

MADISON BOROUGH ZONING BOARD OF ADJUSTMENT

RESOLUTION

**Madison Movie Development, LLC - Application No. Z-20-018
Grant of (d) & (c) Variances, Site Plan Approval and Site Plan Exceptions
14 Lincoln Place - Block 2702, Lots 11, 22, 23 & 24
Adopted August 12, 2021**

WHEREAS, Madison Movie Development, LLC applied to the Madison Borough Zoning Board of Adjustment for a variance pursuant to N.J.S.A. 40:55D-70(d)(1) from the use regulation in Section 195-32.4(B)(1) that permits residential apartments in the CBD-1 Zone if located over stores or offices, (c) variances, preliminary and final major site plan approval, and related site plan exceptions to permit construction of a mixed use building with 24 residential units, 6 of which would be on the first floor and would not be over stores or offices, and installation of related site improvements on property located in a CBD-1 Zone at 14 Lincoln Place and designated on the Borough Tax Map as Lot 24 in Block 2702, including site improvements on adjacent property designated as Block 2702, Lots 11, 22 and 23; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at virtual meetings using the Zoom platform pursuant to the Governor's executive orders related to the COVID-19 public health emergency and recommendations of the New Jersey Department of Community Affairs, Division of Local Government Services on January 28, 2021, February 11, 2021, March 4, 2021, March 11, 2021, April 8, 2021, May 6, 2021, May 13, 2021, June 10, 2021 and June 29, 2021, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the applicant's development proposal was modified during the course of the public hearing process to make various changes in response to questions, comments and concerns that were raised by members of the Board of Adjustment, Board professionals and members of the public ; and

WHEREAS, the Board of Adjustment considered the testimony and exhibits presented during the public hearing; and

WHEREAS, at the meeting on June 29, 2021, the Board of Adjustment heard closing arguments by counsel, deliberated and then adopted an oral resolution approving the revised application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Madison Borough Zoning Board of Adjustment, this 12th day of August 2021, that the oral approval of the application by Madison Movie Development, LLC for a (d)(1) variance, (c) variances, preliminary and final major site plan approval, and related site plan exceptions is hereby memorialized based on findings and conclusions and subject to certain conditions as follows:

Findings of Fact and Statement of Reasons

1. The property owned by the applicant consists of a lot located at 14 Lincoln Place with a lot area of 11,601 square feet that exceeds the 10,000 square foot minimum for

the CBD-1 Zone.

2. The property is also in the designated Madison Civic Commercial Historic District.
3. Until recently, the property was improved with a vacant building that had previously contained the Madison Theater. The building was demolished in June of 2021 per prior approval granted by the Madison Historic Preservation Commission. As a result the property is currently unimproved.
4. The applicant proposed to construct a mixed use building with 3 levels of habitable space. The rear portion of the first floor would contain 6 residential dwelling units, and the front portion of the building facing Lincoln Place would contain 1,788 square feet of retail space. The second and third floors would each contain 9 dwelling units, resulting in a total of 24 dwelling units, 4 of which would be subject to affordable housing controls. The units on the third floor would include internal mezzanine areas with access to private terraces. The building would also have a lower level parking garage with 24 delineated parking spaces served by elevator access to the upper levels of the building.
5. Limited site improvements would be installed on adjacent Lots 11, 22 and 23, the owners of which consented to the application. These abutting parcels have areas as follows: Lot 11 – 10,046 square feet; Lot 22 - 5,789 square feet; and Lot 23 – 5,031 square feet. The principal improvement would be an expanded replacement driveway on abutting portions of the southeast side of Lot 24 and the northwest side of Lot 23 to provide access to the lower level parking garage in the proposed new building and to replace an existing driveway providing shared access to Lots 11, 22 and 23. Use of the new driveway would be governed by an access easement agreement that would supplement existing access easement rights of the owners of Lots 11, 22, 23 and 24. In addition, a portion of Lot 11 to the rear of the applicant's property would be repaved, and the unstriped parking area on contiguous portions of Lots 22 and 23 would be re-paved and reconfigured for more orderly parking use, along with installation of an access gate on the entry from the upgraded shared driveway, new lighting fixtures and stormwater management improvements.
6. The applicant's initial proposal was shown on site plan drawings prepared by Bowman Consulting Group, Ltd., initially dated September 9, 2020, and on architectural plans prepared by Gertler & Wente Architects LLP, initially dated September 3, 2020.
7. The proposed mixed use building requires a (d)(1) use variance from the use regulation in Section 195-32.4(B)(1) that permits mixed use buildings in the CBD-1 Zone subject to a requirement that the residential units must be over stores or offices. The applicant requires use variance relief because 6 residential units are proposed to be on the first floor above the lower level parking garage, rather than being over stores or offices.
8. The final revised proposal was determined to require (c) variances as follows:
 - a. A (c) variance from the 3 story building height limit in Schedule I to allow construction of a building that includes mezzanine areas that meet the definition of a "story", thus resulting in classification as a 4 story building.
 - b. A (c) variance from the 25' minimum rear setback requirement in Schedule I to allow minimum rear setbacks of 1.1' for 47 linear feet and 13.4' to 18.25' for the remaining 25 linear feet along the rear lot line.

- c. A (c) variance from the 85% maximum impervious lot coverage ratio limit in Schedule I to allow the nonconforming ratio for Lot 24 to be slightly reduced from 98% to 97.72%, which will continue to exceed the 85% maximum.
 - d. A (c) variance from the 85% maximum impervious lot coverage ratio limit in Schedule I to allow the nonconforming ratio for Lot 23 to be reduced from 100% to 89.7%, which will continue to exceed the 85% maximum.
 - e. A (c) variance, if required, from the unadjusted minimum parking space requirement of 46 parking spaces in Section 195-35(B) to permit 24 parking spaces.
 - f. A (c) variance from the maximum permitted signage area limit of 50 square feet in the Sign Regulations Schedule to permit a total signage area of 78.9 square feet.
 - g. A (c) variance from the building sign regulations in the Sign Regulations Schedule to permit 4 building signs that will not face a public roadway or municipal parking lot.
 - h. A (c) variance from the requirement in Section 195-32.4(G)(1) for a minimum 10' wide landscaped buffer where a nonresidential or mixed use development is contiguous to a residential zone or use, to permit no landscaped buffer between the proposed mixed use building and existing residential development to the rear and side.
9. The applicant's development proposal requires preliminary and final major site plan approval.
10. The applicant's final development proposal was determined to require site plan exceptions as follows:
- a. A site plan exception from the maximum illumination limit at property lines of 0.1 foot-candles in Section 195-25.6(C)(2)(a) to permit a maximum illumination level of 4.6 foot-candles.
 - b. A site plan exception from the requirement for minimum retaining wall setbacks of 5.2' and 2.3' in Section 195-25.5(B)(9) to allow a minimum setback of 0'.
 - c. A site plan exception from the requirement for minimum refuse storage area setbacks of 25' in Section 195-25.9(B) to allow a minimum setback of 1.1'.
 - d. A site plan exception from the requirement for a minimum of 10% of any surface parking lot to be landscaped in Section 195-25.15(C) & (M) to allow 0% landscaping for the improved parking area on Lots 22 and 23.
 - e. A site plan exception from the 9' minimum parking space width requirement in Section 195-25.15(F) to allow a minimum parking space width of approximately 8.5' for 19 of the proposed parking spaces in the garage level due to the location of structural columns.
 - f. A site plan exception from the requirement for a maximum driveway grade of 2% within 25' of the street in Section 195-25.15(H) to permit a 5% grade at the top of the driveway and a 10% grade for the remainder.

- g. A site plan exception from the 30' minimum driveway width requirement in Section 195-25.15(I)(3)(a) to allow a 20' driveway width.
- h. A site plan exception from the 4' minimum sidewalk width requirement in Section 195-25.15(L) to allow a width of approximately 3.1' for a portion of the sidewalk.
- i. A site plan exception from the requirement for parking areas to be curbed with granite block in Section 195-25.15(M)(5) to allow no curbing for the parking area on Lots 22 and 23.
- j. A site plan exception from the requirement for parking areas to have minimum rear and side setbacks of 5' in Section 195-25.15(N)(7) to allow parking and driveway improvements to cross lot lines and thus have 0' setbacks.

11. The applicant's final development proposal also required de minimis exceptions from the Residential Site Improvement Standards ("RSIS"), which requires minimum parking space width of 9' to allow 19 spaces to have a minimum width of approximately 8.5' due to the location of structural columns and permit a lesser number of parking spaces than required by RSIS absent adjustment.

12. The applicant was represented in proceedings before the Board of Adjustment by Peter Wolfson, Esq. of the Day Pitney law firm.

13. Save the Madison Theater, Inc., a group opposed to the proposed development, was represented by Robert Simon, Esq. of Herold Law, who participated in the public hearing proceedings.

14. Comments on technical aspects of the development proposal were provided in a memorandum dated October 6, 2020 from prior Board Engineer Frank Russo, P.E., P.P., and in memoranda dated January 26, 2021, April 5, 2021 and April 27, 2021 from current Board Engineer Dennis J. Harrington, P.E., who attended and participated in the public hearings.

15. Comments on the development proposal were also provided by Russell Stern, AICP, PP, LLA, Board Consulting Planner, in memoranda dated December 31, 2020, January 24, 2021, April 2, 2021 and May 2, 2021. He also attended and participated in the public hearings.

16. Comments were provided by Board traffic consultant Harold K. Maltz, PE, PP, in a letter to the Board of Adjustment dated January 26, 2021. He appeared at several hearings and testified and answered questions.

17. The Board also received comments from Borough police and fire safety officials, as reported by Board Engineer Harrington.

18. The comments from the Board's professionals were discussed during the public hearing, and the applicant's representatives agreed to address all comments, as reflected by revised plans that were submitted and/or by agreement to approval conditions requiring compliance with comments.

19. Comments on the development proposal were provided by the Madison Historic Preservation Commission ("HPC") in a memorandum dated January 26, 2021. The HPC

memorandum commented on signage and recommended variance relief for 2 proposed interpretive plaques. The HPC also raised procedural questions related to planned demolition of the former theater building. HPC Chairperson Janet Foster testified concerning the HPC comments at the public hearing on March 11, 2021. She was advised that issues as to the prior development proposal and demolition conditions were not before the Board. There was a discussion concerning a replica ticket booth that was proposed on the left side of the building, resulting in a determination to delete it from the development proposal. The HPC's favorable recommendations as to proposed signage were noted.

20. The Madison Environmental Commission issued a series of letters raising questions and comments as to the development proposal, that were favorably responded to by the applicant's representatives and/or the Board at various meetings. The positive changes included consideration of provisions for electric vehicle charging, use of appropriate building materials and energy efficiency features.

21. The Madison Downtown Development Commission ("DDC") commented on the application in a letter dated January 26, 2021 that expressed support for the development. DDC Vice Chair Eric Range testified concerning the DDC letter at the hearing on March 11, 2021.

22. Comments from the DDC Sign and Façade Committee were presented in a letter dated January 26, 2021 that generally expressed support for the proposed signage, except for questioning the extensive use of backlit illumination. DDC Vice Chair Eric Range testified concerning this separate DDC letter regarding signage at the hearing on March 11, 2021.

23. John Morris testified at the hearing on March 11, 2021 on behalf of both the DDC and the Madison Chamber of Commerce. He emphasized the importance of providing additional residents in the downtown area to increase pedestrian traffic thus contributing to the vitality of retail uses in the downtown. He characterized this as breathing new life into the downtown.

24. Prior to the initial public hearing questions were raised as to whether the proposed development should be subject to an increased affordable housing setaside ratio of 20%, rather than 15%, by virtue of the amendment of Section 195-48 by adoption of Ordinance No. 27-2020 on September 14, 2020. Correspondence from the Borough Administrator indicated that the prior setaside ratio of 15% would apply based on the time of application rule under N.J.S.A. 40:55D-10.5, since the application was filed prior to the zoning amendment, even though a completeness determination had not yet been issued.

25. Attorney Simon presented various procedural objections at the start of the first public hearing session, involving notice, jurisdiction and other issues. Applicant's attorney Wolfson presented oral responses, and attorney Simon was permitted to respond. The Board Attorney expressed concurrence with attorney Wolfson, and the Board determined to proceed with the hearing.

26. Testimony in support of the application was provided by:

- a. Eric Keller, P.E., professional engineer and traffic consultant.
- b. Jeff Gertler, architect.
- c. Paul Phillips, P.P., professional planner.

27. Engineer Keller testified concerning existing and proposed site improvements on Lot 24 and adjacent properties, as shown on the site plan drawings that he had prepared, which at the time of the initial hearing bore a revision date of November 18, 2020. He stated that the existing vacant building would be demolished and replaced by a 3 story mixed use building with a lower level for parking. The current driveway running along the common side lot lines of Lots 24 and Lot 23 would be widened and improved to provide access to the lower level parking area in the new building, while continuing to provide shared access to adjacent properties. A portion of the abutting area to the rear on Lot 11 would re-paved, and the parking area on the abutting rear portions of Lots 22 and 23 would re-paved and re-configured.

28. Engineer Keller testified that a sidewalk would be installed on the southeast side of the upgraded access driveway, which in his opinion would be adequate at that location. He noted that the RSIS, which provides for sidewalks on both sides, does not apply because the project involves a mixed use building, rather than an exclusively residential project.

29. Engineer Keller testified concerning proposed stormwater management improvements that were deemed to be acceptable by Board Engineer Harrington, subject to certain adjustments. The applicant agreed to make all recommended changes and work cooperatively with Engineer Harrington.

30. Engineer Keller testified concerning proposed site lighting, which included lighting timing alternatives. The applicant agreed to further adjustments as recommended by the Board's professionals.

31. Engineer Keller testified as to solid waste storage and collection. In response to comments, the applicant agreed to enhance the appearance of the solid waste storage area to serve the proposed building on Lot 24 and also creation of an enclosed storage area for the existing solid waste storage on abutting Lot 11.

32. Engineer Keller was qualified as a traffic engineer and also testified in that capacity. Board traffic consultant Harold Maltz largely concurred with Mr. Keller's testimony subject to limited comments, including the addition of signage by the entrance to the shared driveway from Lincoln Place and adjustment of the parking garage entrance.

33. Architect Gertler testified concerning the design and interior layout of dwelling units, retail space and the parking garage in the proposed mixed use building. He presented exhibits showing other multi-story buildings in the downtown and expressed his professional opinion as an architect that the proposed new building would be compatible in size and appearance. Architect Gertler also provided testimony as an architect that in his opinion the proposed mezzanine areas did not result in classification as an additional story of the building. He also testified that rooftop HVAC equipment would be predominantly screened.

34. There was a discussion of parking garage usage, and the applicant indicated that the affordable unit occupants would not be charged for parking.

35. Testimony in support of the requested variance relief was provided by Paul Phillips, licensed professional planner, as follows:

- a. He expressed the opinion that (d)(1) variance relief was appropriate since mixed use is permitted, with the deviation from the use regulation being limited to the particular combination and location of uses under the applicant's proposal.

- b. Mr. Phillips testified that proposed retail space on the front portion of the first floor facing Lincoln Place would advance the primary planning purpose of the use regulation. He testified concerning his review of the size and configuration of other retail uses in the downtown area and opined that it would be difficult to devote the entire 9,000 square foot area of the first floor to retail use.
- c. He noted that due to the downward sloping topography of the site, the first floor residential units would not be at grade because the lower level parking level beneath would be exposed.
- d. Mr. Phillips opined that there would be a significant improvement in compatibility with the surrounding area, as reflected by comparison of photographs of existing conditions and renderings of the proposed development.
- e. He testified that the proposed development of the property would advance specific objectives in the Master Plan by enhancing the streetscape and providing first floor commercial uses along the street frontage of the property.
- f. Mr. Phillips opined that the mezzanine areas on the third floor should not result in classification as a 4 story building. He emphasized that the proposed building would conform with the applicable 45' height limit.
- g. He opined that all other variance and other relief was appropriate due to elimination and/or improvement of nonconforming conditions and the enhanced design and compatibility with adjacent development.
- h. Mr. Phillips expressed the opinion that the statutory negative criteria requirement would be met for all variance relief, since the enhanced appearance of the property would make it more compatible with adjacent uses and the proposal would advance Master Plan objectives.

36. Objector attorney Simon presented testimony by professional planner Michael Pessolano, who criticized the absence of a detailed study by Mr. Phillips of the parameters of demand for retail space in downtown Madison. Mr. Pessolano did not support his criticism by any study or analysis, asserting that it was the applicant's burden to do so. He also focused on the general assertion that granting the requested variance would result in the loss of property designated for commercial development in downtown Madison, which he characterized as a valuable scarce resource without any supporting factual basis.

37. Attorney Simon did not present testimony by any member of the objector group as to reasons for objecting when given the opportunity to do so at the conclusion of the public hearing proceedings.

38. Various adjustments were made to the applicant's development proposal in response to comments from members of the Board of Adjustment and the Board's consultants.

39. The Board of Adjustment concludes that the applicant demonstrated the existence of special reasons for the requested (d) variance under N.J.S.A. 40:55D-70(d)(1) for the final revised proposal for the following reasons:

- a. This proposal involves a limited deviation from the use regulations for the CBD-1

Zone, since dwelling units are permitted if located over retail and/or office use. Use variance relief is required only due to the particular combination of these uses in the proposed building.

- b. The building will replace a vacant former movie theater that was previously determined to be unsuitable for repair and repurposing and was recently demolished. This will represent an important benefit.
- c. The new mixed use building will significantly advance Master Plan goals and objectives for redevelopment of the downtown area in terms of both street level commercial use and residential use.
- d. The size of the proposed building will be compatible with the surrounding downtown area.
- e. Conditions on adjacent Lots 11, 22 and 23 will be significantly improved by the applicant's development proposal by rehabilitation of the driveway and sidewalk, resurfacing substantial paved areas, modernized lighting, stormwater management and drainage improvements, two new crosswalks on Lincoln Place and a new trash enclosure. These improvements may stimulate investment by other nearby owners.
- f. Any impact of the use variance will be mitigated by the significantly enhanced appearance of the property and the contribution to enhanced pedestrian activity in the downtown area.
- g. The proposed development will be consistent with and advance the zoning purposes served by the use regulations for the CBD-1 Zone.

40. The Board of Adjustment concludes that the requested (d)(1) variance can be granted without substantial detriment to the public good based on the preceding findings and the fact that the proposed improvements will be more compatible with surrounding land uses than the prior vacant building that was recently demolished.

41. The Board of Adjustment concludes that granting the requested (d)(1) variance will not result in substantial impairment of the Master Plan and Zoning Ordinance under the particular circumstances of this property and proposal for the reasons noted above.

42. The Board of Adjustment concludes that the proposed building design dictates classification as a 4 story building, requiring (c) variance relief. However, (c) variance relief from the 4 story building height limit in Schedule I in the Ordinance is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The proposed mezzanine areas in the third floor units represent "space between the floor and the ceiling next above it", thus falling within the literal wording of the "story" definition in the Ordinance.
- b. Notwithstanding classification as an additional story, the proposed mezzanine areas will not appreciably expand the level of activity of the third floor units, but will instead provide a unique and beneficial design feature.
- c. The building will conform with the separate 45' building height limit.

- d. Under these particular circumstances, strict compliance with this zoning requirement would impose exceptional practical difficulties on the applicant.

43. The Board of Adjustment concludes that granting (c) variance relief from the 25' minimum rear setback requirement in Schedule I in the Ordinance is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The proposed setback will be consistent with the longstanding nonconforming rear setback of the prior building.
- b. Strict compliance with the rear setback requirement would significantly impair the building design, thus imposing exceptional practical difficulties on the applicant.

44. The Board of Adjustment concludes that granting (c) variance relief from the 85% maximum impervious lot coverage ratio limit in Schedule I in the Ordinance is appropriate as to Lots 23 and 24 pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The need for variance relief is attributable to the existing nonconforming lot coverage ratios for Lots 23 and 24, which will not be increased.
- b. Any impact of the continued excess impervious lot coverage will be offset by proposed stormwater management improvements and the enhanced appearance resulting from resurfacing of paved areas.
- c. Under these particular circumstances, strict compliance with this zoning requirement would impose exceptional practical difficulties on the applicant.

45. The Board of Adjustment concludes that use of an alternate parking standard of 1 parking space per unit is appropriate due to the location across the street from the Madison commuter rail station, public bus service on nearby Main Street, and the availability of other parking alternatives in the surrounding downtown area. For the same reason, variance relief and/or a RSIS de minimis exception would be appropriate if deemed to be required for the parking space ratio.

46. The Board of Adjustment concludes that granting (c) variance relief from the total sign area limit of 50 square feet in the Ordinance to allow a total sign area of 78.9 square feet is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The proposed signage was favorably recommended by the Sign and Façade Committee and the Historic Preservation Commission.
- b. The sign area calculation includes commemorative signage concerning the prior theater use.
- c. Under these particular circumstances, strict compliance with this zoning requirement would impose exceptional practical difficulties on the applicant.

47. The Board of Adjustment concludes that granting (c) variance relief from the building sign regulations in the Ordinance is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The installation of 4 building signs not facing a public street or municipal parking area is appropriate under the particular circumstances.
- b. Under these particular circumstances, strict compliance with this zoning requirement would impose exceptional practical difficulties on the applicant.

48. The Board of Adjustment concludes that granting (c) variance relief from the 10' wide minimum landscaped buffer between residential and nonresidential uses in Section 195-32.4(G)(1) is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) for the following reasons:

- a. The need for variance relief is attributable to the existing nonconforming absence of any landscaped buffer area.
- b. Under these particular circumstances, strict compliance with this zoning requirement would impose exceptional practical difficulties on the applicant.

49. The Board of Adjustment concludes that granting the requested (c) variance relief will not result in substantial impairment of the Master Plan and Zoning Ordinance or substantial detriment to the public good because the proposed improvements to the overall site will be more compatible with surrounding land uses and will advance Master Plan objectives.

50. The Board of Adjustment concludes that a site plan exception from the 30' driveway width requirement in Section 195-25.15(I)(3)(a) of the Ordinance to allow a minimum driveway width of 20' is appropriate pursuant to N.J.S.A. 40:55D-51(b) for the following reasons:

- a. The driveway will continue to function safely and efficiently with a minimum width of 20'.
- b. A wider driveway would require additional paving and impervious lot coverage.
- c. Granting this site plan exception will facilitate the applicant's development proposal, which will result in development that is more compatible with Master Plan goals.
- d. Under all of the circumstances, a 20' driveway width is reasonable and consistent with the general purpose and intent of the site plan approval regulations.

51. The Board of Adjustment concludes that it is appropriate to grant site plan exceptions from Section 195-25.15(C), which requires a minimum of 10% of any surface parking lot to be landscaped for the following reasons:

- a. The surface parking areas are pre-existing improvements.
- b. The proposed improvements will significantly enhance the appearance of this property and its compatibility with the surrounding area.

52. The Board of Adjustment concludes that it is appropriate to grant all other site plan exceptions for similar reasons.

53. The Board of Adjustment concludes that all site plan exceptions may be granted consistent with N.J.S.A. 40:55D-51(b) because they are all reasonable and within the general purpose and intent of the site plan regulations in the Ordinance and literal enforcement would

be impractical and would result in undue hardship because of peculiar conditions pertaining to the applicant's property.

54. Subject to compliance with all conditions, the applicant's final revised development proposal complies with the requirements for preliminary and final major site plan approval.

Description of Variance Approvals

1. A variance is hereby granted pursuant to N.J.S.A. 40:55D-70(d)(1) from the use regulations in Section 195-32.4(B)(1) of the Land Development Ordinance, which permits residential use only for apartments over stores or /offices, to permit construction of a mixed use building with 6 units on the first floor above the lower parking level, as shown on site plan drawings prepared by Bowman Consulting Group, Ltd., initially dated September 9, 2020, and on architectural plans prepared by Gertler & Wente Architects LLP, initially dated September 3, 2020, as required to be revised as a condition of these approvals.

2. A variance is hereby granted pursuant to N.J.S.A. 40:55D-70(c)(1) from the 3 story height limit in Schedule I of the Ordinance to allow construction of a mixed use building containing 4 stories, as shown on the plans as required to be revised as a condition of these approvals.

3. A variance is hereby granted pursuant to N.J.S.A. 40:55D-70(c)(1) from the 25' minimum rear setback requirement in Schedule I of the Ordinance to allow construction of a building with minimum rear setbacks of 1.1' for 57 linear feet and 13.4' to 18.25' for the remaining 25 linear feet, as shown on the site plan drawings and architectural plans, as required to be revised as a condition of these approvals.

4. A (c) variance is hereby granted from the 85% maximum impervious lot coverage ratio limit in Schedule I to allow the nonconforming ratio on Lot 24 to be slightly reduced from 98% to 97.72%, which will continue to exceed the 85% maximum.

5. A (c) variance is hereby granted from the 85% maximum impervious lot coverage ratio limit in Schedule I to allow the nonconforming ratio on Lot 23 to be reduced from 100% to 89.7%, which will continue to exceed the 85% maximum.

6. A (c) variance, if required, is hereby granted from the unadjusted minimum parking space requirement of 46 parking spaces in Section 195-35(B) to permit 24 parking spaces.

7. A (c) variance is hereby granted from the maximum permitted signage area limit of 50 square feet in the Sign Regulations Schedule to permit a total signage area of 78.9 square feet.

8. A (c) variance is hereby granted from the building sign regulations in the Sign Regulations Schedule to permit 4 building signs that do not face a public roadway or municipal parking lot.

9. A (c) variance is hereby granted from the requirement for a minimum 10' wide landscaped buffer where a nonresidential or mixed use development is contiguous to a residential zone or use to permit no landscaped buffer between the proposed mixed use building and existing residential development to the rear and side.

Site Plan Approval

Preliminary and final major site plan approvals are hereby granted based on site plan drawings prepared by Bowman Consulting Group, Ltd., initially dated September 9, 2020, and on architectural plans prepared by Gertler & Wente Architects LLP, initially dated September 3, 2020, as required to be further revised as a condition of these approvals.

Description of Site Plan Exceptions

1. A site plan exception is hereby granted from the maximum illumination limit of 0.1 foot-candles at the property line in Section 195-25.6(C)(2)(a) to permit a maximum illumination level of 4.6 foot-candles.

2. A site plan exception is hereby granted from the requirement for a minimum refuse storage area setback of 25' in Section 195-25.9(B) to allow a minimum setback of 1.1'.

3. A site plan exception is hereby granted from the requirement for minimum retaining wall setbacks of 5.2' and 2.3' in Section 195-25.5(B)(9) to allow a minimum setback of 0'.

4. A site plan exception is hereby granted from the requirement for a minimum of 10% of any surface parking lot to be landscaped in Section 195-25.15(C) & (M) to allow 0% landscaping for the parking area on Lots 22 and 23.

5. A site plan exception is hereby granted from the 9' minimum parking space width requirement in Section 195-25.15(F) to allow a minimum parking space width of approximately 8.5' for 19 of the proposed parking spaces in the garage level.

6. A site plan exception is hereby granted from the requirement for a maximum driveway grade of 2% within 25' of the street in Section 195-25.15(H) to permit a 5% grade at the top of the driveway and a 10% grade for the remainder.

7. A site plan exception is hereby granted from the 30' minimum driveway width requirement in Section 195-25.15(I)(3)(a) to allow a 20' driveway width.

8. A site plan exception is hereby granted from the 4' minimum sidewalk width requirement in Section 195-25.15(L) to allow a width of approximately 3.1' for a portion of the sidewalk.

9. A site plan exception is hereby granted from the requirement for parking areas to be curbed with granite block in Section 195-25.15(M)(5) to allow no curbing for the parking area on Lots 22 and 23.

10. A site plan exception from the requirement for parking areas to have minimum rear and side setbacks of 5' in Section 195-25.15(N)(7) to allow parking and driveway improvements to cross lot lines and thus have 0' setbacks.

RSIS De Minimis Exceptions

De Minimis exceptions from the RSIS are hereby granted from the parking space width requirement for the 19 parking spaces impacted by the locations of structural columns, and to permit a lesser number of parking spaces than required by RSIS, as shown on the site plan

drawings and architectural plans, as required to be revised.

Approval Conditions

These approvals are granted subject to the following express conditions:

1. These approvals are based on and limited to the specific site improvements and building footprints as shown on site plan drawings prepared by Bowman Consulting Group, Ltd., initially dated September 9, 2020, and on architectural plans prepared by Gertler & Wente Architects LLP, initially dated September 3, 2020, as required to be further revised as a condition of these approvals.

2. To the extent not already revised or addressed by the preceding conditions, the site plans shall be revised consistent with the comment memoranda and oral comments issued by the Board Planner and the Board Engineer during the final public hearing proceedings.

3. The required plan revisions shall be subject to review and approval by the Board Engineer and/or Board Planner.

4. The applicant shall obtain all other necessary approvals.

5. The applicant shall comply with the affordable housing regulations in Section 195-46, 47 & 48; provided, however, that amendments enacted by Ord. No. 27-2020 adopted on September 14, 2020 are not applicable pursuant N.J.S.A. 40:55D-10.5, commonly referred to as the time of application rule.

6. The applicant shall pay any outstanding technical review fees.

7. The applicant shall enter into a developer's agreement in a form acceptable to the Borough Attorney.

8. Prior to the start of any site work and issuance of a building permit, the applicant shall post any performance guarantees and inspection fees as required by Borough Ordinances.

9. Following completion of site work, an as-built survey shall be submitted showing all landscaping, improvements, utilities, building setbacks and areas, which shall be reviewed by the Board Planner for consistency with these approvals, including potential site inspections, and approved prior to issuance of any certificates of occupancy.

Vote on Resolution

For the Oral Resolution: Driscoll, Fitzsimmons, Paetzell, Salko, Di Ionno, Tirittli & Santoro.

Against the Oral Resolution: None.

For the Form of Written Resolution: Paetzell, Salko, Di Ionno & Santoro.

Against the Form of Written Resolution: None.

Certified to be a True Copy

By: Dennis J. Harrington
Dennis Harrington, Acting Secretary

Dated: August 18, 2021