

RESOLUTION  
FORMER BANK  
(PARCEL A)

**RESOLUTION**

**PLANNING BOARD**

**BOROUGH OF METUCHEN**

**ITEM NO. 02-573**

**WHEREAS**, METUCHEN I, LLC made application to the Planning Board of the Borough of Metuchen for the property designated as Block 71, Lot 37, located at 700 Middlesex Avenue, located on the north side of Middlesex Avenue within the LI Zone for the following approval: Minor Subdivision as well as Preliminary and Final Site Plan Approval and conditional use approval with variances and waivers; and

**WHEREAS**, the Planning Board of the Borough of Metuchen held a Public Hearing on February 6, 2003 and March 6, 2003, applicant having filed proper proof of service and publication in compliance with statutory and ordinance requirements; and

**WHEREAS**, at said hearing, the Planning Board reviewed and considered the following documents:

- Zoning Permit;
- Application for Development dated December 20, 2002;
- Proof of Payment of Taxes and Assessments;
- Board Fees as shown on Zoning Permits;
- Certification that the Plans and Application for Development have been submitted to the Engineer, Planner, Zoning Officer and the Fire Prevention Bureau;

- Memorandum of Howard R. Colegrove, Fire Official Metuchen fire department dated November 13, 2002;
- Memorandum from Board Planner, James Constantine, P.P., dated February 6, 2003 as well as Ed Wilson, NCARB, AIA, P.P.
- Memorandum from Board Planner, James Constantine, P.P., dated March 6, 2003 as well as Ed Wilson, NCARB, AIA, P.P.
- Memorandum from Board Engineer, Donald J. Norbut, P.E., C.M.E. dated February 5, 2003;
- Memoranda from Applicant's Engineer, Bohler Engineering, PC, by Benjamin J. Scott, dated February 21, 2003 and September 13, 2002;
- Memorandum from Applicant's Attorney, Steven J. Tripp, dated February 20, 2003;
- Freehold Soil Conservation District Certification Letter dated October 9, 2002;
- Applicant's corporate disclosure notice;
- Concept Site Plan of revised bank layout prepared by K.L. Haney, P.E., dated January 23, 2002, consisting of one (1) sheet.
- Preliminary and Final Site Plan and Minor Subdivision Plan prepared by K.L. Haney, P.E., dated September 13, 2002 consisting of twenty-one (21) sheets.
- Revised Preliminary and Final Site Plan and Minor Subdivision Plan prepared by K.L. Haney, P.E., dated February 20, 2003 consisting of twenty-one (21) sheets.
- Revised Preliminary and Final Site Plan and Minor Subdivision Plan prepared by K.L. Haney, P.E., dated February 20, 2003 but stamped "Received March 4, 2003" by the Planning Board consisting of two sheets being sheets 13 and 14 entitled Landscaping Plan.
- Survey of property prepared by Jeffrey D. Bunce, PLS, dated July 30, 2002, last revised August 20, 2002 consisting of two (2) sheets.
- Survey of property prepared by Michael L. Roman, PLS, of Pequest Associates, inc., dated May 18, 1999 consisting of one (1) sheet.
- Architectural drawings prepared by Michael J. Napolitan, AIA, dated August 5, 2002, consisting of three (3) sheets.
- Architectural drawings prepared by Aztec Architects, PC, dated January 23, 2002, consisting of two (2) sheets.
- Traffic Impact Analysis prepared by Elizabeth Dolan, P.E. dated July 11, 2002
- Drainage Report prepared by Kevin L. Haney, P.E., dated September, 2002
- Sanitary Sewer Engineering Report, dated February 21, 2003;
- Applicant's List Of Professionals;

- Colored Concept Site Plan of revised bank layout prepared by K.L. Haney, P.E., dated January 23, 2002, consisting of one (1) sheet entered into evidence as Exhibit A-1;
- Colored Concept Bank Plan and entered into evidence as Exhibit A-2;
- Signage and circulation plan entered into evidence as Exhibit A-3;
- Exhibit A-4 is nonexistent;
- Survey of property prepared by Michael L. Roman, PLS, of Pequest Associates, Inc., dated May 18, 1999 consisting of one (1) sheet entered into evidence as Exhibit A-5;
- Colored site plan sheet depicting bank layout entered into evidence as Exhibit A-6;
- Colored site plan sheet depicting bank layout entered into evidence as Exhibit A-7 being an enlargement of a portion of Exhibit A-6;
- T&M. Associates plan for Oakite Park Recreation Improvements entered into evidence as Exhibit A-8;
- Sketch of points of access into proposed Tract proposed renovated warehouse and Park entered into evidence as Exhibit A-9;
- Colored drawing of bank building entered into evidence as Exhibit A-10;

**WHEREAS**, sworn testimony was given by Kevin L. Haney, as the applicant's Professional Engineer, Elizabeth Dolan, as applicant's Traffic Engineer, Michael Napolitan, as applicant's Professional Architect and Robert Corcoran, President and CEO of Somerset Savings Bank, proposed lessee of proposed bank development on proposed Block 71, Lot 37.01 of proposed subdivision, Steven Tripp, Esq. appearing; and

**WHEREAS**, the testimony indicated that the applicant is the owner of the property, known and designated as Block 71, Lot 37, more commonly referred to as 700 Middlesex Avenue, Metuchen; and

**WHEREAS**, it was testified that Block 71, Lot 37 has an area of 482,419 square feet being approximately 11 acres with an irregular dimension of 368.54 feet at the southeast front of the property facing Middlesex Avenue and 139.95 feet at the northwest rear of the property fronting Durham Avenue wide x 1364.64 feet at the northeast side,

695.64 feet and 225.00 feet at the west side, 249.93 feet at the south side, 50 feet at the southeast side and 477.41 feet at the southwest side and applicant is proposing to subdivide the property into two (2) Lots and the premises previously upon it a two story brick building with a corrugated metal roof which has been demolished, adjoined to a one to two story brick building area including two loading docks which has been demolished and adjoined to a one story corrugated metal building and a one story corrugated metal loading dock which applicant proposes to refit as well as an accessory water tower structure all of which were formerly owned by Oakite Products, Inc., and previously used for manufacturing purposes; and

**WHEREAS**, it was indicated that the entire site is a Brownfield site and further is under the oversight of the New Jersey Department of Environmental Protection as an Industrial Site Remediation Act site; and

**WHEREAS**, testimony was offered that Tract 1, with proposed designation of Lot 37.01 and Block 71, being approximately 6.577 acres with an area of 286,508 square feet as required in the LI Zone and irregular dimensions of 368.54 feet at the southeast front of the property facing Middlesex Avenue and 288.63 feet at the rear abutting the proposed Tract 2 wide x 141.99 feet and 341.35 feet on the northeast side of the property fronting the Lehigh Valley Railroad right of way, 455.87 feet on the northeast side abutting Tract 2, and 275.35 feet and 225 feet on the west side abutting Lot 125.07 in Lot 69 and 249.93 feet on the south side abutting Olive Street and Lots 71 and 80 in Block 70 and 50 feet on the south side abutting Factory and Adam Streets and 447.41 feet on the southwest side abutting Factory Street but requiring a variance for the minimum side yard

requirement inasmuch as an existing water tower is within the proposed 20 foot side yard setback abutting Tract 2; and

**WHEREAS**, the southwestern portion of Tract 1 having a general triangular shape contains a large mound of capped asbestos material; and

**WHEREAS**, testimony was offered that proposed Tract 2, with a proposed designation of Lot 37.02 in Block 71, being approximately 4.497 acres with an area of 195,911 square feet as required in the LI Zone with irregular dimensions of 139.95 feet on the northwest side fronting on Durham Avenue and 288.63 feet at the rear side abutting proposed Tract 1 wide x 455.87 feet on the southwest side abutting the proposed Tract 1 and 813.29 feet on the northeast side abutting the Lehigh Valley Railroad right of way and 420.29 feet on the west side abutting Lot 125.07 in Block 69; and

**WHEREAS**, the applicant has demolished an existing manufacturing and warehouse building fronting along Middlesex Avenue and the proposes to refit the existing warehouse located within proposed Tract 2 on the northwest side of the site fronting on and accessed from Durham Avenue; and

**WHEREAS**, the applicant testified that all utilities used on the premises are public utilities; and

**WHEREAS**, the applicant seeks conditional use approval to refit and use its existing warehouse located on proposed Tract 2 under Land Development Ordinance section 110-87 (J) and for a drive-in bank on proposed Tract 1 under Land Development Ordinance section 110-83 (D); and

**WHEREAS**, applicant seeks to construct and lease to Somerset Valley Bank, a one-story 3,000 square foot bank structure along the frontage of Middlesex Avenue, at

the northeast corner of proposed Tract 1 including parking spaces, a drive-thru and two-  
(2) ingress/egress drives along Middlesex Avenue, on the portion of that Tract having  
dimensions of 168.46 feet on the southeast side fronting on Middlesex Avenue and  
181.25 feet on the northwest side at the rear x 141.99 feet abutting on the Lehigh Valley  
Railroad right of way on the northeast side and 147.58 feet on the southwest side abutting  
a proposed stub street leading into the premises from Middlesex Avenue having an area  
of 26,234 square feet; and

**WHEREAS**, testimony was offered that applicant has no current plans for  
developing the remainder of the proposed Tract 1 but does in the future plan to develop  
Tract 1 further; and

**WHEREAS**, applicant proposes to construct the stub street on Tract 1 for ingress  
and egress on to Middlesex Avenue for the proposed bank as well as for future  
development of Tract 1 and that ingress to the proposed bank would also be proposed for  
traffic southbound on Middlesex Avenue by way of a driveway onto the property  
proposed to be leased to the bank; and

**WHEREAS**, the applicant indicated that it has no present plan to extend the stub  
street on Tract 1; and

**WHEREAS**, the applicant agreed that it would not offer the proposed stub street  
for dedication to the municipality; and

**WHEREAS**, the applicant indicated that, as to the proposed bank, there will be  
no parking allowed where vehicles for the drive-through windows will be stacked, that  
the vehicular ingress and egress, the proposed traffic flow in a counter-clockwise rotation

and the drive through separation from the parking is in accordance with engineering standards; and

**WHEREAS**, the applicant proposes that the drive up ATM will abut the bank building adjacent to in the first drive up window of the total of three drive up lanes and that there will be signage directing motorists to the appropriate lane and that there will be no ATM machine for pedestrians; and

**WHEREAS**, the applicant testified that the bank would have four interior teller stations one of which being a handicap teller station as well as stations for branch manager, assistant branch manager, 2 platform customer service persons, 3 tellers, 1 part time teller and one investment manager who would be present once or twice a week for a total of approximately 7 employees and that the applicant proposed a total of 16 parking spaces where the ordinance required 4 spaces per teller window plus 1.5 spaces per non-teller work station or 1 space per 180 square foot of floor area, whichever was greater. Additionally, the anticipated lobby hours of the bank would be Monday through Friday from 9 a.m. to 3 p.m., Thursday from 4 p.m. to 6 p.m., Friday from 4 p.m. to 7 p.m. and Saturday from 9 a.m. to 12 p.m. The anticipated drive up hours would be Monday through Wednesday and Friday 8 a.m. to 6 p.m.; Thursday 8 a.m. to 7 p.m. and Saturday 9 a.m. to 12 p.m. As such, the parking required would be 20 spaces with respect to the teller stations, 8 spaces with respect to the non-teller stations for a total of 28 spaces required where 16 spaces are proposed. 7 of the spaces are located on the stub street and 9 of the spaces are located on the portion of the Tract 1 proposed to be leased to the bank; and



**WHEREAS**, the applicant indicated that the 16 proposed parking spaces for the bank were adequate based on experience with other banks and that there would be less lobby activity inasmuch as teller windows would be used; and

**WHEREAS**, the applicant indicated that typically in a bank development of this size that with drive in windows, the parking requirements are self-policing by the consumer and typically 10 to 16 spaces is the maximum required for such a site; and

**WHEREAS**, the applicant agreed that no parking shall be allowed in the area of the vehicle stacking spaces for the drive-in windows of the bank; and

**WHEREAS**, the applicant requested a design waiver from the Borough of Metuchen Land Development Law, section 110-130(f) in that the minimum setbacks for buildings from driveways, parking areas and private streets for nonresidential development are 15 feet and the proposed building setback from the driveway was 10 feet on the south side and 11.6 feet on the east side and testified that the proposed design was more aesthetically pleasing and that compliance would reduce the buffer from Middlesex Avenue on the east and that the deviation would not provide any adverse impact; and

**WHEREAS**, the applicant agreed to reduce the brightness of the lighting on the entire site as well as the brightness of the lighting at the bank drive through as may be determined by board professionals; and

**WHEREAS**, there was testimony that the number of vehicles using the bank and the drive up windows would be sufficiently stacked in the stacking lanes for the drive up windows, that there was a fourth lane bypass proposed, that stacking would occur behind and to the side of the building, that there was no parking in the stacking area, that there was no visual impact to the adjacent properties and that there was no unreasonable impact

on adjacent intersections, that the proposed plan provided a safe and efficient circulation of vehicles, that with respect to left turns onto the stub street based on a capacity assessment, there would be no delay or queuing, that no present signalization was required at the intersection of the Middlesex Avenue and the stub street based on the volume of traffic; and

**WHEREAS**, the applicant indicated that the proposed bank roofing material would be shingles, that it would be constructed from brick and stucco but agreed that it would not be EIFS stucco or similar stucco, that the base of the building would be precast and that the columns would be brick or precast with corbel capitals and that a standard branch bank design as proposed would be used with a different configuration so as to accommodate the lot, that the windows would not be double hung windows and agreed that they would be display type windows with divided lights and further indicated that the rendering of the proposed bank building does not match the site plan but that it would reoriented so that the façade would face Middlesex Avenue and to provide a revised plans for the proposed bank; and

**WHEREAS**, the applicant agreed that the parallel parking which it proposes on the proposed stub street would be assigned to and used by the bank employees and that it would revisit the issue of parallel parking on said street when it makes application to develop the remainder of Tract 1; and

**WHEREAS**, the applicant agreed that it would apply to Middlesex County for approval to replace its proposed traffic striping on Middlesex Avenue with curbed, landscaped "island" medians, with on street parking and traffic calming "bump outs" along Middlesex Avenue with and landscaping along the curb line; and

**WHEREAS**, the applicant agreed that it would plant a double row of London Plain Trees extending the entire length of its property fronting on Middlesex Avenue and would line the stub street with appropriate shade trees to continue the streetscape treatment at Franklin Square further down Middlesex Avenue; and

**WHEREAS**, the applicant agreed that the Northeast portion of proposed Tract 1 proposed to be leased to the bank abutting the Lehigh Valley Railroad right of way would be planted with evergreen trees; and

**WHEREAS**, the applicant agreed that in the event of any future development of the site that the issue of signalization on Middlesex Avenue at the expense of the developer will be revisited at the time of that future application; and

**WHEREAS**, the applicant proposes that the water tower located on Tract 1 will remain only if necessary for fire suppression; and that if the water tower does remain, it will only be used for fire suppression and the graffiti on the water tower will be removed; and

**WHEREAS**, applicant indicated that a variance is required in that the minimum side yard setback is 20 foot and the water tank on proposed Tract 1 is approximately 5.09 feet from the side yard line; and

**WHEREAS**, the applicant agreed that the use of the warehouse on Tract 2 will conform with the Land Development Ordinance of the Borough of Metuchen; and

**WHEREAS**, the applicant testified that the Tract 2 parking area is unpaved, broken concrete and gravel which is almost totally impervious to water, that there is brush along the Lehigh Valley Railroad right of way, that there are a total of 14 loading

doors on the warehouse and that the applicant proposes to use the existing Durham Avenue curb cut for ingress and egress to the driveway on the premises; and

**WHEREAS**, the applicant testified that with respect to Tract 2 it was requesting a parking waiver to the Borough of Metuchen Land Development Law, section 110-130(c) in that the proposed parking will not be in a rear yard but in the side yard where it currently has parking and that the New Jersey Department of Environmental Protection required that certain portions of the Tract be capped, that trees were to be removed and that the property be paved and that the applicant's plan accommodates this requirement; and

**WHEREAS**, The Borough of Metuchen has a pending contract with the applicant for the acquisition of Lot 125.07, Block 69 abutting the western line of the applicant's site which The Borough of Metuchen is acquiring for use as open space and recreation as a park with final acquisition of the property anticipated in early 2003; and

**WHEREAS**, the applicant testified that as to Tract 2 the minimum lot width at the street line and the setback line is 200 feet whereas the applicant proposes 69.71 feet at the street line and 95 feet at the setback line from the Durham Avenue. The applicant states that the lot width at the street line and setback are currently non-conforming. Also it has contracted to sell its adjacent Lot to the south to the Borough of Metuchen for a park and it is limited by the Lehigh Valley Railroad right of way located to the north in terms of the width of the Lot abutting Durham Avenue and will therefore need variance as to minimum lot width at the street line and the setback line at Durham Avenue as proposed in its plan; and

**WHEREAS**, with respect to Tract 2 the applicant indicated that a warehouse would be a quiet use in terms of trip generation estimated to be less than 100 per day but that the applicant agreed it would address this issue with the Board Professionals; and

**WHEREAS**, the applicant agreed that it will decrease the illumination of its lighting and /or its lighting fixtures so that there is no spillover onto adjacent sites; and

**WHEREAS**, the applicants agreed to configure the driveway exit from proposed Tract 2 so as to reduce the speed of any trucks exiting the premises with traffic calming designs; and

**WHEREAS**, the applicant agreed to revise its plans in order to accomplish a separation between the proposed a driveway of the Tract 2 warehouse which may include a traffic calming "bump out" and the driveway of the proposed Borough of Metuchen Park abutting the applicant's site; and

**WHEREAS**, the applicant has agreed to install a six-foot high chain-link fence along the western property line separating the site from the proposed Borough of Metuchen Park abutting the applicant's site at the completion of the applicant's development of the site and the completion of the Park development project; and

**WHEREAS**, the applicant agreed that the Northeast wall of the warehouse on Tract 2 would be planted with appropriately spaced trees as may be allowed and in accordance with New Jersey Department of Environmental Protection requirements; and

**WHEREAS**, the applicant agreed that it would plant two (2) London Plain trees on Durham Avenue near the proposed driveway; and

WHEREAS, the applicant agreed that the warehouse would be painted in muted earth tones; and

WHEREAS, the applicant agreed that the exit from the proposed Tract 2 driveway from the warehouse on to Durham Avenue would be right turn only; and

WHEREAS, applicant agreed that the Durham Avenue sidewalk crossing the driveway from the proposed Tract 2 warehouse would be stamped colored concrete pavers; and

WHEREAS, applicant agreed that signage on the site would be subject to review and approval of the Board Professionals; and

WHEREAS, applicant agreed to address the recommendations contained in the February 5, 2003 memorandum of Donald Norbut, Board Engineer, section 4 regarding Drainage and Grading and section 6 regarding Lighting to the satisfaction of the Board Engineer; and

WHEREAS, the applicant testified that the New Jersey Department of Environmental Protection has limited the type of trees, landscaping and locations of planting on Tract 2 and the applicant agreed that the type and number of trees, shrubs and landscaping it will plant on the site shall be subject to review and approval by Board Professionals subject to the regulations and requirements of the New Jersey Department of Environmental Protection; and

WHEREAS, the applicant agreed to submit copies of the descriptions for all easements and lease agreements for review by Board professionals; and

WHEREAS, the applicant indicated that it would revise its plans to be in compliance with the "New Jersey Map Filing Law" and would file the plat pursuant to

said Law rather than the subdivision deed and would provide copies to the Tax Assessor, The Borough Engineer and Board Professionals prior to filing; and

WHEREAS, the application as proposed required variances from Section 110-64 for the following:

With respect to the proposed Tract 1, the minimum side yard setback is 20 foot and the water tank is approximately 5.09 feet from the side yard line as proposed.

With respect to proposed Tract 2, the minimum lot width at the street line and the setback line is 200 feet whereas the applicant proposes 69.71 feet at the street line and 95 feet at the setback line from the Durham Avenue.

WHEREAS, the following waivers were requested by the applicant during the course of the testimony:

- With respect to the proposed bank site, Section 110-154(B) requires a total of 28 parking spaces whereas 16 parking spaces are provided.
- With respect to the proposed bank site, Section 110-130(F) which requires a building set back of 15 feet to interior driveways and parking lots.
- With respect to proposed Tract 2, section 110-130(c) in that the proposed parking will not be in a rear yard but in the side yard.
- Section 110-157 (C) requires the applicant to provide an average horizontal illumination of 0.9 foot-candles for driveways and parking lots. The applicant proposes three to four foot-candles.

WHEREAS, no formal testimony was presented by any objectors.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Metuchen, County of Middlesex, State of New Jersey, after having

considered the aforementioned plans and testimony, that this application is hereby **granted with conditions.**

In support of this decision, the Board makes the following findings of fact and conclusions of law:

1. The Planning Board of the Borough of Metuchen has proper jurisdiction to hear the within matter.

2. The property designated as Block 71, Lot 37, located at 700 Middlesex Avenue within the LI Zone.

3. The subject site is currently owned and occupied by the applicant. The applicant also owns Block 69 Lot 125.07 abutting the western line of the site.

4. The entire site is a Brownfield site and further is under the oversight of the New Jersey Department of Environmental Protection as an Industrial Site Remediation Act site.

5. The applicant proposes to subdivide the property into two (2) Lots proposed as Block 71, Lots 37.01 and 37.02 referenced herein as Tract 1 and Tract 2 respectively. The site previously upon it a manufacturing buildings which have been demolished leaving a one story corrugated metal building on Tract 2 and a water tower on Tract 1.

6. With respect to Tract 1, the applicant proposes to construct a 3000 square foot bank building on a 26,234 for square foot portion of the tract and lease the building as well as that portion of the tract to Somerset Valley Bank leaving the remainder of the tract, for the present, undeveloped. It also proposes construction of a stub street onto the tract from Middlesex Avenue abutting the portion of the tract leased to the bank. It



proposes to leave the existing water tower on this tract for fire suppression purposes, if necessary.

7. With respect to Tract 2, the applicant proposes to refit the one story corrugated metal building for use as a warehouse.

8. Conditional use approval for a drive-in bank on Tract 1 may be granted in that the applicant produced testimony that its proposed bank fully complied with Land Development Ordinance section 110-87 (J). It provided five vehicle-stacking spaces for each of the three drive-in windows, it would agree to adequate directional signage and striping, its internal circulation for stacked vehicles did not interfere with other vehicles, parking or pedestrians and no drive-in lane provided a means of egress, the building and pedestrian walkways were primarily visually oriented toward the street, egress was on to the stub street, the drive-in portion was obscured from the street and no other banks were located on the property.

9. Conditional use approval for the warehouse on tract 1 may be granted in as much as the applicant is using the existing building and will refit it for use as a warehouse for which it is particularly suited.

10. The proposed variances for lot area, lot width, lot depth, open space and side yard setback will have no detrimental impact on the adjoining properties. As to the water tank on Tract 1 testimony revealed that the side yard lot line abutted the Tract 1 side yard lot line and would only serve for fire suppression purposes, if necessary. As to Tract 2 testimony revealed that the configuration of the property as to the width at the street and setback lines, the abutting property to the north was a railroad right-of-way and the abutting property of the South was potentially being sold to the Borough of Metuchen

for park purposes and that in any event easements would be obtained increasing but not meeting the width requirements but were sufficient for the warehouse purposes proposed and that the variance was required in order to develop the property. These variances should not cause substantial detriment to the public good and can be granted.

11. As to Tract 1, the applicant is proposing 16 parking spaces whereas 28 are required. Of those spaces 7 will be located on the proposed stub street off the site proposed to be leased to the bank and 9 spaces will be located on the site proposed to be leased to the bank. The applicant produced testimony that based on the size of the bank, the number of its employees and their functions as well as the drive through feature of the proposed bank that the parking proposed by the applicant with the conditions set forth hereafter was adequate. Based on the foregoing, this parking waiver subject to the conditions set forth hereafter can be granted without causing substantial detriment to the public good.

12. The Board has reviewed the balance of the waivers and has determined that same can be granted without causing substantial detriment to the public good except as to those waivers that are to be modified by the conditions of the approval as set forth herein.

13. The physical improvements to be effectuated as a result of the within application will improve the aesthetic appearance of the area; accordingly, the benefits associated with the approval of the application outweigh the detriments associated with same.

14. The proposed development is a permitted use in the LI zone and accordingly, the within application can be approved without impairing the intent of the subject zoning scheme.

15. Approval of the within application promotes various purposes of the Municipal Land Use Law - specifically, the same will promote a desirable visual environment through creative development techniques and good civic design standards.

16. The proposed development will not significantly increase/intensify the allowed use at the properties; accordingly, the within application can be approved without impairing the intent of the subject zoning scheme.

17. The applicant has satisfied the applicable minor subdivision requirements of the Borough of Metuchen Land Development Ordinance.

During the course of the hearing, the Board has requested and the applicant has agreed to abide by the following conditions of approval:

- A. The applicant must submit revised plans reflecting the conditions of approval herein. All of the applicant's revised plans shall be subject to the review and approval of the Board Engineer and the Board Planner prior to the applicant being permitted to commence its construction at the site.
- B. The applicant shall not extend the proposed stub street on Tract 1 without further approval of the Board.

- C. The applicant shall not offer the proposed stub street for dedication to the municipality.
- D. There shall be no parking allowed where vehicles for the drive-through windows will be stacked.
- E. The drive up ATM will abut the bank building near the first drive up window of the total of three drive up lanes and that there will be signage directing motorists to the appropriate lane and that there will be no ATM machine for pedestrians.
- F. The bank shall have no more than four interior teller stations, one of which shall be one handicap teller window 1 station for the branch manager, 1 station for the assistant branch manager, and 2 platform customer service person stations. The bank shall have no more than, 3 full-time tellers, 1 part time teller 1 branch manager, 1 assistant branch manager and 2 platform customer service persons with one investment manager who would be present once or twice a week for a total of approximately 7 employees. Additionally, the anticipated lobby hours of the bank would be Monday through Friday from 9 a.m. to 3 p.m., Thursday from 4 p.m. to 6 p.m., Friday from 4 p.m. to 7 p.m. and Saturday from 9 a.m. to 12 p.m. The anticipated drive

up hours would be Monday through Wednesday and Friday 8 a.m. to 6 p.m.; Thursday 8 a.m. to 7 p.m. and Saturday 9 a.m. to 12 p.m.

- G. The applicant agreed to and shall reduce the brightness of the lighting on the entire site as well as the brightness of the lighting at the bank drive through as may be determined by Board Professionals
- H. The proposed bank roofing material shall be shingles, it shall be constructed from brick and stucco but not be EIFS stucco or similar stucco, the base of the building shall be precast and the columns shall be brick or precast with corbel capitals and that applicant's standard branch bank design as proposed would be used with a different configuration so as to accommodate the lot, the windows shall not be double hung windows but display type windows with divided lites and the building shall reoriented so that the façade would face Middlesex Avenue and applicant shall provide a revised plans for the proposed bank. The applicant shall provide revised architectural plans which shall be subject to subject to review and approval by Board Professionals.

- I. The parallel parking which applicant proposes on the proposed stub street shall be assigned to and used by the bank employees and that the issue of parallel parking on said street shall be revisited when applicant makes application to develop the remainder of Tract 1.
- J. The applicant shall apply to Middlesex County for approval to replace its proposed traffic striping on Middlesex Avenue with curbed, landscaped "island" medians, with on street parking and traffic calming "bump outs" along Middlesex Avenue with landscaping along the curb line and cooperate with Board Professionals in obtaining such approval although this application is not conditioned upon such approval.
- K. The applicant shall plant a double row of London Plain Trees extending the entire length of its property fronting on Middlesex Avenue and line the stub street with appropriate shade trees to continue the streetscape treatment at Franklin Square further down Middlesex Avenue. Such plantings shall be subject to review and approval by Board Professionals.
- L. The applicant shall plant the Northeast portion of proposed Tract 1 proposed to be leased to the bank abutting the Lehigh Valley Railroad right of way with

evergreen trees. Such plantings shall be subject to review and approval by Board Professionals.

- M. In the event of any future development of the site, the issue of signalization on Middlesex Avenue at the expense of the developer will be revisited at the time of that future application.
- N. The water tower located on Tract 1 shall remain only if necessary for fire suppression; and if the water tower does remain, it will be used for fire suppression only and the applicant shall remove the graffiti from the water tower.
- O. The use of the warehouse on Tract 2 will conform with the Land Development Ordinance of the Borough of Metuchen.
- P. The applicant's modification of its lighting so that there is no spillover onto adjacent sites. Such lighting shall be subject to review and approval by Board Professionals.
- Q. The applicant shall configure the driveway exit from proposed Tract 2 so as to reduce the speed of any trucks exiting the premises with traffic calming designs. Such configuration shall be subject to review and approval by Board Professionals.

- R. The applicant shall revise its plans in order to accomplish a separation between the proposed driveway of the Tract 2 warehouse which may include a traffic calming "bump out" and the driveway of the proposed Borough of Metuchen Park abutting the applicant's site. Such design shall be subject to review and approval by Board Professionals.
- S. The applicant shall install a six-foot high chain-link fence along the western property line separating the site from the proposed Borough of Metuchen Park abutting the applicant's site at the completion of the applicant's development of the site and the completion of the Park development project. Such installation shall be subject to review and approval by Board Professionals.
- T. The applicant agreed that the Northeast wall of the warehouse on Tract 2 would be planted with appropriately spaced trees as may be allowed and, in accordance with New Jersey Department of Environmental Protection requirements and review and approval by Board Professionals.
- U. The applicant shall plant two (2) London Plain trees on Durham Avenue near the proposed driveway. Such



- planting shall be subject to review and approval by Board Professionals.
- V. The applicant shall paint the warehouse muted earth tones. Such painting shall be subject to review and approval by Board Professionals.
- W. The exit from the proposed Tract 2 driveway from the warehouse on to Durham Avenue shall be right turn only. Such exit and signage shall be subject to review and approval by Board Professionals.
- X. The Durham Avenue sidewalk crossing the driveway from the proposed Tract 2 warehouse shall be stamped colored concrete pavers. Such pavers and installation shall be subject to review and approval by Board Professionals.
- Y. Signage on the site would be subject to review and approval of the Board Professionals.
- Z. Applicant shall address the recommendations contained in the February 5, 2003 memorandum of Donald Norbut, Board Engineer, section 4 regarding Drainage and Grading and section 6 regarding Lighting to the satisfaction of the Board Engineer.
- AA. The type, number and location of trees, shrubs and landscaping applicant shall plant on the site shall be

subject to review and approval by Board Professionals subject to the regulations and requirements of the New Jersey Department of Environmental Protection.

BB. The applicant shall submit copies of the metes and bounds descriptions for all easements and lease agreements for review by Board professionals and at such time as applicant seeks permits for construction and occupancy applicant shall provide notice to the Board of the proposed use of the premises and provide such information as has been submitted to the Zoning Office.

CC. The applicant shall revise its plans to be in compliance with the "New Jersey Map Filing Law" and shall file the plat pursuant to said Law rather than the subdivision deed and shall provide copies to the Tax Assessor, The Borough Engineer and Board Professionals prior to filing.

DD. Said conditions are subject to the findings of fact of the Board set forth hereinabove.

EE. The applicant shall publish a notice of this decision in the Home News and Tribune within ten days from the date of this decision.

FF. The applicant shall be approved by the Middlesex County Planning Board and any other applicable state agencies.

GG. The applicant shall reimburse the Metuchen Planning Board and/or the Borough of Metuchen for professional fees associated with this application.

**BE IT FURTHER RESOLVED**, that the applicant shall furnish a performance guarantee, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the costs of site improvements approved by this Resolution, as estimated by the Borough Engineer, in a form satisfactory to the Borough Attorney. The applicant shall also post an inspection fee equal to five (5%) percent of the public improvements.

**BE IT FURTHER RESOLVED**, that the applicant pay to the Borough of Metuchen the sanitary sewer connection fees required for the connection of the commercial establishments for this project as set forth in Sections 153-28 through 153-32 of the Land Development Ordinance. Such sanitary sewer connection fees shall be calculated by the Borough Engineer.

**BE IT FURTHER RESOLVED**, that nothing contained herein shall be deemed to relieve the applicant from having to comply with all other Federal, State, County and Local Regulations - for the Planning Board of the Borough of Metuchen offers no warranties, express, implied or otherwise with regard to same.

**BE IT FURTHER RESOLVED**, that the granting of this Application is expressly made subject to and dependent upon the applicant's compliance with all other

applicable rules, regulations and/or ordinances of the Borough of Metuchen, County of Middlesex, and State of New Jersey.

**BE IT FURTHER RESOLVED**, that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Borough Construction Official and to the applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED**, that the granting of this Application is expressly made subject to and dependent upon the applicant's entering into a developer's agreement with the Borough of Metuchen, County of Middlesex and State of New Jersey.

**I HEREBY CERTIFY** that the foregoing statement is a true copy of the Resolution prepared to reflect the actions of the Planning Board of the Borough of Metuchen on February 6, 2003, March 6, 2003 and April 24, 2003.

DATED: May 1, 2003



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SHARON HOLLIS,  
BOARD SECRETARY

RESOLUTION

SPORTSPLEX  
(PARCEL E)

**METUCHEN BOROUGH ZONING BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION GRANTING  
CONDITIONAL USE VARIANCE, BULK VARIANCES,  
SITE PLAN APPROVAL AND DESIGN WAIVERS TO  
METUCHEN I, L.L.C.  
BLOCK 71, LOT 37.02  
APPLICATION NO. 06-727**

**WHEREAS**, Metuchen I, L.L.C., hereinafter referred to as "the Applicant", is the owner of Block 71, Lot 37.02 as shown on the official Tax Map of the Borough of Metuchen, said property being located on Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, the Applicant has filed an application with the Metuchen Borough Zoning Board of Adjustment for a conditional use variance, bulk variances, design waivers and site plan approval; and

**WHEREAS**, the Metuchen Borough Zoning Board of Adjustment held public hearings on said application on November 25, 2008, December 11, 2008, January 8, 2009 and February 24, 2009 after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, the Applicant was represented by Stephen E. Barcan, Esq., who presented the sworn testimony of Stuart D. Schooler; Paul Dimakos, Environmental Engineer; John K. Burns of

Sportsplex Management Group; Steven Coppola, P.E.; Charles D. Olivo, P.E.; Michael Jovishoff, P.P.; and Greg Elliott, of Sportsplex Management Group; and

**WHEREAS**, Mr. Barcan presented the testimony of the persons listed above who were duly sworn, together with the following plans and reports:

1. "Preliminary and Final Major Site Plan and Change of Use for Metuchen I, L.L.C., Proposed Sportsplex Development," prepared by Bohler Engineering, K.L. Haney, P.E., New Jersey License Number 40371, consisting of 11 sheets, dated July 18, 2008, together with boundary and topographic survey prepared by Jeffrey D. Bunce, P.L.S., New Jersey License No. 41045, dated February 28, 2008, consisting of 2 sheets, and a property survey prepared by Pequest Associates, Michael L. Roman, P.L.S., New Jersey License Number 33112, dated June 4, 1999.
2. "Preliminary and Final Major Site Plan and Change of Use for Metuchen I, L.L.C., Proposed Sportsplex Development," prepared by Bohler Engineering, K.L. Haney, P.E., New Jersey License Number 40371, dated July 18, 2008 and revised through February 9, 2009,

consisting of 14 sheets, numbered 1 through 14, together with boundary and topographic survey prepared by Jeffrey D. Bunce, P.L.S., New Jersey License No. 40145, dated February 28, 2008, consisting of 2 sheets, and the property survey prepared by Pequest Associates, Michael L. Roman, P.L.S., New Jersey License Number 33112, dated June 4, 1999.

3. A sheet entitled, "Middlesex Perspective" dated July 28, 2008, prepared by K.L. Haney, P.E., New Jersey License Number 40371, depicting the views from Middlesex Avenue, together with a rendering of the proposed Sportsplex.
4. A plan entitled, "Hampton Street Perspective" dated July 28, 2008, prepared by K.L. Haney, P.E., New Jersey License Number 40371, depicting the views from Hampton Street, together with a rendering of the proposed Sportsplex.
5. Storm water drainage summaries, prepared by K.L. Haney, P.E., New Jersey License Number 40371, dated August 2008 and revised February 2009.
6. Traffic Impact Analysis, for Metuchen I, L.L.C., proposed Sportsplex Redevelopment, prepared by John R.



Harter, P.E., New Jersey License Number 41033 and Charles D. Olivo, P.E., New Jersey License Number 46719, dated January 7, 2009.

7. Architectural plans prepared by the Heiserman Group, as follows:

a. A plan depicting the floor plan of the proposed fields, dated December 29, 2008 and last revised February 9, 2009.

b. A plan depicting the East and North elevations of the proposed Sportsplex dated December 29, 2008 and last revised February 9, 2009.

c. A plan depicting the West and South elevations dated December 29, 2008 and last revised February 9, 2009.

d. Mezzanine floor plan dated December 29, 2008 and last revised February 9, 2009.

e. Logo and sign detail dated February 9, 2009; and

**WHEREAS**, the Board also considered the report of the Board Planner dated November 25, 2008, last revised January 24, 2009, the report of the Board Engineer dated November 17, 2008 and last revised February 17, 2009; and

**WHEREAS,** at the hearing the Board determined that the application was not a use variance under N.J.S.A. 40:55D-70(d)(1), but rather a conditional use variance under N.J.S.A. 40:55D-70(d)(3), design waivers, bulk variances and site plan; and

**WHEREAS,** after hearing the testimony in support of the application and the arguments of counsel, as well as any and all other persons desiring to be heard, the Metuchen Borough Zoning Board of Adjustment has made the following findings of fact and has drawn the following conclusions of law:

1. The Applicant is the owner of Block 71, Lot 37.02 as shown on the official Tax Map of the Borough of Metuchen, County of Middlesex and State of New Jersey, more commonly known as 215 Durham Avenue, Metuchen, New Jersey.

2. The subject property fronts on Durham Avenue and is bordered on the North by the Lehigh Valley Railroad Company, Main Stem Perth Amboy Branch and Vidas Park on the South side. The subject location on the property is adjacent to Durham Avenue and fronts on Durham Avenue.

3. The property is located in the LI/Light Industrial Zone.

4. The subject property (Lot 37.02) contains a 62,349 sq. ft. one-story warehouse building. The Applicant is seeking a conditional use variance, bulk variances and waivers for change of use from the existing warehouse to a sports recreation facility together with an addition for a total square footage of 66,938± square feet, plus a mezzanine.

5. The overall site (Lots 37.01 and 37.02) is the former Oakite site which has been the subject of an environmental clean-up and constitutes a "Brownfield" site. The site is presently involved in a remedial action under the supervision of the New Jersey Department of Environmental Protection.

6. The Applicant originally received approval for a warehouse use on Lot 37.02, but has since been contacted by and contracted with Sportsplex, a company that runs recreation centers for indoor sports activities including indoor soccer, lacrosse, basketball, roller hockey and other types of indoor recreation. The remaining portion of the site (Lot 37.01) contains a bank and additional vacant land that would be subject to further development in the future.

7. As a result of the Application, the following variances are required:

A. Relief from Section 110-87P(4), which provides that no use provided for as a conditional use under Subsection P shall be located on a lot having any of its lot lengths located within 500' from the lot containing a school, church, Borough operated public facility, any residential use or district, or within 500' of a similar type of use. The application as proposed is located within 500' of a residential district and the Borough owned Vidas Park.

B. In accordance with Section 110-64, of the zoning schedule for density, bulk and coverage controls, the following bulk variances exist or are proposed:

I. Minimum lot width at street - 200' required, 69.82' existing and 44.81' proposed after the Borough roadway dedication.

II. Minimum lot width at setback - 200' required, 94.54' existing and 69.59' proposed after the Borough roadway dedication.

III. Minimum rear yard setback - 50' required, 49.03' existing and 29.03' proposed.

C. In accordance with Section 110-186A, design waivers are required as follows for building mounted signs:

I. Maximum number of signs - 1 permitted, 2 proposed.

II. Maximum sign area - 24 sq. ft. permitted, 64 sq. ft. proposed.

III. Maximum sign height - 3' permitted, 5' proposed.

IV. Maximum sign width - 12' permitted, 12.8' proposed.

V. Maximum letter height - 2' permitted, 4' proposed.

8. The representative of the owner of the property, Stuart Schooler, testified that the company purchased the property in June of 1999. In 2003, the company received site plan approval for the reuse of the property as a warehouse. The property was subdivided to provide a bank pad on Lot 37.01. After considering alternative uses for the property, the Applicant in the Spring of 2006, appeared before the TRC in order to discuss potential uses for the property. The Applicant originally attempted to locate a bowling alley, but that possibility is not proposed now. After reviewing other potential possibilities, Sportsplex became an option based upon the unfilled demand for indoor sports facilities within the Borough

area. It is the intent of the owner to continue owning the building and the property and not to sell the building or the land, although such continued ownership is not a condition of this approval.

9. Mr. Schooler explained that as part of the clean-up of the property, soils had to be removed and monitoring wells installed on the site. Subsequently, it was discovered that one additional area of contamination existed at the corner of the warehouse and that area was being excavated and the soils were to be removed. The remaining contamination of the building was the transite board in the warehouse which would be removed, buried and capped on site. The transite board contains non-friable asbestos. The transite would be placed where the slab and soils were to be removed. The transite board would then be placed into the open area, filled and capped.

10. The Applicant presented the testimony of Paul Dimakos, an environmental engineer, who has worked as a consultant on this site since 1999. He explained the cap and remedial plan including removal of the soil and contaminated material, and the filling of the area with transite board to be capped with crushed concrete and slab. He further indicated that the cap would be inspected and subject to DEP approval.

11. The Applicant presented the testimony of John K. Burns, of the Sports Management Group. He is a partner in the Sportsplex. Sportsplex runs several facilities including Rockville, Maryland, Pottstown, Pennsylvania and Sterling, Virginia. Mr. Burns stated that the Sports Plex offers both youth and adult activities which include league and instruction. For the most part, youths use the facility in the winter while the adult leagues are year round. Sports Plex also offers additional types of instruction in basketball, soccer and other sports, as well as child development programs. Sports Plex offers camps in the summer and camps on certain days off. Coaches are brought in to run the camps. Birthday parties are also a feature of the Sports Plex facility. For the most part, Sportsplex teams up with recreation departments and schools in a partnership and targets groups for use. The proposed complex would provide two (2) turf fields and three (3) courts. In addition, office space and food services would be provided. Most of the food is prepackaged and includes pizza. Observation mezzanines are provided. The soccer and other sports are conducted on open fields without boards. Boards are only provided for roller hockey activities. All activities are indoor in climate controlled areas.

Mr. Burns also confirmed that the small building addition at the rear of the building - which creates the need for the rear yard variance - is necessary in order to have room for proper facilities.

12. The general hours of operation of the Sportsplex from November to March are Monday through Friday from 5:00 p.m. to 12:00 midnight; Saturdays from 7:00 a.m. to 12:00 midnight and Sundays from 7:00 a.m. to 12:00 midnight, although games could run over as late as 2:00 a.m. Between April and October, activities are generally 7:00 p.m. to 12:00 midnight during the weekdays, 7:00 a.m. to 8:00 p.m. on Saturdays and 7:00 a.m. to 11:00 p.m. on Sundays. The Sportsplex has little or no truck delivery and provides minimal retail sales of accessory items for use directly by the users of the facility. The facility will contain monitoring cameras both indoors and outdoors to monitor site activities.

13. Steven D. Coppola, P.E. discussed the engineering and site plan. After hearing input from the Board and the public, the Engineer amended the plans (revision dated February 9, 2009) which were presented on February 24, 2009. The changes incorporated a circulation loop which reduced the amount of north-west drive aisles for safety purposes. The plans now also



show the beginning of a public connector road between Durham Avenue and Middlesex Avenue. The plan provides traffic calming "speed tables" and pedestrian crossing signage. Bike racks are also provided on the enlarged island. The landscaping plan provides 46 shade trees, 26 evergreen trees, 70 deciduous shrubs, 6 ornamental trees and 215 evergreen shrubs, 178 low plantings and 510 perennials was amended to include the addition of a wire (or other weather-resistant material) trellis system to support ivy growth along the sides of the building per the Planner's request.

14. The sign for the complex was revised to provide wall signs with individual lettering in "Metuchen" blue. The sign proposal was amended to provide illuminated channel letters as requested.

15. The site plan lighting was revised and redesigned to fit the new site circulation. The on site lights have been designed with heights of 18' rather than the 20' permitted by the ordinance and 12' or less for the building mounted lights. While the Engineer testified that the lighting may exceed the design average standards for the Borough, the lighting itself would be lower in height than permitted and would appear even lower given the elevations of the property. The Engineer

assured the Board that there would be little or no light spillage from the property to the adjoining residential area. Part of the lighting increase was the result of providing lighting along the new proposed public roadway.

16. (a). The Applicant's Engineer also reviewed the new proposed public roadway through the site connecting Durham and Middlesex Avenues; its location would be adjacent to the railroad right-of-way. It was noted that the roadway increases the nonconforming lot width, adds additional impervious surface, and requires temporary grading easements from the railroad. The roadway would be designed to Borough standards. The portion of the roadway through Lot 37.02 will be built contemporaneously with the indoor recreation center. As to the portion through Lot 37.01, there was discussion of the planning issue presented by the desire to build the road versus the fact that without a change to the existing light industrial zone, it is very difficult to do a site layout and know where to locate the road on adjacent Lot 37.01. The Applicant agreed that 18 months after this approval, it would continue the road across Lot 37.01 and through to Middlesex Avenue if by that time (a) the Applicant has obtained an amendment to the Zoning Ordinance permitting a mix of commercial development on the adjacent Lot

37.01 which presently is in the L-I Zone and has only a bank and (b) the Applicant has obtained site plan approval under such new zoning with the new public road incorporated in the site plan. If such Zoning Ordinance amendment and site plan approval have not occurred within 18 months to permit the public road to be built on Lot 37.01, the Applicant shall return to the Board to report on the status of these matters and request an extension of the 18 month period discussed above.

(b). The new roadway and adjacent sidewalk will be dedicated to the Borough.

17. The Applicant presented the testimony of Charles D. Olivo, P.E., a traffic engineer, who presented a traffic impact analysis for the proposed Sports Plex redevelopment. The report was marked as A-8 in evidence. The report, dated January 7, 2009, contained a study of intersections in and about the proposed site. The study determined that the peak hour for the project user was different than the peak hour for the use of the roadways surrounding the project. The peak hour for the roadways was between 4:00 p.m. and 6:00 p.m. Moreover, the proposed use generated less than 100 new trips during the highest critical peak hour of the adjacent roadway network, and therefore was not a "major generator" during that peak hour.

The traffic engineer further testified that the new proposed public roadway would be a benefit. He concluded that there would be no change in the service levels of the areas surrounding the project and that the parking areas were adequate for the parking demand counts. He further recommended signage and cross-walks in order to delineate locations for crossing within the Sportsplex parking lot. As a result of the study by the traffic engineer, the circulation plan was revised and presented in a new plan dated February 9, 2009.

18. At the request of the Board, Mr. Olivo did a further investigation into whether or not the counts based upon the schedule for the Sports Plex facilities had been skewed by the fact that the counts were taken during the holiday season. Mr. Olivo reported in his testimony on February 24, 2009 that, in fact, the number of games scheduled was higher during the holiday season than non-holiday season. All games were played and there were no forfeits, based on information provided by the operator. Thus, he confirmed his prior findings that the proposed project would have no significant impact on the roadways surrounding the project.

19. As a result of testimony given during the hearings, the Zoning Board invited Linda Taylor, the case manager from the

New Jersey Department of Environmental Protection (DEP), to testify at the Zoning Board hearing in order to further enlighten the Board as to the November 2008 remedial action work plan for the site. However, Mark Peterson, Bureau Chief of Bureau Industrial Site Remediation, wrote to the Board on or about February 3, 2009, indicating that Ms. Taylor was not permitted to testify before the Board and that the Board would be copied on the DEP's review when it was completed.

20. The Applicant presented the testimony of Michael Jovishoff, P.P., a planner with Philips, Preiss and Shapiro. Mr. Jovishoff testified that he reviewed the surrounding area and the requirements of the LI Zone and agreed with the Board's determination that a variance for a conditional use permit was required. He also reviewed the application concerning the bulk variances. Mr. Jovishoff determined that the site was suitable based upon the location of the site adjacent to Vidas Park. He testified that the proposed project would be a benefit and not a detriment and would have minimal impact on the residential areas. In fact, it would have no adverse impact on Vidas Park which was a compatible use. He found that the proximity to Vidas Park, a public facility, was an advantage rather than a disadvantage and created a unique recreational opportunity. He

further determined that the proposed four season use provided amenities not available within the Borough and certainly not available at Vidas Park. He further noted that the creation of recreation opportunities was a purpose of the Municipal Land Use Law. The Sportsplex provided the opportunity for recreation use and it was a better use than a warehouse. Moreover, the expanded recreational opportunities were being provided by private enterprise rather than tax dollars.

21. Mr. Jovishoff also found the incorporation of the new public roadway could ultimately lead to the enhancement of the greenway areas within the Borough. As a result, he concluded that the proposed use was a benefit to the community, particularly with the addition of the landscaping as shown on the February 2009 revised plans. He further noted that the Applicant could have complied with the open space requirements but that the provision of the public roadway reduced open space to 21%. Nevertheless, he found that the benefit of the public roadway outweighed any detriment.

22. Mr. Jovishoff further testified that the two proposed wall signs as amended provided adequate notice to users of the location of the building and had little, if any, impact given the size of the façade as compared to the sign. In fact, he

noted that the sign will appear smaller given the distance from the roadway and the size of the building.

23. Mr. Jovishoff also noted that - as the plans show - the rear yard setback variance is for a yard adjacent to the Applicant's Lot 37.01 making the variance somewhat technical. Further, the lot width variances - exacerbated by the roadway dedication which makes Lot 37.02 narrower - are an existing narrow neck of the property between the greenway and Vidas Park and cannot be enlarged. The lot widens significantly at the building. This is an undue hardship caused by lot shape under N.J.S.A. 40:55D-70(c)(i).

24. Mr. Jovishoff further noted that the benefits of the application outweighed any detriment when it came to the negative criteria. There was no outside activity, no truck traffic and no significant impact on the area caused by the proposed application. The use was the same as the park facility adjacent to the site and would, in fact, have less of an impact given its indoor activity. The buffering and distance from the residential areas, as well as the indoor activity, would have little, if any, impact on the surrounding municipal areas and would have no significant impact in terms of traffic. Thus,

there was no substantial detriment to the community, the zone plan or the zoning ordinance.

25. At the conclusion of the public hearing, the Applicant's attorney argued that the Applicant had complied with the proofs required under the case of "Coventry Square" discussed in Paragraph 26 of this Resolution. The Applicant argued that the conditions set forth in the conditional use permit, provisions of Section 110-87 were not significantly impacted by the Applicant's application and that the relaxation of the conditions was justified given the purpose of the conditions and the location of this specific property and use.

26. After hearing the sworn testimony on behalf of the Applicant, and any and all objectors, and the arguments of the attorney representing the Applicant, the Metuchen Borough Zoning Board of Adjustment has made the following findings of fact and conclusions concerning the approval of the application:

A. The Board finds that the proposed use to be a conditional use governed by the provisions of Section 110-87(P).

B. The Board finds that the testimony presented on behalf of the Applicant satisfies the positive and negative criteria under N.J.S.A. 40:55D-70(d)(3), as stated in Coventry Square v. Westwood Zoning Bd. of Adj., 138 N.J. 285 (1994). In Coventry



Square, the Court found that an applicant need only justify the municipality's continued permission for the use, notwithstanding the deviation from one or more of the conditions of the ordinance. Thus, it is clear that the quantum of proof necessary to prove positive criteria in a conditional use under N.J.S.A. 40:55D-70(3) is less than the enhanced proofs required under N.J.S.A. 40:55D-70(d)(1). As a result, the Board has focused its attention on whether the Applicant's proofs demonstrate that the site will accommodate the problems associated with the proposed use given the conditions set forth in the ordinance.

C. In proving the positive criteria, the Applicant, through its plans and testimony, has demonstrated that the proposed application is consistent and supports the overall goals of the conditional use in the LI Zone. The Board finds that the site is an existing site with a warehouse that is undergoing an environmental cleanup and is presently a Brownfields site. The proposal of the Applicant to provide an indoor sport facility in the existing building provides for the reuse of a portion of that building. Above grade improvements will be demolished; the slab and some foundations will remain. Moreover, the indoor sports facility, while adjacent to an

existing municipal facility, and within 500' of a residential zone which facts generate the need for the "d(3)" variance, does not adversely impact the apparent purpose of the conditions. A review of Section of 110-87P of the Metuchen Code sets forth four conditions that apply to a conditional use permit for sports and amusement type uses in the LI Zone. Only the condition in Subsection 4 described above is applicable to the proposed use. It is clear that the location of such a use within 500' of a school, church, Borough operated public facility or any residential use or district took into account many of the types of uses set forth in Subsection P including amusement centers, billiard parlors and activities that may have occurred outdoors. The indoor facilities being provided by the Applicant, while not complying with Subsection 4, is appropriate for the conditional use notwithstanding the deviations from the conditions. The plan accommodates the problems associated with the use for which the conditions have been established. For example, the uses are indoors and, as stated above, there was testimony that the site lighting will not be seen off-site. Moreover, the use is compatible and compliments the municipal facility, Vidas Park.

D. The Board finds that the proposals and stipulations of the Applicant to construct a roadway to connect Middlesex Avenue and Durham Avenue as well as provide additional plantings and architectural details, such as the ivy trellises, addresses the continued use of this building adjacent to Vidas Park and near the residential areas.

E. Other issues raised by many of the residents who spoke at the meetings, concerning the environmental issues have been addressed by the Applicant, but are nevertheless, subject to the New Jersey Department of Environmental Protection approval. The Board has no jurisdiction other than to condition its approval upon the appropriate permits and approvals from the New Jersey Department of Environmental Protection.

F. As a result, the Board finds that the Applicant has met the positive criteria under Coventry Square.

G. Applicant has satisfied the requirements of N.J.S.A. 40:55D-70(c) for the lot width variance (lot is narrow at the frontage) and rear yard (setback to Lot 37.01 which Applicant owns) (testimony supported the benefit of a small building enlargement at the rear).

H. The Board also finds that the Applicant has met the negative criteria under Coventry Square and the bulk variances.

The application has been modified to address the concerns of the Board and, based upon the stipulations herein, satisfies the negative criteria as set forth in N.J.S.A. 40:55D-70. Specifically, the Board finds that there are no adverse impacts on the surrounding properties based upon the manner in which the proposed Sports Plex is to be managed and accessed. Moreover, it is clear that the Applicant has addressed any perceived traffic issues by agreeing to construct the connecting public roadway through its properties from Durham Avenue to Middlesex Avenue. Issues concerning traffic and onsite circulation and safety have been addressed by the modified parking layout submitted to the Board in the last plan developed by the Applicant (revised February 9, 2009). Moreover, the Applicant has addressed any sight issues by conforming the sign to the requests of the Board as well as providing plantings and vines at the request and subject to the approval of the Board Planner.

I. The Board finds that the proposed use will permit reuse of a Brownfields location while enhancing the surrounding areas, creating a beneficial relationship between Vidas Park and the proposed recreational uses.

J. The Board finds that the Applicant has demonstrated that the existing and requested bulk variances and waivers can

be granted in that minimal new construction is being proposed. The additional bulk variance for open space is the result of the proposed public roadway requested by the Board connecting Middlesex Avenue and Durham Avenue.

K. The Board further finds that the site plan as proposed can be granted subject to the stipulations and representations made by the Applicant and the conditions imposed herein. The proposed site plan is consistent with the requirements of the Borough and the waivers requested can be granted without substantial detriment to the surrounding properties and the intent and purpose of the zone plan and the zoning ordinance. The proposed site plan is consistent with the Applicant's presentation and will result in a site with proper circulation while providing a public connecting road between Middlesex and Durham Avenues.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Metuchen that the application of Metuchen I, L.L.C., be and is hereby granted for a conditional use variance, bulk variances, waivers and site plan as submitted to the Board at its meeting of February 24, 2009, together with the stipulations and agreements made by the Applicant, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Zoning Board of Adjustment.

B. The Applicant furnishing proof to the Secretary of the Zoning Board of Adjustment that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits, if any, shall be issued until all fees and escrows are paid in full.

C. The Applicant shall establish the location of the proposed public roadway connecting Middlesex Avenue and Durham Avenue and shall construct same per Borough specification within eighteen (18) months of the date of this approval. If the Applicant is unable to achieve commercial zoning and site plan approval for its adjacent lands located between this site and Middlesex Avenue, it shall apply for an extension of this condition. Such request shall be filed sixty (60) days prior to the expiration of the 18 months.

D. Compliance with the site plan submitted on February 9, 2009 and marked in evidence as A-10 at the hearing.

E. The execution of a developer's agreement with the Borough of Metuchen for construction of the proposed connective

roadway as set forth above. Said roadway shall be constructed in accordance with the Metuchen Borough standards.

F. New Jersey Department of Environmental Protection approval, as required, for occupation and operation of the proposed sports plex, as required, or provide and connect to on or off.

G. Compliance with the report of the Board Engineer dated February 17, 2009.

H. Provision of traffic calming devices into the design of the proposed roadway and the circulation system on the remainder of the site, subject to the approval of the Board Engineer and Board Planner.

I. Provision of street trees along the new proposed roadway, subject to the approval of the Board Planner.

J. The approval of a revised landscaping plan by the Board Planner to include the provision of additional landscaping along the property line with the adjacent lot to reduce the view of the building from Middlesex Avenue.

K. Review and approval of the final proposed lighting plan by the Board Engineer and the Board Planner.

L. Review and approval of the proposed sign in accordance with the application filed herein as amended and demonstrated by

Exhibit A-13 at the hearing on February 24, 2009. The color shall be subject to the approval of the Board Planner in order to determine the appropriate "Metuchen Blue."

M. The Applicant shall be permitted, but not required, to incorporate photovoltaic solar panels onto the roof versus providing a green roof solution.

N. Review and approval of the final architectural plans including drawings, materials and colors by the Board Planner.

O. Review and approval of the following agencies, if required:

1. New Jersey Department of Environmental Protection.
2. Middlesex County Planning Board.
3. Freehold Soil Conservation District Certification.
4. Borough of Metuchen Fire Department.
5. Middlesex County Utilities Authority.
6. Middlesex Water Company.
7. Conrail Corporation for any construction easements as determined by a developer's agreement.

P. Submission and approval of any deeds of easement and dedication of right-of-way for the new proposed road in a form



acceptable by the Borough Attorney as to form and the Borough Engineer as to description.

Q. The Applicant shall comply with the Borough affordable housing ordinance, including payment to the Board of any fees required under Section 110-55.1, *et.seq.*, of the Land Development Ordinance, if applicable.

R. A copy of this resolution shall be filed in the Office of the Middlesex County Clerk in the same manner in which deeds are filed.

**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement within the time required and shall terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution.

**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent

jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

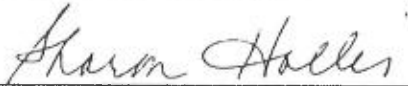
**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting held on February 24, 2009 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Zoning Board of Adjustment to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Borough Construction Official and to the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairperson and Secretary by and are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

Dated: April 21, 2009

#3157522

  
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Sharon Hollis, Secretary

RESOLUTION

DAYCARE  
(PARCEL E)

METUCHEN PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING  
PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL,  
WITH C VARIANCES AND EXCEPTIONS, TO  
METUCHEN III, LLC  
BLOCK 71, LOTS 37.02 & 37.01  
215 DURHAM AVENUE  
APPLICATION NO.: 21-13131E

**WHEREAS**, this application involves property comprised of Block 71, Lots 37.02 & 37.01, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 215 Durham Avenue in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Metuchen III, LLC, hereinafter referred to as “the Applicant,” is the owner of Block 71, Lot 37.01, and is an entity that is wholly owned by Metuchen I, LLC, the owner of Block 71, Lot 37.02; and

**WHEREAS**, the Planning Board of the Borough of Metuchen held a public hearing on said application on February 17, 2022, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, at said hearing, the Planning Board considered the following documents:

1. Application for Development, last dated November 22, 2021, deemed complete by the Office of Planning & Zoning on January 14, 2022 and consisting of six (6) pages;
2. Narrative, undated and consisting of four (4) pages;
3. Submission Checklist, undated and consisting of one (1) page;
4. Major Site Plan Checklist, undated and consisting of nine (9) pages;
5. Zoning Permit Application, dated November 22, 2021 and consisting of one (1) page;

6. Zoning Coverage Checklist, dated November 19, 2021 and consisting of one (1) page;

7. Corporate Disclosure, undated and consisting of one (1) page;

8. Report entitled “Stormwater Management Report Prepared for Maven Group; Block 71; Lots 37.01 & 37.02; 215 Durham Avenue; Borough of Metuchen, Middlesex County, New Jersey,” prepared by Bohler Engineering NJ, LLC, under seal of Ahmad Tamous, PE, NJPE License No. 46184, dated November 2021, consisting of 21 pages and the following enclosures:

a. Map entitled “FIRM Flood Insurance Rate Map; Middlesex County, New Jersey (All Jurisdictions); Panel 61 of 286; Map Number: 34023C0061F; Effective Date: July 6, 2010,” prepared by Federal Emergency Management Agency and consisting of one (1) sheet;

b. Survey entitled “Remedial Cap As-Built; PI No. 024790; Former Oakite Product Facility; Borough of Metuchen, New Jersey,” prepared by CB&I, approved by P. Farrington, PE, NJPE License No. 22900, dated December 20, 2013 and consisting of one (1) sheet; and,

c. Map entitled “Drainage Maps for Maven Group; Proposed Daycare; 700 Middlesex Ave; Block 71; Lots 37.01 & 37.02; Borough of Metuchen, Middlesex County, New Jersey; LI Zone; Tax Map Sheet #17,” prepared by Bohler Engineering NJ, LLC, approved by A. Tamous, PE, dated September 8, 2020, last revised November 8, 2021 and consisting of one (1) sheet.

9. Survey entitled “ALTA/ACMS Land Survey; Metuchen I & Metuchen III; 215 Durham Avenue & 700 Middlesex Avenue; Lots 37.01 & 37.02, Block 71; Borough of Metuchen, Middlesex County, New Jersey,” prepared by Control Point Associates, Inc., under

seal of John P. Lynch, PLS, NJPLS License No. 35381, dated January 19, 2011, last revised April 20, 2015 and consisting of two (2) sheets;

10. Engineering plans entitled “Preliminary & Final Major Site Plan for Maven Group; Proposed Daycare; 215 Durham Avenue; Block 71; Lots 37.01 & 37.02; Borough of Metuchen, Middlesex County, New Jersey; Oakite Site Redevelopment; Tax Map Sheet #17,” prepared by Bohler Engineering NJ, LLC, under seal of A. Tamous, PE, dated November 8, 2021, last revised December 23, 2021 and consisting of 16 sheets.

11. Exhibit entitled “Aerial Exhibit,” prepared by Bohler Engineering NJ, LLC, approved by A. Tamous, dated January 24, 2022 and consisting of one (1) sheet;

12. Rendered exhibit entitled “Site Layout Plan,” prepared by Bohler Engineering NJ, LLC, approved by A. Tamous, dated January 24, 2022, last revised January 5, 2022 and consisting of one (1) sheet; and,

13. Architectural plans entitled “Everbrook Academy – Location 12K Prototype/Model,” prepared by Architects, Inc., dated April 10, 2020, last revised April 1, 2021 and consisting of one (1) sheet.

14. (Revised) Application for Development, dated February 7, 2022, and consisting of six (6) pages;

15. (Revised) Narrative, undated and consisting of four (4) pages;

16. (Revised) Zoning Permit Application, dated February 7, 2022 and consisting of one (1) page;

17. (Revised) Corporate Disclosure, undated and consisting of one (1) page;

18. Amended Oakite Site Redevelopment Plan; and,

19. Redevelopment Agreement by and between the Borough of Metuchen and Metuchen III, LLC.

20. Revised memorandum of LRK Inc. by Chris S. Cosenza, AICP, PP, LEED AP, Board Planner, dated February 16, 2022;

21. Memorandum of Colliers Engineering & Design, P.A. by Thomas J. Herits, P.E., P.P., P.L.S., Borough Engineer, dated February 4, 2022;

**WHEREAS**, the Applicant was represented by Steven J. Tripp, Esq.; and

**WHEREAS**, Applicant seeks preliminary and final major site plan approval, exception(s) and variance(s) for the property designated as Block 71, Lots 37.02 & 37.01 (parking only), as shown on the official Tax Map of the Borough of Metuchen and more commonly known as 215 Durham Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Applicant proposes to construct a 12,870-square-foot one-story daycare facility in an area containing an existing parking area on Lot 37.02 as well as to utilize the existing DGA parking area located on Lot 37.01 (“Project”). Other improvements associated with the daycare facility include fenced playground areas, realigned walkways and drive aisle, stormwater management infrastructure, landscaping, lighting and signage. The existing parking area contains 98 parking spaces; the proposed daycare facility will be constructed in an area containing 75 parking spaces, while the remaining 23 parking spaces will be reconfigured to accommodate 33 parking spaces. There are 77 parking spaces along the front of the Metuchen Sportsplex; therefore, there will be a total of 110 parking spaces located on Lot 37.02; and

**WHEREAS**, the Project substantially conforms to the Amended Oakite Site Redevelopment Plan (“Redevelopment Plan”); and

**WHEREAS**, Applicant requests the following C variances:

§110-112.A(1), chain link fence material and solid fencing not permitted; chain link fencing with vinyl slats proposed; and

§110-112.B.1.(a), fence height permitted along Durham Avenue; four feet permitted; six feet proposed; and

**WHEREAS**, Applicant requests the following exceptions:

§110-186.A.(1), size of wall mounted signs, 24 square feet permitted, 48 square feet and 61 square feet proposed; and

§110-186.A.(2), height of wall mounted signs, 3 feet permitted, 4 feet 10 inches proposed for one sign, 5 feet 3 inches proposed for two signs; and

§110-186.A.(3), sign width, 12 feet permitted, 13 feet 6 inches proposed for three signs; and

§110-185.C, size of secondary wall-mounted signs, 12 square feet permitted, above-described signs exceed this limitation; and

**WHEREAS**, the Board heard the presentation and evidence as follows:

1. Steven Tripp, Esq., Applicant's attorney, gave an opening statement. The application is submitted on behalf of the redeveloper, Metuchen III, LLC. He indicated that there was a correction to the application, the facility may be used by 152 children, not 120. He indicated that the parking is, nevertheless, adequate. Mr. Tripp indicated that the project substantially complies with the redevelopment plan. There are some variances required relating to fencing. Additionally, regarding design requirements, Applicant is seeking approval for three facade signs. Mr. Tripp outlined the witnesses he proposed to present. He indicated that there would be testimony by a professional engineer, an architect, a planner, and a representative of Everbrook, the operator of the



daycare center. Additionally, Stuart Schooler, Principal of the Applicant, and a Licensed Site Remediation Professional (LSRP) were available to give testimony.

2. David Wisotsky, P.E., was sworn in, qualified and gave testimony. He introduced Exhibit 1-A, an aerial exhibit. He described the layout of the site, indicating that Durham Avenue is to the north and Middlesex Avenue is to the south. The Sportsplex is shown on the upper portion of the aerial on Lot 37.02. The only other structure on the site now is at the southeastern portion of the overall property, on Lot 37.01, a vacant bank building, formerly Fulton Bank.

3. Mr. Wisotsky next testified about Sheet C-301 on the site plan set submitted to the Board. He described the site. Durham Avenue is on the north. The Lehigh Valley Railroad is on the east. The proposed Artis Senior Living facility is shown. The Sportsplex is also depicted. Mr. Wisotsky mentioned the Sportsplex is on "Parcel E," which is a part of the overall site, not yet subdivided. Mr. Wisotsky indicated that the Applicant is not proposing a subdivision at this time and is only seeking approval for the proposed daycare building.

4. Mr. Wisotsky next indicated that an exhibit was prepared working from Sheet C-302, the site layout plan. This exhibit was marked 2-A.

5. Mr. Wisotsky described the 12,870 square foot proposed daycare building, as well as the proposed parking area. Mr. Wisotsky indicated that there is also access to the parking area that is in front of the Sportsplex, between the Sportsplex and the connector road. Mr. Wisotsky described the parking area, indicating that there is appropriate ADA access and ramps at all locations and crosswalks, and that the plan allows for pedestrian circulation from the public right-of-way through the site and into the Sportsplex or the daycare center. Mr. Wisotsky pointed out the recreational and play facility and playground that is towards the north and the western edges of the site and behind

the building. He indicated that these recreation areas are controlled by fencing, which will be the subject of further discussion.

6. Mr. Wisotsky described the parking requirement, which he calculated to be a total of 118 spaces, 67 for the Sportsplex and 51 for the daycare. This would be satisfied through the 110 existing paved spaces, less the 23 spaces which were agreed to be used by way of easement by Artis Senior Living, for a total of 87 existing spaces, available for use by the Sportsplex and daycare, where 118 are required. After some discussion, it was calculated that 31 spaces needed to be reserved in the “future paved” parking area on Lot 37.01 and it was agreed, through Applicant’s counsel, that 31 spaces would need to be reserved in the current dense graded aggregate (DGA) area by way of easement or other encumbrance.

7. Mr. Wisotsky indicated that in terms of comments by the Board Engineer, signage for compact cars in the compact car parking area would be added to the plan. In terms of the Board Engineer’s comments suggesting increasing the depth of the compact spaces, Mr. Wisotsky indicated that the ordinance allows for up to 15% of the overall parking to be compact spaces, being defined as 16 feet by 8 feet. He indicated that they comply and that it was his opinion that the layout is appropriate.

8. Mr. Tripp indicated that the Applicant will provide bicycle parking, as per the ordinance requirement. Mr. Wisotsky then described the trash enclosure and indicated that the trash enclosure for the daycare would match the existing trash enclosure at the Sportsplex.

9. In response to a question, Mr. Wisotsky described access to the site, particularly the Sportsplex, during construction of the daycare. He explained that access would be through the second curb cut off of Durham Avenue, while the first entrance would be closed off during

construction. Mr. Wisotsky also agreed that Applicant would actually delineate the parking spaces in the DGA parking area, perhaps by an epoxy style traffic marking paint.

10. Mr. Wisotsky described the fencing shown on the plan, indicating that it is chain link vinyl coated fencing with privacy slats, and that some of the fences would be 6 feet in height. Where the fencing is outside of the play areas, there is no privacy slatting. At that point, the fencing changes to a decorative aluminum fence that is open, but still 6 feet in height. The fencing height drops to 4 feet along the remainder of the front of the building, also being decorative aluminum. Mr. Wisotsky indicated that the ordinance does not permit chain link fencing with privacy slatting and that the requirement is for it be at least 50% open and no more than 6 feet in height, from which requirements Applicant seeks variances.

11. Mr. Wisotsky testified about the landscape plan included in the site plan. He indicated that the landscape is conforming with the requirements of the ordinance. He described the numbers of trees and shrubs on the plan. He also stated that there is a row of decorative landscape boulders that go along the front of the building on the bottom of the retaining wall between the new sidewalk along the road and the building.

12. Mr. Wisotsky described the lighting shown on the plan and also discussed stormwater management. He indicated that the light color could be softened from 4000k to 3300k. With respect to drainage, he indicated that the existing drainage structures will be modified and that as depicted, the drainage plan meets the requirements of the DEP Stormwater Management requirements for the application. He indicated that Applicant did not propose additional stormwater quality measures.

13. Mr. Wisotsky described the three proposed facade signs. One on the northern side of the building, facing Durham Avenue, would be 61 square feet. A second sign on the eastern side of

the building, facing the connector road, would also be 61 square feet. A third sign on the southern end of the building, near the main entrance, would be 48 square feet. Only one sign is permitted under the zoning ordinance, whereas three are proposed, and signs exceeding 24 square feet are not permitted, whereas the proposed signs exceed that.

14. There was a discussion about ordinance requirements. The Board Planner explained that more than one use is permitted on a lot. It was also stated that currently, the frontage of the site is Durham Avenue, but once the connector road is created, there will be a second front.

15. Brian Birks was sworn in and gave testimony. He is the Senior Director of Real Estate Development for Everbrook and is in charge of site selection and acquisition of properties for the construction of Everbrook Academies. The parent company is Learning Care Group.

16. Mr. Birks indicated that the hours of operation are Mondays through Fridays from 6:30 AM to 6:30 PM. There will be a staff of 23 members, arriving in a staggered manner throughout the morning, being fully staffed by about 9:30 or 10:00 AM. 152 children would be full capacity, meaning every classroom is at full capacity, which Mr. Birks stated generally does not happen.

17. Mr. Birks stated that generally children are brought in and picked up throughout the day. There are several peak hours, drop off between 6:30 and 9:30 AM and pick up from about 3:30 to 6:30 PM. Parents are required to bring their children into the building and sign in. He indicated that Everbrook requires a minimum of about 35 spaces, but as long as there are 8 to 10 parking spaces close to the front of the building, that will accommodate a 152 capacity school.

18. Mr. Birks indicated that deliveries come approximately 2 to 3 times a week, office supplies, classroom supplies and some food, arriving in small box trucks. Trash pickup is typically two times per week.

19. James Kassay, Architect, was sworn in, qualified and gave testimony.

20. Prior to Mr. Kassay testifying, Mr. Tripp indicated that he was going to use an exhibit that is slightly different than the plans that were submitted in that the plans only showed two signs and the architecture has been changed somewhat. After some discussion, it decided that this exhibit would be designated A-3, and that the prior marked exhibits would be A-1 and A-2, rather than 1-A and 2-A as they were originally marked. To reiterate, the aerial was designated A-1, the colored site plan A-2 and the new exhibit A-3.

21. Mr. Kassay described the architecture. Two gables have been added. In lieu of EIFS, a stucco finish is shown as the main field material throughout the building. There is some fiber cement vertical siding and in lieu of cultured stone, the plan shows a thin brick base around the entire building. The roofing is asphalt shingle roofing. Mr. Kassay also reiterated the signage that had been previously discussed.

22. Mr. Kassay described the proposed sustainability features of the building, including occupancy sensors, Energy Star rated refrigerator and freezer, Energy Star milk cooler, undercounter Energy Star rated refrigerators, LED lighting fixtures throughout, and limited irrigation. Plumbing fixtures are all water sense rated. Paint specification is low VOC. Case work is all formaldehyde free. Wall carpet is made from 100% recycled resins and the material is 100% recyclable. The ceiling tile is 99% USDA certified bio-based content, 41% recycled content. Flooring is renewable content.

23. In response to a question, Mr. Kassay offered a rendering of the building, which was marked as Exhibit A-4. Mr. Kassay provided the dimensions of the signs. He indicated that the 61 square foot sign is 5 feet 3 inches by 16 feet 3 inches and that the smaller sign, the 48 square foot

sign, is 4 feet 10 inches by 12 feet. Mr. Kassay further indicated that the dimensions include a planet symbol at the top of the circle on the signs, so it is not a rectangle.

24. In reviewing the Planner's report, Mr. Tripp went over the items for which Applicant no longer needed relief, including parking setback, bicycle parking, trash enclosure, street trees, and light fixture color temperature, which left the fences and the signage as the only items from which relief required.

25. Digia Chen, P.P., was sworn in, qualified and gave testimony. She is a professional planner. Ms. Chen broke the relief required into two groups, the signage and the fencing.

26. Ms. Chen noted that daycare is an inherently beneficial use under the Municipal Land Use Law. Addressing the signage, she stated that the relief is not from the redevelopment plan, but from the underlying ordinance. She opined that considering the context and the orientation of the signs and the distance from the neighboring properties and rights of way, there would not be any visual detriment.

27. As to the fencing, she indicated that the purpose of the fence height was to have privacy in the outside playground area and for consistency and visual continuity. She opined that there would be no visual detriment from having the proposed 6 foot high fencing. It was her opinion that the benefits of granting the variances would outweigh the detriments. She also indicated that the granting of the variances would advance several purposes of the Municipal Land Use Law, including purpose A, general welfare, G, sufficient spacing and appropriate locations, and I, desirable visual environment.

28. Crystal Leavey, LSRP, was sworn in, qualified and gave testimony. She is a licensed site remediation professional. She indicated that the site is currently under environmental restriction for residual soil contamination associated with historical operations at the Oakite site. She stated

that there are two caps. One consisting of two foot cap that is soil, that is, clean fill material that was brought in. The other cap consists of the sidewalk and asphalt paving. In response to questioning by the Board Engineer, Ms. Leavy indicated that there will be some disturbance of the cap during construction and there will be some soil exposure. She stated that her job is to ensure that the work remains protective of human health and the environment and to prepare a remedial action work plan (RAWP) for submission to the NJDEP. She indicated that her firm would prepare the RAWP, and it would be certified and submitted to NJDEP. After construction, the cap will have to be reinstalled in areas that are not under paving or the building foundation. Ms. Leavy indicated that once construction is complete, there will be a recorded deed notice on the property to incorporate the new engineering controls. In response to a question, Ms. Leavy indicated that the remedial action work plan has to be submitted before ground is broken. In response to another question, Ms. Leavy indicated that the area where the daycare center is proposed to be constructed is covered by environmental restrictions strictly related to historic fill material and that, historically, the subject area of the site was used as a parking area, and no manufacturing activities went on there.

29. The Board Engineer went over a few points in his review memorandum. Specifically, he asked about access to the site and the amount of parking needed during construction. In response, Stuart Schooler, was sworn in and gave testimony. He is the managing partner of Metuchen III and Metuchen I and is responsible for redevelopment of the site. Mr. Schooler indicated that to the best of his knowledge, the DGA parking area had never been needed to be used and that if excess parking was used, he had not previously heard of that. Mr. Schooler stated that he believed that during construction, the site would accommodate the parking needs of the uses. He stated that the DGA parking area can be made accessible from the rear of the building which faces Middlesex Avenue.

30. In response to a question, Mr. Schooler indicated that he anticipates that in order to get the building shell complete so that the parking area could be reopened, it would be about 10 months from groundbreaking, and that interior work would take place after that.

31. Mr. Mannix indicated that as part of resolution compliance, he and Applicant would need to look at some kind of temporary measure to make it safe for people to access the DGA parking area from the end of the existing access driveway, to which Mr. Schooler agreed.

32. The Board Engineer next confirmed that Applicant agreed to comply with all of the items in his review letter unless otherwise specified on the record.

33. Mr. Schooler clarified that the proposed road is going to be dedicated to the Borough from Durham Avenue to Middlesex Avenue as soon as the utility companies approve the utility proposal to bring them in up the proposed road.

34. The Board Attorney interjected that as part of the application, it had been required that the proposed road be submitted to and approved of by the Borough for acceptance of dedication, so that it will be a public right of way. On the right of way issue, Applicant agreed that if the road is not dedicated by the time the Artis Senior Living subdivision map is filed, then Applicant would provide an easement as an interim measure. The Board Attorney and Board Engineer indicated that the beneficiary of the easement would be the Borough of Metuchen.

35. The Board Engineer discussed his concerns about the compact parking spaces and the width of the sidewalk in front of them. Ultimately, Applicant maintained that the compact parking spaces should remain as proposed, with no wheel stops.

36. In response to the Board Engineer's question, Mr. Wisotsky indicated that the pedestrian crossing along the daycare side to the Sportsplex side was designed primarily for employee access to the trash enclosure.



37. The Board Engineer, Mr. Mannix, indicated that he had spoken with an Engineer in Mr. Wisotsky's office, and that it was agreed that they would provide Mr. Mannix with data concerning the model of the water quality treatment device. Mr. Mannix emphasized that Applicant would need to comply with the current regulations, which he could determine after the existing device details are provided.

38. With respect to the Board Engineer's Site Comment 9 concerning the sanitary lateral, Mr. Wisotsky indicated that his office would work with the Board Engineer's office to provide a way to protect the existing sanitary sewer line.

39. With respect to the Board Engineer's Site Comment 19 regarding lighting for the DGA parking area, Mr. Mannix indicated that the lot has to have some kind of lighting. Applicant agreed to provide lighting for those portions of the DGA parking area that will be used after dusk. The Applicant agreed to initially provide lighting for the 31 spaces to be reserved for the Sportsplex and the daycare center, and to fence off the remainder of the DGA parking area. In the event that the Applicant decides to use additional portions of the DGA parking area, the fencing would be relocated and those portions to be used would be lighted as well, subject to the approval of the Board Engineer as to the lighting to be provided for the additional portion

40. Mr. Tripp indicated that there was nothing in Mr. Mannix's report that had been skipped over that Applicant did not agree with, except for those items specifically addressed at the hearing, including the comments about the compact parking and the adjacent sidewalk.

41. Discussion next turned to the Board Planner's review memorandum. Point 8.5, electric vehicle spaces, were discussed. Mr. Wisotsky indicated that there are two spaces designated with conduits being installed to allow for up to 6 additional spaces. Mr. Schooler indicated that there was some problem with supply and permits, but the wiring will be installed in anticipation. With

respect to bicycle parking, Mr. Cosenza emphasized that the redevelopment plan requires one bicycle parking space for every 10 motor vehicle parking spaces and that compliance was required. Mr. Tripp stated they would be installed. Mr. Tripp stated that they would be submitted on the revised plans and Mr. Wisotsky stated that his office would work with the Board Planner's office and pick a spot for the spaces.

42. The Board Planner suggested removing some boulders and changing the landscaping. Mr. Kassay indicated that the intent of the boulders is to provide some vehicular protection and that they would like to leave the boulders. With respect to landscaping, Mr. Schooler agreed, and Mr. Tripp stated that Applicant would work with the Planner's office with respect to the spacing of the boulders and landscaping, to which Mr. Schooler agreed. Mr. Cosenza indicated that revised plans would be required.

43. Regarding the Board Planner's comment on street lighting, Mr. Wisotsky agreed to Mr. Cozenza's request that the Applicant work with Borough officials with respect to decorative lighting fixtures on the new street at the time of the subdivision application.

44. The Board Planner agreed that the fences require variances and requested that landscaping be added along Durham Avenue in front to the fence to which Mr. Schooler agreed.

45. The Board Attorney made clear that the proposed street is, in fact, a street for the purpose of this application and not an easement.

46. It was also clarified that the height of the fence is 6 feet from the grade so that where the fence is on top of the retaining wall, it is 6 feet from grade not 6 feet above the retaining wall.

47. The Board Planner clarified that the Applicant's Planner's testimony was given for C2 variance, but the Board Planner stated that the signage falls under design standards, so it does not require a variance, it needs an exception. The Board Planner noted, however, that the

Applicant's Planner had met the heavier burden for a variance in any event; Mr. Cosenza was in agreement that the Applicant's Planner was correct in that the signage should be looked at in proportion to the building façade and that because the building is set back 165 feet from Durham Avenue, it can benefit from a larger size sign.

48. The Board Planner thought that the signage on the street side having a setback of only 17 feet, and on the rear side could be reduced, but Board members expressed that the signage was in proportion considering the site. Also, regarding the signage, the Board Planner requested that the internal illumination of the sign should only illuminate the letters and the bar logo, as opposed to the all-white background. Applicant agreed to investigate that request with the sign vendor.

49. The hearing was opened to the public for questions. No member of the public had any questions. That portion of the public hearing was closed.

50. The hearing was then opened for comments from the public. No member of the public had comments. The public portion of the hearing was then closed.

51. The Board Attorney then reviewed potential conditions to be include in the resolution if the Board were to approve the application. They included the reserving of the 31 spaces which would have to be both reserved and improved to the satisfaction of the Board Engineer. Signage would be added for the compact parking spaces. Bicycle parking will be added. Lighting will be reduced from 4000k to 3300k to soften the lighting. Applicant will comply with all recommendations and requirements of the Board Planner's and Engineer's review memoranda unless otherwise specified in this resolution. Additionally, it was agreed that the resolution would note that the road shown on the plans is a public road which is subject to dedication to the municipality, with a letter of credit having been posted.

WHEREAS, the Metuchen Planning Board after hearing the testimony on behalf of the Applicant, considering the recommendations of the Board Engineer and the Board Planner, and no member of the public having spoken for or against the application, has made the following findings of fact and has drawn the following conclusions of law:

1. The Planning Board of the Borough of Metuchen has proper jurisdiction to hear the within matter.

2. Applicant proposes to construct a 12,870-square-foot one-story daycare facility in an area containing an existing parking area on Lot 37.02 as well as to utilize the existing DGA parking area located on Lot 37.01 (“Project”).

3. The facility will be constructed in an area containing an existing parking area to the north of the Metuchen Sportsplex located on Lot 37.02. Other improvements associated with the daycare facility include fenced playground areas, realigned walkways and drive aisle, stormwater management infrastructure, landscaping, lighting and signage.

4. Parking requirements for the site, Sportsplex and daycare, were calculated to be 67 spaces (Sportsplex) and 51 (daycare), based on the recalculated number of potential children at 152 children and 1 space per 3 children for a total of 51 daycare spaces and 118 overall. Applicant proposes a total of 118 spaces, consisting of 77 spaces in front of the Sportsplex (on Lot 37.02), less 23 spaces agreed as part of the Artis Senior Living (Artis) application on Lot 37.01 to be reserved by way of easement to Artis, plus 33 spaces to be constructed on the daycare site as shown on the site plan, and 31 spaces to be reserved by way of easement or other encumbrance in the DGA parking area on Lot 37.01.

5. The Project substantially conforms to the Amended Oakite Site Redevelopment Plan (“Redevelopment Plan”). Variances are required for the proposed fencing and exceptions are required for the proposed signage.

6. The Board heard and accepts the testimony of applicant’s planner with respect to the fence variances and signage exceptions with respect to the C(2) criteria for the fencing and with respect to the standards for granting exceptions for the signage.

7. Applicant has agreed to work with the Board Planner and Board Engineer with respect to various design aspects of the project.

8. Applicant’s meets the goals and objectives of the Redevelopment Plan and the Master Plan.

9. The Board finds that the application for preliminary and final major site plan approval, with variances and exceptions, may be granted as being in general conformance with the intent and purpose of the Borough’s site plan regulations, and with the Redevelopment Plan.

10. The Board finds that the variances requested may be granted because the Applicant has demonstrated that the purposes of the Municipal Land Use Law, including N.J.S.A. 40:55D-2(a), general welfare, (g), appropriate location, (i) desirable visual environment, would be advanced by a deviation from the literal enforcement of the zoning ordinance and that the benefits of granting the variances would substantially outweigh any detriment. The benefits of granting the fence variances include safety, security, privacy, and visual impact. No detriment is found based on the granting of these variances.

11. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance because the Board finds no detriment to granting

the requested variances due to the functionality noted above and due to the location of this project.

12. With respect to the exceptions requested, the Board finds that there would be exceptional and undue hardship imposed by the strict application of the design criteria for which the exception is sought, such that the three wall-mounted signs may be permitted as proposed.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Metuchen that the application of Metuchen III, LLC, for preliminary and final site plan approval, C variance approval and exceptions be and are hereby granted subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. To the extent required, the application shall be subject to the approval of the following outside agencies

or a letter of no jurisdiction:

1. County of Middlesex Planning Board;
2. Freehold Soil Conservation District;
3. Borough of Metuchen Fire Department;
4. Middlesex County Utilities Authority;
5. Middlesex Water Company.

D. This approval is subject to compliance with the Borough Affordable Housing Ordinance and Development Fee Ordinance, including, but not limited to, payment of any development fees in accordance with the Development Fee Ordinance.

E. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all other applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey. No further deviations from the zoning ordinance or site plan regulation shall be permitted without approvals of the Planning Board.

F. The Applicant shall furnish a performance guaranty, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the cost of the site improvements approved by this resolution as estimated by the Board Engineer in a form satisfactory to the Borough Attorney.

G. The Applicant shall also post an inspection fee equal to 5% of any public improvements or changes to public improvements.

H. The Applicant shall reimburse the Metuchen Planning Board and/or the Borough of Metuchen for professional fees associated with this application.

I. This approval is subject to performance by the applicant in accordance with the Redevelopment Agreement between the Applicant and the Borough of Metuchen.

J. Applicant shall comply with the following additional conditions:

1. Except as specifically noted in this resolution, Applicant shall comply with all the requirements contained in the review letters of the Borough Engineer and the Board Planner, dated February 4, 2022 and February 16, 2022 respectively.

2. Applicant shall work with the Board Planner and the Board Engineer with respect to final design, landscaping, and lighting. Applicant shall revise its site plan sheets to show the changes, including to the DGA parking area on Lot 37.01, including demarcation of the 31 reserved spaces for the Sportsplex and daycare, together with the parking area improvements agreed to at the hearing, as well as a revised landscaping plan to be submitted to and approved of by the Board Planner.

3. Applicant shall prepare and submit to the Board Attorney and Board Engineer for their review and approval, and shall record after approval, an easement or other encumbrance satisfactory to the board professionals reserving 31 parking spaces in the DGA parking area on Lot 37.01 for the use of the Sportsplex and daycare uses.

4. If required by the Board Engineer after review of information concerning the existing drainage/stormwater/water quality structures, applicant shall have prepared and submit for the review and approval of the Board Engineer an operation and maintenance manual for all proposed drainage structures. The operation and maintenance manual and maintenance plan shall be incorporated into a covenant so as to make clear the responsibility for the maintenance of the stormwater system, which shall be submitted to and subject to the review and approval of the Board Engineer and Board Attorney and then recorded subsequent to being signed, sealed and delivered by whomever is necessary to put it in the chain of title. A copy of the recorded covenant shall be filed with the Planning Board Secretary.

5. Applicant shall comply with all Borough ordinances with respect to tree replacement, landscaping, shade trees and street trees. Applicant shall work with the Board Planner in consultation with the Shade Tree Commission and shall submit tree and landscaping plans for the Board Planner's review and approval.



6. A revised site plan, reflecting compliance with this approval, shall be prepared and submitted to the Board Engineer for his review and approval prior to the issuance of any certificates of occupancy.

K. Applicant shall submit revised plans, reflecting the conditions of this approval, for the review and approval of the Board Planner and Board Engineer within sixty (60) days of the date of this Resolution.

**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.


**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of February 17, 2022 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Board Planner, Board Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairman and Secretary are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

I hereby certify the foregoing Resolution to be a true copy of the Resolution adopted by the Metuchen Planning Board at its meeting of April 7, 2022.

  
Denise Hamilton, Secretary

Dated: April 8, 2022

**RESOLUTION**

**ARTIS SENIOR LIVING  
(PARCEL B)**

METUCHEN PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING  
PRELIMINARY AND FINAL MAJOR SUBDIVISION AND  
SITE PLAN APPROVAL, WITH C VARIANCES AND EXCEPTIONS, TO  
ARTIS SENIOR LIVING, LLC  
BLOCK 71, LOT 37.01  
700 MIDDLESEX AVENUE  
APPLICATION NO.: 21-1283E

**WHEREAS**, Artis Senior Living, LLC, hereinafter referred to as “the Applicant,” makes this application for preliminary and final major subdivision and site plan approval, with C variances and exceptions, with the consent of Metuchen III, LLC the owner of Block 71, Lot 37.01, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 700 Middlesex Avenue in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, the Planning Board of the Borough of Metuchen held a public hearing on said application on December 2, 2021, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, at said hearing, the Planning Board considered the following documents:

1. Letter by Joshua J. Koodray of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C., dated December 15, 2020 and consisting of three (3) pages;
2. Planning Board Packet, including:
  - a. Zoning Permit Application, dated December 11, 2020 and consisting of one (1) page;
  - b. Application for Development, last dated December 14, 2020 and consisting of seven (7) pages;

- c. Escrow Agreement, dated December 11, 2020 and consisting of one (1) page;
  - d. Affidavit of Ownership & Authorization, dated December 14, 2020 and consisting of one (1) page;
  - e. Corporation Disclosure Affidavit, dated December 11, 2020 and consisting of one (1) page;
  - f. Disclosure Statement, undated and consisting of one (1) page;
  - g. Major Site Plan Checklist, dated March 26, 2020 and consisting of eight (8) pages;
  - h. Variance / Deviations Table, undated and consisting of one (1) page;
  - i. Narrative, undated and consisting of three (3) pages;
3. Plans entitled "Preliminary and Final Site and Subdivision Plan for Artis Senior Living, LLC, Proposed Senior Living Facility, Block 71 Lot 37.01, Tax Map Sheet #17 – Latest Rev. Dated June 1, 1984, 700 Middlesex Avenue (CR 501), Borough of Metuchen, Middlesex County, New Jersey," prepared by Dynamic Engineering Consultants, P.C., dated April 6, 2020, last revised July 27, 2020 and consisting of 17 sheets;
4. Architectural Plans entitled "Artis Senior Living, Memory Care & Assisted Living, 700 Middlesex Avenue, Metuchen, NJ," prepared by Dan Dokken, AIA, Architect, dated June 3, 2019, last revised March 6, 2020 and consisting of six (6) sheets;
5. Report entitled "Traffic Impact Study for Artis Senior Living, LLC, Proposed Senior Living Facility, Property Located at 700 Middlesex Avenue (CR 501), Block 71 - Lot 37.01, Borough of Metuchen, Middlesex County, NJ," prepared by Dynamic Traffic, dated April 15, 2020 and consisting of 12 pages;

6. Report entitled "Recycling Report Prepared for Artis Senior Living, LLC, Proposed Senior Living Facility, Block 71, Lot 37.01, 700 Middlesex Ave, Borough of Metuchen, Middlesex County, NJ," prepared by Dynamic Engineering, dated March 2020 and consisting of four (4) pages;

7. Report entitled "Stormwater Management Report, Prepared for Artis Senior Living, LLC, Proposed Senior Living Facility, Block 71, Lot 37.01, 700 Middlesex Avenue (C.R. 501), Borough of Metuchen, Middlesex County, NJ," prepared by Dynamic Engineering, dated October 2020 and consisting of 82 pages;

8. Survey entitled "Alta/NSPS Land Title Survey, Artis Senior Living, Existing Conditions, Block 71, Lot 37.01, 700 Middlesex Avenue, Borough of Metuchen, Middlesex County, New Jersey," prepared by Dynamic Survey, LLC, dated February 20, 2019, last revised April 16, 2019 and consisting of one (1) sheet;

9. Certified Tax Statement Letter, dated December 21, 2020 and consisting of one (1) page; and,

10. Certified Tax Statement, dated December 21, 2020 and consisting of one (1) page.

11. Amended Oakite Site Redevelopment Plan

12. Redeveloper's Agreement

13. Developer's Agreement

14. Form of Irrevocable Standby Letter of Credit

15. Memorandum of LRK Inc. by Chris S. Cosenza, AICP, PP, LEED AP, Board Planner, dated December 1, 2021;

16. Memorandum of Colliers Engineering & Design, P.A. by Thomas J. Herits, P.E., P.P., P.L.S., Borough Engineer, dated November 30, 2021;

**WHEREAS**, the Applicant was represented by Joshua J. Koodray, Esq.; and

**WHEREAS**, Applicant seeks preliminary and final major site plan and major subdivision approval, exception(s) and variance(s) for the property designated as Block 71, Lot 37.01, as shown on the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Applicant proposes to subdivide the property that it proposes to develop, noted as Parcel A on the Overall Site and Subdivision Plan, from the rest of Lot 37.01, with the remainder of Lot 37.01 being developed by others in the future. Additionally, the existing stub-end portion of the connector roadway is proposed to be extended by the property owner, in the future, from Middlesex Avenue, along the front of Parcel A, turn in front of the Metuchen Sportsplex, and connect with the existing Metuchen Sportsplex driveway; and

**WHEREAS**, Applicant proposes to construct a 39,340 square foot, two-story Artis Senior Living-branded assisted living / memory care facility on proposed Parcel A. The facility will offer 61 units, containing a total of 64 beds, serving individuals suffering from Alzheimer's disease and other forms of dementia; and

**WHEREAS**, the subject property is situated in the Amended Oakite Site Redevelopment Area, an overlay to the LI Light Industrial Zoning District. The property is part of an 11-acre industrial superblock which contained the former Oakite factory along the Lehigh Valley Railroad Line (commonly referred to as the "future Middlesex Greenway Extension"); and

**WHEREAS**, Applicant requests the following C variances:

§110-112.2.B.2.(b), fence height, six feet permitted, 8 feet proposed.

§110-112.6.B, accessory structure setback, 5 feet required, less than 5 feet proposed; and

**WHEREAS**, Applicant requests the following exception:

§110-186.B, free standing sign area and width, 16 square feet area permitted, 32 square feet area proposed, 6 feet width permitted, 8 feet width proposed; and

**WHEREAS**, the Board heard the presentation and evidence as follows:

1. Joshua J. Koodray, Esq., Applicant's Attorney, gave an opening statement. He stated that Applicant is seeking preliminary and final major site plan and subdivision approval to subdivide a portion of Block 71, Lot 37.01, to construct a 64-bed memory care assisted living facility on a 1.6 acre parcel. The entire site is over 6.5 acres, with a one-story vacant drive-thru bank building which fronts on Middlesex Avenue. The balance of the site is unimproved and vacant. The property owner, Metuchen III LLC, has consented to the application. Site improvements include stormwater management measures, utilities, landscaping, fencing, lighting, refuse area enclosure, storage shed, generator, paving, striping, facade and signage. This development is permitted in the zone and complies with the Redevelopment Plan. Receipt of professionals' memos from Colliers Engineering, LRK, and Harbor Consultants were acknowledged.

2. The Board Attorney informed the Board that the hearing is for subdivision and site plan approval. The use and the subdivision plan were recently reviewed by the Board as an amendment to the Redevelopment Plan. The application is in accordance with the Redevelopment Plan and the Redevelopment Agreement with the municipality. The use conforms to the Redevelopment Plan, with a few deviations that should be the Board's focus.

3. Max Ferentinos, Vice President of Artis Senior Living, LLC, was sworn in by the Board Attorney and gave testimony. The company was founded in 2012 and headquartered in McLean, Virginia. It has 27 operating facilities nationwide. They are aiming for seven sites in New



Jersey, including Metuchen. The proposal is for a two-story memory care facility consisting of 64 beds. It will be staffed 365 days a year, 24 hours a day, seven days per week. There will be three shifts; 1) 7:00 am-3:00 pm, staffed with 24 employees, 2) 3:00 pm-11:00 pm, staffed with 14 employees, and 3) 11:00 pm-7:00 am, staffed with 8 employees. Additionally, there is an executive director whose hours are closer to the 9:00 am-5:00 pm range.

4. There are no set visiting hours as it will be a residential facility, but most visiting will take place during the day and after work. 20 onsite parking spaces are provided, with an additional 23 spaces on the Sportsplex lot under an agreement being negotiated with the property owner, for a total of total 43 spaces. Typical delivery/pickup schedules include food 3 times per week, housekeeping supplies once per month, medical waste disposal once per week, trash one to two times per week, mail five times a week, and UPS and FedEx deliveries at various times. Mr. Ferentinos testified that there has been no negative impact on the communities where memory care facilities have been established once their facilities are operational.

5. Joseph Jaworski, Engineer, was sworn in, qualified and gave testimony. He is a graduate of Rutgers University in Civil Engineering. He is certified in NY, NJ and PA., and was accepted as an expert witness. He showed an aerial map and indicated that the site is bordered by the future Greenway extension, the former bank, Factory Street, and the Sportsplex property. He reviewed the site plan documents and shared his screen showing a colorized version of the site plan, labeled Exhibit A-1. The application includes construction of a two-story building. The footprint of the building is 21,505 square feet with a second story of approximately 17,000 square feet, for a total of 39,340 square feet. There will be 61 units providing 64 beds. Proposed Greenwich Parkway will be an extension of the road in front of the Sportsplex running in front of the subject property and then in front of the bank, then leading onto Middlesex Avenue. There will be an

ingress only driveway on the right, a one-way circulation in front of the building, and an egress to the left side of the building, with angled parking in front.

6. There is a courtyard proposed with an 8-foot vinyl white fence for security and safety. The rear area will also be enclosed with a fence. The Residential Site Improvement Standards (RSIS) require a total of 31 spaces and 43 are proposed, including 20 on-site and 23 at the Sportsplex. The majority of the employees will park offsite at the 23 spaces at the Sportsplex. The parking area in front of the subject will be offered for those with a disability, visiting doctors, residents, etc. Adjacent to the ingress driveway will be the masonry trash enclosure with a finish to match the building. Next to the enclosure will be the generator and electric transformer.

7. Mr. Jaworski stated that a variance is needed for the fence height at 8 feet where 6 feet is permitted. A variance is required for setback location for the trash enclosure and one for a small shed. The generator will be screened.

8. Mr. Jaworski stated that the property drains toward the Greenway to the rear. Stormwater will be collected by inlets which will run to the north corner and discharged into the future Greenway extension. The water quality unit will collect all stormwater from paved area and roof area before it is discharged. The Board Attorney interjected that an Operation and Maintenance Manual will be required, as well as a recorded covenant to provide for maintenance. Piping along the north side is sized appropriately to handle the stormwater flow. Utilities, gas and electric will come from Middlesex Avenue and run underground. Water will also come in from Middlesex Avenue. Two lines will run to the front of the building, one will be a fire line and the other a domestic line. The building will be fully sprinklered to meet code. Sewer will run along the roadway with a 6-inch lateral coming into the building to service. There will be a grease trap from the kitchen area to the sanitary system. Lighting will run along the front of the roadway to the

interior of the site. The Spring City lighting fixtures will be carried around the northwest part of the property. In the courtyards, bollards will be placed along the walkway with low level lighting. There will be foundation planting along the building and within the courtyard. Applicant will work with the Board professionals to enhance the landscaping. A bike rack will be provided. The main variance or exception deviations are for the fence height and signage. The fence is proposed at 8 feet where 6 feet is permitted. A variance is required. The sign proposal is for a 4x8 sign in front totaling 32 square feet, where the Ordinance allows for 24 square feet<sup>1</sup>. An exception is required. The sign will be mounted on the trash enclosure. Mr. Jaworski agreed that all recommendations and requirements set forth in the Colliers Engineering review memorandum will be complied with. The Board Engineer confirmed that plans are in accordance with the recommendations and requirements made.

9. Joseph Staigar, Traffic Engineer and Professional Planner was sworn in, qualified and gave testimony. He has a Bachelor's and Master of Science degrees in Civil Engineering from N.J. Institute of Technology. He is licensed and has testified previously in Metuchen. He was accepted by the Board as an expert witness. He stated there are four accessible spaces proposed, which exceeds the requirement, and they are ADA compliant and van accessible with 8-foot-wide striping between. No deviations are required or proposed. The sign is 8 square feet larger than what is allowed but is a proper size for the activity anticipated. The 32 square feet will give ample warning to drivers. For traffic safety purposes the deviation is warranted. The proposed type of development is a light traffic trip-generator. There is an acceptable level of service in the adjacent roadways.

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<sup>1</sup> Note that the ordinance requirement is actually 16 square feet.

10. There was a brief discussion between Mr. Staigar and the Board Engineer regarding the potential traffic conditions. Mr. Koodray noted that a condition in the Redevelopment Agreement requires that the roadway be installed and passable before the building can be occupied.

11. Mr. Staigar provided planning testimony. He stated that the C2 criteria are applicable to this proposed development. In his opinion, the benefits outweigh the detriments because the 8-foot fence provides better buffering, and the larger sign is better for driving safety purposes than the permitted size. No parking variance is required. The setback deviation for the dumpster area is needed for functionality. Architectural aspects of the dumpster area will match the building itself. Mr. Staigar's opinion was that there are no negative aspects to the variance requests. He stated that the application advances the purposes of the Redevelopment Plan and development in general.

12. The Board Planner stated that a fence is allowed to be 8 feet in height along an active or former rail line, including the future Greenway extension, so the areas more than 10 feet from the property line – generally along the side of the building – area the only locations where the variance is needed. His opinion was that the fence height along the side does not make the fence a detriment. The shed requires a variance because it does not comply with the minimum 5 foot setback from the rear lot line, and standing 8 feet tall, should not be visible with an 8-foot fence. All the deviations from the design standards have been eliminated; issues with parking, bicycle rack, wall, trees, landscaping, and lighting, have been resolved. Inquiry was made about the suggestion for a front parklet with benches within the median. Mr. Staigar responded that Applicant would provide the parklet as suggested. The Board Planner stated that lights should be reduced to residential height of 12 feet with agreeable color temperatures. A reduction in the sign would be preferred and its location on the dumpster may cause confusion. The Board Planner noted that the

permitted sign size is 16 square feet, not 24 square feet. Mr. Staigar stated that Applicant was open to additional discussion regarding the sign.

13. There was a discussion of the roadway. The Board Planner mentioned that a roadway will be provided by the landowner, Metuchen III, LLC, and that the roadway must be in passable condition for the building to have a C/O. Plans should be revised to give the proper lot designation as a Condition of Approval. Inquiry was made about the one EV charging station required and mechanical equipment. Mr. Ferentinos confirmed one EV charging station will be provided and mechanical equipment will be roof mounted and shielded.

14. As to the roadway, the Board Attorney stated that this is a subdivision application and Applicant must comply with the subdivision requirements of the Municipal Land Use Law and Metuchen's ordinances. Lot numbers will be assigned, usually by the tax assessor, but since that office is presently vacant, they may be assigned by the Board Attorney in the absence of a tax assessor. A revised site plan with the roadway as finally designed shown will be required before a C/O is issued. For there to be a subdivision application, the subject property must front on a street.

15. Mr. Koodray confirmed that the site plan will be prepared as requested. Only a portion of the property is to be developed by Artis. The rest will be developed by others. Mr. Staigar stated that subdivision plan will be revised as requested.

16. The Board Planner stated the application would not have been deemed complete unless and until the Developer's Agreement and Letter of Credit for the roadways were in place.

17. The Chairman invited questions from the Board. There were none. The hearing was opened to the public for questions or statements. There being no public questions or comments, the public portion of the hearing was closed.

18. The Board Attorney summarized the conditions, other than the standard conditions, which should be required as conditions of an approval if approval is granted. The included approval by the Board Attorney of the proposed parking easement, to be recorded, for the 23 spaces at Sportsplex, affordable housing requirements to be complied with requiring 10% of occupied beds to be reserved for Medicaid patients, variances are required for the fence height and shed setback, an exception for the sign size and width, Operation and Maintenance Manual to be provided and incorporated in a recorded covenant, one EV space to be provided, Applicant has agreed to comply with the recommendations and requirements in the Engineer's and Planner's memos, the Board Planner request for sign to be made smaller is open to future negotiations, plans to be revised in accordance with agreements at the hearing and final site plan to be revised and submitted after final design of the roadway and prior to issuance of a certificate of occupancy and affordable housing compliance.

**WHEREAS**, the Metuchen Planning Board after hearing the testimony on behalf of the Applicant, considering the recommendations of the Board Engineer and the Board Planner, and no member of the public having spoken for or against the application, has made the following findings of fact and has drawn the following conclusions of law:

1. The Planning Board of the Borough of Metuchen has proper jurisdiction to hear the within matter.
2. The subject property is situated in the Amended Oakite Site Redevelopment Area, an overlay to the LI - Light Industrial Zone District. There is an existing redevelopment agreement between the Applicant and the Borough of Metuchen and there is also an existing developer's agreement between the owner of the property, Metuchen III, LLC and the Borough of Metuchen.

3. The overall property is a corner lot, located on the northwest side of Middlesex Avenue (Middlesex County Road 501), northeast side of Factory Street as well as north sides of Adams Street and Oliver Street. The overall property is irregular in shape and comprises of approximately 287,375 square feet (6.597 acres) in area. The property is presently improved with a now-vacant one-story drive-thru bank building and a stub-end portion of the connector roadway, situated on a land lease area fronting on Middlesex Avenue.

4. Applicant seeks preliminary and final major site plan and major subdivision approval, exception(s) and variance(s) for the property designated as Block 71, Lot 37.01 as shown on the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey.

5. Applicant proposes to subdivide the property that it proposes to develop, noted as Parcel A on the Overall Site and Subdivision Plan, from the rest of Lot 37.01, with the remainder of Lot 37.01 to be developed by others in the future. Additionally, the existing stub-end portion of the connector roadway is proposed to be extended by the property owner, in the future, from Middlesex Avenue, along the front of Parcel A, turn in front of the Metuchen Sportsplex, and connect with the existing Metuchen Sportsplex driveway.

6. Applicant proposes to construct a 39,340 square foot, two-story Artis Senior Living branded assisted living / memory care facility on proposed Parcel A, approximately 70,000 sq.ft. in area. The facility will offer 61 units, containing a total of 64 beds, serving individuals suffering from Alzheimer's disease and other forms of dementia.

7. At the front of the property, a parking lot containing a one-way drive aisle and 20 angled parking spaces (16 standard and four (4) accessible spaces) on one side is provided,

together with a trash enclosure, generator and transformer. At the rear of the property, an eight-foot-tall fence is proposed, intended to provide for an enclosed, secure outdoor space for use by residents. Other site improvements, including signage, paving, and landscaping are proposed throughout Parcel A.

8. During the course of the hearing, the application was deemed amended to include certain changes listed above. They included provision of additional parking for the site on the Sportsplex lot through a recorded easement agreement, as well as compliance with all of the development and design standards, thus eliminating all of the deviations listed in Section 6.3 of the Board Planner's memorandum, except with respect to the area and width of the proposed freestanding sign. Additionally, Applicant agreed to other requests of the Board and the Board Professionals, as indicated above.

9. Applicant has agreed to work with the Board Planner and Board Engineer with respect to various design aspects of the project.

10. The proposal is in conformance with the Borough's Redevelopment Plan for the property and meets the goal and objectives of the Redevelopment Plan and the Master Plan.

11. The Board finds that the application for preliminary and final major subdivision and site plan approval, with variances and exceptions, may be granted as being in general conformance with the intent and purpose of the Borough's subdivision and site plan regulations, and with the Redevelopment Plan.

12. No variances, waivers or exceptions are granted except the variance for the 8 foot high fence where 6 feet is permitted, the variance for accessory structure setback for the shed, and the exception for the total area and width of the freestanding sign.



13. The Board finds that the variances requested may be granted because the Applicant has demonstrated that the purposes of the Municipal Land Use Law would be advanced by a deviation from the literal enforcement of the zoning ordinance and that the benefits of granting the two variances would substantially outweigh any detriment. The benefits of granting the fence height variance include safety, security and visual impact, and the benefits of the setback variance include that the location is a logical one for trash pickup. No detriment is found based on the granting of these variances.

14. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of the zone plan and zoning ordinance because the Board finds no detriment to granting the requested variances due to the functionality noted above and due to the location of this project.

15. With respect to the exception requested, the Board finds that there would be exceptional and undue hardship imposed by the strict application of the design criteria for which the exception is sought, such that the freestanding sign may be permitted as proposed.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Metuchen that the application of Artis Senior Living, LLC, for preliminary and final major subdivision and site plan approval, C variance approval and exception be and are hereby granted subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. The application shall be subject to the approval of the following outside agencies or a letter of no jurisdiction:

1. County of Middlesex Planning Board;
2. Freehold Soil Conservation District;
3. Borough of Metuchen Fire Department;
4. Metuchen County Utilities Authority;
5. Middlesex Water Company.

D. This approval is subject to compliance with the Borough Affordable Housing Ordinance and Development Fee Ordinance, including, but not limited to, payment of any development fees in accordance with the Development Fee Ordinance.

E. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all other applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey. No further deviations from the zoning ordinance or site plan regulation shall be permitted without approvals of the Planning Board.

F. The Applicant shall furnish a performance guaranty, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the cost of the site improvements approved by this resolution as estimated by the Board Engineer in a form satisfactory to the Borough Attorney.

G. The Applicant shall also post an inspection fee equal to 5% of any public

improvements or changes to public improvements.

H. The Applicant shall reimburse the Metuchen Planning Board and/or the Borough of Metuchen for professional fees associated with this application.

I. This approval is subject to performance by the applicant in accordance with the Redevelopment Agreement between the Applicant and the Borough of Metuchen.

J. Applicant shall comply with the following additional conditions:

1. Applicant shall comply with all the requirements contained in the review letters of the Borough Engineer and the Board Planner, dated November 30, 2021 and December 1, 2021, respectively.

2. Applicant shall work with the Board Planner and the Board Engineer with respect to final design, including signage. Applicant shall revise its landscaping and supplement same in accordance with a landscaping plan to be submitted to and approved of by the Board Planner.

3. Applicant shall have prepared and submit for the review and approval of the Board Engineer an operation and maintenance manual for all proposed drainage structures. The operation and maintenance manual and maintenance plan shall be incorporated into a covenant so as to make clear the responsibility for the maintenance of the stormwater system, which shall be submitted to and subject to the review and approval of the Board Engineer and Board Attorney and then recorded subsequent to being signed, sealed and delivered by whomever is necessary to put it in the chain of title. A copy of the recorded covenant shall be filed with the Planning Board Secretary.

4. Applicant shall comply with all Borough ordinances with respect to tree replacement, landscaping, shade trees and street trees. Applicant shall work with the Board

Planner and the Shade Tree Commission and shall submit tree and landscaping plans for the Board Planner's review and approval.

5. Applicant shall secure, as a condition of this approval, the proposed parking easement for 23 parking spaces at the Sportsplex. Said easement, subject to the Board Attorney's review and approval, shall be recorded so as to secure the use of the 23 spaces for the duration of the use of the subject premises for the purposes for which this application was approved.

6. Applicant shall comply with the Affordable Housing requirements such that 10% of occupied beds shall be reserved for Medicaid patients.

7. An EV space shall be provided

8. Applicant shall consider relocating and reducing the size of the freestanding sign and shall work with Board Planner with respect to same.

9. A revised site plan, reflecting compliance with this approval, with the roadway as finally designed shown, shall be prepared and submitted to the Board Engineer for his review and approval prior to the issuance of any certificates of occupancy.

K. The subdivision approval granted shall be memorialized by the filing of a subdivision plat in accordance with the Map Filing Law. The approval, signing and filing of the subdivision plat shall not take place until and unless all of the conditions precedent set forth in this resolution have been satisfied, with the exception of the final site plan after the final design of the roadway has been determined. Prior to the signing and return of the final major subdivision plat the Applicant shall submit three copies of the approved plat to the secretary; Applicant shall also submit a translucent copy of the drawing suitable for making prints and provide an electronic disc containing the filed map information. Applicant shall pay to the

Borough the cost of transferring the data on the final map including, without limitation, lot lines and easements. Applicant shall confirm the proposed new lot numbers with the Tax Assessor (or the Board Attorney, as the case may be) and shall include them on the revised subdivision plan.

L. Applicant shall submit revised plans, reflecting the conditions of this approval, for the review and approval of the Board Planner and Board Engineer within sixty (60) days of the date of this Resolution.

**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

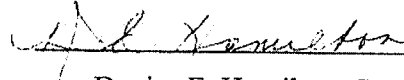
**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of December 2, 2021 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Board Planner, Board Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairman and Secretary be and are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

I hereby certify the foregoing Resolution to be a true copy of the Resolution adopted by the Metuchen Planning Board at its meeting of January 6, 2022.



Denise E. Hamilton, Secretary

January 10, 2022

RESOLUTION

STARBUCKS  
(PARCEL C)

METUCHEN PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING  
PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL TO  
METUCHEN III, LLC  
BLOCK 71, LOTS 37.02 & 37.01  
700 MIDDLESEX AVENUE  
APPLICATION NO.: 22-1340 E

**WHEREAS**, this application involves property comprised of Block 71, Lots 37.02 & 37.01, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 700 Middlesex Avenue in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Metuchen III, LLC, hereinafter referred to as “the Applicant,” is the owner of Block 71, Lot 37.01, and is an entity that is wholly owned by Metuchen I, LLC, the owner of Block 71, Lot 37.02; and

**WHEREAS**, the Applicant has applied to the Metuchen Planning Board for Preliminary and Final Major Site Plan approval with exceptions and waiver of submission requirements; and

**WHEREAS**, the Planning Board of the Borough of Metuchen held a public hearing on said application on July 21, 2022, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, at said hearing, the Planning Board considered the following documents:

1. Application for Development, last dated May 25, 2022, consisting of six (6) pages;
2. Zoning Permit Application, dated May 25, 2022 and consisting of one (1) page;
3. Zoning Coverage Checklist, dated November 19, 2021 and consisting of one (1) page;
4. Narrative of Proposal, undated and consisting of one (1) page;



5. Major Site Plan Checklist, undated and consisting of 12 pages;
6. Report entitled “Stormwater Management Report Prepared for Maven Group; Block 71; Lots 37.01 & 37.02; 700 Middlesex Avenue, Borough of Metuchen, Middlesex County, New Jersey,” prepared by Bohler Engineering NJ, LLC, under seal of Ahmad Tamous, PE, NJPE License No. 46184, dated May 2022, consisting of six (6) pages, together with A. Design Calculations consisting of two (2) pages, B. Maps consisting of 11 pages, C. Off-Site Stability Analysis consisting of two (2) pages and Pre- vs. Post-Development Hydrographs consisting of seven (7) pages;
7. Report entitled “Traffic Impact Analysis for Maven Group, Proposed Oakite Site Redevelopment, Block 71, Lots 37.01 & 37.02, 700 Middlesex Avenue (CR 501), Borough of Metuchen, Middlesex County, New Jersey,” prepared by Atlantic Traffic & Design Engineering, LLC, under seal of John R. Harter, PE, NJPE License No. 41033 and David W. Fahim, PE, NJPE License No. 57657, dated May 6, 2022 and consisting of 18 pages, together with an extensive Technical Appendix;
8. Engineering plans entitled “Preliminary & Final Major Site Plan for Maven Group; Proposed Restaurant with Drive Thru, 700 Middlesex Ave, Block 71; Lots 37.01 & 37.02; Borough of Metuchen, Middlesex County, New Jersey; Oakite Site Redevelopment; Tax Map Sheet #17,” prepared by Bohler Engineering NJ, LLC, under seal of A. Tamous, PE, dated April 15, 2022 and consisting of 14 sheets; and,
9. Architectural plans entitled “Proposed Building for: Coffee Shop, Maven Group, 700 Middlesex Avenue, Metuchen, N.J., Middlesex County,” prepared by Vincentsen & Blasi Architecture L.L.C., under seal of Gregory Blasi, RA, NJRA License No. 16519, dated May 12, 2022 and consisting of two (2) sheets

10. Memorandum of LRK Inc. by Chris S. Cosenza, AICP, PP, LEED AP, Board Planner, dated July 20, 2022;

11. Memorandum of Colliers Engineering & Design, P.A. by Thomas J. Herits, P.E., P.P., P.L.S., Borough Engineer, dated July 21, 2022;

**WHEREAS**, the Applicant was represented by Steven J. Tripp, Esq.; and

**WHEREAS**, Applicant seeks preliminary and final major site plan approval, exception and waiver of certain submission requirements for the property designated as Block 71, Lot 37.01 as shown of the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Block 71, Lot 37.01 is part of the Oakite Redevelopment Plan area; and

**WHEREAS**, Applicant proposes to construct a Starbucks coffee shop, with a drive-through facility, fronting on Middlesex Avenue (“Project”). The Project substantially conforms with the Amended Oakite Site Redevelopment Plan (“Redevelopment Plan”), with deviations associated with signage, buffer and landscape requirements; and

**WHEREAS**, Applicant requests the following exceptions:

Redevelopment Plan

Section 5.6.2.F.7. – EV charging infrastructure and/or stations

Section 5.6.3.A.4. – Uninterrupted public sidewalk across driveways

Section 5.6.3.A.5. – Pedestrian crosswalks at all corners

Section 5.6.3.A.6. – Pedestrian crosswalks to be “continental” or ladder striping

Land Development Ordinance

§110-175 – Buffering & screening around trash enclosure

§110-180 – Street trees along Factory Street

§110-185.C – Size of secondary wall-mounted signs

§110-186.A.(1) – Size of certain wall-mounted signs

§110-186.A.(2) – Height of certain wall-mounted signs

§110-186.A.(3) – Width of certain wall-mounted signs

§110-185 and 186 – number of signs

**WHEREAS**, the Board heard the presentation and evidence as follows:

1. Steven Tripp, Esq., Applicant's attorney, gave an opening statement. He indicated that the application is for a portion of the Oakite Redevelopment site, part of Block 71, Lot 37.01, with the subject site designated as Parcel C in the Redevelopment Plan. He indicated that eventually the site will be subdivided into parcels. Applicant is seeking preliminary and final site plan approval with exceptions from some design standards in the redevelopment plan. He also indicated that there is a proposed deviation from the maximum front yard setback as a result of complying with one of the Board Planner's recommendations, namely the realignment of the roadway.<sup>1</sup>

2. Mr. Tripp indicated that what is proposed is a Starbucks coffee shop. He stated that the use is specifically permitted in the redevelopment plan on Parcel C and that the proposal substantially complies with the Redevelopment Plan.

3. Lizanne Kile was sworn in and gave testimony. She stated that she is a Senior Store Development Manager for Starbucks, responsible for new store locations in North Jersey and also responsible for negotiating renewals and relocating stores. She has been with Starbucks for 16 years and is familiar with the application for the subject Starbucks.

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<sup>1</sup> This would require a variance if the proposal is adopted.

4. Ms. Kile testified that store hours are 5:30 AM to 10:00 PM on Monday through Saturday and Sunday hours are 6:00 AM to 9:00 PM. There will be about 25 employees, 5-6 on each of 3 shifts per day.

5. What is proposed is a café with a drive-thru and a walk-up window, including indoor and outdoor seating, a maximum of 48 seats.

6. According to Ms. Kile, deliveries occur between 6:00 PM and opening time. Deliveries take about 30 minutes. The delivery truck is a small box truck, not a tractor-trailer.

7. Trash will be collected 2-3 times per week during non-peak times. In terms of stacking in the drive-thru, Ms. Kile stated that the stacking is “fantastic” there is a “relief valve” if someone changes their mind and decides not to stay in the drive-thru line. The stacking capacity is ten cars. They will also have mobile order and pay-by-phone. The walk-up window will be separate from the store entrance and drive-thru.

8. Ms. Kile was asked about her familiarity with the Starbucks on Route 27 near Parsonage Road in Edison, which was considered by board members to be poorly conceived. She stated that stores are now designed differently. The Edison location has no by-pass lane with only 6 stacking spaces. She stated that the 10 stacking spaces plus a by-pass is “a beautiful plan.” She stated definitively that the proposed development would not have the same problems as the Route 27 Edison Starbucks. She stated that the average time from order to pick-up is 4 minutes.

9. David Wisotsky was sworn in, qualified and gave testimony. He is a licensed professional engineer, a principal with Bohler Engineering. His qualifications were accepted. He then proceeded to discuss the site plan that was prepared by Bohler Engineering.

10. Mr. Wisotsky described an aerial exhibit, which was designed A-1. He discussed the site as shown on the aerial. He stated that it is part of the Oakite Redevelopment Area. He stated that

the site is approximately 11 acres overall, with 5 parcels to be developed. He discussed each of the parcels as shown on the plan. The subject application involves Parcel C, which is in the southwest corner of the site, fronting on Middlesex Avenue. When the lot is subdivided, this parcel will be 0.76 acres and will house the Starbucks. He described that adjacent to the subject parcel will be a roadway to be known as Greenway Avenue. Mr. Wisotsky indicated that Greenway Avenue will run between Middlesex Avenue on the south and Durham Avenue on the north. The other parcels on the redevelopment plan are Parcel A, which is the now-closed bank site, Parcel B, the memory care site, Parcel D, a future development site, Senior Living, and Parcel E, the Sportsplex and daycare site.

11. Mr. Wisotsky next discussed Exhibit A-2, a rendered site plan of Sheet C-302 on the engineering plans. He indicated that Sheet C-302 had been revised to show proposed changes that were recommended by the Board's professionals and at the DRC meeting. If proved, the "formal set" of plans will be revised to reflect the changes.

12. Mr. Wisotsky described the site and how it is proposed to function as shown on Exhibit A-2. He stated that the building will be as shown on the plan, with a pedestrian sidewalk and connectivity around its east and south sides. Also on the south side is a patio and proposed outdoor seating area. The walk-up window will also be on the south side facing Middlesex Avenue.

13. Mr. Wisotsky indicated that access for vehicles is toward the north end of the site, from Greenway Avenue into the site, where patrons can either go straight to enter the drive-thru lane, or turn left and go into the parking field where 17 parking spaces were originally proposed, now reduced to 16 spaces at the request of the Board's professionals, to leave a turn-around space closest to the building. There will be a maximum of 48 seats in the restaurant, not including patio

seating. The Board Planner indicated that a provision of the redevelopment plan indicates that the parking requirement is based on indoor seats, with no limit on the number of outdoor seats.

14. Mr. Wisotsky indicated that there is actually space to stack 2 more cars before it would become a traffic issue that would impact either the parking on the site or Greenway Avenue.

15. Mr. Wisotsky stated that the trash enclosure is located in the northwest corner of the site. He mentioned revisions to the site plan, including a stop bar to discourage cars from blocking the trash enclosure area. He also indicated that Applicant is adding a decorative brick wall in front of the parking area between Greenway Avenue and the parking lot which will wrap around the north side of the parking area. Mr. Wisotsky testified that other changes had been made at the Board professionals' request as shown on Exhibit A-2.

16. Mr. Wisotsky stated that bicycle parking will be in the front of the store between Greenway Avenue and the store. He did not know the exact number of bicycles for which space was provided.

17. Mr. Wisotsky next discussed changes to the plan with respect to Greenway Avenue. Exhibit A-2 shows three lanes on Greenway Avenue, one entering going north and two exiting going south, one of which for left turns and one of which for right turns. He indicated that after discussions, the preference is to have one lane going south, exiting, rather than two lanes. Additionally, some on-street parking could be provided in front of the store on Greenway Avenue, subject to further review. The change would result in a request for a variance from the redevelopment plan, which has a maximum setback from the building to the curb line of 25 feet, whereas the setback as proposed with the new curb line would be 28.6 feet.

18. In response to a question, Mr. Tripp indicated that construction would begin as soon as all of the necessary approvals have been obtained. He also stated that Greenway Avenue will have to be built at least to the end of the site in order for there to be access.

19. Explaining the elimination of the third lane, the Board Engineer indicated that the third lane was simply a 50 foot wide right turn lane which was deemed infeasible because it did not go through the whole site.

20. A board member expressed concern about on-street parking, not having previously envisaged same. It was determined that final design could not be decided until Middlesex County takes a position.

21. Returning to Mr. Wisotsky's testimony, he described the landscaping and lighting as shown on the plans, including the trees, shrubs and other landscape features, as well as the retaining wall shown on the west side of the site. He stated that, in summary, all of the landscaping complies with the ordinance requirements. He stated there are three pole mounted signs and 13 building lights on the site and they meet all of the redevelopment plan requirements and other ordinance requirements.

22. In response to a question, Mr. Wisotsky indicated that the Applicant does not propose EV charging stations on the parking lot because of its size. There was a legal discussion about whether or not the Starbucks is a retail use because for a retail use with up to 25 parking spaces, there is no EV charging station requirement.

23. Mr. Wisotsky continued, noting that the site would be connected to all public utilities, and that there is a proposed stormwater management system that functions and meets all required standards, including the water quality requirements.

24. Mr. Wisotsky stated that the sign package for the building includes 7 proposed signs, with signs on each of the 4 faces, but no free standing signs. According to Mr. Wisotsky, only 3 signs would be permitted on the site under the ordinance. He stated that six of the seven signs meet the 24 square feet standard, while one sign at the rear of the site is 27 square feet. He also referred to the sign on the rear, indicating that the standard is 12 feet, but the sign's column is 16.2 feet.

25. Mr. Wisotsky referred to several other exceptions. One is for the standard in the redevelopment plan for uninterrupted public sidewalks crossing driveways, Mr. Wisotsky stated that it was his opinion that what was proposed on the plan was a better design to use, with standard depressed curb side sidewalks and typical crosswalks. Additionally, Mr. Wisotsky opined that Applicant has complied with the requirement for pedestrian crosswalks at all corners. There was a discussion of coordinating with the County regarding crosswalks across Middlesex Avenue to Trailhead Park.

26. Mr. Wisotsky also indicated that no shade [sic] trees are proposed along Factory Street because of differentials of elevation and existing overhead lines and wires along Factory Street. He also indicated that an exception is sought for screening for the trash enclosure because it butts up against the retaining wall and there is no buffering to provide.

27. One Board member expressed disappointment that the plan was so car-centric. Mr. Tripp responded that the redevelopment plan specifically contemplates this type of use at this location. Ms. Kile interjected that Applicant would agree to adding one or two or whatever was required, bicycle racks. Mr. Tripp made a representation that their engineer will work with the Planner and agree on a location and a number of additional bicycle racks.

28. Gregg Blasi was sworn in, qualified and gave testimony. He is a licensed architect. His qualifications were accepted as an expert in architecture. He displayed Sheet SD01, the first



sheet of the architectural plans submitted, a floor plan of the facility. He also showed the architectural elevation, which is Sheet SD02 on the architectural plans submitted. SD02 was rendered, so it was marked as Exhibit A-3.

29. Mr. Blasi described the floor plan as containing two work rooms, two bathrooms, a seating area and a patio. With respect to the elevations, Exhibit A-3, Mr. Blasi indicated that the front elevation, Middlesex Street [sic], shows the sign logo, which is 60 inches, 9.6 square feet, and another sign which is 7 square feet, 3 feet 11 inches by 1 foot 9 inches. That is the drive-thru sign, a directional sign. Mr. Blasi stated materials are dark stucco, dark metal flat trim and wood signage with gray brick.

30. As to the rear elevation, there is a service door, not a general entrance, tongue and groove siding on the lower portion of the building, with gray stucco on top. Two signs are shown, one is the Starbuck's lettered sign, 27 square feet, 1 foot 8 inches high by 16 feet 3 inches long. That sign exceeds the maximum permitted width and maximum area. There is also a drive-thru sign of 7 square feet, 3 feet 11 inches by 1 foot 9 inches.

31. An additional color rendering was marked as Exhibit A-4, Drawing No. SD03. On the right side elevation, there is a suspended canopy with dark aluminum trim. There are two signs on that elevation, a Starbucks logo sign 60 inches in diameter, 19.6 square feet and another drive-thru sign. The canopy is 9 feet 4 inches high. As to the left side elevation, facing Factory Street, there is gray stucco on top with gray brick at the bottom, dark metal trim and wood siding. This is the side with the drive-thru, with the canopy at 9 feet 10 inches clear height. There is another logo sign, 60 inches, 9.6 square feet.

32. Mr. Tripp addressed a Board member's question as to the need for the sign waivers. Mr. Blasi responded that looking at the size of the signs compared to the overall façade, the sign does not take up much room and conforms with the scale of the building.

33. The Board Planner, after having been asked to comment, indicated that with respect to these specific exceptions, one sign at 27 square feet is proportional to the façade and not excessive in size, and that with respect to height of the 5 foot signs, there being circular indicates less area. He also agreed about the size of the sign in the context of the building façade and opined that the size of the signs is appropriate and will not be a detriment. With respect to the width of 16 feet on the one sign, the Board Planner agreed that it is proportional to the façade and not excessive in size. As to the number of signs, the Planner indicated that they are small and appropriately located.

34. With respect to the bathrooms, Mr. Tripp advised that Starbucks had no objection to making both bathrooms gender neutral if that was the Board's pleasure.

35. John Harter was sworn in, qualified and gave testimony. He is a licensed Civil Engineer and has testified in Metuchen. He was accepted as an expert in traffic engineering.

36. Mr. Harter testified that he did the traffic study. He worked with the traffic engineer at Collier Engineering, the firm of the Board Engineer and Municipal Engineer. The study included all of the sites in Lot 37.01 and 37.02. The study was done with traffic counts from October 2020. They tried to capture peak volumes and adjusted the traffic counts for COVID effects. They studied 8 sites beyond the site access points, so a total of 10 locations all together. They recalculated the projected volume more to Middlesex Avenue (63%) and less to Durham Avenue (37%). After that recalculation, Mr. Harter's opinion now is that the Greenway Avenue/Middlesex Avenue meets the warrant for a signalized intersection. Previously they had calculated 50/50 Middlesex/Durham. His

opinion changed based on the redistribution to 63/37. He indicated that additionally, going from three lanes down to two lanes will also contribute to meeting the warrant for a signalized intersection because there are different standards for intersections with different numbers of lanes.

37. Under questioning by Mr. Tripp, Mr. Harter agreed to redo his analysis of the traffic signal warrant based on the redistribution of traffic 63% to Middlesex Avenue and 37% to Durham Avenue, with the 2-lane configuration, and will work with the Traffic Engineer at Collier's Engineering, including Mr. Fiori, to try to convince Middlesex County that a traffic signal is warranted and would be installed at the expense of the redeveloper. The traffic signal would have pedestrian features, including crosswalks and walk signals. Under questioning by Mr. Tripp, Mr. Harter agreed that when he speaks with the County officials, the Borough's consultants will be included in all discussions with the County.

38. The Board Engineer advised the Board that just because there are warrants for a traffic signal, that does not mean that the County is going to approve a traffic signal. Mr. Tripp agreed that the Applicant would utilize its traffic engineer and coordinate with the Borough to do its "absolute best to get the signal."

39. The Board Chairman requested that the Board Planner comment on the application or his review memorandum. He first recommended that the waiver of submission requirements including check list requirements be approved as they are minor in nature. He was pleased with the plan for the drive-thru. In his opinion the elimination of the right turn lane will provide for a better street scape. He recommended considering on-street parking on Greenway Avenue in front of the proposed Starbucks, subject to further review. He stated that the Applicant has indicated that when the Parcel D application comes forward, they will take care of the missing screening for the trash enclosure on that side of the enclosure. With respect to the trash enclosure, he noted that the detail

on the plan showed a hollow block construction and he recommended that it should be finished, instead, with some sort of high quality material consistent with the building or the free standing wall. Mr. Wisotsky agreed on behalf of the Applicant to comply with that request.

40. The Board Planner also recommended that the Applicant consider pergolas, poles and string lights on the patio and that such addition should not trigger site plan approval if done.

41. The Board Planner explained the reason why he had no objection to not requiring street trees on Factory Street, which functions as a parking lot for the adjacent daycare use. During its Planner's testimony, Applicant agreed to fashion the trash enclosure consistent with the materials on the building or on the freestanding wall, agreed to provide additional bike parking in different locations, working with the Board Planner, and agreed to provide one electric vehicle charging station. Additionally, it was clarified that Applicant requires a variance from the 25 foot maximum setback requirement to allow the building to be set back 28.6 feet. It was then decided that if after review, the Borough does not wish to have on-street parking, the variance would have been granted. Applicant will not be required to return to the Board whether or not on-street parking is permitted or required.

42. With respect to the Board Engineer's memorandum, Mr. Wisotsky reviewed the general comments. He indicated that the LSRP will oversee the site remediation. In response to a question, it was indicated that the HVAC system will be on the building roof. Applicant agreed that Applicant will comply with all recommendations and requirements contained in the Board Engineer's memorandum dated July 21, 2022. Applicant agreed to work with the Board's and Borough's consultants. It was agreed that Greenway Avenue will have to have been installed prior to Starbucks being opened.

43. A Board member expressed reluctance to vote on the application without knowing whether or not the traffic signal will be approved. Mr. Tripp responded that Applicant was seeking only minor exceptions and waivers and that the proposal complies with the redevelopment plan. At that point, it was decided to open the hearing to the public.

44. The hearing was opened to the public for questions or comments. Peter Fairclough of 3 Goodwill Place, Metuchen stated that he wanted to know about air quality and indicated that he likes the traffic signal proposal. Mr. Tripp responded that air quality was not really a land use issue and had not been analyzed.

45. Charles Kratovil of New Brunswick asked what input or involvement, if any, the environmental commission had had on the application. Mr. Kratovil submitted a letter for the record objecting to consideration of the application. The letter was filed with the Board Secretary. Mr. Kratovil asked if the copy of the application was available for the environmental commission. The Board Attorney responded that all applications are available on the Borough's website. Mr. Kratovil asked why the Mayor had recused himself and whether it was appropriate for the Mayor's designee to participate; the Board Attorney responded that the Mayor's designee does not have any conflict.

46. There being no further public comment or questions, the public portion of the hearing was closed.

47. In response to a question, the Board Attorney indicated that it is the usual procedure for the Board to first act on the application prior to its being submitted to the County planning board for approval. The Board Engineer commented on another question and indicated that it was the Board's pleasure as to whether the Board wanted to be involved in the details of the plan or leave the details to the professionals to handle in their discretion. There was then a discussion as to whether approval of the traffic signal could or should be a condition of approval if approval of the

site plan application is granted. Mr. Tripp offered that the Applicant has agreed to do everything that it can to get the traffic signal and that because the project substantially complies with the redevelopment plan and only minor relief is sought, which has nothing whatsoever to do with traffic, then the application should be approved and the condition should be that Applicant will have the traffic analysis revised to show that the traffic signal is warranted and will work with the consultants and use best efforts to get the traffic signal.

48. At this point, Stuart Schooler, 8801 Glenbrook Road, Bethesda, Maryland, asked to be heard. He was sworn in. He is the Managing Partner of Metuchen I and Metuchen III. He indicated that the developer wants the traffic signal and will try to obtain it. He stated that he owns an electric car and bikes to work. Mr. Schooler reiterated that the drive-thru was part of the redevelopment plan and redevelopment ordinance.

49. In response to a Board question, the Board Attorney indicated that there were several options with respect to a resolution. One would be to wait until the next meeting and look at the traffic study. The attorney advised, however, as a general rule, that there are people walking around, that there are parks that may attract people and that there is traffic in the area, are not issues that Applicant can be required to solve. The Applicant is only required to deal with the traffic that is generated from the site and where, as Applicant's Attorney pointed out, the use is a permitted use, off-site traffic considerations are not a basis to deny an application.

50. At this point, a motion was made to approve the application. The motion was seconded. There was then a discussion about the conditions to be included in the resolution. One was to require the Applicant to work with the Borough to facilitate an application to the County for a traffic signal. Additionally, the Applicant agreed to comply with all of the conditions and recommendations in the Planner's memorandum and in the Engineer's memorandum, except those

items that were modified during the hearing. Additionally, there would be requirement for a recording of a covenant for the water quality and stormwater controls. Applicant will work with the Board Planner with respect to the number and location for the installation of bike racks.

Additionally, Applicant agreed to install an electric vehicle charging station in the parking lot.

**WHEREAS**, the Metuchen Planning Board, after hearing the testimony on behalf of the Applicant, considering the recommendations of the Board Engineer and the Board Planner, and having considered the comments of the public, has made the following findings of facts and has drawn the following conclusions of law:

1. The Planning Board of the Borough of Metuchen has proper jurisdiction to hear the within matter.

2. Applicant proposes to construct a Starbucks coffee shop, with a drive-through facility, fronting on Middlesex Avenue.

3. The subject property is located in the amended Oakite Site Redevelopment Area as designated by the Borough Council of the Borough of Metuchen. The development proposed in the subject application substantially conforms with the amended Oakite Site Redevelopment Plan. Applicant Metuchen III, LLC, has entered into a Redevelopment Agreement with the Borough of Metuchen for the redevelopment of Block 71, Lot 37.01.

4. Applicant seeks Preliminary & Final Major Site Plan approval, together with exceptions and a request for waiver of submission requirements, for the property designated as Block 71, Lot 37.01 as shown on the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey.

5. Applicant proposes to construct a 2,250-square-foot one-story Starbucks coffee shop, with a drive-through facility, fronting on Middlesex Avenue and the future mid-block connector roadway, to be known as Greenway Avenue. Other improvements include a parking area and drive-through facility at the rear of the property, together with an outdoor patio area, masonry walls, retaining wall, fencing, landscaping, lighting, and signage. The parking area will contain 16 parking spaces (reduced from the proposed 17 to provide a turn-around space), which is separate from a one-way drive-through loop system that can accommodate up to 10 stacked vehicles.

6. While the Project substantially conforms to the Amended Oakite Site Redevelopment Plan, a variance may be required for maximum front yard setback depending upon whether or not the Borough Council decides that on-street parking is to be permitted on Greenway Avenue. The Board will grant the variance as part of this application so that if it is required, Applicant will not need to come back to the Board for approval.

7. Additionally, the Board determined to grant waiver of submission requirements as the items sought to be waived are not needed for the Board's consideration of the application.

8. The Board also determined that the requested exceptions for maximum size, width, height, and number of proposed signs, minimum number of street trees, buffering and screening of the proposed trash enclosure, as referred to in § 110-186.(A), § 110-185, §110-180 and §110-175 of the Land Development Ordinance, and an exception from the requirement of uninterrupted public sidewalks across driveways, as referred to in §5.6.3.A.4 of the Redevelopment Plan, may be granted.



9. The Board heard and accepts the testimony of the Applicant's expert witnesses and the comments of the Board Engineer and Board Planner with respect to the variances, exceptions and waivers applied for and to be granted.

10. Applicant has agreed to work with the Board Planner and Board Engineer with respect to various design aspects of the project.

11. The Application meets the goals and objectives of the Redevelopment Plan and the Master Plan.

12. The Board finds that the application for preliminary and final major site plan approval, with variances and exceptions, may be granted as being in general conformance with the intent and purpose of the Borough's site plan regulations, and with the Redevelopment Plan.

13. The Board finds that the maximum front setback variance may be granted under the C-2 criteria because the Applicant has demonstrated that the purposes of the Municipal Land Use Law will be advanced by a deviation from the literal enforcement of the zoning ordinance, and that the benefits of granting the variance would outweigh any detriment, for the reasons set forth on the record above. The benefits of granting the variance include enhanced pedestrian and vehicular safety.

14. In accordance with the C-2 criteria, the Board finds that there is no detriment to granting the requested variance relating to maximum front yard setback.

15. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance because the Board finds no detriment to granting the maximum setback variance due to the enhanced public safety resulting from the granting of the variance.

16. With respect to the exceptions requested, the Board finds that there would be exceptional and undue hardship imposed by the strict application of the design criteria for which the exceptions are sought, such that the signage, number of street trees and buffering and screening of the proposed trash enclosure, and design of sidewalks, may be permitted as proposed.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Metuchen that the application of Metuchen III, LLC, for preliminary and final site plan approval, with exceptions and waiver of submission requirements, be and is hereby granted subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. To the extent required, the application shall be subject to the approval of the following outside agencies or a letter of no jurisdiction:

1. County of Middlesex Planning Board;
2. Freehold Soil Conservation District;
3. Borough of Metuchen Fire Department;
4. Middlesex County Utilities Authority;
5. Middlesex Water Company.

D. This approval is subject to compliance with the Borough Affordable Housing

Ordinance and Development Fee Ordinance, including, but not limited to, payment of any development fees in accordance with the Development Fee Ordinance.

E. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all other applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey. No further deviations from the zoning ordinance or site plan regulation shall be permitted without approvals of the Planning Board.

F. The Applicant shall furnish a performance guaranty, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the cost of the site improvements approved by this resolution as estimated by the Board Engineer in a form satisfactory to the Borough Attorney.

G. The Applicant shall also post an inspection fee equal to 5% of any public improvements or changes to public improvements.

H. The Applicant shall reimburse the Metuchen Planning Board and/or the Borough of Metuchen for professional fees associated with this application.

I. This approval is subject to performance by the applicant in accordance with the Redevelopment Agreement between the Applicant and the Borough of Metuchen.

J. Applicant shall comply with the following additional conditions:

1. Except as specifically noted in this resolution, or otherwise specifically addressed and/or agreed upon at the public hearing, Applicant shall comply with all the requirements contained in the review letters of the Borough Engineer and the Board Planner, dated July 20, 2022 and July 21, 2022 respectively.

2. Applicant shall work with the Board Planner and the Board Engineer with respect to final design, landscaping, and lighting. These items include finishing of the trash enclosure with materials as discussed consistent with the building or the free standing wall, the addition of additional bike racks and locations of bike racks.

3. Applicant shall have prepared and submit for the review and approval of the Board Engineer an operation and maintenance manual for all proposed drainage structures. The operation and maintenance manual and maintenance plan shall be incorporated into a covenant so as to make clear the responsibility for the maintenance of the stormwater system, which shall be submitted to and subject to the review and approval of the Board Engineer and Board Attorney and then recorded subsequent to being signed, sealed and delivered by whomever is necessary to put it in the chain of title. A copy of the recorded covenant shall be filed with the Planning Board Secretary.

4. A revised site plan, reflecting compliance with this approval, shall be prepared and submitted to the Board Engineer for his review and approval prior to the issuance of any certificates of occupancy.

5. Applicant shall cause its traffic engineer to revise the traffic study in accordance with the testimony given during the hearing and shall use its best efforts to have Middlesex County agree to the installation of a traffic signal at the Middlesex Avenue/Greenway Avenue intersection. If approved, applicant shall install the traffic signal and associated improvements at its expense, in accordance with the redevelopment agreement.

6. Applicant shall comply with all Borough ordinances with respect to tree replacement, landscaping, shade trees and street trees, except that street trees shall not be installed along Factory Street at Applicant's request and applicant shall make a contribution in

lieu to the Shade Tree Commission. Applicant shall work with the Board Planner in consultation with the Shade Tree Commission and shall submit tree and landscaping plans for the Board Planner's review and approval.

7. Applicant shall install an electric vehicle charging station in the parking area.

8. The two bathrooms shall be unisex.

9. No certificate of occupancy shall be issued until Greenway Avenue shall be completed to the northern end of the lot shown for the subject property, subject to the reasonable satisfaction of the Borough Engineer.

K. Applicant shall submit revised plans, reflecting the conditions of this approval, for the review and approval of the Board Planner and Board Engineer within sixty (60) days of the date of this Resolution.

**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

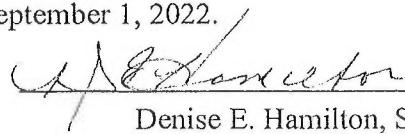
**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of July 21, 2022 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Board Planner, Board Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairman and Secretary be and are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

I hereby certify the foregoing Resolution to be a true copy of the Resolution adopted by the Metuchen Planning Board at its meeting of September 1, 2022.

  
Denise E. Hamilton, Secretary

Date: *Sept. 2, 2022*

RESOLUTION

RETAIL CANNABIS  
FACILITY  
(PARCEL A)

METUCHEN PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING  
PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL, CONDITIONAL USE  
APPROVAL, AND WAIVER OF SUBMISSION REQUIREMENTS TO  
DASCO SOLUTIONS, LLC  
BLOCK 71, LOT 37.01  
700 MIDDLESEX AVENUE  
APPLICATION NO.: 23-1368

**WHEREAS**, this application involves the property Block 71, Lot 37.01, as shown on the official Tax Map of the Borough of Metuchen, and more commonly known as 700 Middlesex Avenue in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Dasco Solutions, LLC, hereinafter referred to as “the Applicant,” is the lessee of Block 71, Lot 37.01; and

**WHEREAS**, the Applicant has applied to the Metuchen Planning Board for Preliminary and Final Major Site Plan approval, conditional use approval and waiver of submission requirements; and

**WHEREAS**, the Planning Board of the Borough of Metuchen held a public hearing on said application on November 2, 2023, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

**WHEREAS**, at said hearing, the Planning Board considered the following documents:

1. Amended Oakite Site Redevelopment Plan, prepared by LRK, Inc., dated August 18, 2021, last revised September 13, 2021 and consisting of 54 pages;
2. Ordinance 2023-03, dated March 6, 2023 and consisting of four (4) pages;
3. Redevelopment Agreement, dated November 9, 2021 and consisting of 200 pages;
4. Zoning Permit Application, dated September 12, 2023 and consisting of one (1) page;



5. Application for Development, dated September 15, 2023 and consisting of six (6) pages;
6. Planning Board Resolution No. 02-573, dated May 1, 2003 and consisting of 27 pages;
7. List of Submission Exhibits, undated and consisting of one (1) page;
8. Schedule of Bulk Requirements, undated and consisting of one (1) page;
9. Narrative (inclusive of multiple exhibits), undated and consisting of 11 pages;
10. Series of photographs, undated and consisting of 12 images on seven (7) pages;
11. Major Site Plan Checklist, dated October 14, 2023 and consisting of eight (8) pages;
12. Green Development Checklist, dated October 14, 2023 and consisting of six (6) pages;
13. Waiver Requests, dated October 14, 2023 and consisting of one (1) page;
14. Survey entitled "ALTA/NSPS Land Title Survey, Block 71, Lot 37.01, 700 Middlesex Avenue, Borough of Metuchen, Middlesex County, State of New Jersey," prepared by Control Point Associates, Inc., under seal of James D. Sens, PLS, NJPLS License No. 24GS04322600, dated June 14, 2023, last revised July 24, 2023 and consisting of two (2) sheets;
15. Plans entitled "Dasco Solutions, Adaptive Re-Use, 700 Middlesex Avenue, Metuchen, NJ 08840," prepared by Polar Green Architecture Engineering LLP, under seal of Joseph D. Javier, RA, NCARB, NJRA License No. 16479, dated September 11, 2023 and consisting of six (6) sheets.
16. Memorandum of LRK Inc. by Chris S. Cosenza, AICP, PP, LEED AP, Board Planner, dated October 31, 2023;

**WHEREAS**, the Applicant was represented by Richard Schkolnick, Esq.; and

**WHEREAS**, Applicant seeks preliminary and final major site plan approval, conditional use approval, waiver of certain submission requirements for the property designated as Block 71, Lot 37.01 as shown of the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey; and

**WHEREAS**, Block 71, Lot 37.01 is part of the Oakite Redevelopment Plan area; and

**WHEREAS**, Applicant proposes to renovate a former bank building and convert it into a Class 5 Cannabis Retailer. The Project conforms with the Amended Oakite Site Redevelopment Plan, and does not require any variances or exceptions; and

**WHEREAS**, the Board heard the presentation and evidence as follows:

1. Richard Schkolnick, Esq., Applicant's attorney, gave an opening statement. He stated that the present application concerns an existing bank building located at 700 Middlesex Avenue, which is currently vacant. The property is located in the Oakite Redevelopment Plan area (the "Redevelopment Area") and is designated as Parcel A in same. Mr. Schkolnick stated that in September 2022, Metuchen Borough passed an ordinance permitting retail cannabis locations in certain zones and subject to conditions. On March 6, 2023, the Borough amended the Amended Oakite Site Redevelopment Plan (the "Redevelopment Plan) to permit Class 5 Cannabis retail use as a permitted use within Parcel A in the Redevelopment Area. Finally, the Borough issued a letter of endorsement, on May 18, 2023, expressing support for a cannabis facility at the subject location. Mr. Schkolnick stated that the conditions for the proposed use are set forth in Section 72-5C, all of which were addressed in the application and which will be further elucidated to confirm compliance. He stated that as a result of full compliance, no variances are requested nor are any

changes to the existing structure being proposed. As part of Applicant's presentation, the Board Planner's memo will be addressed with testimony given to respond to concerns about parking, traffic circulation, and ongoing consultation with the Metuchen Police Department.

2. Joseph D. Javier, Architect, was sworn in, qualified, and gave testimony. Referring to a previously submitted site plan, he stated that the subject property, Parcel A, is one of many lots in the Redevelopment Area. The subject lot is approximately 25,956 square feet while the minimum required lot size is 25,000 square feet. The property is located on Middlesex Avenue, which provides the main access, and is a corner lot with a mid-block connector roadway for secondary access. The property is not within 200 feet of any schools meeting one of the conditional use standards. Describing the existing structure, he stated that it is about 3,000 square feet in area with three existing drive-thru lanes from its prior use as a bank. The current proposal is to utilize one of said lanes with a potential future expansion to use the additional lanes. The site currently has 10 existing parking spaces, one of which is an ADA-compliant accessible parking space.

3. Moving to sheet A-4, Mr. Javier stated that minimal alterations were made to the existing lighting on the property. Two lamp posts were added near the mid-block roadway, along with wall sconces along the front elevation of the building. The purpose of these additions was to ensure at least 0.9 foot-candles throughout the site, while ensuring no excessive light pollution was created. The additional lights remain under the 12-foot maximum height for lighting imposed on the site. In response to a question from Chairman Erickson, Mr. Javier confirmed that the existing lighting will maintain the original fixtures, and that new lanterns will match. In response to Board Member Clarkson, Mr. Javier stated that the locations of the existing lights have not changed and demonstrated same with the use of his exhibit.

4. After a short discussion among the Board Members regarding the potential for updating the existing and additional lighting proposed at the site, Mr. Javier clarified that while the lampposts would remain as is, the light fixtures themselves would be upgraded with LED lighting.

5. Turning to sheet A-2, Mr. Javier outlined the interior layout of the proposed use, pointing out a main entrance, security desk, main sales floor area, bathroom, a rear emergency exit and an employee lounge area. The existing vaults from the prior use as a bank will be used for long-term and short-term product storage. Finally, a flex-space can be used for administrative purposes. The floor plan, vault storage, security and safety will all require approval by the State Cannabis Regulatory Commission, along with consultation with the local police department. These processes have already been initiated as part of the project's development.

6. Turning to sheet A-3, Mr. Javier described the proposed signage, stating that minimal changes were made which would keep the planned signage as compliant with a twelve-foot maximum size of the proposed wall-mounted sign. Mr. Javier also confirmed that the site has separate access from Middlesex Avenue and is not within 200 feet of a K-12 school. To ensure compliance that no cannabis product or paraphernalia would be visible to the public, Mr. Javier stated that all windows would be tinted and opaque along with landscaping to limit visibility. As to noise compliance, he stated that existing condenser units would be utilized and screened by landscaping as well.

7. In response to questions from Ms. Clarkson and Mr. Delia, the witness stated that two signs stating "Dasco Solutions" were being proposed, and that a third freestanding sign is not under the Applicant's control, rather is owned by the current landlord of the property.

8. Mr. Javier stated that the proposal complies with a prohibition on cannabis facilities being housed in a vehicle or movable structure, and that the plan complies with New Jersey's

Cannabis Regulatory Commission rules and regulations, though a subsequent witness would address that in greater depth.

9. In response to the Board Planner's memo, the Applicant submitted a conceptual parking layout, marked as exhibit A-1. Walking through this exhibit, Mr. Javier detailed four new spaces along the northeast corner of the property designated for employee parking. The space dimensions were listed as nine feet by eighteen feet, though the Applicant agreed with the Board Planner's recommendation that twenty-three feet should be considered. In response to a question from Mr. Erickson, the Board Planner stated that the planned employee parking should be submitted to the Metuchen Police and Fire departments for consultation. The Applicant agreed as a condition of approval.

10. Mr. Javier stated that the plans indicate 10 existing parking spaces, one of which is ADA compliant, but they are proposing the additional four aforementioned employee only spaces, which would be beyond the minimum required by ordinance. In response to questioning from the Board, the witness demonstrated the main point of ingress from the entrance to the subject property along Middlesex Avenue which is a one-way entry. Vehicles entering through this entryway would circle through the property to the parking area if not accessing the existing drive-through lane. Mr. Javier also demonstrated that the only exit from the property is through the mid-block connector road and gave a brief description of the hypothetical flow of traffic through the property.

11. Mr. Cosenza stated that based on consultation with the Board Engineer, they agreed that the Applicant should be required, as a condition of approval, to submit a revised site plan showing all traffic control devices actually shown on the survey. The applicant agreed to that condition. The Applicant also agreed to include appropriate signage on the subject property indicating the flow of traffic to entering and exiting vehicles.

12. Mr. Lifton expressed concern over the potential for excessive traffic and issues with stacking of vehicles based upon the proposed layout of the lot. Applicant's attorney stated that a traffic control officer would help address this during busier hours, and added that further testimony from the witnesses would be discussing the circulation of vehicles.

13. A number of Board Members discussed the potential traffic issues at peak operation hours, with Mr. Delia raising the possibility of closing the Middlesex Avenue entry into the subject property.

14. Mr. Renaud indicated that the plans before the Board, specifically Sheet A-1, did not properly mark ingress and egress and suggested a revised plan with proper markings be provided.

15. At this point the meeting was opened to the public for questions, with the acknowledgment that more time would be provided later in the hearing should further comment be necessary.

16. Dan Spiegel of 1 Mark Circle, Metuchen, New Jersey, asked questions regarding the placement of proposed parking spaces and whether adequate room would be available for traffic and parallel parking. Mr. Javier responded by stating that the distance between existing stanchions and the curb line was roughly eighteen to twenty feet, which would provide adequate space for traffic and necessary parking maneuvers. Mr. Schkolnick reiterated that the proposed parking layout would be submitted to the Metuchen Police and Fire Departments for review. Mr. Javier added that the stated dimensions would be added to a revised plan. Mr. Cosenza suggested further striping and traffic indicators should also be added to the plans, noting that the Board Engineer concurred.

17. Paul Gibson of 72 Lake Avenue, Metuchen, New Jersey asked whether the relevant ordinance prohibits queuing of customers outside of the establishment. Mr. Renaud clarified that

this applies to pedestrian traffic and queuing of customers on foot, rather than vehicular traffic as was being discussed.

18. Mr. Spiegel began to question whether an appropriate level of detail was included in the interior layouts displayed, however, Mr. Javier stated that a subsequent witness would be better suited to answer.

19. Joshua Bell, Expert in Cannabis Operations, was sworn in, qualified, and gave testimony. Mr. Bell addressed some of the requirements laid out by ordinance. The Applicant intends to operate Monday through Saturday, from 11 am to 7 pm, and on Sundays from Noon to 6 pm. The property was designed to operate as an “express dispensary” following the examples of pharmacies and industries relying on combined methods of picking up orders. They anticipate between four to five staff members, including security, on site at a given time.<sup>1</sup> The total staff is expected to be 12 employees.

20. Giving a description of the customer experience, Mr. Bell began by pointing out a proposed security vestibule at the entry point of the property where a security officer would verify ID and age.<sup>2</sup> He stated that of the two vaults, one would be used for short-term storage including servicing of the drive-thru window, while the other would be used for long-term storage. Discussing payment options, he stated that pickup orders can be placed through a website as well as a phone application, both of which would enable customers to place online orders for pick up in store or via the drive-through window. Mr. Bell anticipates roughly 60% of traffic occurring through the pickup window. That expectation is based upon research conducted on traditional retail establishments and restaurants. In response to a question from Mr. Lifton, Mr. Bell stated that he

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<sup>1</sup> Applicant later amended this total to a maximum of six employees, to allow for a second security officer to assist with traffic control.

<sup>2</sup> Applicant later clarified that the security officer would not be stationed at a specific vestibule and would be mobile within the dispensary.

has not participated in the establishment of a drive-thru cannabis operation before this application. Mr. Schkolnick added that informal surveys were done on comparable cannabis operations in New Jersey which do feature drive-thru pickup options.

21. Referring to earlier questioning, Mr. Lifton asked whether 60% of sales occurring via the drive-thru window would create traffic issues impacting Middlesex Avenue similar to traffic caused by nearby drive-thru Starbucks customers. Mr. Bell replied that based on extensive modeling completed on behalf of the Applicant this should not be an issue.

22. In response to Ms. Cohn, Mr. Bell explained that they expect a steady stream of customers throughout the course of the day, though 4-6 pm would typically be high volume periods accounting for roughly 30% of a given day's business.

23. In response to Mr. Love, Mr. Bell stated that they expect only a small percentage of purchases to be made by walk-in customers who have not pre-ordered online. He also added that the average transaction time for such a purchase is about five minutes, whereas pre-ordered pickups would take only two minutes.

24. In response to Ms. Cohn, Mr. Schkolnick stated that the Applicant's research and expert testimony indicates a single drive-thru window will be adequate, but they anticipate they may have to reapply at a future date to make use of a second drive-thru lane.

25. Mr. Bell responded to questions posed by Mr. Cosenza and Ms. Cohn regarding peak traffic hours. He stated that roughly twenty-seven transactions would occur during the two-hour peak period of 4-6 pm, meaning that on average they would expect fourteen customers per hour, which should only require twenty-eight minutes of transaction time in either of those given hours.



26. In response to Ms. Cohn, Mr. Bell explained that customers using the pickup window would show identification, the corresponding order would be retrieved, payment would be made if not already completed online, and the product dispensed to the patient. He added that while consideration was given to utilizing existing pneumatic tubes as a bank would, the back-and-forth nature of those transactions would actually increase wait times while irregular shaped products would be problematic for the cylindrical tubes.

27. In response to Mr. Lifton, Mr. Bell stated that while cash payments are permitted, more than 50% of purchases are anticipated to be made online or via accepted electronic payment. Mr. Lifton reiterated his concern that peak hours coupled with longer than expected transaction times could result in traffic issues for the surrounding areas. Mr. Bell stated that one option for mitigation of traffic is to pace the delivery of notifications that orders are ready for pickup while Mr. Schkolnick added that the Applicant has already agreed to work with the Metuchen Police Department along with employing a traffic control officer to mitigate any traffic issues which may arise. In response to Ms. Clarkson, Mr. Bell stated the Applicant intends to employ a second security officer to facilitate circulation of traffic within the site for at least the first two months of operation.

28. In response to Mr. Cosenza, Mr. Bell stated that to remain in compliance with the relevant ordinance, customers would not have to queue outside while waiting to make a purchase inside of the dispensary. Further discussing traffic, Mr. Bell confirmed that after opening, the Applicant intends to perform analysis of traffic and customer purchase trends which can be shared with the Borough. Mr. Cosenza added that the planned removal of the existing canopy structure could be reconsidered to potentially add a second drive-thru lane to ameliorate potential traffic

issues. Mr. Schkolnick stated that it could be considered but the Applicant requires operational experience before being able to predict what changes will need to be made.

29. Turning to conditional use standards, Mr. Bell testified that the property will be making use of the existing vaults, that odor control will be maintained with sealed opaque cannabis containers, negative air pressure, carbon filtration and HVAC filtration. Trash removal will be compliant with all necessary guidelines with no cannabis products being disposed of in on-site dumpsters.

30. The Board took a brief recess.

31. Stuart Schooler, was sworn in and gave testimony. He testified that he is the principal of the entity which owns the entire redevelopment parcel on which the subject property sits. After some questioning by Board Members and the Board Attorney, Mr. Schooler testified that the monument sign currently in place is not being used by either the Applicant or the Redevelopment Entity. Mr. Renaud stated that as such, there should be no issue with its removal as part of this Application. Ms. Koskoski stated that the amended redevelopment agreement requires a subdivision for the operation of a cannabis facility. Mr. Schooler stated that the subdivision has been delayed but paperwork effectuating same would be filed shortly. Mr. Renaud noted that the required subdivision has to be a condition of approval.

32. At this point the meeting was opened to the public for questions, with the acknowledgment that more time would be provided later in the hearing should further comment be necessary.

33. Mr. Spiegel asked another question of Mr. Schooler, as to whether he would provide cross-access easement for the balance of the site for parking purposes if the Board determined that inadequate parking is included in the application. He stated that most of the remaining properties

are leased which deprives him of the ability to answer on their behalf. In response to Mr. Cosenza, Mr. Schooler stated that the nearby Metuchen Sportsplex could potentially accommodate five to six parking spaces for staff.

34. Mr. Lifton asked Mr. Bell to compare the proposed facility to a nearby facility in Woodbridge, and expressed concern of odors emanating from the latter's facility. Mr. Bell testified that he believes that facility is co-located with a cultivation and processing plant from which is likely producing said odors. The proposed site would not have this issue.

35. Mr. Bell outlined how customers would be processed in the interior of the facility. Several POS stations will be present along with displays of empty packaging for various products. A large L-shaped counter would also be used as a POS counter.

36. In response to Mr. Grossman, Mr. Bell stated that a security officer will be present at the entryway to conduct age verification but that a physical security desk is not anticipated. He reiterated that customers who have not yet had their ID checked by security can wait to do so within the facility. He added that customers seeking to purchase cannabis must be 21 years of age, but no such prohibition exists for those who merely enter the building, comparing it to a liquor store.

37. At this point the meeting was opened to the public for questions, with the acknowledgment that more time would be provided later in the hearing should further comment be necessary.

38. In response to Mr. Spiegel, Mr. Bell stated that both adult use and medical patients can be served at this facility, and that there would be separate POS stations for pickup versus in-store purchasers. He also stated that employees would be flexed between stations to address volume and consumer activity.

39. Mr. Renaud inquired as to what each of the employees would be doing on-site at any given time. Mr. Bell stated that a security officer would be on-duty inside at all times, while a second would be on-site for traffic purposes for at least the first two months of operation, while the remaining employees would be flexed between roles serving the various purchase fulfillment options.

40. Ms. Clarkson asked whether the Applicant currently operates any other cannabis facilities and whether a sign displaying "Dasco Solutions" would indicate a cannabis facility to passersby. Mr. Schkolnick stated that as to the first question a subsequent witness would be better suited to answer. Mr. Bell stated that the hypothetical sign would not make it apparent that the site hosted a cannabis facility but that word-of-mouth travels quickly regarding these types of companies. Mr. Bell also stated that pursuant to State regulations, nothing about the exterior of the building or signage will indicate that a cannabis facility is present.

41. David Delvecchio was sworn in and gave testimony. He stated that he currently owns a dispensary in Gloucester Township and is part of the ownership group of Dasco Solutions. Mr. Delvecchio described the application in general, stating that they are trying to be as accommodating as possible, especially regarding traffic concerns and have had discussions with the Metuchen Police department to ensure it is adequately addressed. He supported Mr. Bell's testimony in this area, adding that he has consulted with owners of other dispensaries in New Jersey who confirmed that roughly 50-60% of their customers make use of drive-thru windows when available. He also reiterated that the Applicant's approach is to quickly modify existing plans of operation should it become necessary.

42. Mr. Delvecchio proposed a mechanism to control traffic and access, whereby a gate would be installed at the Middlesex Avenue entrance to ensure only a certain number of vehicles

could enter the property at a given time. He added that if the Board requires the Applicant to close off the Middlesex Avenue entrance as a condition of approval he would comply but suggested that adequate security staffing should be able to ameliorate any traffic concerns.

43. In response to Mr. Grossman, Mr. Delvecchio replied that the proposed gate is a new idea and has not been discussed with the Metuchen Police Department. He further reiterated that based upon his understanding of other dispensaries he does not believe traffic will be negatively impacted in the surrounding area.

44. Mr. Lifton stated his concerns with a gate blocking access from Middlesex Avenue which could potentially worsen traffic as customers wait to access the property. After some discussion from Mr. Cosenza and the Board, the Applicant agreed to the closure of the Middlesex Avenue entrance as a condition of approval, and to submit revised plans showing same to be reviewed by the Board Planner and Engineer.

45. In response to Ms. Koskoski, Mr. Delvecchio confirmed that drive-thru customers would be required to submit identification for any purchases, and agreed to set aside a bike parking area as a condition of approval. In response to Mr. Cosenza, Mr. Delvecchio confirmed that the bathrooms on-site would be unisex.

46. In response to several Board Members, Mr. Bell further testified about ID verification, stating that mobile hand-held devices are used to quickly scan an ID.

47. Mr. Spiegel questioned whether online orders could be modified on-site. Mr. Bell replied they could not.

48. Mr. Cosenza stated that both he and the Board Engineer had comments to ensure everything is restriped and repainted, that the site improvements will require inspection by the Engineer's office as a condition of approval, and that the site plan should be revised to include all

traffic control signage as well as any new signage, all of which would be subject to review and approval of the Planner's office and in coordination and consultation with the Police and Fire Departments. Addressing the removal of the Middlesex Avenue driveway, Mr. Cosenza recommended an extended sidewalk, upright curb, and the addition of a grassy area with more shrubbery. Mr. Cosenza asked whether the entire building's windows would be screened. Mr. Bell stated that pursuant to State requirements cannabis products cannot be viewable from the exterior of the property. Mr. Delvecchio added that window treatments will be included to give the exterior the look and feel of typical windows while still complying with state law.

49. After a short discussion regarding necessary subdivision, Mr. Renaud stated that the required subdivision would be included as a condition of approval.

50. Mr. Cosenza suggested removing the existing lighting to install light industrial type fixtures, consistent with new lighting that will be provided throughout the Oakite site.

51. The hearing was opened to the public for questions or comments.

52. Daniel Spiegel was sworn in and gave testimony. He gave a detailed description of his personal analysis of cannabis dispensaries in the nearby area. He described visiting these sites to take informal traffic counts of customers and numbers of vehicles visiting the sites per hour, which led him to conclude that the Applicant is understating the likely amount of customers to expect per hour of operation. He added that the proposed location for the subject dispensary is in an ideal location which would only further increase potential traffic and parking issues.

53. The public portion of the hearing was closed.

54. Mr. Renaud listed some of the conditions of approval for the application:

1. The pickup window is to be used for pre-orders only.
2. New light fixtures, subject to Planner and Engineer's approval.

3. Removal of the existing free-standing monument sign.
4. Submission of a revised site plan including but not limited to traffic signs, direction signs, pavement markings, subject to the Planner and Engineer's approval.
5. Removal of the Middlesex Avenue entrance and driveway.<sup>3</sup>
6. Applicant shall appear before the Board within three months for site plan approval to address parking and whether the additional drive-thru lanes will be removed.
7. No queuing of pedestrian customers outside of the property.
8. The proposed cannabis facility shall not be permitted to operate until the required subdivision is perfected.
9. Installation of a bike parking area subject to the Board Planner and Engineer's approval.
10. Approval of a security plan by the Metuchen Police Department.
11. Approval of a cross-easement with Lot 37.02 for the use of six (6) parking spaces.

55. At this point, a motion was made to approve the application.

**WHEREAS**, the Metuchen Planning Board, after hearing the testimony on behalf of the Applicant, considering the recommendations of the Board Engineer and the Board Planner, and having considered the comments of the public, has made the following findings of facts and has drawn the following conclusions of law:

1. The Planning Board of the Borough of Metuchen has proper jurisdiction to hear

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<sup>3</sup> Mr. Renaud noted that such removal is already required as per the Redevelopment Plan, Section 5.6 2A-3.

the within matter.

2. Applicant proposes to renovate a former bank building at the subject location to convert it into a Class 5 Cannabis Retailer.

3. The subject property is located in the amended Oakite Site Redevelopment Area as designated by the Borough Council of the Borough of Metuchen. The Project conforms with the Amended Oakite Site Redevelopment Plan and does not require any variances nor exceptions.

4. Applicant seeks preliminary and final major site plan, conditional use approval, and a request for waiver of submission requirements, for the property designated as Block 71, Lot 37.01 as shown on the official Tax Map of the Borough of Metuchen and more commonly known as 700 Middlesex Avenue, in the Borough of Metuchen, County of Middlesex and the State of New Jersey.

5. Applicant seeks approval to renovate the 3,037 square foot, one-story vacant bank building and convert it into a Class 5 Cannabis Retailer. As such, the building will continue to front on Middlesex Avenue and the future mid-block connector roadway. Applicant proposes to maintain the existing canopy structure but only utilize one of the former drive-through lanes closest to the building as a drive-up window to service customers. The other two drive-through lanes will not be utilized at this time. Applicant also proposes to maintain the existing off-street surface parking area containing 10 parking spaces.

6. Additionally, the Board determined to grant waiver of submission requirements as the items sought to be waived are not needed for the Board's consideration of the application.



7. The Board heard and accepted the testimony of the Applicant's expert witnesses and the comments of the Board Engineer and Board Planner with respect to the waivers and conditional use approval applied for and to be granted.

8. Applicant has agreed to work with the Board Planner and Board Engineer with respect to various design aspects of the project.

9. The Application meets the goals and objectives of the Redevelopment Plan and the Master Plan.

10. The Board finds that the application for preliminary and final major site plan approval, conditional use approval and waiver of submission requirements, may be granted as being in general conformance with the intent and purpose of the Borough's site plan regulations, and with the Redevelopment Plan.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Metuchen that the application of Dasco Solutions, LLC, for preliminary and final site plan approval, conditional approval, and waiver of submission requirements, be and is hereby granted subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Metuchen and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. To the extent required, the application shall be subject to the approval of the following outside agencies or a letter of no jurisdiction:

1. County of Middlesex Planning Board;
2. Freehold Soil Conservation District;
3. Borough of Metuchen Fire Department;
4. Middlesex County Utilities Authority;
5. Middlesex Water Company.

D. This approval is subject to compliance with the Borough Affordable Housing Ordinance and Development Fee Ordinance, including, but not limited to, payment of any development fees in accordance with the Development Fee Ordinance.

E. The granting of the application is expressly made subject to and dependent upon the Applicant's compliance with all other applicable rules, regulations, ordinances of the Borough of Metuchen, County of Middlesex and State of New Jersey. No further deviations from the zoning ordinance or site plan regulation, or the Redevelopment Plan shall be permitted without approvals of the Planning Board.

F. The Applicant shall furnish a performance guaranty, if necessary, in favor of the Borough of Metuchen in an amount equal to 120% of the cost of the site improvements approved by this resolution as estimated by the Board Engineer in a form satisfactory to the Borough Attorney.

G. The Applicant shall also post an inspection fee equal to 5% of any public improvements or changes to public improvements.

H. The Applicant shall reimburse the Metuchen Planning Board and/or the Borough of Metuchen for professional fees associated with this application.

I. This approval is subject to performance by the Applicant in accordance with the Redevelopment Agreement between the Applicant and the Borough of Metuchen.

J. Applicant shall comply with all of the following additional conditions:

1. Except as specifically noted in this resolution, or otherwise specifically addressed and/or agreed upon at the public hearing, Applicant shall comply with all the requirements contained in the review letter of the Board Planner.

2. The pickup window(s) shall only be used to dispense preordered cannabis products.

3. New exterior lighting fixtures shall be installed, subject to review and approval by the Board Planner and Engineer. As to the existing light poles on site, such poles will remain, with the fixtures being replaced.

4. The existing free-standing monument sign shall be removed.

5. Applicant shall submit a revised site plan with revisions including but not limited to markings indicating traffic signs, directional signs, and pavement markings, subject to the Board Planner and Engineer's review and approval.

6. Applicant shall remove the driveway and entrance from Middlesex Avenue into the subject property as required by the Redevelopment Plan.

7. Applicant shall appear before the Metuchen Planning Board within three (3) months of the date of the opening of the facility to address possible additional parking requirements and whether the additional 2 drive-through lanes will be eliminated, and to seek site plan approval if additional parking is required and removal of the drive-through lanes is proposed.

8. Applicant shall ensure no queuing of pedestrian customers occurs outside of the subject dispensary.

9. No certificate of occupancy shall be issued until the subdivision is perfected.

10. Applicant shall install a bike parking area, subject to review and approval by the Board Planner and Engineer.

11. Applicant shall acquire a cross-easement with Lot 37.02 for the use of six (6) parking spaces.

K. Applicant shall submit revised plans, reflecting the conditions of this approval, for the review and approval of the Board Planner and Board Engineer within sixty (60) days of the date of this Resolution.

**BE IT FURTHER RESOLVED** that the Applicant understands and acknowledges that all of the conditions contained in this resolution and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

**BE IT FURTHER RESOLVED** that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the

approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

**BE IT FURTHER RESOLVED** that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

**BE IT FURTHER RESOLVED** that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of November 2, 2023 and effective as of that date.

**BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the Borough Clerk, Board Planner, Board Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

**BE IT FURTHER RESOLVED** that the Chairman and Secretary be and are hereby authorized to sign any and all documents necessary to effectuate the purpose of this resolution, provided the Applicant has complied with the above-stated conditions.

I hereby certify the foregoing Resolution to be a true copy of the Resolution adopted by the Metuchen Planning Board at its meeting of January 4, 2024.



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Sharon Hollis, Secretary

Dated: January 5, 2024