used for purposes that preclude parking of resident's vehicles. Residents must primarily use their garage and driveway to park said vehicles. For residents who do not require parking for personal vehicles, in such case the garages may be used for secondary purposes. This restriction shall be included in governing documents and/or leases.

Traffic, circulation, and parking

k. The Traffic Impact Study cover shall be revised to include Lots 10.02 and 54.

l. Street names signs shall be mounted on the streetlight poles at the intersection corners.

m. On-street parking shall be provided in the immediate vicinity of units that do not have garages in accordance with the parking management plans submitted as Exhibit A-13.

n. The last driveway on E Alley shall be widened to accommodate a K-turn and exit.

o. STOP signs, stop bars, crosswalks and double yellow pavement markings shall be used sparingly, and the applicant shall work with the Township's Traffic Consultant to reduce the pavement markings and develop a simpler design.

p. The W1-1aR sign in advance of the curve in the outbound direction does not conform as designed and shall be replaced with a W1-1R/W13-1P combination for consistency.

q. Locations of the D3-1 signs on Sheets 12-15 and 65 of the plan set shall be added, and the sizes of the signs for the street names provided.

r. The R7-8P Van Accessible plaque and R7-8 Reserved Handicapped Parking sign shall, on the sign details on Sheet 65, be shown relative to each other such that the plaque beneath the sign is wider.

s. The designated parking spaces for affordable units shall be adjacent to each other as shown on the proposed parking management plan submitted as Exhibit A-13.

t. The signage plan shall indicate how affordable parking spaces are reserved. This information shall be provided using signs, not markings on the pavement.

u. The signage plan shall indicate how visitor parking spaces are reserved. This information shall be provided using markings on the pavement, not signs.

Affordable Housing

v. The 13 affordable units above the 25% set aside requirement shall be provided and shall be moderate-income units.

w. The fee for amenities shall be no greater for affordable units than for the market units.

x. A preference as far as possible shall, during the initial lottery and initial affirmative marketing period, be given to veterans applying for the affordable units, and an agreement between the Township and applicant shall provide for a fair and reasonable methodology for reaching out to veterans to offer a preference in the initial lottery process. The applicant, jointly with the Administrative Agent, shall establish the percentage of affordable units to which the veteran's preference applies.

Other

y. The forms of easements and agreements shall be subject to the review and approval of the Board Attorney.

z. Detailed grading of all handicapped ramps and accessible routes to each building entrance at 10-scale minimum shall be submitted during the resolution compliance process and shall be subject to the approval of the Township Engineer.

aa. Proposed elevations at both sides of ramps, landings and accessible routes shall be provided to show compliant cross-slopes as well as running slopes.

bb. A construction cost estimate prepared by the applicant's engineer shall be submitted for review and approval by the Township Engineer to determine the amounts of guarantees and fees required to be posted with the Township. Performance guarantee and construction inspection escrow fees shall be posted to the extent required by law.

cc. All Township sanitary sewer and connection details shall be provided on the plans in accordance with Section 200-91.

dd. A note shall be added to the plans providing for detailed engineering designs of the ultimate connection of the Township sanitary sewer to the Duck Pond Run Interceptor line, proposed to be effected by reconstruction of a 21-foot deep existing manhole, shall be provided for review and approval prior to construction.

ee. The invert of the proposed “invert in” of the reconstructed 21-ft-deep existing manhole shall be revised as necessary to indicate an elevation of 56.4 feet.

ff. The applicant shall provide to the Engineering Department, via both hard copy and electronic format, approved site plans being submitted for signature. Following construction, the applicant shall provide via both hard copy and electronic format as-built surveys upon project completion. Additionally, electronic copies of the Stormwater Management report and maintenance plan shall be provided.

gg. The following approvals and permits shall be obtained if necessary:

- Mercer County Planning Board
- Mercer County Soil Conservation District
- Delaware and Raritan Canal Commission
- NJDEP - TWA Permit

CONCLUSION

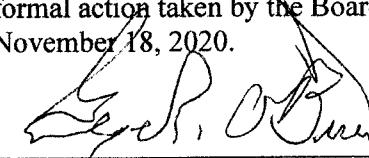
Based on the foregoing, the Board at its November 18, 2020 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

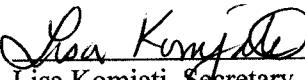
This resolution of memorialization was adopted on January 13, 2021 by a vote of Members who voted to grant the relief sought by the applicant.

The date of decision shall be November 18, 2020 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on January 13, 2021. This resolution memorializes

formal action taken by the Board at its regular meeting held
November 18, 2020.

 Gene R. O'Brien, Chair

 1/18/21
Lisa Komjati, Secretary

Gene O'Brien, Chair – Yea
Michael Karp, Vice Chair – Absent
Simon Pankove – Absent
Sue Appelget – Absent
Anis Baig – Yea
Linda Geevers – Yea
Curtis Hoberman – Yea
Michael Huey – Yea
Hemant Marathe – Yea
Allen Schechtel, Alternate I – Absent
Jyotika Bahree, Alternate II – Absent

Appendix D-13: Resolution re: Lofts at Princeton Junction

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
<u>Palladium Realty LLC for Preliminary and</u>	)	CONCLUSIONS OF LAW
)	
<u>Final Major Site Plan and Subdivision</u>	)	File No. PB 19-15
	)	Block 9, Lot 12.01 and Lot 12.03
<u>Approval (Phases 1 & 2) and Preliminary</u>	)	Block 9.03, Lot 12.02
)	
<u>Major Site Plan Approval (Phases 3 & 4)</u>	)	Approval granted:
	)	August 26, 2020
with Waivers)	
)	
)	

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on August 26, 2020 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site"), consisting of approximately 58.79 acres on Block 9, Lots 12.01 and 12.03, and Block 9.03, Lot 12.02, is located in the northwesterly portion of the Township, near the intersection of US Route 1 and Meadow Road, in the PMN-1 District.

2. Block 9, Lot 12.01, consisting of approximately 25.57 acres and irregularly shaped, comprises the northwesterly portion of the Site, undeveloped and largely farmland with a wooded area near its westerly corner. It is a corner lot with frontage along US Route 1 North, Carnegie Center Drive, Meadow Road Connector, Meadow Road, and an off-ramp connecting Meadow Road to Route 1.

3. Block 9, Lot 12.03, consisting of approximately 5.01 acres, and roughly rectangular in shape, comprises the northeasterly portion of the Site, undeveloped and largely wooded and partially constrained by wetlands. It is a corner lot with frontage along Meadow Road and Meadow Road Connector.

4. Block 9.03, Lot 12.02, consisting of approximately 28.2 acres, irregular in shape, comprises the southerly portion of the Site, undeveloped and containing areas of farmland and wooded areas and a stormwater basin. It is a corner lot with frontage along Meadow Road and Old Meadow Road. Wetland areas exist near its northwesterly and southerly corners, while a flood hazard area is also located near its southerly corner.

5. Surrounding land uses consist of MarketFair, On the Border, Brick House Tavern, Hyatt Place hotel, Residence Inn hotel, and additional commercial uses to the northwest; the Carnegie Center office development to the northeast; open space to the east; and the Square at West Windsor shopping center and the Windsor Woods multifamily development to the south and east.

6. The Site is identified in the Township's Housing Element and Fair Share Plan ("HEFSP") as a site to address the Township's affordable housing obligation. According to the HEFSP, the Township intended to rezone the Site to encourage a mix of uses, including nonresidential, residential, and a limited service hotel. The HEFSP envisioned that 656 dwelling units would be located on the Site, of which 164 would be reserved as affordable units.

JURISDICTION AND RELIEF SOUGHT

7. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.

8. The applicant seeks preliminary and final major site plan and subdivision approval for Phases 1 and 2 and preliminary major site plan approval for Phases 3 and 4 of a planned mixed use development consisting of 656 multi-family residential units; a 130-room hotel with liquor license; 16,000 s.f. retail space; and a 6,915 s.f. restaurant (the "Project").

9. The main components of the Project are as follows:

Multi-family development

Six hundred and fifty-six dwelling units are proposed, of which 164, equal to 25% required by the ordinance, are to be affordable units. The proposed distribution of bedrooms is a mix of 1-, 2-, and 3-bedroom units.

Twenty-nine residential buildings are proposed. Eight different residential building templates are proposed, with building heights varying from 3 to 4 stories. Their facades will generally consist of brick, fiber cement siding, and metal

panels, with accents of metal and cement. Two clubhouses are also proposed, Clubhouse North, to be located on Block 9, Lot 12.01, and Clubhouse South, to be located on Block 9.03, Lot 12.02.

The architectural plan divides the multifamily portion of the Site into the “north” and “south” areas. The north area will contain 356 units, the south 300 units. The southerly portion will not be constructed until 2025 at the earliest.

Hotel and restaurant

A sixty-foot high, 100,673 s.f., five-story hotel is proposed, to be located in the northwesterly corner of the Site. It will contain 130 rooms, with 150 beds, to serve both transient and extended stays. It will offer an indoor pool, meeting room, lounge, dining room, food prep room, and a motion room (fitness center) and have administrative and maintenance spaces. The roof will feature an indoor/outdoor bar area with seating for 210. The façade of the hotel will be mainly Exterior Insulation and Finish Systems (EIFS) finishes of a variety of colors, as well as metal and cement paneling accents.

The proposed 6,915 s.f. restaurant with 250 seating capacity is to lie immediately west of the hotel and be connected to the hotel.

Retail buildings

Two retail buildings are proposed to be located in the northwesterly corner of the Site, each to have a footprint of 8,000 s.f.

Subdivision

Block 9, Lot 12.01 is to be subdivided. Proposed Lot 12.011 will be approximately 4.13 acres and will contain the hotel and restaurant. The remainder of Lot 12.01, proposed Lot 12.012, will contain the 356 dwelling units and 16,000 s.f. of retail. An easement of approximately 1.06 acres (46,180 s.f.) for the hotel parking area is to be located on proposed Lot 12.012.

10. The Four Phases of the Project are as follows:

Phase 1. Preliminary and Final Major Site Plan and Subdivision includes the 130-room hotel on proposed Lot 12.011, together with associated parking areas, utilities, drainage basin and access driveways outside of proposed Lot 12.011.

Phase 2. Preliminary and Final Major Site Plan and Subdivision includes the 356 north residential units, of which 267 will be market rate and 89 affordable, in 12 buildings and a clubhouse building, together with associated parking areas, utilities, drainage basin and access driveways. Phase 2 will have direct access to Carnegie Center Drive and Meadow Road.

Phase 3. Preliminary Major Site Plan for the two retail buildings each 8,000 s.f. and the 6,915 s.f. restaurant pad.

Phase 4. Preliminary Major Site Plan for the remaining 300 south residential units in 17 buildings of which 225 units will be market rate and 75 affordable. This Phase also includes parking areas, a clubhouse building, detention basin, access driveways and utilities. Access to Phase 4 will be provided by Old Meadow Road and Meadow Road.

11. Six design waivers are sought:

- From Section 200-28D(2)(b), to exceed the minimum number of required parking spaces for residential uses, 1,277, whereas 1,286 parking spaces are proposed.
- From Section 200-28D(2)(b), to exceed the minimum number of required parking spaces for retail uses, 80, whereas 123 parking spaces are proposed.
- From Section 200-29J, to not provide a deceleration lane where access to a parking area of 100 or more spaces is proposed.
- From Section 200-30A, to reduce the required wall to wall separation between structures as follows:

Between buildings 5 & 6 - 75 feet required vs 47.9 feet proposed

Between buildings 15 & 16 - 75 feet required vs 53.9 feet proposed

Between buildings 16 & 17 - 75 feet required vs 54 feet proposed

Between buildings 24 & 25 - 75 feet required vs 53.4 feet proposed

Between buildings 25 & 26 - 75 feet required vs 53.1 feet proposed

Between buildings 23 & 28 - 75 feet required vs 53 feet proposed

Between buildings 28 & 29 - 75 feet required vs 53 feet proposed

Between buildings 19 & 20 - 75 feet required vs 67.5 feet proposed

- From Section 200-31K (1),(2),(4), to exceed the maximum average light intensity as follows:

parking lots: 0.5 footcandles required vs 0.8 - 1.1 proposed

intersections: 3.0 footcandles required vs 3.3 - 4.2 proposed

residential areas: 0.6 footcandles required vs .9 - 1.3 proposed

- From Section 200-36C(3)(c)[5], to not provide a tennis court.

12. Pursuant to MLUL N.J.S.A. 40:55D-49 and 52, the applicant seeks extended vesting of the preliminary and final approvals, as further set forth in the Findings.

THE APPLICANT

13. The applicant is Palladium Realty, LLC, which is also the owner.

NOTICE

14. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

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

16. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for August 26, 2020.

THE HEARING

17. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

18. At the hearing, the Board reviewed the following plans:

- Site Plan set entitled “Preliminary & Major Subdivision and Preliminary and Final Major Site Plan for Proposed Hotel (Phase I) and Proposed Residential Development (Phase 2) and Preliminary Major Site Plan for Proposed Retail & Restaurant (Phase 3) & Proposed Residential Development (Phase 4), Princeton Executive Park” prepared by Bowman Consulting (Geoffrey Lanza, P.E.), dated May 3, 2019 (no revision date), consisting of 49 sheets:

- Cover Sheet (Sheet 1)
- General Notes and Zoning Plan (Sheet 2)
- Constraints Map (Sheet 3)
- Demolition Plan (Sheet 4)
- Tree Removal Plan (Sheet 5)
- Phasing Plan (Sheet 6)
- Overall Site Plan (Sheet 7)
- Layout and Dimensioning Plan (Sheets 8-11)
- Overall Grading Plan (Sheet 12)
- Overall Utilities Plan (Sheet 13)
- Grading and Utilities Plan (Sheets 14-17)
- Grading – Hotel Plan Enlargement (Sheet 18)
- ADA Grading – Residential Plan (Sheet 19)
- Profiles (Sheets 20-26)
- Overall Soil Erosion & Sediment Control Plan (Sheet 27)
- Soil Erosion & Sediment Control Plan (Sheets 28-31)
- Soil Erosion and Sediment Control Notes & Details (Sheets 32-33)
- Traffic Signage Plan (Sheet 34)
- WB-50 Truck Turning Plan (Sheet 35)
- Garbage Truck Turning Plan (Sheets 36-39)
- Fire Truck Turning Plan (Sheets 40-43)
- Fire Hydrant Location Plan (Sheet 44)
- Construction Details (Sheets 45-47)
- West Windsor Standard Sanitary Sewer Details (Sheets 48-49)

- Landscape Architecture Plans prepared by Melillo + Bauer Associates, dated March 27, 2020, consisting of 25 sheets:
 - Cover
 - Overall Landscape Plan (L-1)
 - Circulation Plan – North (L-1A)
 - Circulation Plan – South (L-1B)
 - Landscape Plan (L-2 – L-6)
 - Overall Lighting Plan (L-7A)
 - Overall Security Lighting Plan (L-7B)
 - Lighting Plan & Details (L-7 – L-11)
 - Typical Unit Planting (L-12 – L-13)
 - Enlargement Plan (L-14 – L-16)
 - Site Details (L-17 – L-19)
 - Planning Details & Notes (L-20)
- Architectural Plan prepared by Lessard Design, dated May 17, 2019, revised March 27, 2020, consisting of 19 sheets:
 - Cover
 - Program Analysis and Summary (G.01)
 - Illustrative Site Plan (A.101)
 - Parking Distribution Diagram (A.102)

- COAH Distribution Diagram (A.103)
 - Floor Plans Plex Buildings (A1, A2) (A.111)
 - Floor Plans Plex Buildings (B1, B2) (A.112)
 - Floor Plans Plex Building C (A.113)
 - Floor Plans Flats Building D1 (A.114)
 - Floor Plans Flats Building D2 (A.115)
 - Floor Plans Flats Building D3 (A.116)
 - Elevations Buildings (A1, A2) (A.201)
 - Elevations Buildings (B1, B2) (A.202)
 - Elevations Buildings C (A.203)
 - Elevations Buildings D1 (A.204)
 - Elevations Buildings D2 (A.205)
 - Elevations Buildings D3 (A.206)
 - Club House Floor Plans and Elevations (A.207)
 - Material Board (A.208)
- Architectural Plan prepared by Base4, dated June 12, 2019 (no revision date), consisting of five sheets:
 - Floor Plans (A2.1-A2.3)
 - Elevations (A3.1-A3.2)
- Preliminary/Final Major Subdivision Plan prepared by Bowman Consulting (Martin F. Tirella, P.L.S.), dated March 27, 2020
- Land survey prepared by Stires Associates, P.A. (Richard Mathews, P.L.S.), dated March 27, 2020
- Topographic survey prepared by Stires Associates P.A. (Richard Mathews, P.L.S.), dated March 17, 2020
- Wetlands Map prepared by Stires Associates, P.A. (Richard Mathews, P.L.S.), dated June 21, 2016
- Tree Plan prepared by Stires Associates, P.A. (Richard Mathews, P.L.S.), dated March 27, 2020
- Striping Plan prepared by Stires Associates, P.A. (Richard Mathews, P.L.S.), dated March 17, 2020

TOWNSHIP REPORTS

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

- Memorandum from David Novak, P.P. to the Board dated June 8, 2020
- Memorandum from Dan Dobromilsky, L.L.A. to the Board dated June 8, 2020
- Memorandum from Francis A. Guzik, P.E. to the Board dated June 8, 2020
- Memoranda from James L. Kochenour, P.E. to the Board dated June 8, 2020

- Memorandum from Timothy M. Lynch, West Windsor Township Fire & Emergency Services, dated June 9, 2020
- Memorandum from West Windsor Technical Review Committee to the Board dated June 10, 2020
- Memorandum from Christopher B. Jepson, P.E. to the Board dated June 8, 2020

EXHIBITS AND APPLICANT'S REPORTS

20. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Sheet 3 of 49 – Constraints Map
- Exhibit A-2 – Sheet 7 of 49 – Overall Site Plan
- Exhibit A-3 – Sheet 6 of 49 – Phasing Plan
- Exhibit A-4 – Sheet 13 of 49 – Overall Utility Plan
- Exhibit A-5 – Sheet 1 of 1 – Major subdivision Plan for Hotel and Right-of-Way for Roundabout
- Exhibit A-6 – Overall landscape plans
- Exhibit A-7 – North Village Amenity Area
- Exhibit A-8 – South Village Amenity Area
- Exhibit A-9 – Colored version of Sheet L-1A in plan set for North Village
- Exhibit A-10 – Colored version of L-1B in plan set for South Village
- Exhibit A-11 – Section Location Plan – Site Sections
- Exhibit A-12 – Site Sections 1 and 2
- Exhibit A-13 – Site Sections 3 and 4 in North Village by Meadow Road Connector
- Exhibit A-14 – Site Sections 5 and 6 off Meadow Road to Building 25
- Exhibit A-15 – Building elevations A1 + A2, Sheet A02
- Exhibit A-16 –Building D, Sheet A03
- Exhibit A-17 –Clubhouse elevation, Sheet A04
- Exhibit A-18 – MV01 – material board
- Exhibit A-19 – MV02 – siding material
- Exhibit A-20 – Plan of Hotel
- Exhibit A-21 – Elevations, Sheet A3.2
- Exhibit A-22 – Floor Plans, Sheet A2.1
- Exhibit A-23 – Floor Plans, Sheet A2.2
- Exhibit A-24 – Floor Plans, Sheet A2.3
- Development Application
- Site Plan Checklist, dated March 3, 2020
- Subdivision Checklist, dated March 27, 2020
- West Windsor Township Environmental Impact Statement Worksheet

- Revised West Windsor Township Green Development Practices Checklist, dated April 23, 2020
- Stormwater Management Report – Princeton Executive Park – Phase 1 - Block 9, Lots 12.01 and 12.02; Block 9.03, Lot 12.02, prepared by Bowman Consulting, dated May 16, 2019, revised March 16, 2020
- Stormwater Management Measures Maintenance Plan and Field Manuals – Princeton Executive Park – Block 9, Lots 12.01 and 12.02; Block 9.03, Lot 12.02, prepared by Bowman Consulting, dated October 18, 2019, revised March 20, 2020
- Major Development Storwmwater Summary
- Sanitary Sewer Design Report – Princeton Executive Park - Block 9, Lots 12.01 and 12.02; Block 9.03, Lot 12.02, prepared by Bowman Consulting (R. Michael McKenna, P.E.), dated October 18, 2019, revised April 22, 2020
- West Windsor Fire & Emergency Services Site Plan Requirements
- Letter dated March 27, 2020 from Geoffrey Lanza, P.E., Bowman Consulting, to Samuel J. Surtees
- Letter of Interpretation: Line Verification – File No. 1113-05-0006.2, issued by NJDEP, dated January 12, 2017

TESTIMONY AND PUBLIC INPUT

21. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Ronald L. Shimanowitz, Esq. represented the applicant. Thomas Golden, its Professional Planner and Vice-President of Development; James Talerico, Senior Director of Development with the Briad Group, which seeks to facilitate approval of the hotel; Jamie Giurintano, P.E., its engineer; Craig W. Peregoy, P.E., its traffic engineer; Thomas S. Carmen, L.L.A., its landscape architect; Jerry Simon, R.A., its architect; and Charles Jordan, R.A., Briad Group hotel architect, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: David Novak, P.P.; Ian Hill, P.E.; Dan Dobromilsky, L.L.A.; Samuel Surtees, P.P., Land Use Manager; Jeff L'Amoreaux, P.E.; and Gerald J. Muller, Esq.

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

Alison Miller expressed concern that there was not sufficient secure indoor bicycle parking for the affordable units.

John Church requested clarification of the definition of “limited service hotel.”

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL MAJOR SITE PLAN AND SUBDIVISION APPROVAL (PHASES 1 AND 2) AND PRELIMINARY MAJOR SITE PLAN APPROVAL (PHASES 3 AND 4)

23. The Board notes that the Site is part of the Township’s court-approved HEFSP prepared in accordance with a Settlement Agreement between the Township and Fair Share Housing Center, entered on October 9, 2018, as amended, setting forth the Township’s affordable housing obligations. This backdrop of affordable housing and the Township’s carefully negotiated and court-approved goals to meet its affordable housing obligations, while not dispositive of this Board’s decision, sensitizes the decision making somewhat differently than an ordinary development approval would, as the Board starts with a keen interest to ensure that the project is designed in such a way as to merit approval.

24. The proposed development is permitted in the PMN-1 District, but the Board must still make mandatory findings for a planned development, as required by Section 200-194.3B(1) of the ordinance and *N.J.S.A. 40:55D-45*. These statutorily required findings are as follows, and the Board’s conclusion as to each follow below:

- (a) That the departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards pursuant to subsection 52c. of this act;
- (b) That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;
- (c) That provisions through physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
- (d) That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;
- (e) In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total

completion of the development are adequate.

Departures from zoning regulations (N.J.S.A. 40:55D-45(a))

25. The proposed plan does not depart from any zoning controls of the PMN-1 District regulations. This criterion is therefore satisfied.

Maintenance and conservation of common open space (N.J.S.A. 40:55D-45(b))

26. The applicant proposes a variety of open space facilities, including Green Belt preservation areas and an extensive, project-wide bike way and sidewalks, community gardens and a 10,000 s.f. public activity space on Block 9, Lot 12.01 that will serve as the terminus of the Carnegie Center Green Way. With a 37% improvement coverage at buildout, 63%, or 37 acres, will remain or be in some form of open space. 43 retail parking stalls will be banked to further increase green space. An extensive area of the south residential parcel will be dedicated to the Township Green Belt, and onsite wetlands and wetlands transition areas will be protected by conservation easements and/or deed restrictions. Given this, the Board finds that this criterion is satisfied.

Adequate provision for public services, control over vehicular and pedestrian traffic, light and air, and recreation and visual enjoyment (N.J.S.A. 40:55D-45(c))

27. Subject to the conditions addressing these criteria, the Board finds that the requirements of these criteria have been met, as follows:

(a) Public services. The residential units will be serviced by the Township and by utility companies serving West Windsor. Public services will be delivered via connections to existing infrastructure located in Meadow Road, Carnegie Center Drive and Old Meadow Road.

(b) Vehicular and pedestrian traffic. The proposed plan offers a well-designed pedestrian and vehicular circulation plan. An extensive internal sidewalk network and a perimeter bike path connects the north and south parcels to the adjoining streets, nearby offices and retail uses, and Township open spaces. Safe and secure bicycle parking is proposed. A roundabout is proposed, consistent with the requirements of the PMN-1 District, to safely and efficiently accommodate traffic generated by the project, as well as by through traffic that uses the Meadow Road/Route 1 interchange. Right-of-way

dedication is proposed along Old Meadow Road and the Meadow Road connector, as required by the Township engineer, to ensure that adequate turning radii, traffic lanes and road alignment are provided per Township standards.

(c) Light and air. Most building setbacks are met, ensuring adequate light and air, and where building to building setback compliance is not provided, extensive landscaping is provided as a buffer. Discrete architectural design and carefully chosen building materials are proposed to enhance the visual enjoyment of residents and passersby.

(d) Recreation and visual enjoyment. In addition to the open space facilities described above that will enhance recreational and visual enjoyment, a variety of recreational facilities is proposed, including two clubhouses, pools, dog runs, barbecue areas, and playgrounds.

No unreasonably adverse impact upon the site plan area (N.J.S.A. 40:55D-45(d))

28. The zoning requirements are substantively met. The development is next to major roadways and largely removed from other residential neighborhoods. The proposed roadway improvements are designed to ensure that traffic within the site and through the area will flow efficiently. Wetlands, flood hazard areas and the Township Green Belts will be protected and even expanded. The project is to utilize existing infrastructure. The noise and soil impacts, as described in the Environmental Impact Statement submitted by the applicant, are expected to be limited and of short duration. Accordingly, the Board finds that this criterion is satisfied.

The protection of interests during multi-year construction of development (N.J.S.A. 40:55D-45(e))

29. The Board notes that the applicant met with Township staff numerous times to assure compliance with Township ordinances and best practices in the phasing of this project. Phases 1 and 2 may be done simultaneously after all permits are secured. Phase 4 construction will not begin prior to January 1, 2025.

30. The phases are designed in accordance with market demand, allowing time for the market to absorb the new residential units. This creates certain challenges insofar as each area of the Site as temporarily completed must be able to stand on its own with respect to vehicular and pedestrian circulation, parking, and lighting and safety features and could require temporary interim improvements to be designed and installed until the next phase receives final approval and construction begins. The applicant satisfactorily demonstrated that utilities, including sewer and all stormwater management requirements, will be satisfied based upon the construction of the phases being approved herein.

31. To show that sufficient parking would be provided with each phase of development, the applicant provided a breakdown of parking spaces by phase. Further protections will be ensured by the execution by the applicant of a Developer's Agreement and by the posting of performance and maintenance guarantees. With respect to affordable housing, Condition 39tt additionally provides that the buildout of the units will, to the extent reasonably practicable, be proportionate to the income mix of the affordable units, such that, for example, the lowest income units will not be left for last. As the number of buildings exceeds the number of very low income units, not every building will contain a very low income unit. The Board finds that this criterion is therefore satisfied.

Affordable Housing

32. The proposed plan meets the ordinance requirements (Section 200-194.3(1)) of a 25% set aside for low and moderate-income housing meeting all applicable standards and requirements, including those of UHAC, for affordable units. The applicant will meet the UHAC requirements for bedroom distributions that (i) the combined number of efficiency and one-bedroom units is no greater than 20% of the total; (ii) at least 30% are two-bedroom units; and (iii) at least 20% are three-bedroom units. It will also meet the ordinance requirement in Section 200-194.3(1) that at least 50% of the affordable units be for low-income households, and at least 13% shall be for very low-income households. Finally, Section 200-194.1 requires that the affordable units must be reasonably dispersed throughout each residential component phased in accordance with the affordable housing construction schedule set forth in *N.J.A.C. 5:97-6.4(d)*. The map submitted by the applicant in the architectural plans identifying the locations of the affordable units was especially helpful in this respect, demonstrating that the dispersal requirement has been satisfied. Finally, the Board finds the proposed affordable housing accommodations to be reasonably attractive and appropriate, taking into account the needs of individuals who will qualify for the units, as well as the applicant's interest to develop a

commercially viable facility. Based on the foregoing, the Board finds that the applicant's plan for the provision of affordable housing in this project is adequate.

Stormwater Management

33. The project will disturb more than one acre of land and result in the addition of more than one quarter of new impervious surfaces. Therefore, the applicant must meet all aspects of the stormwater management ordinance, which the Board finds the applicant has done satisfactorily. Subject to the applicant meeting the Conditions relating to stormwater management, the Board finds the stormwater management plan acceptable.

Other Considerations

34. Pursuant to *N.J.S.A. 40:55D-49* and 52, the applicant initially requested an extended vesting period of 10 years, but its representative, Mr. Golden, stated at the hearing that a vesting period of 15 years was preferred. Finding the request reasonable, the Board approved a compromise of a 12-year vesting period.

35. The Board finds that the Project meets the bulk standards for the PMN-1 District. The Project also meets the intent and purpose of the PMN-1 District, to encourage a mix or residential development in conjunction with appropriately scaled, compatible commercial development consisting of retail sales and services, a hotel, corporate suites, general and administrative offices, fitness and instructional studios, and similar uses with convenient access to Route 1 and to the Princeton Junction train station and surrounding employment centers and a 25% set aside of dwelling units for affordable housing.

36. The Board finds that the proposed plan offers a sensible and efficient layout to create a functional mixed-use neighborhood near existing employment and retail centers. Although the gross density will be high relative to other neighborhoods in West Windsor, the design includes ample space for outdoor recreation, extensive walkways, and opportunities to hike or jog through natural areas. The Board appreciates that the applicant, through numerous technical review meetings with Township staff, diligently addressed numerous comments and concerns regarding code compliance and design details. The landscape design offers planting, berthing and other improvements to conform to Township standards, including street and parking lot trees, stormwater, recreation, and pedestrian area landscape architectural enhancement. The proposed plantings offer an appropriate and attractive mix of

species to create seasonal interest, spatial definition and visual buffering. Although there will be some short term disturbance from the construction, this is more than outweighed by the benefits of the development, which is the enhancement of the economy, new job opportunities and new residents to support existing local retail establishments, and the provision of a significant number of affordable housing units.

37. Findings and conclusions re: preliminary and final major site plan and subdivision approval (phases 1 and 2) and preliminary major site plan approval (phases 3 and 4). The Board finds that, with waivers granted and conditions imposed, the applicant has met all Township major site plan and subdivision standards. Preliminary and final major site plan and subdivision approval for phases 1 and 2 and preliminary major site plan approval for phases 3 and 4, accordingly, are granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

38. The application necessitates six design waivers. The waivers and Board's action on them are as follows:

a. Waiver. From Section 200-28D(2)(b), which requires a demonstration of necessity where the minimum off-street parking requirement is exceeded for residential uses. 1,277 parking spaces are required, whereas 1,286 parking spaces are proposed.

Waiver granted. The exceedance of proposed parking spaces for the residential uses, 3, on the south parcel, is *de minimus*. Six of these spaces are on the north parcel, 3 on the south, thus not all concentrated in the same area. The Board finds that the number and proposed location of the excess parking spaces are acceptable and that permitting no more than 1,277 spaces would work undue hardship on the applicant by requiring a redesign of the parking layout. The deviation is minimal and will result in more parking than is required. It will therefore not impair the intent and purpose of the zone plan and zoning ordinance, which is to provide an adequate amount of parking spaces. This waiver is therefore granted.

b. Waiver. From Section 200-28D(2)(b), which requires a demonstration of necessity where the minimum off-street parking requirement is exceeded for retail uses. Eighty parking spaces are required, whereas 123 parking spaces are proposed.

Waiver granted. The exceedance of proposed parking spaces for the retail uses, 43, will be banked, which will give the applicant flexibility to determine if 80 spaces is sufficient without increasing the impervious coverage and detracting from open space on the Site. Literal enforcement of this ordinance provision would create undue hardship because, if demand for retail parking spaces is determined to be greater than 80 spaces, the applicant would have to seek waiver relief and redesign its parking plan. Granting the waiver will not impair the intent of the ordinance, which is to provide adequate parking, as adequate parking is being provided. Accordingly, this waiver is granted.

c. Waiver. From Section 200-29J, which requires the provision of an acceleration or deceleration lane for access to a parking area of more than 100 spaces, whereas no such lane is being provided.

Waiver granted. The applicant's traffic engineer indicated that no deceleration lanes are necessary and it is safe not to have them, a determination with which the Township's traffic consultant agreed. Accordingly, the Board finds this waiver request to be reasonable and within the intent and purpose of the ordinance, which is to provide safe access to parking lots through the provision of deceleration lanes. Accordingly, this waiver is granted.

d. Waiver: From Section 200-30A, which requires wall to wall separation between structures of at least 75 feet, whereas the following distances have been proposed:

Between buildings 5 & 6 - 75 feet required vs 47.9 feet proposed
Between buildings 15 & 16 - 75 feet required vs 53.9 feet proposed
Between buildings 16 & 17 - 75 feet required vs 54 feet proposed
Between buildings 24 & 25 - 75 feet required vs 53.4 feet proposed
Between buildings 25 & 26 - 75 feet required vs 53.1 feet proposed
Between buildings 23 & 28 - 75 feet required vs 53 feet proposed
Between buildings 28 & 29 - 75 feet required vs 53 feet proposed
Between buildings 19 & 20 - 75 feet required vs 67.5 feet proposed

Waiver granted. Mr. Golden testified that the separation between buildings for which the waiver is requested will be addressed by buffering between the buildings. The Board is satisfied that such buffering will minimize the impact of having less space between the buildings and that granting the waiver will allow for a better site design. Literal enforcement of this ordinance provision would be impracticable as it would require a redesign of the site, resulting in

potentially less space for residential development. The deviation will not impair the intent and purpose of the zone plan and zoning ordinance, which is to ensure adequate distance between buildings. While less distance is being provided between the buildings, the provision of buffering will ensure privacy for the residence and significantly lessen the impact of the deviation. Accordingly, this waiver is granted.

e. Waivers. From Section 200-31K(1), which requires intensity in footcandles of an average of 0.5 throughout parking lots whereas average footcandles of 0.8 – 1.1 are proposed; from Section 200-31K(2), which requires a 3.0 footcandle at intersections whereas average footcandles of 3.3-4.2 are proposed; and from Section 200-31K(4), which requires an average intensity in footcandles of 0.6 in residential areas whereas 0.9 is proposed for the north parcel and 1.3 is proposed for the south parcel.

Waiver granted. The proposed lighting will result in a better-lit, safer site but not an overly-lit site, and no increased negative impact is anticipated from the proposed lighting plan. All lights will be shielded to restrict the maximum apex angle of the cone of illumination to 150 degrees, and the lighting system will be placed on a timer such that all but security lighting will shut off by 11:00 p.m. Hotel parking lot lights will be on a photocell and will remain on at night for 24-hour security. Footcandles at the property line do not exceed 1.0, except where the property line crosses a vehicular intersection. For these reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to provide adequate and safe lighting. Literal enforcement of this requirement would exact undue hardship upon the applicant because it would require the lighting plan to be redesigned, which is not feasible without impacting the safety of the site or compromising appropriate levels of visibility. This waiver is therefore granted.

f. Waiver. From Section 200-36C(3)(c)[5], which requires a tennis court for each 100 dwellings, whereas none is proposed.

Waiver granted. The Board finds this waiver request to be reasonable given that there is little or no demand for tennis and the applicant is proposing a variety of other recreational facilities, including pools, bocce ball, dog runs, and playgrounds, all of which provide an opportunity for residents and visitors to get exercise and enjoy the outdoors. Literal enforcement of this requirement would exact undue hardship upon the applicant by requiring tennis courts to be installed that take up a lot of space and are not likely to get much use, while the space can be better used for the other recreational facilities being proposed. For these

reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to provide recreational facilities for residential developments, which the Project will do. Accordingly, this waiver is granted.

CONDITIONS REQUIRED

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

Site plan and subdivision

- a. Street addresses and unit numbering will be undertaken as part of Resolution compliance.
- b. Five monuments proposed to be set along the southeast lot line of the new lot, which is coincident with the northwesterly curb line of Proposed Road "A," shall be set as offset monuments due to the proposed curb.
- c. The plans shall be revised to indicate that the right-of-way dedications associated with the roundabout construction on Meadow Road are to benefit West Windsor Township.
- d. All required cross-easements on Lot 12.02, Block 9.03 for the benefit of Lot 12.01, Block 9 for storm water and sanitary sewer shall be formalized and subject to review and approval of the Township Engineer and Board Attorney.
- e. Utility and stormwater management easements as required shall be granted to the Township, subject to review and approval of the Township Engineer and Board Attorney.
- f. The applicant shall use the street addressing and the building and unit numbering as assigned by the Township Engineer's office.
- g. The discrepancy in the number or numbering of buildings between the site plan and architectural plans shall be corrected. This condition relates to Buildings 23 and 28.

Landscaping & Environmental

- h. The applicant shall consider more use of Green Development design and constructions options going forward.
- i. The reforestation plan shall be added to the plan set.
- j. The applicant shall do soil testing and soil remediation if necessary.
- k. To the extent necessary, the landscape plans shall be supplemented to provide full or complete plans for areas that could receive final approval. Detailed plans for the recreation centers shall be subject to review of the Landscape Architect at the time of building permit application to assure consistency with any approvals and standards.

Traffic, circulation, and parking

- l. The 43 banked parking spaces shall be paved and used at the Township's request or in the applicant's discretion.
- m. One or more of the transverse crosswalks on the southerly parcel shall be constructed as a "speed table" traffic calming device that provides for curbline drainage.
- n. With respect to the ADA-Accessible Parking Table on Sheet 2, the layout in the Phase 3 retail area shall be revised to include an additional accessible parking space and the required number of accessible parking spaces shall be corrected in the table for each portion of the entire project.
- o. An ADA-accessible parking space shall be added to the parking lot located to the immediate east of the proposed hotel.
- p. The requirements of Section 200-27D with respect to loading areas shall be addressed at the time of application for final approval for areas of proposed commercial uses.
- q. The applicant shall submit a plan identifying all traffic regulations to be enforced as part of Title 39 Regulation enforcement and in which areas of the Site in Phases 1

and 2 such regulations will apply, particularly with respect to No Parking areas. A similar requirement with respect to Phases 3 and 4 shall be made of the applicant at the time of application for final approval of those phases.

r. The Township shall, if circumstances warrant, have the option, 12 months after opening of the proposed driveway from the northern portion of the Site to Meadow Road, to construct a mountable or landscaped median in Meadow Road to reinforce right-in/right-out movements at the driveway to the northern portion of the Site.

s. The left turn lane into the Site at the proposed driveway from the northern portion of the Site to Meadow Road shall be lengthened to a full storage length of 120 feet.

t. The roundabout at Meadow Road and Meadow Road Connector shall be striped and signed in accordance with Figures 3C-3 and 3C-4 of the Manual on Uniform Traffic Control Devices, 2009 Edition. Detailed roadway plans and signing/striping plans for the roundabout shall be subject to the review and approval of the Township's Traffic Consultant.

u. The applicant shall evaluate the addition of a departure lane on westbound Meadow Road to avoid confusion at the roundabout exit and shall incorporate the same into construction if warranted.

v. Timing modifications in the form of draft timing directives shall be prepared for the Meadow Road signals at the US Route 1 ramps and offered to NJDOT for its consideration.

w. Traffic projected for the adjacent proposed Duck Pond Associates development shall be considered in the design of the roundabout by preparation of capacity analyses reflecting such traffic and that is consistent with the proposed lane geometry.

x. The applicant shall provide information that would justify the internal trip capture applied to the 300 units on the south parcel.

y. Information shall be provided regarding the proximity adjustment factor derived for each land use to land use trips within the Site, and, where proximity adjustments were not applied, the applicant shall provide the justification for the non-use of the proximity adjustment factors for the estimation of the internal trip capture.

z. Information shall be provided regarding the timing for the construction of the proposed roundabout. If the roundabout is not in place prior to the opening of any or all of the north parcel land uses, the applicant shall provide additional Synchro analysis that would represent the phased construction of the Site.

aa. The applicant shall make an off-tract, fair-share financial contribution for off-tract roadway improvements to the Township's Capital Improvement Program.

bb. Turn-around provisions at dead-end aisles, which would include a 10-foot deep back-up area, shall be provided for the locations near Buildings 14 and 20, and the plans shall be amended to include these two locations. This will result in the loss of six parking spaces.

cc. The four-leg intersection on the north parcel nearest the northern clubhouse shall be controlled with a four-way STOP sign configuration rather than the three-way configuration proposed.

dd. The plan set shall be modified to show loading areas for the retail pads at the time of application for final approval for areas of proposed commercial uses in accordance with condition p.

ee. Pedestrian signals and push buttons shall be provided at the crossings across the east approach of Meadow Road at the US Route 1 Northbound off-ramp, which shall be coordinated with NJDOT.

ff. All proposed crosswalks shall be located as close to an intersection as possible, within six feet of an intersecting curbline extended.

gg. Pedestrian crossing signing consisting of a W11-2 sign with a W16-7p(L) plaque beneath it shall be provided for the crossing at the south access road for the roundabout near Buildings 13 and 15.

hh. The construction details shall be updated to show rectangular rapid flashing beacons.

ii. Parking spaces shall be reserved as electric charging stations as follows: 5% for retail spaces; 2 spaces for the hotel; and for the remaining spaces, the applicant shall work with the Township Landscape Architect to formulate a plan acceptable to him. He shall keep the Environmental Commission apprised of the plan.

Stormwater management

jj. A Phase 2-specific storm water management report (or combined Phase 1 and 2 report) must be submitted for review by the Township Engineer.

kk. Each subsequent application for final approval (i.e. Phases 3 and 4) must be accompanied by a phase-specific storm water management report.

ll. The 43 banked parking spaces shall be treated as built for purposes of stormwater management calculations.

Utilities

mm. The Final Site Plan drawing shall clearly identify all piping and manholes that will be installed (both in plain view and in the profiles) to support the Final Site Plan development and those that are to be deferred under a separate TWA permit. Infrastructure that is part of a future phase TWA application shall be “greyed out” or otherwise identified as not being part of the current proposal for construction of Phases 1 and 2.

Emergency services

nn. Standpipes shall be installed in each stair tower floor landing and shall have 2.5 inch National Standard thread hose outlets.

oo. The standpipes shall be tied into the fire sprinkler piping so that there will be only one fire department connection.

pp. If the applicant is required by the Construction Code official to conduct a radio signal strength survey of the building while it is under construction, a radio signal amplification system shall be installed if it is deemed necessary.

qq. A lock box to allow immediate access by the Fire Department shall be installed on the front of the buildings.

rr. The fire department connection that supports the fire sprinkler system shall be at the front of the building.

ss. The number of trees in close proximity to the buildings shall be limited so as not to restrict access by the fire department.

Affordable Housing

tt. The buildout of the affordable units shall, to the extent reasonably practicable, be proportionate to the income mix of the affordable units, such that, for example, the lowest income units shall not be left for last.

uu. Parking shall be free for all the affordable households.

vv. There shall be no charges to amenities for the affordable housing units.

ww. In accordance with UHAC, 13% of the affordable units shall be very low income.

Other

xx. A construction cost estimate prepared by the applicant's engineer shall be submitted for review and approval by the Township Engineer to determine the amounts of guarantees and fees required to be posted with the Township. For both on-site and off-site improvements, performance guarantee and construction inspection escrow fees shall be posted to the extent required by law.

yy. Separate metes and bounds descriptions and closure calculations for any proposed lots, easements and dedications, shall be submitted for review and approval.

zz. The applicant shall provide, via both hard copy and electronic format, approved site plans being submitted for signature, and as-built surveys upon project completion.

aaa. The applicant shall provide electronic copies of its stormwater management report and BMP Operation and Maintenance Manual, along with all maps applicable to the same, once those are approved by the Township Engineer.

bbb. The following approvals shall be obtained:

- Mercer County Planning Board
- Mercer County Soil Conservation District and State 5G-3 Construction Discharge Permit
- Delaware and Raritan Canal Commission
- NJDEP (TWA Permit, Wetlands General Permit, Transition Area Waiver-Buffer Averaging)

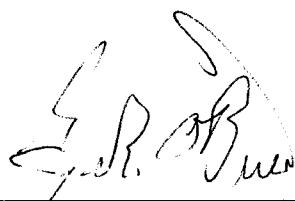
CONCLUSION

Based on the foregoing, the Board at its August 26, 2020 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

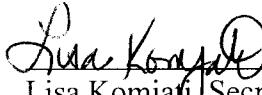
This resolution of memorialization was adopted on December 9, 2020 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be August 26, 2020 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on December 9, 2020. This resolution memorializes formal action taken by the Board at its regular meeting held August 26, 2020.



Gene R. O'Brien, Chair



Lisa Komjati, Secretary

Gene O'Brien, Chair – Yea
Michael Karp, Vice Chair – Absent
Sue Appelget – Absent
Anis Baig – Yea
Linda Geevers – Yea
Curtis Hoberman – Yea
Michael Huey – Absent
Hemant Marathe – Yea
Simon Pankove – Absent
Allen Schechtel, Alternate I – Absent
Jyotika Bahree, Alternate II – Absent

Appendix D-14: Resolution re: VCC Princeton Junction

**RESOLUTION OF MEMORIALIZATION
WEST WINDSOR TOWNSHIP ZONING BOARD OF ADJUSTMENT**

In the Matter of the Application by
VCC Princeton Junction, LLC for a d-
1 Use Variance for a Child Care
Center, 47 Princeton-Hightstown
Road; Block 12.04, Lot 18 West
Windsor Township Tax Map.

Resolution in File No. ZB 18-05

BE IT RESOLVED by the West Windsor Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) that the following findings of fact and basis for the decision approving the above-referenced application by the Board on January 3, 2019 is hereby memorialized.

FINDINGS

FINDINGS REGARDING THE APPLICANT:

1. VCC Princeton Junction, LLC (hereinafter referred to as the “Applicant”) is the owner of 47 Princeton-Hightstown Road, also designated as Block 12.04, Lot 18 on the West Windsor Township Tax Map (hereinafter referred to as the “Property”).

FINDINGS REGARDING THE NATURE OF THE APPLICATION AND RELIEF SOUGHT:

2. The Applicant proposes constructing a mixed-use development within the RP-7 Princeton Junction Redevelopment Zoning District. The development proposed by the Applicant involves the construction of a two-story building consisting of 10,890 square feet of commercial space on the first floor and 12 apartment units on the second floor. This building is located on the northside of the Property. On the southside of the Property, the Applicant proposes constructing a 12,870 square foot one-story building which will be used for child care and early childhood development. For the child care and early childhood development center, the Applicant seeks the following relief:
 - A. Section 200-266. A. (2) Land Use Ordinance (“LUO”) sets forth the permitted principal uses in the RP-7 Zoning District. Child care and early childhood development centers are not permitted principal uses within the district. The Applicant therefore requires a d-1 use variance for the proposed child care and early childhood development center.

FINDINGS REGARDING THE BOARD'S JURISDICTION:

3. As indicated above, the Applicant requires a d-1 use variance for the proposed child care and early childhood development center. The Board has jurisdiction over this application pursuant to N.J.S.A. 40:55D-70d(1) of the New Jersey Municipal Land Use Law.

NOTICE OF PUBLICATION:

- A. The Applicant obtained a list of all property owners within 200 feet of the Property from West Windsor Township.
- B. The Applicant served notice of the application upon all of said owners at least 10 days prior to the hearing on January 3, 2019 and also published notice of the hearing in a newspaper of general circulation within the Township of West Windsor, both of which as required by law.
- C. The Applicant has filed with the Board Secretary Proof of Notice and Proof of Publication indicating that Notice was provided to the aforementioned property owners and all required utilities at least 10 days in advance of the January 3, 2019 hearing on the application.

HEARING:

4. A public hearing was held on the application by the Board on January 3, 2019. The Applicant and all other interested parties were given an opportunity to present evidence and to be heard.

WITNESSES:

5. At the hearing, the Board considered testimony from the following witnesses:
 - A. Brian Birks, Learning Care Group.
 - B. Julia G. Algeo, PE, Maser Consulting, PA, Applicant's Civil Engineer.
 - C. Karl A. Pehnke, PE, Langan Engineering and Environmental Services, Inc., Applicant's Traffic Consultant.
 - D. Paul Grygiel, PP, Phillips Preiss Grygiel Lenehy Hughes, Applicant's Planning Consultant.
 - E. Samuel J. Surtees, Manager, West Windsor Township, Land Use Division.
 - F. James L. Kochenour, PE, Arora & Associates, PC, Board Traffic Consultant.
 - G. David Novak, PP/AICP, Burgis Associates, Inc., Board Planning Consultant.
 - H. Anthony W. Catana, AIA, Spiezle Architectural Group, Inc., Applicant's Architect.

- I. Daniel Dobromilsky, LLA/PP/LTE, West Windsor Township Landscape Architect.
- J. Ian L. Hill, PE, Van Cleef Engineering Associates, LLC, Board's Civil Engineer.
- K. Thomas Calabria, Chairman, West Windsor Township Affordable Housing Committee.

STAFF AND BOARD REPORTS:

- 6. The Board also considered the following staff reports:
 - A. Burgis Associates, Inc. memorandum dated December 18, 2018.
 - B. Arora & Associates, PC report dated December 21, 2018.
 - C. Van Cleef Engineering Associates, LLC report dated December 18, 2018.
 - D. Daniel Dobromilsky, LLA/PP/LTE report dated December 19, 2018.
 - E. Mason, Griffin & Pierson, PC report dated December 17, 2018.

EXHIBITS:

- 7. The Board considered the following exhibits:

Exhibit A-1: Aerial photograph dated January 3, 2019 of Block 12.04, Lot 18 West Windsor Township Tax Map prepared by Maser Consulting, PA.

Exhibit A-2: Plan entitled: "Use Variance Plan for 47 Princeton-Hightstown Road, Block 12.04, Lot 18 West Windsor Township, Mercer County, New Jersey: Dimension Plan Exhibit" prepared by Maser Consulting, PA dated January 3, 2019.

Exhibit A-3: Rendering of Child Care and Early Childhood Development Center West Facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-4: Material Board of facade treatment of Child Care and Early Childhood Development center building.

Exhibit A-5: Color rendering of Child Care and Early Childhood Development Center facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-6: Plans entitled: "Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Floor Plan – Daycare Center" prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No. A1.2).

Exhibit A-7: Color Rendered Entrance Approach prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-8: Color Rendered Child Care and Early Childhood Development Center Entry prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-9: Color Rendered Commercial/Residential West Facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-10: Plans Entitled: “Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Floor Plans Commercial/Residential” prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No.: A1.1).

Exhibit A-11: Colored Rendered Commercial/Residential Facade prepared by Siezle Architectural Group, Inc. (undated).

Exhibit A-12: E-mail message dated October 30, 2018 confirming all three affordable units to be built on the Property are to be one-bedroom units.

Exhibit A-13: Colored Rendered Building Facade Analysis prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-14: Plan Entitled: “Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Elevations-Commercial Building” prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No. A1.3).

Exhibit B-1: Rendering of proposed development on adjacent Princeton Ascend Development (Block 12.04, Lot 25 West Windsor Township Tax Map).

FINDINGS BASED ON THE HEARING AND TESTIMONY:

8. Based upon all of the testimony presented, a review of the application materials, a review of the staff reports, consideration of the exhibits presented, the Board makes the following findings:
 - A. The Applicant was represented by Kevin J. Moore, Esq., Sills, Cummis & Gross, PC.
 - B. The Applicant is the owner of the Property.
 - C. The Property is located in the RP-7 Redevelopment Zoning District.
 - D. The Property is located in the northerly portion of the Township near the intersection of Princeton-Hightstown Road and Cranbury Road. The Property has a total area of 95,072 square feet and is generally rectangular in shape. The Property has frontage on Princeton-Hightstown Road. The Property was previously developed with a one-story bank building which has been razed. Within the RP-7 Zone wherein the Property is located, the Property is surrounded by commercial uses to the west; a mixed-use project (Princeton Ascend) consisting of commercial space and residential

units to the north near the existing Rite-Aid Building; office uses to the south; and a private access road to Carlton Plan to the east.

- E. The Applicant is proposing to construct a mixed-use building which will be located within the northerly half of the site. The first floor of this building would contain 10,890 square feet of commercial space. The second floor would have 12 residential apartments, three of which would be deed restricted affordable housing units. These units are all one-bedroom. The Applicant proposes a second building located on the southerly half of the site. This building would be a one-story, 12,870 square foot building and would be occupied by a child care and early childhood development. It is this building that is the subject of the d-1 use variance.
- F. In support of the Applicant's d-1 use variance, the Applicant presented to the Board its "Concept Plan" for the development of the Property. The Property will be improved with two new buildings. One building containing 10,890 square feet of space will be a mixed-use retail and residential building. The building for which the Applicant seeks d-1 use variance approval is a 12,870 square foot building which will be occupied by a child care and early childhood development facility. The Applicant has submitted a bifurcated application first seeking the d-1 use variance approval and then returning to the Board for formal site plan approval for both buildings. The facility will be licensed by the New Jersey Department of Human Services. The building will contain several classrooms for infants, toddlers, two-year old's, pre-kindergarten youngsters, preschool and school age children. An enclosed outdoor play area will be located to the rear of the building. The main access to the building will be by a driveway connected to Princeton-Hightstown Road. A second driveway is proposed along the northerly property line and will connect to the recently approved Princeton Ascend Development. 83 parking spaces are proposed on the Property. The maximum number of students will be 158. There will be a total of 23 staff for the child care and early childhood development center at peak staffing hours. The peak drop-off time for the youngsters utilizing the center will be from 6:30 a.m. to 9:30 a.m. The peak pick-up time will be from 3:30 p.m. to 6:30 p.m. There will be eight parking spaces near the entry to the building designated for peak-hour child care drop-off and pick-up.

FINDING REGARDING THE LEGAL STANDARD TO BE APPLIED:

- 9. In evaluating this application, the Board applied the following legal standard:

- A. Use Variance: d-1. The Board recognized that the proposed child care and early childhood development center is a defined "inherently beneficial use" under the New Jersey Municipal Land Use Law ("MLUL") at

N.J.S.A. 40:55D-4. See Burbridge v. Mine Hill Township, 117 N.J. 376 (1990).

B. The Board then evaluated the “negative criteria” as instructed by Sica v. Board of Adjustment of the Township of Wall, 127 N.J. 152 (1992). This analysis involved: (i) having the Board identify the public interest at stake and confirming that it is an inherently beneficial use for the West Windsor Township Community; (ii) the Board then identified any detrimental effect that would ensue if the use variance was granted permitting a child care and early childhood development center building in the RP-7 Zone; (iii) the Board then considered any appropriate conditions on an approval in order to mitigate any potential detrimental effect if the child care and early childhood development center use was permitted; and (iv) finally, the Board weighed the positive and negative criteria to determine whether, on balance with appropriate conditions, the use variance as requested could be granted.

FINDINGS AND DECISIONS:

The Board having applied the above-referenced standards, voted six in favor (Abbey, Van Dyke, Church, Hoberman, Roeder and Marks) and one opposed (Jacobsohn) to grant the Applicant the requested d-1 use variance to permit the above-referenced child care and early childhood development use in the RP-7 Zoning District. The Board granted approval for the following reasons:

A. The Board agreed that the proposed child care and early childhood development center operation did, in fact, constitute an “inherently beneficial use” within the RP-7 Zoning District. The Board then evaluated whether or not there would be any substantial negative impact on the District for the remaining development on the Property if the child care and early childhood development use was permitted. The Board concluded that there would be no substantial negative impact and that the conditions noted hereinbelow would be appropriate and would ensure that the child care and early childhood development use would operate appropriately within the RP-7 Zone. The Board is satisfied that the child care and early childhood development use, with its limited hours and being closed on weekends is actually a less intense use than the uses otherwise permitted in the zone under Section 200-266 of the LUO. The child care and early childhood development use fits well into the mixed-use objective of the RP-7 Zone. Accordingly, the Board determined that the balance of the positive and negative criteria indicated that the variance as requested could be granted.

B. This approval is granted, however, subject to the following conditions:

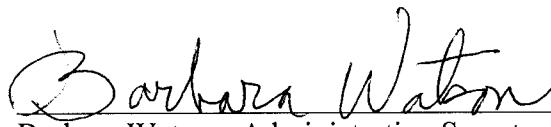
- i. The maximum number of children that can be enrolled in the child care and early childhood development center shall not exceed 158.
- ii. The Applicant shall construct both the mixed-use building and the child care and early childhood development building at the same time.
- iii. The affordable housing unit to be constructed on the Property shall be mixed and blended into the overall 12 apartments.
- iv. When the Applicant returns to the Board for site plan approval, the parking on the Property shall be situated in a fashion so as to facilitate either access to Carlton Place through the adjacent Princeton Ascend Property or otherwise.
- v. The Applicant shall bring current all taxes, sewer charges and other municipal charges including land development application and escrow fees for the Property within 30 days of the date of the adoption of this Memorializing Resolution.

CONCLUSION

Based upon the foregoing findings of fact and for the reasons set forth hereinabove and subject to the conditions also set forth hereinabove, the Board at its meeting on January 3, 2019, approved this application by a vote of six in favor and one opposed. This Resolution of Memorialization was adopted on January 24, 2019. The date of decision, however, shall be January 3, 2019, except for the purposes of (1) mailing a copy of the decision to the Applicant within ten (10) days of the date of decision; (2) filing a copy of the decision with the Administrative Officer; and (3) publishing notice of this decision.

CERTIFICATION

I, Barbara Watson, Administrative Secretary, to the West Windsor Township Zoning Board of Adjustment do hereby certify that the above Resolution of Memorialization was adopted by the Board at its regular meeting held on January 24, 2019. This Resolution memorializes the Board's approval of this matter at its meeting on January 3, 2019.



 Barbara Watson, Administrative Secretary
 West Windsor Township Zoning Board of Adjustment

Appendix D-15: Resolution re: Bear Creek

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
<u>Bear Creek Senior Living for Second</u>	)	CONCLUSIONS OF LAW
)	
<u>Amended Final Site Plan Approval</u>	)	File No. PB 19-13 AM
	)	Block 33, Lots 1.021 and 1.022
)	
	)	Approval granted:
	)	February 19, 2025

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on February 19, 2025 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site (“Site”), approximately 28 acres, located in the Planned Residential Retirement Community Zoning District (“PRRC District”), is an irregularly shaped lot with frontage on Old Trenton Road (CR 535) (approximately 1,400 feet) and Village Road East (approximately 540 feet) and is designated as Block 33, Lot 1.02 on the Township of West Windsor Tax Map, with an address of 289-291 Village Road East. The entrance to the Site is located off Village Road East via Esplanade Drive, which loops around the internal perimeter of the Site. This access road also provides access to the Assisted Living facility (as described below), lying immediately northwest of the area to be developed, and The Hamlet at Bear Creek (Block 33, Lot 1.01). The property is bounded on the northeast by Village Road East, on the southeast by The Hamlet at Bear Creek, farmland to the south, and Old Trenton Road to the northwest.

2. The Site is subject to several environmental constraints, including wetlands transition areas and the Township Greenbelt, which is the subject of a greenbelt easement required by the approval of a previous application. The Site is also subject to existing drainage and utility easements (sanitary sewer, water main and electric) and an access easement benefiting

Lot 1.01 (The Hamlet at Bear Creek), extending from Village Road East to the entrance to The Hamlet.

3. In 2009, the Site was condominiumized by the recording of a Master Deed. One half of the Site, under separate ownership, designated as “Unit AL” and identified as Unit 1.021 on the Township Tax Map, consists of approximately 14.104 acres improved with an Assisted Living facility. The owner of that unit has consented to the processing of this application. The other half of the Site, which is the subject of this application, is designated “Unit IL” and is identified as Unit 1.022 on the Township Tax Map. Consisting of approximately 13.737 acres, it is unimproved land except for the existing internal loop road and underground utilities installed at the time of construction of the Assisted Living facility. The Applicant is proposing to construct a congregate care facility (the “Independent Living” facility) on Unit IL/Unit 1.022, as further described below. It is a permitted use in the PRRC District.

4. A similar development as that being proposed in this application was proposed as part of a larger general development plan previously approved, in 1996. Known as Bear Creek, the original General Development Plan (“1996 GDP”) was for an age-restricted planned residential retirement community consisting of 901 dwelling units with a 15% affordable units set-aside. These dwelling units consisted of 540 single-family units at the Villages at Bear Creek, 61 multi-family units at The Hamlet (including 38 low-income and 23 moderate-income), and 300 dwelling units in a congregate care retirement community consisting of 220 apartments and 80 assisted living units.

5. In 1999, preliminary and final site plan approval was granted for the Esplanade (the “1999 Approval”), a senior citizen congregate care facility to be located on the Site with 306 dwelling units, including 61 affordable units. The complex was to consist of five buildings, including two assisted living buildings, two independent living buildings, and a community building with accessory uses. In 2000, approval was granted to subdivide the Site (i.e., the Esplanade property) into two lots for financing purposes, Lot 1.02A, now Unit 1.021, for the assisted living buildings and Lot 1.02B, now Unit 1.022, for the independent living buildings and community building. 327 parking spaces were approved for the Site. The subdivision was never perfected by that Applicant.

6. The assisted living facility, known as Unit AL, on Unit 1.021, has been constructed, including 86 units, of which 10 are affordable. Construction of The Hamlet and Villages of Bear Creek has also been completed, and these facilities are now occupied.

7. In June 2005, the Board granted Amended Preliminary and Final Site Plan approval (the “2005 Approval,” and, together with the 1999 Approval, the “Prior Approvals”) for 220 independent living units to be constructed on what is now Unit IL, on Unit 1.022, plus 234 parking spaces, together with several design exceptions and waivers. The 220 units were to be located in buildings that were designed or redesigned in 2005 to appear more residential and consisted of a mix of one- and two-bedroom units, some of which were to have dens and 51 of which were to be affordable. The 2005 Approval was also never perfected.

8. The Board on February 26, 2020 granted Preliminary and Final Site Plan Approval (PB 19-13) (“2020 Approval”) for the construction of 220 units consisting of the following: 49 one-bedroom market-rate units (40 with dens), 51 one-bedroom affordable units, and 120 two-bedroom market-rate units (40 with dens). Approved amenities included an automated café, exercise room with equipment, yoga room, wellness room, card and crafts rooms, heated pool, four pickle ball courts, two tennis courts, and outdoor seating areas.

9. The Board on July 13, 2022, granted Amended Final Site Plan Approval (“2022 Approval”) approving changes to the 2020 Approval including, but not limited to, reducing the footprint of the 3-story building to 99,401 square feet, the addition of 4 elevators, replacing the mansard roof with a flat roof, increasing the indoor amenity space from 10,000 square feet to 15,000 square feet and adjusting the condominium line separating Units AL and IL.

10. The Township’s court-approved Third Round Housing Element and Fair Share Plan dated February 28, 2019 identifies the Site as one of the components to address the Township’s prospective third round obligation, with Unit 1.022/Unit IL deemed an “approvable, available, developable and suitable” site and designed for development of inclusionary housing (169 market rate and 51 affordable units).

JURISDICTION AND RELIEF SOUGHT

11. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.

12. The Applicant seeks second amended final major site plan approval to make the following changes to the plans approved by the 2022 Approval:

- Raising the building by 5.5 feet (while maintaining current footprint) to permit 168 parking spaces within an underground garage;
- Modifying the exterior patio area to include a pavilion with bathrooms for the pool area, exterior and pool storage, and an area to accommodate sheltered outdoor events;
- Modifying the proposed tennis court to be able to be converted to two pickleball courts when necessary;
- Modifying the previously proposed parking areas from generally curvilinear layouts to rectilinear layouts;
- The addition of two 12-bay garages (one in each lot) directly adjacent to 12 parking spaces, creating "tandem" parking arrangements for 48 vehicles;
- Modifying the Great Room to add a kitchen, a pantry and a "demonstration kitchen";
- Additional of a "Basement Level" beneath the new "ground floor" amenity area (exclusive of the subsurface parking lot footprint), consisting of a Spa, Movie Room, Swimming Pool, bathrooms, and Gym equipment, along with other rooms designated as "Unassigned" at this time.

13. No new variances are required. With two exceptions, the waivers previously granted do not require further waivers. The exceptions would allow an increase in the total number of parking spaces from 339 to 392 and tandem parking for the garages.

THE APPLICANT

14. The Applicant is The Blackpoint Group/Anthony Mazzucca, acting as agent for the owner of Unit IL, Benjamin Zaitz.

NOTICE

15. The Applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

16. The Applicant filed an affidavit stating that the notice was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The Applicant has also filed a proof of publication confirming that

newspaper publication was made in accordance with legal requirements. Proper notice was given.

17. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for February 19, 2025.

THE HEARING

18. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the Applicant and all other interested parties were given the opportunity to present evidence and to be heard. No one from the public requested an opportunity to be heard.

19. Materials on file with the Board and part of the record reviewed by the Board:

- Development Application
- Consent by Owner of Unit AL to Entry onto Unit AL and to process Application
- Agreement to Pay for Professional Review and Inspections
- Site Plan Checklist with two (2) page Rider
- West Windsor Township Green Development Practices Checklist
- Architectural elevation and floor plans, prepared by Steven S. Cohen, dated November 26, 2024, last revised January 20, 2025 consisting of ten (10) sheets; amended on February 6, 2025 (11 sheets)
- Landscape Plan, prepared by Spiezle Architectural Group, dated August 23, 2019, last revised January 20, 2025, consisting of six (6) sheets
- Amended Final Major Site Plan, prepared by Partner Engineering & Science, Inc. ("Partner"), dated May 3, 2019, last revised January 20, 2025, consisting of eighteen (18) sheets
- Traffic and Parking Assessment, prepared by Langan Engineering, dated December 3, 2024, last revised February 13, 2025
- Stormwater Management Report, prepared by Partner, dated July 10, 2019, last revised January 20, 2025

- Operations and Maintenance Manual, prepared by Partner, dated November 11, 2019, last revised January 20, 2025
- Condominium Plan, prepared by Partner, dated May 17, 2019, last revised January 20, 2025
- Letter dated January 24, 2025, prepared by Daphne A. Galvin, P.E. of Partner responding to Township Review Memoranda
- Approval Resolutions (1) PB96-07 (1996) – General Development Plan Approval, (2) PB96-07Amended (2000) – Amended General Development Plan Approval, (3) PB97-7 (1999) – Preliminary and Final Major Site Plan Approval with Variance, etc., (4) PB00-05 (2000) - Preliminary and final Subdivision Approval with Waivers, (5) PB00-05 Amended (2005) -Preliminary and final Subdivision Approval, (6) PB19-13 (2020) - Preliminary and Final Site Plan Approval with Variance and Waivers; and (7) PB19-13 Amended (2022) – Amended Final Site Plan Approval
- Affidavit of Proof of Service and Publication of Notice dated February 17, 2025

TOWNSHIP REPORTS

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

- Review Memorandum to West Windsor Planning Board, prepared by Chief Timothy M. Lynch, dated February 18, 2025
- Review Memorandum to Samuel J. Surtees, prepared by Quazi Masood, PE, PTOE and Daniel Pflueger of Arora Associates, P.C., dated February 14, 2025 – Compliance Letter
- Review Memorandum to West Windsor Township Planning Board prepared by Ed Sniekus, Jr., LLA, PP, ASLA, Burgis Associates, Inc., dated February 12, 2025
- Review Memorandum to West Windsor Planning Board, West Windsor Division of Land Use prepared by David Novak, PP, AICP, Burgis Associates, Inc. dated February 12, 2025
- Review Memorandum to West Windsor Township Planning Board prepared by Francis A. Guzik, PE, CME, dated February 12, 2025

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

- Exhibit A-1 – Site Plan Sheet 4 of 18 of set, dated May 3, 2019, and revised through January 20, 2025
- Exhibit A-2 – Entry Photograph/Rendering
- Exhibit A-3 – Main Drive Photograph/Rendering
- Exhibit A-4 – View Towards Garage Photograph/Rendering
- Exhibit A-5 – Basement and Ground Floor Plan – Sheet A1.01
- Exhibit A-6 – Canopy Lighting – Sheet A101.1
- Exhibit A-7 – First Residential Floor Plan – Sheet A1.02
- Exhibit A-8 – Pavilion Plan – Sheet A1.05
- Exhibit A-9 – Roof Plan – Sheet A1.06
- Exhibit A-10 – Elevations – Sheet A2.03
- Exhibit A-11 – Photograph of sample board, material and color

TESTIMONY AND PUBLIC INPUT

22. The testimony presented by and on behalf of the Applicant and advice by Board consultants were given by the following persons:

Frank J. Petrino, Esq. represented the Applicant. Anthony Mazzucca, The Blackpoint Group, the agent for the owner; Daphne Galvin, P.E., its engineer; Steven Cohen, A.I.A., its architect; Creigh Rahenkamp, P.P., A.I.C.P., its planner, and Karl Pehnke, P.E., P.T.O.E., its traffic consultant, attended and either provided direct testimony or answered questions from the Board or its professionals.

The most salient expert testimony, unrebutted, is as follows:

- Utilizing Exhibit A-1, Ms. Galvin described the existing site and pointed out the site-related changes that are the subject of the Amendment; including reconfiguration of surface parking lots and addition of garage structures and lower level building garages, resulting in an increase in parking spaces from 339 to 392, which is needed to provide multiple parking options to make the development more marketable. The building is raised to allow for the lower-level garages and amenity space, the courtyard is modified to include a new Pavilion building, the tennis and pickleball courts are shifted and the tennis courts reconfigured to allow for conversion to pickleball. The landscape and lighting plans are revised to accommodate the site changes. There is no change to unit count or building footprint size, no new variances and only one waiver for excess parking.
- Utilizing Exhibits A-2 to 11, Mr. Cohen described the height of the building and the change to a flat roof, the below ground parking, the enhanced outdoor, and the indoor amenity package.

At the hearing, the Applicant agreed that the garages would not be used for storage.

The following Township staff and professionals gave advice to the Board at the hearing: David Novak, P.P., Ed Snieckus, Jr., L.L.A., P.P., A.S L.A; Quasi Masood, P.E., P.T.O.E., Francis A. Guzik, P.E., P.E., C.M.E. and Gerald J. Muller, Esq.

23. The statements of the members of the public made during the course of the hearing may be summarized as follows: None.

FINDINGS AND CONCLUSIONS RE: SECOND AMENDED FINAL MAJOR SITE PLAN APPROVAL

24. What the Applicant presented at the hearing is set forth in paragraph 12 above. No variances are required, and the proposed site plan changes are modifications of prior approved plans and make good sense, particularly in light of the Applicant's showing that the market for age-restricted developments is such as to require upgrades to be competitive. That is precisely what the modifications do.

25. Findings and conclusions re: second amended final major site plan approval. The Board finds that the Applicant has met all Township site plan standards. Second amended final major site plan approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

26. Waivers: Two waivers are necessary for (a) 24 tandem parking spaces, 12 in front of each of the two proposed garages while Section 200-29M(10) permits tandem parking only for employees and for valet parking; and (b) for 392 spaces proposed, while Section 200-28D(2)(b) does not permit parking spaces in excess of that permitted by Code which is 166 spaces in this case.

Waivers granted: 224 spaces have been previously approved in 2022, and the additional ones are proposed as part of the Applicant's program to make the development as marketable as possible, in this instance by having ample parking. With condition z permitting the use of the tandem spaces only by the renters of the garages and their guests, both waiver requests are reasonable and within the intent and purpose of ordinance provisions, which are intended to provide sufficient parking. They apply only to this site, not having more general applicability. Literal enforcement of the ordinance sections would be impracticable because it would defeat the elements of the site plan for which waivers are necessary in order to upgrade the development, which the Board has found acceptable.

The two waiver requests are therefore granted.

CONDITIONS REQUIRED

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

- a. The underground parking spaces shall be assigned.
- b. Four bicycle racks shall be added adjacent to the pavilion. Their location shall be subject to the Township Engineer's approval.

c. Landscaping shall be added along the building. It shall be subject to the review and approval of the Board Landscape Architect. The landscaping shall not block venting from the underground garage.

d. Pool water shall be trucked offsite, and any permits necessary for its discharge shall be secured. A water removal/disposal plan shall be submitted for approval by the Township Engineer and the Health Department.

e. The minimum lighting in the garage shall be .25 f.c.

f. The Applicant shall identify locations for Make Ready parking spaces. Their location shall be subject to the review and approval of the Director of Fire and Emergency Services.

g. There shall not be any EV charging stations in the underground garage.

h. The screening of rooftop units shall match the building color if they can be seen from any portion of the site.

i. The building amenities shall not be open to the public except that the café shall be open to the residents of The Hamlet and the assisted living facility.

j. The lighting levels in the surface parking area shall be approved by the Township Engineer.

k. Signage subject to the review and approval of the Township Landscape Architect shall be provided for the openings of the underground parking.

l. The Applicant shall designate proposed locations of the Fire Department connection and ensure that a hydrant is located within 100 feet of the proposed connection in compliance with NFPA 14. This shall be subject to the review and approval of the Director of Fire and Emergency Services.

m. The Applicant shall place lock boxes for immediate access by the Fire Department on both the front of the building and rear service entrance.

n. The Applicant shall install Fire Department standpipes in each stair tower. The standpipes shall have a 2 1/2 foot national standard thread hose outlet on each stair tower floor landing. The standpipe shall be tied into the fire sprinkler piping so that there will be only one Fire Department connection.

o. As per N.J.A.C. 5:70, 510.1 Emergency Responder Radio Coverage – “All new buildings shall have approved radio coverage for emergency responders within the

building based upon existing coverage levels of the public safety communications systems of the jurisdiction at the exterior of the building.” The Applicant shall be required by the construction official to conduct a radio signal strength survey of the building while under construction, and if deemed necessary a radio signal amplification system would need to be installed.

p. The Applicant shall execute a Developer’s Agreement prepared by the Board Attorney.

q. The completion of repairs/rehabilitation of the existing site amenities is required prior to the issuance of a certificate of occupancy.

r. The Applicant shall develop a Title 39 enforcement plan for the project and submit a request to Township Council with respect thereto.

s. An updated Sanitary Sewer Engineering report shall be provided based upon the proposed modifications in addition to the project’s amenities and any change in bedroom distribution.

t. The project is located within the South Post Road Pump Station wastewater service area, where capacity issues exist. The Township has awarded a construction contract for required upgrades to increase capacity. To the extent that there is increased wastewater discharges above the currently approved discharge rate, the Applicant shall be required to reimburse to the Township its pro rata share for such improvements. The specific cost to the Applicant will be based upon total increase in the project wastewater demand. The Developer’s Agreement shall address this condition.

u. If the dog wash/ grooming station is connected to the sanitary sewer, a filter must be employed to prevent the discharge of animal fur to the sewer flows.

v. The locations of the relocated light fixtures due to parking lot reorientation shall be shown on the site civil plans. Any additional building mounted lighting for garages (underground and exterior) and main entrance canopy lighting and façade accent lighting shall also be included. Updated lighting calculations for the parking lots and driveways shall be provided.

w. Any conditions of the prior approvals that have not been satisfied during resolution compliance shall be satisfied during resolution compliance on this application.

x. The revised plans, incorporating all the testimony and exhibits, shall be submitted electronically.

y. The hours of operation for the automated café shall be set forth on Sheet A1.01.

z. The tandem spaces at each garage may only be used by the renter of the garage and his or her guests.

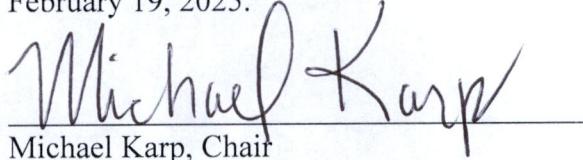
CONCLUSION

Based on the foregoing, the Board at its February 19, 2025 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on March 19, 2025 by a vote of who voted to grant the relief sought by the Applicant.

The date of decision shall be February 19, 2025 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the Applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at a regular meeting held on March 19, 2025. This resolution memorializes formal action taken by the Board at its regular meeting held February 19, 2025.



Michael Karp, Chair



Lisa Komjati, Secretary

Michael Karp, Chair – Yea
Curtis Hoberman, Vice Chair – Absent
Sue Appelget – Absent
Anis Baig – Yea
Hemant Marathe – Yea
Pankaj Patel – Alternate II – Yea
Simon Pankove – Absent
Allen Schechtel – Yea
Martin Whitfield – Absent
Jyotika Bahree – Yea
Robert Loverro, Alternate I – Absent

Appendix D-16: Resolution re: Bear Brook Homes

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
<u>Bear Brook Homes</u> for Preliminary and Final Major	)	CONCLUSIONS OF LAW
)	
Subdivision Approval, Variances, and Waivers)	
	)	File No. PB16-12
	)	Block 9, Lots 55 and 56
)	
	)	Approval Granted: April 4, 2018
)	
)	
)	
)	

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on April 4, 2018 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township to subdivide its parcel into 10 buildable lots, seven for zero lot line homes and three for townhouses, including two affordable units, and two open space lots. Variances and submission waivers were also sought.

2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.

3. The street address of the property is 106 and 110 Bear Brook Road.

4. The property is located in an area designated on the West Windsor Township Zoning Map as the R-3A zoning district.

THE APPLICANT

5. The applicant is the contract purchaser of the property.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

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

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for February 7, 2018. The application was heard on that date and was continued to April 4, 2018.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:

- Plans entitled "Preliminary Major Subdivision – Block 9, Lots 55 & 56 – (Tax Map Sheets 8.03 & 8.04), Township of West Windsor, Mercer

County, New Jersey”, 8 sheets total, prepared by Page-Mueller Engineering Consultants, P.C., dated December 14, 2016, last revised December 28, 2017

- Map entitled “Final Plat – Major Subdivision of Block 9: Lots 55 & 56, Township of West Windsor, Mercer County, New Jersey”, 1 sheet, prepared by Kennon Surveying Services, Inc., dated December 22, 2017
- Exhibit entitled “Schematic Home Designs”, prepared by Steven DeRochi, A.A., dated October 15, 2017

TOWNSHIP REPORTS

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

- January 15, 2018 memorandum from Joseph H. Burgis, P.P. and David Novak, P.P. to the Board and Planning Department.
- January 16, 2018 memorandum from Francis A. Guzik, P.E. to the Board.
- January 12, 2018 memorandum from Dan Dobromilsky, P.L.A. to the Board.
- January 10, 2018 memorandum from James L. Kochenour, P.E. to the Board.
- January 16, 2018 memorandum from Christopher B. Jepson, P.E. to the Board.
- January 4, 2018 memorandum from James V. C. Yates to Chairperson, Planning Board.
- Memorandum from Site Plan Review Advisory Board to the Board, undated.
- February 5, 2017 Memorandum from Affordable Housing Committee to Gene R. O’Brien.

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Siteline study prepared by Steven DeRochi dated March 30, 2017.
- Exhibit A-2 – Electronically-prepared flyover.
- Exhibit A-3 – Sheet showing fences, third fence from the top being the fence to be used (“Chesterfield Smooth finish in Almond”).
- Exhibit A-4 – Sheet O-1, with driveways marked in blue.
- Exhibit A-5 – Hard copy package of changed designs for affordable units, 2 bedroom unit being 800 square feet and 3 bedroom unit being 1,000 square feet
- Report entitled “Stormwater Management Report for proposed Major Subdivision – Block 9, Lots 55 & 56, Township of West Windsor, Mercer County, New Jersey” prepared by Page-Mueller Consultants, P.C., dated December 2016, last revised October 2017.
- Report entitled “Stormwater Management System Test Pit Report for Lots 55 & 56, Block 9, Township of West Windsor, Mercer County, New Jersey” prepared by Page-Mueller Engineering Consultants, P.C., dated December 2016.
- Letter of Interpretation-Line Verification issued by NJDEP dated July 6, 2016.
- Document entitled “Maintenance Manual for the Stormwater Facilities for Proposed Bear Brook Lane Subdivision Block 9, Lots 55 & 56 West Windsor Township, Mercer County, New Jersey” preparer unattributed, dated December 2017.
- Development Application Package Including
 - Development Application
 - Subdivision Checklist
 - West Windsor Township Environmental Impact Statement Worksheet
 - West Windsor Township Green Development Practices Checklist

- Exhibit O-1 – Submission by Farrell Delman consisting of 11 pages with text and photographs
- Exhibit O-2 – 3-page submission of text by Farrell Delman
- Exhibit O-3 – Report by Robert Korkuch, P.E., the second page also being on presentation board.

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Christopher S. Tarr, Esq. represented the applicant. Steven DiRochi, an architect and principal with the applicant, and Catherine Mueller, P.E., its civil engineer, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: Francis A. Guzik, P.E.; Joseph H. Burgis, P.P.; Dan Dobromilsky, P.L.A.; James L. Kochenour, P.E.; Christopher B. Jepson, P.E.; Samuel J. Surtees, and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows: Farrell Delman testified in opposition to the application. He argued that it could be better designed so that what he described as a lengthy wall consisting of the back of the 3 townhouses could be eliminated by shifting the townhouses to the other side of the entry road, which would also have the advantage of eliminating conflicts when vehicles backed out of the townhouse driveways near the entry.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SUBDIVISION APPROVAL

15. Nature of application. The applicant proposes to consolidate its two lots, Block 9, Lots 55 and 56, comprising 9.3 acres and subdivide them into 10 building lots, a 6.472 acre open space lot that will contain the environmentally constrained areas to the rear of the property and that the applicant proposes to dedicate to the Township, and a 0.099 acre open

space lot fronting on the cul-de-sac to be owned by a future homeowners' association. The smaller open space lot will contain storm water management facilities and provide access to the larger open space lot to the rear. Several of the proposed lots utilize the zero lot line provision in the R-3A zone and will vary in size from just under $\frac{1}{4}$ of an acre to just over $\frac{1}{3}$ of an acre. The three unit townhouse building will consist of a 3 bedroom market rate unit, a 3 bedroom moderate income affordable unit, and a 2 bedroom low income affordable unit.

16. Two primary issues were raised. The first is the location of the townhouses closest to the entry point off Bear Brook Road and adjacent to the Delman property. The Board discussed whether conflicts were created by turning movements into the cul-de-sac from Bear Brook and vehicles being backed out of the driveways of the town houses, from which, unlike the seven zero lotline houses, there are no turnarounds on site. The Board's traffic engineer, Mr. Kochenour, opined that this did not represent a dangerous condition because of the low levels of traffic and the fact that vehicles turning into the cul-de-sac would be moving at a slow rate of speed.

17. The second issue, as indicated above, related to the townhouses and their impact upon the Delman property. A redesign proposed by Mr. Delman's engineer, Mr. Korkuch, moved the townhouses to deeper lots on the other side of the drive. The Board found, however, that this presented its own problems particularly in terms of aligning the entry drive with Grelynne Drive across the street; loss of three parking spaces; and the question of whether the unit on the lot closest to Bear Brook Road could be built given the skewing of the lot line. The Board found that, with more landscaping, the impact of the townhouses on the Delman property could be ameliorated. In addition, they do not present a uniform wall as two affordable housing units are set back farther from their rear property lines than the market unit is and have varying heights, thereby reducing the scale and massing.

18. Conclusion Re: subdivision approval. The Board finds that, with the conditions imposed, the application meets all Township subdivision standards. Preliminary and final major subdivision approval, accordingly, is granted.

FINDINGS AND CONCLUSION RE: VARIANCES

19. The application necessitates five variances. The variances and the Board's action are as follows.

a. Variance: From Section 200-177B, which requires that the minimum lot frontage be 50 feet, while the lot frontage for Lot 55.11 is zero.

Variance granted: Frontage is unnecessary for this open space lot, as municipal vehicles can access it from the cul-de-sac through the smaller open space lot. Granting the variance furthers Municipal Land Use Laws purposes “a,” which is to promote the appropriate development of land, and “g,” which is to provide for open space in appropriate locations. Preserving the open space lot in its natural state furthers these goals. The benefits of advancing these goals are substantial, as the open space lot will in perpetuity remain in its natural state and, if the Township Council accepts the offer of dedication, will add to the Townships growing open space inventory. There are no detriments to granting the variance. The benefits therefore outweigh the detriments. The positive flexible “c” criteria have therefore been satisfied.

The negative criteria are satisfied as well. There is no substantial detriment to the public good. Indeed, it is advanced for the reasons given above. In addition, there is no impairment of the intent and purpose of the zone plan and zoning ordinance in that the purpose of the frontage requirement is to provide for access to buildable lots and have frontage consistent with the character of the neighborhood, and that purpose is satisfied.

For the forgoing reasons, the variance request is granted.

b. Variance: Section 200-177B, which requires a minimum lot size of 5,000 feet, while 4,312 square feet is proposed to Lot 55.12, the second open space lot.

c. Variance: From Section 200-177B, which requires a minimum lot frontage of 50 feet, while 12.94 feet is proposed for Lot 55.12.

d. Variance: From Section 200-177B, which requires a minimum lot width of 50 feet, while 22.56 feet is proposed for Lot 55.12.

b-d. Variances granted: These variances are granted for the same reason that the frontage variance for Lot 55.11 is granted. Lot 55.12 is an adjunct to Lot 55.11, which will not

function as accessible open space without Lot 55.12, as it will be landlocked. In addition, Lot 55.12 standing alone satisfies the Municipal Land Use Law goals of promoting the appropriate development of land and conserving open space. Since there are no detriments to granting these variances, the flexible criteria are satisfied.

The negative criteria are also satisfied for the same reasons given with respect to the lot frontage variance for the larger open space lot.

For the forgoing reasons, the three Lot 55.12 variances are granted.

e. Variance: From Section 200-227C, which provides that no fence or wall forward of the front yard setback line in residential districts may exceed 4 feet in height, while the applicant proposes to install a 6 foot privacy fence within the front yards of proposed Lots 55.01 and 55.10.

Variance granted: Granting the variance furthers Municipal Land Use Law purpose “a” by providing for the appropriate development of land in that the two lots abut Bear Brook Road, and, while the yards between the houses and road are technically considered front yards, they actually function as side yards. Fences are appropriate along Bear Brook Road so as to provide privacy for the residents of the two lots. As Exhibit A-3 shows, the fences will be attractively designed and, with pickets at the top, will not be a solid six foot fence. There are substantial benefits in providing privacy for the residents of the two lots, and the detriments will be minimal. The benefits, therefore, outweigh the detriments. The flexible “c” criteria are, accordingly, satisfied.

The negative criteria are also satisfied. There is no substantial detriment to the public good for the reasons given above. Nor is there substantial impairment of the intent and purpose of the zone plan and zoning ordinance, since the fences function as fences along the side property lines rather than in the front yards.

For the foregoing reasons, the variance request is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

20. The application necessitates eight waivers, six design waivers and two submission waivers. The waiver requests and the Boards action on them are as follows.

a. Waiver: From Section 200-91(P)(4), which requires that storm water management areas be integrated as aesthetic landscape features, while the two basins do not meet this standard.

Waiver granted: The basins are located on both sides of the entryway, where there is limited room for them. Since they cannot be integrated into the landscape as the ordinance requires, the waiver request is reasonable. The intent and purpose of the ordinance provision is satisfied by proposed landscape improvements on all sides of the basins. Literal enforcement of the ordinance provision would be impracticable because of the limited area available for the basins, a limitation that is offset by the very substantial amount of land reserved for permanent open space.

Accordingly, the waiver request is granted.

b. Waiver: From Section 200-91P(4), which requires plantings around basin perimeters to be aesthetic features, while the basin perimeter plantings do not serve this purpose.

Waiver granted: The landscape plan specifies about 102 shrubs and two evergreen trees around the basins and has been amended so as to include landscape improvements on all sides. The unique placement of the storm water management basins for the proposed development is not conducive to planting strictly in accordance with the ordinance standard, as the available land does not make additional planting feasible. The waiver request, therefore, is reasonable. The intent and purpose of the ordinance provision is furthered because, while the ordinance is not strictly complied with, the basins do not have the spare, utilitarian look many of the storm water management basins around the state have. Literal enforcement of the ordinance provision is impracticable in that further plantings are really not feasible.

The waiver request, accordingly, is granted.

c. Waiver: From Section 200-36C3(c)(4), which requires that a playground be provided, while the applicant is not providing one.

Waiver granted: Given the size of the development, a playground is not necessary. For this reason, the waiver request is reasonable. The intent and purpose of the ordinance provision is furthered in that preserved open space available for passive recreation is provided. Literal enforcement of the ordinance provision would be impracticable in that it would require a substantial amount of land in an inclusionary development be devoted to improvements that will add to the costs of the development, while the *Mt. Laurel* doctrine requires that costs be kept as limited as feasible.

The waiver request, accordingly, is granted.

d. Waiver: From Section 200-91P(3), which requires a landscape island within the cul-de-sac, while a portion of the island is proposed to be utilized for on-street parking.

Waiver granted: The waiver request is reasonable in that the addition of the on-street parking will help ensure that there is not an overflow parking problem. In addition, a very substantial green space is provided by virtue of the two open space lots. The intent and purpose of the ordinance provision requiring the green space in the cul-de-sac island is satisfied. Green space is provided, and compensating green space at a much larger scale is provided elsewhere in the development. Requiring the 36 foot landscape island would work an undue hardship on the applicant in that it would preclude it from providing more parking.

For these reasons, the waiver request is granted. Landscaping of the entire island is not required. Only the portion of the island for which landscaping is proposed shall be landscaped as per the plans.

e. Waiver: From Section 200-62B, which requires that turnarounds for vehicles on all residential lots be provided, while there are no turnarounds on the three townhouse lots.

Waiver granted: The waiver request is reasonable in that there is no room on the townhouse lot for turnarounds, and requiring turnarounds on all of the lots would necessitate a redesign that may result in fewer units, including possibly fewer affordable units. The intent and purpose of the ordinance provision is satisfied in that turnarounds are provided for seven of the 10 lots. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring a complete redesign of the project, with increased costs inconsistent with the *Mt. Laurel* doctrine and possibly fewer affordable units.

The waiver request is therefore granted.

f. Waiver: From Section 200-36B(4)(b), which requires that an outdoor private living space for each dwelling unit be provided, while the applicant is proposing as an option a 10' long privacy fence running back from the house.

Waiver granted: Giving the owners of the zero lot line homes the option of having the privacy fence, but not requiring it, is reasonable. The option furthers the intent and purpose of the ordinance provision in that it gives the homeowner the opportunity to have such a fence if desired. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring the installation of privacy fences that homeowners may not want.

The waiver request, accordingly, is granted.

g. Waiver: From Section 200-53C(4), which requires identification of the establishment of at least two permanent benchmarks on opposite sides of the development, with all pertinent information about the same being provided, while the applicant is providing one permanent benchmark with the provision that an additional control would be provided on-site prior to construction.

Interim waiver granted: Due to the limited size of the project and the fact that it is an inclusionary development, the Board defers the establishment of the second control until the time of construction. Condition 22n so provides.

h. Waiver: From Section 200-53C(8), which requires the submission of information related to proposed utility layouts, while the plans did not provide the size and location of the existing water or sewer gas mains in Bear Brook Road to which the development will connect.

Interim waiver granted: Again, because of the size of the project and the fact that it is an inclusionary development, the provision of this information and the subsequent pavement repair dimensions are deferred until the time of construction. Condition 22o so provides.

RECOMMENDATION WITH RESPECT TO DEDICATION OF LOT 55.11 AND OF CARTWAY

21. Condition 22f requires that the applicant offer to dedicate Lot 55.11 to the Township. The Planning Board recommends that the dedication be accepted. While the applicant proposes to dedicate the roadway to the Township, the Planning Board makes no recommendation as to whether or not that offer of dedication be accepted.

FINDINGS AND CONCLUSIONS RE: CONDITIONS

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

Affordable Housing

- a. The affordable units shall have central air conditioning.
- b. The applicant, working with the staff, shall make a good faith effort to make the second floor bedroom in the two-bedroom affordable unit bigger.

- c. There shall be one homeowners' association for all ten dwelling units with a provision in the HOA documents indicating that there will be a sinking fund for outside capital repairs of the town house units.
- d. The same siding material, including color, shall be used for all of the townhouse units.
- e. The sizes of the affordable units shall be shown on the plans.

Open Space Preservation

- f. The applicant shall offer to dedicate Lot 55.11 to the Township.
- g. The applicant shall grant an easement to the Township over Lot 55.12 for access by Township personnel and the public to Lot 55.11.
- h. The applicant shall grant an easement to the Township and the public for use of the road if dedication to the Township is not accepted.

Landscape

- i. Smaller trees near the Delman property line shall be replanted in locations acceptable to the Delmans.
- j. A higher berm and more landscaping on the Delman side of the property line shall be installed. The applicant shall work out a solution with the Delmans and give them up to \$10,000.00 so that they can implement the work.
- k. The applicant shall attempt to save four of the five trees to be removed. The Township Landscape Architect shall identify such trees.

- l. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.
- m. HOA documents shall provide that the HOA and not the individual property owners are responsible for maintaining the buffer vegetation on the perimeter of the project.

Major Subdivision

- n. The second permanent benchmark on the opposite side of the development from where the first permanent benchmark has been installed shall be put in place at the time of construction.
- o. Information as to the size and location of the existing water and gas mains on Bear Brook Road to which the development will connect and the subsequent pavement repair dimensions shall be provided at the time of construction.
- p. As there are no common walls along the zero lot lines, the applicant has indicated on the plans 10 foot wide maintenance easements along the adjoining lots. The formal language of the easements shall be subject to the review and approval of the Board attorney.
- q. Separate metes and bounds descriptions with closure calculations for all lots, including the townhome lots, and for all easements and dedications shall be provided to the Township Engineer for his review and approval. The final major subdivision plat will be reviewed in detail in conjunction with these documents once submitted.

Access and Circulation

- r. The total amount of soil required to be imported for the road fill has been estimated by the applicant's engineer as 10,000 cubic yards. The applicant shall engage the services of a geotechnical engineer to supervise the roadway construction and certify that acceptable compaction and moisture contents are obtained in compliance with NJDOT

specifications. In addition, the source of the material for all purposes, including individual lot fill and not just the roadway, shall be identified, and a certification that the material is clean and meets the requirements for NJDEP residential use shall be submitted to the Township Engineer for review and approval prior to commencing the soil import operation.

- s. The applicants shall take such steps as are necessary so that Title 39 is applicable to the development.

Storm water management

- t. The homeowners' association maintenance responsibility shall also include the section of the structurally reinforced sidewalk, since the storm water is designed to flow from the roadway under the sidewalk into the infiltration basins by way of a 3 foot wide open concrete channel. The sidewalk is thus an integral part of the storm water management design.
- u. A Maintenance Manual for the Storm Water Facilities has been submitted, but it is not in strict compliance with the N.J. BNP Manual and the NJDEP Maintenance Plan Guideline documents located at http://www.nj.gov/dep/stormwater/maintenance_guidance.htm. The Manual must include all of the required information contained therein. Once a draft of the Manual is approved by the Township Engineer, it shall be incorporated into the homeowners' association documents.
- v. The storm water management design for the project was based upon the assumed full build-out of each lot as permitted by the current zoning requirements. Note 8 on the Utility Plan (Sheet 4) indicates that the design was based upon the conceptual improvements plus 500 square feet, and the storm water management design shall be revised to be consistent with Note 8.

- w. Due to the fact that runoff from the rear yards of Lots 55.07 through 55.10 will drain through a common swale from Lot 55.10 toward the open space behind Lot 55.07, a 15 foot wide drainage easement for the benefit of the homeowners' association and the Township is required among these properties over the swale and adjacent landscape berm. It shall among other things require the owners to maintain the area in accordance with the original construction, prevent any modifications to the grading of the areas, prevent installation of any permanent improvements, including fencing, unless an opening is provided at the bottom of the fencing so that flow is not obstructed, and give the Township the right, but not the obligation, to enter into the area as required from time to time for inspections and maintenance, with any costs for same to become a lien against the owners. A similar easement area shall be provided along the rear yards of Lots 55.01 through Lot 55.06. Eight drainage easement instruments consistent with these easement areas shall be subject to the review and approval of the Board Attorney and Township Engineer.
- x. The maintenance of the proposed riprap, basin, swales, and all other storm water management elements on proposed Lot 55.12 shall be the responsibility of the homeowners' association.
- y. Infiltration basins on proposed Lots 55.01 and 55.10 are located on privately-owned lots. Section 7:8-5.8(c) of the State Storm Water Regulations prohibits assigning the responsibility for the maintenance of the development's storm water BMPs to any individual owners. Therefore, even the storm water management facilities on private lots shall be maintained by the homeowners' association. Drainage easement areas shown on the plans shall include the obligation and responsibility and the right of access by the homeowners for maintenance and the Township for emergency repairs if the HOA is not responsive. Such shall be included in the easement instruments, which shall be subject to the review and approval of the Board attorney.

Utilities

- z. The proposed sanitary sewer connection into the municipal collection system is to be made at the existing manhole located within the Bear Brook Road right-of-way. A request for sewer capacity reservation shall be submitted to the Township Engineer for Township Council action. The projected flow is below the amount that triggers an NJDEP Treatment Works Approval.

Other

- aa. The privacy fences to be installed along the frontage shall be the third from the top on Exhibit A-3 and shall be almond colored.
- bb. The roadway, if the offer of dedication for the roadway is not accepted by the Township, shall be the responsibility of the homeowners' association.
- cc. The homeowners' association documents shall be subject to the review and approval of the Board attorney.
- dd. A deed notice shall be provided to all purchasers of the units that organic farming is being undertaken on the Delman property. It shall also refer to the ordinance provision requiring the signing of a form with respect to land uses in the area and must state that the buyers must go to the Municipal Building to review the surrounding land uses and sign a form certifying that they have done so. The deed notice shall also state that the Delman property is a farm and is protected by the New Jersey Right to Farm Act. This would include equipment transport and use; daily and seasonal worker presence; day and night activity; worker lodging; product processing and sales; and educational and promotional activities.
- ee. The New Jersey Flood Hazard Regulations have recently changed allowing owners to request a permit for expansions. A deed notice for the lots whose rear yards are in the flood hazard area shall so indicate, and the plans shall detail what would be permitted. Before any development in such area occurs, the homeowner must secure a DEP permit.

ff. The applicant shall submit an engineer's construction cost estimate for review. The applicant will be required to post performance guarantees and inspection fees for the public improvements in accordance with the MLUL and the Township ordinance.

gg. PDF copies of the Stormwater Management Report, as well as the Stormwater Maintenance Manual, and all related mapping shall be provided to the Township once they are approved by the Township Engineer.

hh. In accordance with Ordinance section 200-105.1, the applicant shall enter into an agreement with the Township, in a form satisfactory to the Board Attorney, requiring the installation and maintenance by the applicant and the applicant's successors in interest of all such stormwater management improvements proposed by the applicant and approved by the Board for this project. This Developer's Agreement shall also provide that the applicant shall pay its *pro rata* off tract assessment.

ii. All construction details shall be subject to the review and approval of the Township Engineer.

jj. Outside agency approvals will be required. The following are anticipated at this time:

- Mercer County Planning Board
- Mercer County Soil Conservation District
- Delaware and Raritan Canal Commission

kk. The position of the fire department connections that supports the fire sprinkler systems in the townhomes shall be at the front of each building.

ll. The applicant shall limit the number of trees in close proximity to the buildings as they restrict access by the fire department.

mm. The applicant shall execute a land development performance guarantee in a form satisfactory to the Township Council and shall post such performance and maintenance guarantees as are required.

nn. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefore are not current.

oo. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.

pp. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.

qq. An easement acceptable to the Board Attorney shall be recorded for each easement shown on the plat or plan.

rr. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney for recordation.

ss. Any open space dedication shall be accomplished by separate deeds of dedication recorded prior to release of performance bonds.

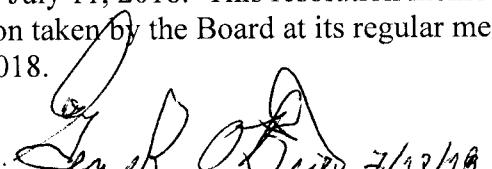
CONCLUSION

Based on the foregoing, the Board at its April 4, 2018 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on July 11, 2018 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be April 4, 2018 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held July 11, 2018. This resolution memorializes formal action taken by the Board at its regular meeting held April 4, 2018.

 7/13/18

Gene R. O'Brien, Chair

 7/13/18

Lisa Komjati, Secretary

Gene O'Brien, Chair – Yea
Michael Karp, Vice-Chair – Absent
Sue Appelget – Yea
Linda Geevers – Yea
Curtis Hoberman – Yea
Michael Huey – Yea
Andrea Mandel – Yea
Hemant Marathe – Yea
Simon Pankove – Absent
Allen Schectel, Alternate I – Absent
Anis Baig, Alternative II – Absent

Appendix D-17: Resolution re: Reserve at West Windsor

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
Toll Bros., Inc. <u>for Preliminary and Final</u>	)	CONCLUSIONS OF LAW
)	
<u>Major Site Plan Approval for The</u>	)	File No. PB 21-02
	)	Block 37, Lots 6 and 7
<u>Reserve with Waivers</u>	)	Approval granted:
		December 8, 2021

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on December 8, 2021 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site"), consisting of approximately 45.40 acres on Block 37, Lots 6 and 7, is located in the easterly portion of the Township, at the intersection of Dorchester Drive and Old Trenton Road, in the Residential Retirement Community (RRC) district. It is irregular in shape and fronts along Dorchester Drive and Old Trenton Road.

2. Identified as qualified farmland, the Site is being actively farmed. It is undeveloped, consisting of some wooded and open space. Several environmental constraints exist in the southwesterly portion: Bear Brook, a Federal Emergency Management Agency (FEMA) 100-year flood line, a New Jersey flood hazard area, a 100-foot Delaware and Raritan (D&R) Canal buffer, a riparian area, and wetlands and associated buffers. The Site also contains a portion of the Township's Greenbelt. A sanitary sewer easement is located along Old Trenton Road and a private drainage easement is located near the southeasterly portion of the property.

3. Surrounding land uses consist of The Elements, an age-restricted residential development to the west and north; the Princeton Arms multifamily development in East Windsor to the east and the Village Grande at Bear Creek, an age-restricted development to the south.

PROPOSED PLAN

Townhouses and Clubhouse

4. The Applicant proposes to construct an age-restricted townhouse and stacked-townhouse development consisting of 88 for-sale units, of which 22 are to be affordable, including very-low-, low- and moderate-income units. The units will be distributed among 20 buildings.

5. The proposed market-rate units, with gross floor areas of 2,000 to 2,400 s.f. (56 feet by 30 feet) will have three bedrooms. The proposed affordable units, with gross floor areas of 1,100 to 1,200 s.f. will have two bedrooms. The townhouses will primarily be located in the northerly portion of the Site. A clubhouse with a pool is proposed near the easterly corner of the Site.

6. The affordable units will be incorporated within specified townhouse buildings as stacked flats with two such affordable units occupying the footprint for what would otherwise be a market rate townhouse building.

Access, Internal Circulation and Parking

7. Primary access to the development is to be provided via a full movement boulevard entrance from Dorchester Drive. Secondary right-in and right-out movement only access is to be provided onto Old Trenton Road. As part of the new access, Old Trenton Road will be widened the entire length of the frontage. An easement will be provided in the northeast corner of the Site to provide emergency access from Dorchester Drive to the interior roadway.

8. Several 24 ft-wide roads will provide circulation throughout the development, and non-parallel parking is to be provided in groups of parking stalls located throughout the development. Sidewalks will be provided on both sides of the internal streets.

9. A total of 334 parking spaces are proposed for the development. The following parking provisions are proposed:

- 66 dual garage/dual driveway townhome units: 3.5 spaces per unit, or 231 spaces;
- 11 single garage/single driveway affordable units: 2 spaces per unit, or 22 spaces
- 11 single driveway/no garage affordable units: 1 space per unit, or 11 spaces
- 11 designated off-street parking spaces for the 11 affordable units that do not have garages, or 11 spaces
- Guest parking for the units will be provided at 0.5 space per unit, or 45 spaces

- Clubhouse: 14 spaces

10. Each unit will be prewired with wiring, junction box, breaker, and blank plate to allow for a receptacle/outlet for electric vehicle charging. The decision to install the receptacle/outlet will be left to the home buyers.

Landscaping, Lighting and Signs

11. Landscaping is to be provided throughout the development and at the Site's perimeter, including extensive landscaping and buffering along Old Trenton Road with a winding sidewalk to mirror the sidewalks on the opposite side of the roadway. Landscaping is also proposed along Dorchester Drive to complement the main entrance. An internal mulch path with benches and bird boxes will run through the project and around the storm water management pond.

12. The Greenbelt portion of the Site will be preserved through a conservation easement in accordance with Section 200-194.2C(d), which requires that the Greenbelt as designated on the Conservation Element of the Master Plan should not be disturbed.

13. Lighting will be provided at parking bays located throughout the community.

14. Two monument signs, 18 ft by 6 ft, are proposed, one at each entrance.

Storm water Management

15. Six rain gardens are to be installed throughout the Site, and a storm water pond that will discharge directly into the Bear Brook basin will be located near the westerly corner of the Site. The pond will serve as an aesthetic feature and also be lined to be maintained as a permanent pool with safety ledges and an aerator fountain to prevent stagnation.

Water and Sewer Service

16. Water service will be provided by the New Jersey American Water main, which will be extended from the intersection of Old Trenton Road and Dorchester Drive to the new boulevard entrance and serve as the primary connection. A secondary connection to the main will occur at the Old Trenton Road entrance, creating a looped system.

17. Sanitary sewer service will be connected to the existing Township main that extends within an easement on the property along the Old Trenton Road frontage. Although the property has a sewer main running through it, the property itself is not currently located in the Sewer Service Area of the Stony Brook Regional Sewerage Authority. Thus, the Applicant has, with the Township's consent, applied to the NJDEP and County for the Site to be included in the Sewer Service Area.

Other

18. In accordance with Section 200-194.2B(2), permanent residents of the development will be restricted to 55 years and older, subject to exceptions for younger partners of residents and caregivers.

19. The development is to be completed in two phases. Phase 1 will comprise 12 buildings containing 56 units, including 18 affordable units, the clubhouse and pool, rain gardens, retention basin and most of the trails. Phase 2 will cover the remaining eight residential buildings containing 32 units, including four affordable units.

20. Lot 6 is a small triangular parcel consisting of approximately .22 acres at the extreme southerly portion of the Site. The Applicant agreed, as a condition of approval, to consolidate Lots 6 and 7.

21. The development is a permitted use in the RRC District.

RELIEF SOUGHT

22. The applicant seeks preliminary and final major site plan approval for the construction of the project. Nine waivers are sought, three design waivers and six submission waivers, as follows:

Design waivers

- From Section 200-91P(4)(a)[1], requiring a reforestation or alternative concept for storm water detention areas, whereas no such concept is being proposed;

- From Section 100-36.1, requiring pervious surfaces to be provided in areas other than drives and parking areas, whereas the Applicant is proposing impervious surfaces outside of such driving and parking areas; and
- From Section 200-28D(2)(b), requiring a waiver to exceed the minimum off-street parking and loading requirements.

Submission waivers

Site Plan Checklist

- From Section 200-11A, which requires the name of the president and secretary to be listed for the landowner and applicant, whereas the information was only provided for the applicant;
- From Section 200-13C(9), which requires wetlands location to be depicted with metes and bounds, whereas such information is not being provided on the plans;
- From Section 200-14C(1)(a), which requires a copy of the preliminary site plan approval resolution, whereas no such resolution is being provided;
- From Section 200-14C(1)(b)[1], which requires construction details to be included with final plans for site development, whereas no such details are being provided;
- From Section 200-14C(1)(b)[5], which requires a Final Landscape Plan, whereas such plan is not being provided; and
- From Section 200-14C(1)(b)[6], which requires a Traffic Signage Plan, whereas such plan is not being provided.

23. No variance relief is requested.

THE APPLICANT

24. The Applicant is Toll Bros., Inc.. The owner of the Site is PAK SC, LLC.

NOTICE AND HEARING

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

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

27. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for December 8, 2021. The hearing was had on that date.

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

PLANS PRESENTED

29. At the hearing, the Board reviewed the following plans:

- Plans entitled “Preliminary and Final Major Site Plan – Preserve at West Windsor – Block 37, Lot 6 and 7 - Township of West Windsor, Mercer County, New Jersey” prepared by ESE Consultants (Andrew J. Grover, PE), dated April 16, 2021, revised through September 8, 2021, consisting of forty (40) sheets
- Plan entitled “Existing Features Plan – Hilton West Windsor - Block 37, Lot 6 & 7 – West Windsor Township, Mercer County, New Jersey” prepared by ESE Consultants (Eric A. Fusco, PLS), dated February 15, 2021, unrevised, consisting of four (4) sheets
- Plan entitled “Plan of Survey for Block 37, Lot 6 & 7 – West Windsor Township, Mercer County, New Jersey” prepared by ESE Consultants (Eric A. Fusco, PLS), dated January 8, 2021, unrevised, consisting of one (1) sheet
- Plan set entitled “Vehicle Maneuverability - Hilton West Windsor – Block 37, Lot 6 and 7 - Township of West Windsor, Mercer County, New Jersey” prepared by ESE Consultants (Andrew J. Grover, PE), consisting of three sheets: Sheet 1 “Fire Truck” dated April 16, 2021, revised through September 8, 2021; Sheet 2 “Garbage Truck” dated July 9, 2021, revised through September 8, 2021; and Sheet 3 “WB50” dated July 9, 2021, revised through September 8, 2021
- Plan entitled “Active Recreational Open Space Exhibit- Hilton West Windsor – Block 37, Lot 6 and 7 - Township of West Windsor, Mercer County, New Jersey” prepared by ESE Consultants (Andrew J. Grover, PE), dated July 9, 2021, revised through September 8, 2021
- Architectural Floor Plans and Elevation Renderings for the 2,200 square-foot Clubhouse, prepared by Sonnenfeld + Trocchia Architects, P.A., undated. West

Windsor Township Planning Board Hilton West Windsor – P/F Site Plan (Reserve @ West Windsor) October 7, 2021

- Set of 11"x17" floor plans for the various townhome units, labeled "draft", dated August 27, 2021, consisting of eight (8) pages
- Report entitled "Stormwater Management Report for Preserve at West Windsor – Block 37, Lot 6 and 7 – (Tax Map Sheets 28.04 & 34.02) - Township of West Windsor, Mercer County, New Jersey" prepared by ESE Consultants (Andrew J. Grover, PE), dated April 16, 2021, revised through September 8, 2021
- Document entitled "Stormwater Management Facilities Operation and Maintenance Manual for Hilton West Windsor Property – Block 37, Lot 6 and 7 – (Tax Map Sheets 28.04 & 34.02) - Township of West Windsor, Mercer County, New Jersey" prepared by ESE Consultants (Andrew J. Grover, PE), dated July 9, 2021, unrevised
- Report entitled "Environmental Impact Statement - Hilton West Windsor Project (TBI #4081) – Block 37, Lot 6 & 7 - West Windsor Township, Mercer County, NJ" prepared by ESE Consultants, Inc., unattributed, dated April 20, 2021, unrevised
- Report entitled "Traffic Impact Study for Hilton West Windsor – Block 37, Lot 6 & 7 – West Windsor Township, Mercer County, New Jersey" prepared by Langan (Karl A. Pehnke, P.E., P.T.O.E., and Eric J. Viloria, P.E.), dated April 9, 2021, unrevised
- Plan entitled "Map of Wetland Locations - Block 37, Lot 6 & 7 – Hilton West Windsor – West Windsor Township, Mercer County, New Jersey" prepared by ESE Consultants (Eric A. Fusco, PLS), dated November 25, 2019, revised through February 19, 2020, consisting of one (1) sheet
- Document referenced "Freshwater Wetlands Letter of Interpretation: Line Verification" dated March 5, 2020, issued by the New Jersey Department of Environmental Protection ("NJDEP")
- Development Application Package

TOWNSHIP REPORTS

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

- Memorandum from David Novak, P.P., A.I.C.P. to the Board dated October 5, 2021
- Memorandum from Francis A. Guzik, P.E. to the Board dated October 7, 2021
- Memorandum from Jeffrey L' Amoreaux, P.E. to the Board dated October 6, 2021
- Memorandum from Dan Dobromilsky, L.L.A., to the Board dated October 6, 2021
- Memorandum from Christopher B. Jepson, P.E. to the Board dated October 5, 2021
- Memorandum from Timothy M. Lynch, West Windsor Township Fire & Emergency Services to the Board dated December 7, 2021
- Memorandum from West Windsor Affordable Housing Committee to West Windsor Technical Review Committee dated October 6, 2021

EXHIBITS

31. At the hearing, the Board considered the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Thirteen (13) page/slide booklet

TESTIMONY AND PUBLIC INPUT

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

Richard J. Hoff, Jr., Esq. represented the Applicant. Jim Majewski, Senior Vice President of the Applicant, Jay Kruse, P.E., its civil engineer, Jeremy Greene, A.I.A., its architect, and Karl A. Pehnke, P.E., its traffic engineer, testified on the Applicant's behalf.

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

Dan Dobromilsky, L.L.A., David Novak, P.P., Chris Jepson, P.E., John Taylor, P.E., Samuel Surtees, Land Use Manager, Jeffrey L'Amoreaux, P.E., and Gerald J. Muller, Esq.

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

- Alison Miller of 41 Windsor Drive commented on the need for window treatment for storage space in the affordable units, where the windows face the street, and for wiring for receptacles/outlets for EV charging.
- Newell Benedict asked how the sidewalk on Old Trenton Road could connect to that in The Village Grande.
- David Hofman asked how the chipped paths could handle wheelchairs and walkers.

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

35. The proposed project conforms to the bulk standards of the Residential Retirement Community District, adopted in November 2020, the purpose of which is to provide additional housing opportunities for elderly populations that have increased in West Windsor and regionally over the past few decades. The project also reserves 25% of the units for low- and moderate-income households, in accordance with the Ordinance, providing a significant contribution towards satisfying West Windsor's affordable housing obligations.

36. The Board finds that the proposed plans meet the comprehensive site plan requirements for the RRC District, including the provision of active recreational open space and facilities for the exclusive use of its residents, such as the clubhouse and pool and walking trails. The development also meets the Residential Site Improvement Standards with respect to roads, parking, and storm water management. Although the proposed parking exceeds the RSIS requirement, a paradoxical situation arises when the number of proposed parking spaces exceeds the Township ordinance standards, since this requires a waiver from the Ordinance in such instance. This is address in paragraph 40c below.

37. The Applicant presented testimony regarding the sufficiency of the existing roadway network to accommodate the traffic demands expected to result from the project. As noted by Mr. Pehnke, the Applicant's traffic expert, a senior living community such as the one proposed is expected to generate only modest traffic, and the access design and parking layout will ensure efficient access and on-site circulation.

38. Although the Site has several environmentally sensitive features, as described above, the development is concentrated in the north east of the Site away from those areas, such as the Greenbelt portion located in the southern part of the Site, for which a conservation easement will be established. Wetlands and associated buffers on the Site have been delineated by the NJDEP, which issued a Letter of Interpretation (LOI) on March 5, 2020, and the project complies with the limits of the LOI. The Board finds that the proposed development will not adversely impact the environment. The Board also finds that the storm water management design complies with the new NJDEP standards.

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

FINDINGS AND CONCLUSIONS RE: WAIVERS

40. The application necessitates nine waivers, consisting of three design waivers and six submission waivers. The waivers and Board's action on them are as follows:

Design waivers

a. Waiver. From Section 200-91P(4)(a)[1], requiring a reforestation or alternative concept for storm water detention areas, whereas no such concept is being proposed.

Waiver granted. The proposed development offers several storm water quality and recharge control measures through small scale Best Management Practices in accordance with the new NJDEP Storm Water regulations. These consist of the small-scale bio-retention areas in the form of rain gardens and a larger-scale BMP wet pond. These elements will provide both storm water quality and recharge controls and aesthetic features throughout the development. The Board finds that these elements provide an adequate alternative concept for storm water management on the Site and address the intent of the code standards to develop an aesthetic and environmentally functional landscape for these areas. Literal enforcement of this requirement is not required when an acceptable alternative design is proposed. For the foregoing reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the Ordinance, which is to provide sensitively designed basins and swales that can benefit the health, welfare and safety of West Windsor Township residents. This waiver is therefore granted.

b. Waiver. From Section 100-36.1, requiring pervious surfaces to be provided in areas other than drives and parking areas, whereas the Applicant is proposing impervious surfaces for the sidewalks and patio around the pool.

Waiver granted. The proposed green infrastructure elements of the development counterbalance the impervious elements and lessen the need for non-parking and drive aisle surfaces to be pervious as well. The Board finds that literal enforcement of the Ordinance provision would work an undue hardship on the Applicant. For the foregoing reasons, this waiver request is reasonable and within the general purpose and intent of the Ordinance, which is to encourage pervious surfaces in development. Accordingly, this waiver is granted.

c. Waiver. From Section 200-28D(2)(b), requiring a waiver to exceed the minimum off-street parking and loading requirements where the applicant demonstrates that the additional parking facilities are necessary for the actual operation of a proposed use. The number of required parking spaces is 213 whereas 334 are being proposed.

Waiver granted. The Board finds that the number and proposed location of the excess parking spaces are acceptable and that permitting no more than 213 spaces would work

undue hardship on the Applicant because it demonstrated that more parking spaces than the 213 required for the operation of the proposed use.

It is noted that a minimum of 257 parking spaces are required under the RSIS, which the proposed parking also exceeds. Most of the excess spaces under the RSIS standards is attributable to a quirk in the RSIS methodology. It requires 2.4 spaces for a three bedroom unit, while crediting 3.5 spaces for units with two garages and driveways. This results in 73 more spaces $((3.5 - 2.4) \times 66)$ than RSIS requires. If the 334 proposed is reduced by the 73, the result is 261 spaces, only four more than the 257 RSIS requires.

The Board finds that literal enforcement of the Ordinance provision would work an undue hardship on the Applicant. This waiver request is reasonable and within the general purpose and intent of the Ordinance, which is to provide an adequate amount of parking spaces. This waiver is therefore granted.

Submission waivers

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

Site Plan checklist

<p>1 <u>Waiver</u>: From Section 200-11A, which requires the name of the president and secretary to be listed for the landowner and applicant, whereas the information was only provided for the applicant.</p> <p>2 <u>Waiver</u>: From Section 200-13C(9), which requires wetlands location to be depicted with metes and bounds, whereas such information is not being provided on the plans.</p>	<p><u>Waiver granted</u>. The property owner consists of only a single managing member, which is listed.</p> <p><u>Temporary waiver granted</u>. The wetlands location plan has been provided, and a digital copy will be provided.</p>
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3 Waiver: From Section 200-14C(1)(a), which requires a copy of the preliminary site plan approval resolution, whereas no such resolution is being provided.

4 Waiver: From Section 200-14C(1)(b)[1], which requires construction details to be included with final plans for site development, whereas no such details are being provided.

5 Waiver: From Section 200-14C(1)(b)[5], which requires a Final Landscape Plan, whereas such plan is not being provided.

6 Waiver: From Section 200-14C(1)(b)[6], which requires a Traffic Signage Plan, whereas such plan is not being provided.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

CONDITIONS REQUIRED

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

Site plan

- a. The Site Plan presented as Exhibit A-1 shall be implemented, except for any inconsistent plans or conditions.
- b. The plan shall identify the trails/drives that have been worn into the woods in the area where the picnic tables, grills, and dog park are located and whether they have been used to dump soil or other materials as the topographic contours suggest. The Applicant shall remove dumped and stockpiled materials and fully restore the area. The picnic tables, grills and

dog park may be retained if the Applicant can demonstrate to the staff's satisfaction that retaining them would benefit the proposed development.

c. The Applicant shall replace the entire length of sidewalk abutting the Site on Dorchester Drive. Its representatives shall walk the area with Township Engineering staff and replace the damaged curb.

d. The pedestrian curb ramps at the intersection of Old Trenton Road with Dorchester Drive shall be reconstructed. This reconstruction work shall be designed and presented on the plans and provided to Mercer County for approval.

e. Detailed (10-scale minimum) grading designs of all proposed accessible ramps and routes shall be provided.

f. The final construction plan for the recreation center shall be submitted to the Township Engineer and Landscape Architect for review and approval, in concert with building code permit review.

Landscaping & Environmental

g. The Applicant shall obtain a Freshwater Wetlands General Permit #11.

h. Monumentation along the Greenbelt limits using the Township standard detail shall be provided.

i. Flood Hazard Area Verification and an Individual Permit shall be obtained from NJDEP.

j. Subject to the review and approval of the Board Attorney and the Landscape Architect, the Applicant shall establish a conservation easement in favor of the Township with respect to the Greenbelt portion of the Site. It shall also establish a conservation easement in favor of the State.

k. Landscape management/maintenance specifications, subject to the review and approval of the Township Landscape Architect, shall be developed for all areas to be dedicated to the Homeowners' Association.

l. For all areas that will not be developed that are not presently wooded, the Applicant shall, pursuant to Section 200-91P(5)(a)[1-5], implement a naturalization and reforestation program through a combination of wildflower seeding and planting of small native trees. Such plan shall be subject to the review and approval of the Landscape Architect. The Applicant shall not be required to pay more than \$150,000.00 on such program.

m. The Applicant shall remove debris along the easterly border of the property that abuts the existing residential development known as Princeton Arms.

Traffic, circulation, and parking

n. The Applicant shall provide a Title 39 Enforcement Plan and shall request Council action in connection with the same.

Storm water management

o. The Applicant shall address the following technical comments on the storm water calculations and proposed BMPs:

- The Applicant shall provide additional drainage area map(s) showing the individual drainage areas to each inlet and also to each BMP, including area (in acres), cover conditions and TC path.
- Each of the times of concentration shall be calculated rather than using assumed minimum times, in accordance with the new storm water management rules, which do not permit assumed minimum time of concentration.
- Sheet flow lengths in disturbed areas shall be calculated using the McCuen-Spiess criteria per the May 2010 update of Chapter 15 of the National Engineering Handbook. This same document also provides a revised velocity calculation for shallow concentrated flow that must also be used.
- A groundwater mounding analysis shall be provided for each rain garden BMP, both to assess potential impacts on adjacent basements, as well as any permeability rate/drain time impacts to each BMP. The Hantush spreadsheet for each rain garden has been provided, but the actual analysis of any impacts on adjacent basements, or the measured permeability rates at each rain garden has not.

- In order for the retention basin to be considered green infrastructure (for water quantity management only), the Applicant shall demonstrate that it complies with the design requirements of Chapter 10.5 of the BMP Manual, including the provision for “beneficial reuse.” In the water quantity management section of the report, each design requirement of the BMP Manual must be identified, with a subsequent detailed explanation of how it is being addressed by this project.
- The design requirements and compliance for each rain garden BMP shall be provided in the “Water Quality” section of the SWM Report. It shall be provided in a tabular format identifying the BMP by number, its total tributary land area, the total water quality design storm runoff volume, the total storage volume below the lowest outlet elevation and the design permeability rate.
- For the “Storm Sewer Tabulation,” the Applicant shall provide a graphical depiction of what lines are associated with which drainage structures, as the “Line ID” numbering on the spreadsheet printouts in Appendix L does not correlate with the drainage structure numbering on the plans.
- The Applicant shall provide a tabulation on the Grading Plans indicating the estimated seasonal high groundwater table elevation based on soil logs at each proposed building, compared to each building’s lowest basement floor elevation. It shall provide a sump pump collection system for each building where separation is less than 2 feet, connected to the on-site storm water drainage system.
- The Applicant shall provide an analysis of site grading and on-site collection system during the 100-year design storm to demonstrate runoff will reach the stormwater management BMPs and not overflow into Bear Brook or other bypass area.

p. The Township Engineer’s comments to the Applicant’s Stormwater BMP Operation and Maintenance Manual shall be addressed, and the Manual shall be subject to his review and approval.

q. The Applicant shall enter into an agreement with the Township, in form satisfactory to the Planning Board Attorney, requiring the installation and maintenance by the Applicant and the Applicant's successors-in-interest of all proposed storm water management improvements for the project approved by the Board. A deed notice shall be prepared and filed with respect to the storm water management measures, in accordance with §200-101.M.

Utilities

r. The Applicant shall reimburse the Township/developer its pro-rata share of the up-front implementation costs of upgrades to the Southfield Road Pump Station wastewater service area. The cost to the Applicant will be based on total sewer demand. This condition shall be addressed in a Developer's Agreement that the Applicant shall be required to enter into with the Township.

s. The Applicant shall obtain a Treatment Works approval by NJDEP and shall apply for the necessary sewer demand allocation from the West Windsor Township Council.

t. Potable water service shall be provided by NJ American Water. Fire hydrant spacing and locations are subject to the review and approval of the Director of Fire and Emergency Services.

Lighting

u. The Applicant shall provide tabular calculations of lighting intensities per the requirements of Ordinance Section 200-31K, specifically for the clubhouse parking lot and for the intersections of internal roadways with County and Township roadways.

v. The lighting design shall be fully compliant.

Affordable housing

w. The basements of the affordable units shall have windows.

x. The affordable unit parking spaces shall be marked "Reserved" with above-ground posts. Details thereof shall be subject to review and approval of the Township Engineer.

Other

y. Each unit shall be prewired with wiring, junction box, breaker and blank plate to allow for a receptacle/outlet for electric vehicle charging without a separate charge to the purchasers.

z. Lofts shall not be used as bedrooms. Their front walls shall be at least one-half wall and/or rails. The Homeowners' Association documents shall include a restriction to this effect.

aa. Windows in storage areas, closets, and unfinished spaces shall have a film placed thereon to darken them.

bb. The Homeowners' Association documents shall be subject to the review and approval of the Board Attorney.

cc. Storage rooms and basements may not be used as bedrooms. Deed restrictions, subject to the review and approval of the Board Attorney, shall be required establishing the same.

dd. Electronic (AutoCAD) copies of wetland areas metes and bounds shall be provided.

ee. The location of the mailboxes shall be subject to U.S. Post Office approval.

ff. Proposed street names and unit identification and numbering may be proposed by the Applicant but shall be subject to the review and approval of the Township Engineer, in concert with Police, emergency services and the U.S. Post Office. The proposed names on the submitted plans shall be revised.

gg. Lot 6 shall be consolidated with Lot 7, and the Applicant shall file a deed of such consolidation, upon review and approval of the instrument by the Board Attorney.

hh. If a full kitchen is installed in the clubhouse, the Applicant shall provide a grease trap.

ii. Inlet #27 is identified as a Type E inlet with two 15" pipes and a 36" pipe entering in and a 42" pipe exiting. The 42" reinforced concrete pipe has an outer diameter (51") that is larger than the larger interior dimension of the E inlet (48"). A Double-E or custom structure shall be required instead, and appropriate details for same provided.

jj. The Applicant shall provide metes and bounds for the proposed private roads on the Site Layout and Dimension Plan or a supplement thereto.

kk. Locations of the storm water BMPs shall be in NAD 1983 State Plane New Jersey FIPS 2900 US Feet or Latitude and Longitude in decimal degrees.

ll. The Applicant shall provide two separate engineer's estimates of probable construction costs, one to include all site improvements for the purpose of establishing the required construction inspection escrow fees, the other to be used for the purpose of establishing the required performance guarantee amounts. The latter is to consist solely of those improvements in the public rights-of-way, or improvements ultimately to be dedicated to a public entity, as well as the proposed buffer landscaping and berthing.

mm. In accordance with Ordinance Section 200-81.1, the Applicant shall provide, via both hard copy and electronic format, approved site plans being submitted for signature and as-built surveys upon project completion. The electronic submission of the approved Storm Water Management documents shall also be provided.

nn. The Applicant shall provide to the Township Engineer for review and approval metes and bounds descriptions for each proposed dedication and easement. Deeds and easement instruments shall be subject to the review and approval of the Board Attorney.

oo. All construction details shall be subject to the review and approval of the Township Engineer.

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

- Mercer County Planning Board
- Mercer County Soil Conservation District
- Delaware and Raritan Canal Commission
- NJDEP (TWA Permit, WWMP Amendment, FWW GP, FHA Verification and Individual Permit)

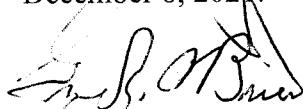
CONCLUSION

Based on the foregoing, the Board at its December 8, 2021 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

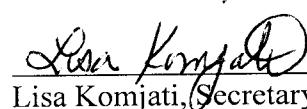
This resolution of memorialization was adopted on January 12, 2022 by a vote of those who voted to grant the relief sought by the applicant.

The date of decision shall be December 8, 2021 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on January 12, 2022. This resolution memorializes formal action taken by the Board at its regular meeting held December 8, 2021.

 1/12/22

Gene R. O'Brien, Chair

 1/18/22

Lisa Komjati, Secretary

Gene O'Brien, Chair – Yea
Michael Karp, Vice Chair – Yea
Sue Appelget – Absent
Anis Baig – Yea
Linda Geevers – Yea
Curtis Hoberman – Yea
Hemant Marathe – Yea
Simon Pankove – Yea
Allen Schechtel – Yea
Jyotika Bahree, Alternate II – Absent
Saju Joseph, Alternate II – Absent

Appendix D-18: Hamlet Deed Restrictions

Record and Return to:

Gerald J. Muller, Esq.

Muller & Baillie, P.C.

707 State Road, Suite 212, Princeton, New Jersey

Princeton, New Jersey 08540, Bd. Bldg. 1, Blk. 13

West Windsor, NJ 08550

Prepared By:

Gerald J. Muller
Gerald J. Muller, Esq.

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

DEED RESTRICTION

DEED-RESTRICTED AFFORDABLE HOUSING PROPERTY WITH RESTRICTIONS ON RESALE AND REFINANCING

ts

THIS DEED RESTRICTION is made on Jan. 15, 2024, (this "Restriction"), by and between, **FRANK PIAZZA**, the administrative agent ("Administrative Agent"), or its successor, acting on behalf of **TOWNSHIP OF WEST WINDSOR**, a municipal corporation of the State of New Jersey with offices at 271 Clarksville Road, West Windsor Township, Mercer County, New Jersey (the "Municipality") and **Tesoro Enterprises I, LLC** a New Jersey limited liability company, whose address is 507 Crescent Parkway, Sea Girt, New Jersey 08750, the owner ("Owner") of a residential low or moderate income age-restricted rental project, commonly referred to as "The Hamlet at Bear Creek."

WITNESSETH

Article 1.

Consideration

The Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction with respect to the land and improvements more specifically described in Article 2 hereof (the Property).

Article 2.

Description of Property

The Property consists of 61 low- and moderate-income age-restricted affordable housing units located on the real property with an address of Hamlet Drive, designated as Block 33, Lot 1.01 in the Township of West Windsor, County of Mercer, State of New Jersey, as more fully set forth in Schedule A attached hereto and incorporated herein.

Article 3.

Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period") commencing upon the execution of this Deed Restriction and running for a minimum of 30 years plus the remainder of the prior control period, which was for 30 years commencing on November 13, 2002 and ending upon the execution of this Deed Restriction, and terminating upon a determination by Township Council to release this restriction for some or all of the units. This release authority shall apply separately to each unit.

- A. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this Deed Restriction for a period of at least 30 years;
- B. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (*N.J.A.C. 5:80-26.1, et seq*, the "Uniform Controls").
- C. The Property shall be used solely for the purpose of providing age-restricted rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful unless approved in advance and in writing by the Administrative Agent.
- D. Any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
- E. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five business days of service upon Owner.
- F. The Owner shall notify the Administrative Agent and the Municipality within three business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Owner, or any successor in interest or other owner of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

OWNER:

Tesoro I, LLC

By: Gayle S. Hoffman
Name: Gayle S. Hoffman
Title: OWNER / MANAGER

STATE OF : New Jersey

SS:

COUNTY OF Middlesex :

I CERTIFY that on this 23rd day of April, 2024, before me the subscriber, personally appeared Gayle S. Hoffman, Owner/Manager of Tesoro I, LLC, who I am satisfied, is the person named in and who executed the Deed Restriction, and thereupon he/she acknowledged that he/she signed, sealed and delivered the attached as his/her voluntary act and deed on behalf of said corporation for the uses and purposes therein expressed.

E. Wade

Notary Public

EILEEN WADE
Notary Public, State of New Jersey
Comm. # 2443759
My Commission Expires 3/17/2029

Appendix D-19: Mandatory Affordable Housing Set-Aside Ordinance

**TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY**

1st Reading March 4, 2019*
 2nd Reading & Public Hearing March 18, 2019
 Date Adopted March 18, 2019
 Date Effective April 8, 2019
 DOT APPROVAL RECEIVED _____

Date to Mayor March 19, 2019
 Date Signed March 19, 2019
 Date Resubmitted to Council _____
 Approved as to Form and Legality Hemant Marathe
 Township Attorney

ORDINANCE 2019 – 11

**TOWNSHIP OF WEST WINDSOR
MERCER COUNTY, NEW JERSEY**

ORDINANCE AMENDING CHAPTER 200 'LAND USE', ARTICLE XXIII 'HOUSING TRUST FUND' OF THE CODE OF WEST WINDSOR TOWNSHIP REGARDING THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
GEEVERS	✓					✓	GEEVERS				✓		
HAMILTON	✓						HAMILTON	✓					
MANZARI	✓				✓		MANZARI	✓				✓	
MILLER	✓						MILLER	✓					✓
ZHANG	✓						ZHANG				✓		

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

Rejected

Approved Hemant Marathe
 Hemant Marathe, Mayor

March 19, 2019
 Date

Reconsidered by Council _____

Override Vote: YES _____ NO _____

Gay M. Huber
 Gay M. Huber, Township Clerk

* Sent to Planning Board for review on March 5, 2019

** Planning Board March 13, 2019 Amended and returned to Council

ORDINANCE 2019 – 11

TOWNSHIP OF WEST WINDSOR
MERCER COUNTY, NEW JERSEY

ORDINANCE AMENDING CHAPTER 200 ‘LAND USE’, ARTICLE XXIII ‘HOUSING TRUST FUND’ OF THE CODE OF WEST WINDSOR TOWNSHIP REGARDING THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

WHEREAS, in Holmdel Builder’s Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans, and municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain fees collected from non-residential and residential development; and

WHEREAS, the Township of West Windsor has prepared a Spending Plan to submit to Hon. Mary Jacobson, in connection with its pending declaratory judgment action concerning the Township’s affordable housing obligations, which incorporates the residential and non-residential development fees set forth in this Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, that the Code of West Windsor Township, Chapter 200 ‘Land Use’, Article XXIII ‘Housing Trust Fund’, shall be amended as follows:

SECTION 1. Chapter 200 of the Township Code, entitled “Land Use,” Article XXIII, entitled “Housing Trust Fund,” is hereby deleted in its entirety and replaced to read as follows:

Article XXIII. Affordable Housing Trust Fund

- §200-122** **Purpose.**
- §200-123** **Court approval required.**
- §200-124** **Definitions.**
- §200-125** **Residential development fees.**
- §200-126** **Non-residential development fees.**
- §200-127** **Collection procedures.**
- §200-128** **Affordable Housing Trust Fund.**
- §200-129** **Use of funds.**

§200-130 Monitoring.
§200-131 Ongoing collection of fees.

§200-122. Purpose.

This Article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Article shall be used for the purpose of providing very-low, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

§200-123. Court approval required.

- A. This Article shall not be effective unless and until approved by the Superior Court in connection with the Township of West Windsor's declaratory judgment action concerning its Third Round affordable housing obligations.
- B. The Township of West Windsor shall not spend development fees collected pursuant to this Article unless and until the Superior Court has approved a Spending Plan for such fees.

§200-124. Definitions.

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

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipally-sponsored construction project or a 100% affordable housing development.

COAH OR THE COUNCIL

The New Jersey Council on Affordable Housing established under the Fair Housing Act, or any successor agency charged with the administration of the Act.

COURT

The Superior Court of New Jersey, Law Division, Mercer County.

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

DEVELOPER

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

EQUALIZED ASSESSED VALUE

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

GREEN BUILDING STRATEGIES

Strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§200-125. Residential Development Fees.

A. Imposed fees.

- (1) Within all districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- (2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential developments.

- (1) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the Township of West Windsor, shall be exempt from the payment of development fees.

- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (3) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use or, except as provided in Subsection B(4), is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (4) Owners of residential structures that are demolished and replaced as a result of a fire, flood or natural disaster and additions as well as decks shall be exempt from paying a development fee.
- (5) Not-for-profit developers shall be exempt.

§200-126. Non-Residential Development Fees.

A. Imposed fees.

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

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

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

- (2) The fee of 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
- (5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by West Windsor Township as a lien against the real property of the owner.

§200-127. Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Building Permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a Building Permit shall notify the local Tax Assessor of the issuance of the first Building Permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of such notification, the municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

- E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the local Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township of West Windsor fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).
- H. Fifty percent of the development fee shall be collected at the time of issuance of the Building Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at Building Permit and that determined at the issuance of the Certificate of Occupancy. No Certificate of Occupancy shall be issued to the developer until all remaining developer fees have been paid in full.

I. Appeal of development fees.

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

§200-128. Affordable Housing Trust Fund.

- A. There is hereby created a separate, interest-bearing Housing Trust Fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of affordable units;
 - (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recaptured funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with the Township of West Windsor's affordable housing program.
- C. In the event of a failure by the Township of West Windsor to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services ("LGS"), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of West Windsor, or, if not practicable, then within the County.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

§200-129. Use of Funds.

A. The expenditure of all funds shall conform to a Spending Plan approved by the Superior Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address West Windsor Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse West Windsor Township for past housing activities.

C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 4, in which West Windsor is located.

(1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

(2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low income affordability assistance shall be identified and described within the Spending Plan.

- (3) Payments in lieu of constructing affordable housing units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. West Windsor Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- E. No more than 20% of all revenues collected from development fees may be expended on administration, including but not limited to salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
 - (1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
 - (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements.
 - (3) Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or actions are not eligible uses of the Affordable Housing Trust Fund.

§200-130. Monitoring.

West Windsor Township shall provide annual reporting of Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, COAH and Local Government Services or other entity designated by the State of New Jersey, using forms developed for this purpose by the New Jersey Department of Community Affairs, COAH or Local Government Services.

§200-131. Ongoing collection of fees.

- A. The ability of West Windsor Township to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its Judgment of Compliance and shall continue thereafter so long as West Windsor Township has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

- B. If the Township of West Windsor is not pursuing authorization to impose and collect development fees after the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).
- C. After the expiration of the Judgment of Compliance and Repose, if the Township does not pursue or obtain continued authorization, West Windsor Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval, retroactively impose a development fee on such a development, or expend any of its collected development fees.

SECTION II.

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgement shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

SECTION III.

This ordinance shall take effect upon final passage and publication in accordance with the law.

Introduction: March 4, 2019

Sent to Planning Board: March 5, 2019

Planning Board Meeting: March 13, 2019

Public Hearing: March 18, 2019

Adoption: March 18, 2019

Mayor's Approval: March 19, 2019

Effective Date: April 8, 2019

Appendix D-20:
Ordinance 2019-11 re: Affordable
Housing Trust Fund

**TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY**

1st Reading March 4, 2019*
 2nd Reading & Public Hearing March 18, 2019
 Date Adopted March 18, 2019
 Date Effective April 8, 2019
 DOT APPROVAL RECEIVED _____

Date to Mayor March 19, 2019
 Date Signed March 19, 2019
 Date Resubmitted to Council _____
 Approved as to Form and Legality Hemant Marathe
 Township Attorney

ORDINANCE 2019 – 11

**TOWNSHIP OF WEST WINDSOR
MERCER COUNTY, NEW JERSEY**

ORDINANCE AMENDING CHAPTER 200 'LAND USE', ARTICLE XXIII 'HOUSING TRUST FUND' OF THE CODE OF WEST WINDSOR TOWNSHIP REGARDING THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
GEEVERS	✓					✓	GEEVERS				✓		
HAMILTON	✓						HAMILTON	✓					
MANZARI	✓				✓		MANZARI	✓				✓	
MILLER	✓						MILLER	✓					✓
ZHANG	✓						ZHANG				✓		

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

Rejected

Approved Hemant Marathe
 Hemant Marathe, Mayor

March 19, 2019
 Date

Reconsidered by Council _____

Override Vote: YES _____ NO _____

Gay M. Huber
 Gay M. Huber, Township Clerk

* Sent to Planning Board for review on March 5, 2019

** Planning Board March 13, 2019 Amended and returned to Council

ORDINANCE 2019 – 11

TOWNSHIP OF WEST WINDSOR
MERCER COUNTY, NEW JERSEY

ORDINANCE AMENDING CHAPTER 200 ‘LAND USE’, ARTICLE XXIII ‘HOUSING TRUST FUND’ OF THE CODE OF WEST WINDSOR TOWNSHIP REGARDING THE COLLECTION OF DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED BY THE NEW JERSEY FAIR HOUSING ACT

WHEREAS, in Holmdel Builder’s Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans, and municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain fees collected from non-residential and residential development; and

WHEREAS, the Township of West Windsor has prepared a Spending Plan to submit to Hon. Mary Jacobson, in connection with its pending declaratory judgment action concerning the Township’s affordable housing obligations, which incorporates the residential and non-residential development fees set forth in this Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, that the Code of West Windsor Township, Chapter 200 ‘Land Use’, Article XXIII ‘Housing Trust Fund’, shall be amended as follows:

SECTION 1. Chapter 200 of the Township Code, entitled “Land Use,” Article XXIII, entitled “Housing Trust Fund,” is hereby deleted in its entirety and replaced to read as follows:

Article XXIII. Affordable Housing Trust Fund

- §200-122** **Purpose.**
- §200-123** **Court approval required.**
- §200-124** **Definitions.**
- §200-125** **Residential development fees.**
- §200-126** **Non-residential development fees.**
- §200-127** **Collection procedures.**
- §200-128** **Affordable Housing Trust Fund.**
- §200-129** **Use of funds.**

§200-130 Monitoring.
§200-131 Ongoing collection of fees.

§200-122. Purpose.

This Article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Article shall be used for the purpose of providing very-low, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

§200-123. Court approval required.

- A. This Article shall not be effective unless and until approved by the Superior Court in connection with the Township of West Windsor's declaratory judgment action concerning its Third Round affordable housing obligations.
- B. The Township of West Windsor shall not spend development fees collected pursuant to this Article unless and until the Superior Court has approved a Spending Plan for such fees.

§200-124. Definitions.

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

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipally-sponsored construction project or a 100% affordable housing development.

COAH OR THE COUNCIL

The New Jersey Council on Affordable Housing established under the Fair Housing Act, or any successor agency charged with the administration of the Act.

COURT

The Superior Court of New Jersey, Law Division, Mercer County.

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

DEVELOPER

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

EQUALIZED ASSESSED VALUE

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

GREEN BUILDING STRATEGIES

Strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§200-125. Residential Development Fees.

A. Imposed fees.

- (1) Within all districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- (2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential developments.

- (1) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the Township of West Windsor, shall be exempt from the payment of development fees.

- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (3) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use or, except as provided in Subsection B(4), is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (4) Owners of residential structures that are demolished and replaced as a result of a fire, flood or natural disaster and additions as well as decks shall be exempt from paying a development fee.
- (5) Not-for-profit developers shall be exempt.

§200-126. Non-Residential Development Fees.

A. Imposed fees.

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

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

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

- (2) The fee of 2.5% development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
- (5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by West Windsor Township as a lien against the real property of the owner.

§200-127. Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Building Permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a Building Permit shall notify the local Tax Assessor of the issuance of the first Building Permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of such notification, the municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

- E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the local Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township of West Windsor fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).
- H. Fifty percent of the development fee shall be collected at the time of issuance of the Building Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at Building Permit and that determined at the issuance of the Certificate of Occupancy. No Certificate of Occupancy shall be issued to the developer until all remaining developer fees have been paid in full.

I. Appeal of development fees.

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

§200-128. Affordable Housing Trust Fund.

- A. There is hereby created a separate, interest-bearing Housing Trust Fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of affordable units;
 - (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recaptured funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with the Township of West Windsor's affordable housing program.
- C. In the event of a failure by the Township of West Windsor to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services ("LGS"), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of West Windsor, or, if not practicable, then within the County.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

D. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

§200-129. Use of Funds.

A. The expenditure of all funds shall conform to a Spending Plan approved by the Superior Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address West Windsor Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse West Windsor Township for past housing activities.

C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region 4, in which West Windsor is located.

(1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

(2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low income affordability assistance shall be identified and described within the Spending Plan.

- (3) Payments in lieu of constructing affordable housing units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. West Windsor Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- E. No more than 20% of all revenues collected from development fees may be expended on administration, including but not limited to salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
 - (1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
 - (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements.
 - (3) Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or actions are not eligible uses of the Affordable Housing Trust Fund.

§200-130. Monitoring.

West Windsor Township shall provide annual reporting of Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, COAH and Local Government Services or other entity designated by the State of New Jersey, using forms developed for this purpose by the New Jersey Department of Community Affairs, COAH or Local Government Services.

§200-131. Ongoing collection of fees.

- A. The ability of West Windsor Township to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its Judgment of Compliance and shall continue thereafter so long as West Windsor Township has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

- B. If the Township of West Windsor is not pursuing authorization to impose and collect development fees after the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).
- C. After the expiration of the Judgment of Compliance and Repose, if the Township does not pursue or obtain continued authorization, West Windsor Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval, retroactively impose a development fee on such a development, or expend any of its collected development fees.

SECTION II.

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgement shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

SECTION III.

This ordinance shall take effect upon final passage and publication in accordance with the law.

Introduction: March 4, 2019

Sent to Planning Board: March 5, 2019

Planning Board Meeting: March 13, 2019

Public Hearing: March 18, 2019

Adoption: March 18, 2019

Mayor's Approval: March 19, 2019

Effective Date: April 8, 2019

Appendix D-21: Ordinance 2019-12 re: Affordable Housing Trust Fund

**TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY**

1st Reading March 4, 2019 *
 2nd Reading & Public Hearing March 18, 2019 **
 Date Adopted March 18, 2019
 Date Effective April 8, 2019
 DOT APPROVAL RECEIVED _____

Date to Mayor March 19, 2019
 Date Signed March 19, 2019
 Date Resubmitted to Council _____
 Approved as to Form and Legality Geevers, Miller, Marathe
 Township Attorney

ORDINANCE 2019 - 12

**TOWNSHIP OF WEST WINDSOR
MECER COUNTY, NEW JERSEY**

ORDINANCE AMENDING CHAPTER 200 'LAND USE', ARTICLE XXXI 'GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS GOVERNING CERTAIN USES' OF THE CODE OF WEST WINDSOR TOWNSHIP TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COPMPLIANCE WITH THE TOWNSHIP'S AFFORDABLE HOUSING OBLIGATIONS

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
GEEVERS	✓					✓	GEEVERS				✓		
HAMILTON	✓						HAMILTON	✓				✓	
MANZARI	✓				✓		MANZARI	✓					✓
MILLER	✓						MILLER	✓					
ZHANG	✓						ZHANG	✓			✓		

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

Rejected

Approved Hemant Marathe
Hemant Marathe, Mayor

March 19, 2019
Date

Reconsidered by Council _____

Override Vote: YES _____ NO _____

Gay M. Huber
Gay M. Huber, Township Clerk

* Sent to Planning Board for review on March 5, 2019
 ** Planning Board March 13, 2019 Amended and returned to Council

ORDINANCE 2019 - 12

TOWNSHIP OF WEST WINDSOR
MERCER COUNTY, NEW JERSEY

ORDINANCE AMENDING CHAPTER 200 'LAND USE', ARTICLE XXXI 'GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS GOVERNING CERTAIN USES' OF THE CODE OF WEST WINDSOR TOWNSHIP TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE TOWNSHIP'S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Township of West Windsor has a constitutional obligation to create a realistic opportunity for the construction of its fair share of the region's need for affordable housing; and

WHEREAS, the Township Council of the Township of West Windsor desires to create a realistic opportunity for the creation of affordable housing within the Township; and

WHEREAS, the Township voluntarily brought a timely declaratory judgment action pursuant to the procedures set forth by the Supreme Court in In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mt. Laurel IV") seeking approval of a Housing Element and Fair Share Plan that satisfies the Township's obligation to provide for its fair share of the regional need of low- and moderate-income housing; and

WHEREAS, the West Windsor Planning Board has adopted a Housing Element and Fair Share Plan dated February 27, 2019 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the Township is desirous of amending and supplementing the Township Code to implement the above-referenced Housing Element and Fair Share Plan, which has been endorsed by the Governing Body, and include provisions addressing West Windsor's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey that the Code of West Windsor Township, Chapter 200 entitled "Land Use," Article XXXI entitled "General Provisions and Supplemental Regulations Governing Certain Uses," shall be amended as follows:

SECTION 1. Chapter 200 of the Township Code, entitled “Land Use,” Article XXXI, entitled “General Provisions and Supplemental Regulations Governing Certain Uses,” is hereby deleted in its entirety and replaced to read as follows:

§200-237. Affordable Housing Regulations.

A. Purpose.

- (1) The title of this section shall be the “Affordable Housing Regulations.”
- (2) The Legislature of the State of New Jersey has, in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., delegated the authority to local governments to adopt an ordinance to provide a realistic opportunity for sound shelter for low- and moderate-income households.

B. Monitoring requirements.

- (1) On the first anniversary of the entry of a final judgment, and every anniversary thereafter through the end of 2025, the Township shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs (DCA), Council on Affordable Housing (COAH), Local Government Services (LGS) or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the DCA, COAH or LGS.
- (2) On the first anniversary of the entry of a final judgment, and every anniversary thereafter through the end of 2025, the Township shall provide annual reporting of the status of all affordable housing activity within the Township through posting on the municipal website, with copies provided to FSHC, using forms previously developed for this purpose by COAH or any other forms agreed to by the Township, the court-appointed Special Master and FSHC.
- (3) For the midpoint realistic opportunity review, due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township shall post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan.
- (4) For the review of very-low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of final judgment, and every third year thereafter, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low income requirements.

C. Definitions.

The following terms when used in this Ordinance shall have the meanings given in this Section:

ACT

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

ADAPTABLE

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT

The entity designated by the Township to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

AFFORDABILITY AVERAGE

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGENCY

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are sixty-two years of age or older; or 2) at least 80% (80%) of the units are occupied by one person who is fifty-five years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

ALTERNATIVE LIVING ARRANGEMENT

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE

A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.), or any successor agency charged with the administration of the Act.

COURT

The Superior Court of New Jersey, Law Division, Mercer County.

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

MARKET-RATE UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

RANDOM SELECTION PROCESS

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

VERY-LOW INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

VERY-LOW INCOME UNIT

A restricted unit that is affordable to a very-low income household.

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

D. Applicability.

- (1) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within West Windsor Township pursuant to the Township's most recently adopted Housing Element and Fair Share Plan.
- (2) Moreover, this section shall apply to all developments that contain low- and moderate-income housing units, including any currently anticipated future developments that will provide low- and moderate-income housing units.
- (3) All low and moderate income units, including all units created through low-income housing tax credits and other outside funding sources, shall have minimum 30 year affordability controls and shall comply with the income and bedroom distribution requirements of UHAC, except that instead of 10% of all affordable rental units being affordable to households earning 35% or less of the regional median household income by household size, 13% of all affordable rental units shall be affordable to very-low-income households earning 30% or less of the regional median household income by household size, which very-low-income units shall be counted as part of the low-income housing requirements set forth in UHAC.
- (4) Affordable housing set aside. West Windsor Township has a mandatory affordable housing set-aside requirement that is imposed on certain types of multi-family development. See **§200-243.2** for the requirements.

E. Rehabilitation program.

- (1) West Windsor's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (2) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (3) All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.

- (4) West Windsor Township shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program.
- (5) West Windsor Township shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township.
- (6) West Windsor Township shall designate, subject to the approval of the Court, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner-occupancy rehabilitation program and a rehabilitation manual for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (7) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
 - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
 - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
 - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

F. Alternative living arrangements.

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and Uniform Housing Affordability Controls (UHAC), with the following exceptions:

- (a) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by COAH or the Court;
- (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

(2) With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by COAH or the Court.

(3) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

G. Inclusionary zoning.

(1) To implement the fair share plan in a manner consistent with the affordable housing regulations, to ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, West Windsor Township has created several inclusionary housing zones. These inclusionary housing zones are detailed in the Housing Element and Fair Share Plan, dated February 27, 2019.

H. Phasing Schedule for Inclusionary Zoning.

In inclusionary development the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

I. New construction.

(1) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

(a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very-low income units (affordable to a household earning 30% or less of median income). The very-low income units shall be counted as part of the required number of low-income units within the development.

- (b) At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families.
- (c) A maximum of 25% of the Township's obligation may be met with age restricted units. At least half of all affordable units in the Township's Plan shall be non-restricted.
- (d) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units, including that at least 13% of the restricted units in each bedroom distribution shall be very-low-income units.
- (e) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - [2] At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - [3] At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (f) In accordance with the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.3(c)*, for low- and moderate-income age-restricted units, at a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. The Township shall not be permitted to claim credit to satisfy its obligations for age-restricted units that exceed 25% of all units developed.

(2) Accessibility Requirements

- (a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multi-story buildings shall be subject to the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7*.
- (b) All restricted townhouse dwelling units and all restricted units in other multi-story buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - [1] An adaptable toilet and bathing facility on the first floor; and

- [2] An adaptable kitchen on the first floor; and
- [3] An interior accessible route of travel on the first floor; and
- [4] An adaptable room that can be used as a bedroom, with a door or casing for the installation of a door, on the first floor; and
- [5] If not all of the foregoing requirements in (b)[1] through (b)[4] can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs (b)[1] through (b)[4] above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- [6] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that West Windsor has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - i. Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - ii. To this end, the builder of restricted units shall deposit funds within West Windsor Township's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - iii. The funds deposited under paragraph [6](ii) above shall be used by West Windsor Township for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - iv. The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of West Windsor Township for the conversion of adaptable to accessible entrances.
 - v. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free

Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

- vi. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

(3) Design.

- (a) In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (b) In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

(4) Maximum rents and sales prices.

- (a) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits, which shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows below. This does not include units established through a federal program exempted from UHAC pursuant to N.J.A.C. 5:80-26.1.

- [1] Regional income limits shall be established for the housing region in which the Township is located (in this case, Housing Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated number of households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total number of households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average

median income for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low-income unit for a household of four shall be 30% of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- [2] The income limits attached to the Settlement Agreement as Exhibit D are the result of applying the percentages set forth in paragraph [1] above to HUD's determination of median income for FY 2018, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- [3] The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph [1] above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- [4] The resale prices of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to the process outlined above. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- [5] The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

(b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.

- (c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low income households, earning 30% or less of the regional median household income, with such very-low income units counted the low-income housing requirement.
- (d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (e) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one and one-half person household;
 - [3] A two-bedroom unit shall be affordable to a three-person household;
 - [4] A three-bedroom unit shall be affordable to a four and one-half person household; and
 - [5] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one and one-half person household; and
 - [3] A two-bedroom unit shall be affordable to a two-person household or two one-person households.

- (g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as it may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as it may be amended and supplemented.
- (h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as it may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as it may be amended and supplemented.
- (i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
- (j) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

J. Utilities.

- (1) Affordable units shall utilize the same type of heating/ventilation/air conditioning (HVAC) source as market units within an inclusionary development.
- (2) Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

K. Occupancy Standards.

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a units, strive to:

- (1) Provide an occupant for each bedroom;

- (2) Provide children of different sexes with separate bedrooms;
- (3) Provide separate bedrooms for parents and children; and
- (4) Prevent more than two (2) persons from occupying a single bedroom.

L. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until West Windsor takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- (4) At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (5) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (6) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

M. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (3) The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- (4) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section O.

N. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.
- (4) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage

insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's eligible monthly income.

O. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- (2) With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

P. Capital Improvements to Ownership Units.

- (1) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to ten (10) year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

Q. Control Periods for Restricted Rental Units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years,

until West Windsor takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Mercer. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (3) A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

R. Rent Restrictions for Rental Units; Leases.

- (1) A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- (4) No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

S. Tenant Income Eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

- (a) Very-low income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
- (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
- (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.

(2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
- (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
- (c) The household is currently in substandard or overcrowded living conditions;
- (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
- (e) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

(3) The applicant shall file documentation sufficient to establish the existence of the circumstances in (2)(a) through (2)(e) above with the Administrative Agent, who shall counsel the household on budgeting.

§200-237.1. Municipal Housing Liaison.

A. Purpose.

The purpose of this article is to create the administrative mechanisms needed for the execution of West Windsor Township's responsibility to promote and oversee the provision of affordable housing pursuant to the Fair Housing Act of 1985.

B. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADMINISTRATIVE AGENT

The entity responsible for administering the affordability controls of some or all units in the affordable housing program, and all units in inclusionary developments, for West Windsor to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

MUNICIPAL HOUSING LIAISON

The municipal employee duly designated by the governing body with the responsibility for monitoring, reporting oversight and general administration of the affordable housing program for the Township of West Windsor.

C. Establishment of position and compensation; powers and duties.

- (1) Establishment of position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for West Windsor Township.
- (2) Subject to the approval of the Court, the Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.
- (3) The Municipal Housing Liaison shall be responsible for monitoring, reporting, oversight and general administration of the affordable housing program for West Windsor Township, including the following responsibilities which may not be contracted out to an Administrative Agent:
 - (a) Serving as West Windsor Township's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents, and interested households;
 - (b) Monitoring the status of all restricted units in West Windsor Township's Housing Element and Fair Share Plan;
 - (c) Compiling, verifying and publishing on the Township's website all referenced monitoring reports as required by the Court;
 - (d) Coordinating meetings with affordable housing providers and the administrative agent(s) as applicable; and

- (e) Attending continuing education programs as required to obtain and maintain certification as a Municipal Housing Liaison.
- (4) Subject to approval by the Court, West Windsor Township may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of West Windsor Township. If West Windsor Township contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and affirmative marketing plan, the Municipal Housing Liaison shall supervise the contracting administrative agent.
- (5) Compensation. Compensation shall be fixed by the governing body at the time of the appointment of Municipal Housing Liaison.

§200-237.2. Administrative Agent.

A. Purpose.

The purpose of this article is to create the administrative mechanisms needed for the execution of West Windsor Township's responsibility to promote and oversee the provision of affordable housing pursuant to the Fair Housing Act of 1985.

B. Establishment of position; powers and duties.

An Administrative Agent may be an independent entity serving under contract to and reporting to the municipality. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

(1) Affirmative Marketing:

- (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of West Windsor Township and the provisions of N.J.A.C. 5:80-26.15; and
- (b) Providing counseling or contracting to provide counseling services to low and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(2) Household Certification:

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;

- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low or moderate-income unit;
- (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
- (f) Employing a random selection process as provided in the Affirmative Marketing Plan of West Windsor Township when referring households for certification to affordable units; and

(3) Affordability Controls:

- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Mercer County Register of Deeds or Mercer County Clerk's office after the termination of the affordability controls for each restricted unit;
- (d) Communicating with lenders regarding foreclosures; and
- (e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

(4) Resales and Re-rentals:

- (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and

- (b) Instituting and maintaining an effective means of communicating information to low (or very-low) and moderate-income households regarding the availability of restricted units for resale or re-rental.

(5) Processing Requests from Unit Owners:

- (a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
- (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
- (c) Notifying the municipality of an owner's intent to sell a restricted unit; and
- (d) Making determinations on requests by owners of restricted units for hardship waivers.

(6) Enforcement:

- (a) Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
- (c) Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
- (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d);
- (e) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and

(f) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls.

(7) Additional Responsibilities:

- (a) The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- (b) The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
- (c) The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§200-237.3. Affirmative Marketing Requirements.

- A. The Township of West Windsor shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the Court that is compliant with N.J.A.C. 5:80-25.15, as it may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement with FSHC, the Affirmative Marketing Plan shall require the notification of the FSHC, New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, Ocean, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch and Trenton Branches of the NAACP, and the Supportive Housing Alliance of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 4, comprised of Mercer, Monmouth and Ocean Counties.

- D. The Township has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the Mercer County Library Headquarters, Monmouth County Library Headquarters, Ocean County Library, West Windsor Library, the West Windsor Municipal Building and the developer's rental office. Pre-applications may be emailed to prospective applicants upon request. Otherwise, hard copies are available from the Township's Municipal Housing Liaison.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§200-237.4. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of sixty (60) days after service of the written notice:

(1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

- (a) A fine of not more than five hundred dollars (\$500.00) per day or imprisonment for a period not to exceed ninety (90) days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
- (b) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into West Windsor Township's Affordable Housing Trust Fund of the gross amount of rent illegally collected;
- (c) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

(2) The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.

- (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In

the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two (2) year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

C. Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

SECTION II.

In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgement shall be limited in its effect only to the portion of the Ordinance actually adjudged to be invalid, and the remaining portions of this Ordinance shall be deemed severable therefrom and shall not be affected.

SECTION III.

This ordinance shall take effect upon final passage and publication in accordance with the law.

Introduction: March 4, 2019

Sent to Planning Board: March 5, 2019

Planning Board Meeting: March 13, 2019

Public Hearing: March 18, 2019

Adoption: March 18, 2019

Mayor's Approval: March 19, 2019

Effective Date: April 8, 2019

Appendix D-22: Resolution Appointing Municipal Housing Liaison

RESOLUTION

WHEREAS, the Township Council of the Township of West Windsor petitioned the Council on Affordable Housing (COAH) for substantive certification of its Housing Element and Fair Share Plan on December 16, 2005; and

WHEREAS, West Windsor's Fair Share Plan promotes an affordable housing program pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.); and COAH's Third Round Substantive Rules (N.J.A.C. 5:94-1, et. seq.); and

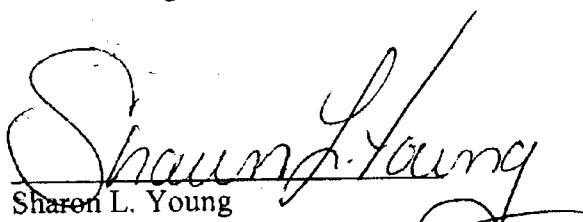
WHEREAS, pursuant to N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26.1 et. seq., West Windsor is required to appoint a Municipal Housing Liaison for the administration of West Windsor's affordable housing program to enforce the requirements of N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26.1 et. seq.; and

WHEREAS, West Windsor has amended Chapter 200, entitled Land Use, to provide for the appointment of a Municipal Housing Liaison to administer West Windsor's affordable housing program;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of West Windsor in the County of Mercer and State of New Jersey that John V. Mauder is hereby appointed as the Municipal Housing Liaison for the administration of the affordable housing program, pursuant to and in accordance with Section 200-237, O, of the West Windsor Code.

Adopted: April 6, 2010

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 6th day of April 2010.


Sharon L. Young
Township Clerk
West Windsor Township