

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

JANUARY 9, 2019

RE-ORGANIZATION MEETING 7:00 P.M.

AGENDA

1. Call meeting to order.
2. Requirements of the Sunshine Law. This meeting was advertised in the Burlington County Times on January 5, 2018 and posted in the Municipal Building.

Pledge of Allegiance

3. Welcome to guests. Give Oath of Office to new Board members: Mr. Blair, Mr. Eckart, Mr. Freeman, Mr. Odenheimer
4. Roll Call: Mr. Applegate, Mr. Barger, Mr. Blair, Mr. Borger, Mr. Eckart, Mr. Freeman, Mr. Guerrero, Ms. Haas, Mr. Myers, Mr. Odenheimer, Mr. Wisniewski
5. Motions are needed for the following 2019 appointments:

Chairman
Vice Chairman
Secretary
Solicitor
Engineer

6. Swear in Board Professionals
7. Approval of Meeting Minutes 12/5/2018
8. Resolutions: approval needed:

23-2018 979 Woodlane Road, LLC/7-Eleven, Block 1104, Lot 3 (Woodlane & Jacksonville Roads) – preliminary & final major site plan, use variance – convenience store & gasoline fueling station – continuance

24-2018 Fountain Square Shopping Center, Highview Homes, LLC, Block 807, Lot 1 (2035 Burlington-Mt. Holly Road) – preliminary major subdivision, site plan, use, bulk variances and design waivers

9. Old Business:
 - a. Kingdom Church, Block 1411, Lot 21 – request for modification to conditions in

Resolution #1-2015

10. New Business:

None

11. Informal Applications:

12. Correspondence:

13. Open meeting for public comment

14. Comments from Board members, Solicitor, Engineer and Secretary

15. Adjourn

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WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

REGULAR MEETING

DECEMBER 5, 2018 7:00 P.M.

MINUTES

The regularly scheduled meeting of the Westampton Township Land Development Board was held at the Municipal Building on Rancocas Road on December 5, 2018 at 7:01 P.M. The meeting was called to order by Chairman Gary Borger and the opening statement required by Sunshine Law was read. This meeting was advertised in the Burlington County Times on January 5, 2018 and posted in the Municipal Building. All guests were welcomed.

Everyone stood for the Pledge of Allegiance. There was a moment of silence in honor of the passing of George H. W. Bush.

Roll Call: Present: Mr. Applegate, Mr. Barger, Mr. Blair, Mr. Borger, Mr. Guerrero, Ms. Haas, Mr. Myers, Mr. Wisniewski (arrived at 8:45 PM), Engineer Jim Winckowski, Planner Barbara Fegley, Solicitor Robert Swartz, Secretary Marion Karp
Absent: Mr. Freeman, Mr. Mumbower, Mr. Henley

The minutes of the November 7, 2018 meeting were approved as written.

Resolutions:

22-2018 Fountain Square Shopping Center, Highview Homes, LLC, Block 807, Lot 1 (2035 Burlington-Mt. Holly Road), preliminary major site plan, minor subdivision, variances and waivers – continuation until 12/5/18 meeting – was memorialized.

New Business:

979 Woodlane Road, LLC/7-Eleven, Block 1104, Lot 3 (Woodlane & Jacksonville Roads). Chairman Borger made an announcement that the applicants requested a continuance of the application until the Board's January 9, 2019 meeting. No further notice would be required.

Old Business:

Fountain Square Shopping Center, Highview Homes, LLC, Block 807, Lot 1 (2035 Burlington-Mt. Holly Road). The applicant's attorney, Richard Hluchan, was present on behalf of the application, substituting for Bill Hyland who had become ill and couldn't attend the meeting. The plans have been substantially revised according to Mr. Hluchan. Lots have been reduced from 7 to 2; several bulk variances are still necessary, along with design waivers. Ed Brady, engineer was sworn; all other witnesses were present that were here and sworn in from the prior meeting. Cecilia

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Schmidt, engineer gave a summary of the changes that were made as well as the variances that are being requested.

The subdivision was revised from 7 lots to 2 lots; a roundabout was added to Irick Road; a 20-foot setback was provided along Irick Road. They reduced the hotel room count from 150 to 125; the footprint was thus reduced. A drive thru restaurant was relocated, it is now along the entrance drive. The restaurant was replaced with a retail building with a drive through. They slightly enlarged the retail strip; they delineated dumpster areas in several spots on the site; they located the loading areas on the pad sites except for the bank and large retail store. The bus stop is shown; proposed sidewalks are shown on the plan. Another entrance is shown to the gas convenience station; sign locations and details have been provided. Parking was slightly reduced; evergreens were added along the Route 541 frontage; the access drive was widened from 24 to 30 feet in width.

Variances include a waiver for insufficient buffer to the east of the hotel; they aren't sure what hotel is going to go in at this time but will know at the time of final approval. They will meet the parking requirements and room size requirements of the Township Ordinance according to Ms. Schmidt. All approvals for variances must be granted at the time of preliminary approval, which is now, according to Solicitor Swartz. They cannot ask for them when coming in for final approval but if needed will have to come back for an amended preliminary approval. The applicants understand and agree to this. Lot A needs an impervious coverage variance; also, one for loading area. Waivers include a 12-foot separation between loading and parking area where 10 feet is provided. Fire lanes will be provided at final approval. The project ID sign on Lot D needs a waiver for the content of the sign where tenants will be listed; signage for Lot A for sign height and area, the canopy sign for number of signs; a free-standing sign area variance and a waiver for exceeding foot candles for lighting. A revised lighting plan has not been provided but will be.

Nathan Mosley, traffic engineer testified regarding modifications that were made that include the proposed roundabout; they added it for traffic calming purposes. There are dual left turn lanes from Irick Road going north on Route 541. An alternative access is provided to the gasoline convenience store; a dedicated deceleration lane is provided as well. An updated study was provided for traffic counts. They looked at the intersection of Woodlane Road and Irick Road; there is a heavy volume of traffic traveling on Woodlane from the western side of town and turning right onto Irick Road. Conversely there is a lot of traffic turning left onto Woodlane Road from Irick Road at this intersection. There is not much traffic traveling straight down Irick to the site. It is his opinion that the larger signs offer a safety benefit to drivers from a traffic perspective. He sees no detriment that could occur from the larger signage. Mr. Mosely explained that they don't have County approval at this point in time but have met with them informally; they will be submitting plans shortly.

Gene Blair stated that pylon signs are prohibited by ordinance. They are proposing a 20 foot and a 25-foot-high sign; both of which require variances.

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Engineer Jim Winckowski has concerns about the left turn lane into the convenience store. He asked if a queue analysis was done as he was concerned about stacking; Mr. Mosley stated it was provided in the new report. Level of service changes from B to C on Saturdays. Jim commented regarding the trash dumpster location and the convenience store; he thinks they should be moved; the applicants agree to look into this.

Andrew Doran, applicant's architect, next testified regarding signage. The size, height and number of signs all require variances. The main sign is a multi-tenant sign and there are individual pad site signs. The main sign identifies the tenants at the rear of the site, the proposed height is 25 feet and width is 18 feet, a total of 127.4 square feet in size and will be located in the center of the entrance to the site. Individual pad site signs are to be provided and will be monument style. They are 12 feet to 12.6 feet in height, 42 square feet in size, 8 feet in width. The sign on the gas station convenience store lot is 20 feet in height. The sign off Irick Road will be 15 feet in height and 10 feet in width and will be compliant. Jim wants to work with them to perhaps change the location of this sign, the applicants agree to this.

Spacing between the signs is 250 feet and 160 feet along Route 541. They need a variance for the signs because it is all one lot and only one sign is permitted per lot. Hotel signage will be on the side of the building, there will be no free-standing sign. The hotel will be four stories in height. The pylon signs aren't allowed by ordinance; the applicants agree to add a base to the pylon signs so that they will comply with the ordinance.

Barbara Fegley had concerns about the size of the individual pad site signs; she thought the small panels on the large sign were too small for the stores at the rear of the site and these other signs rather large. They are in the process of negotiating with 3 or 4 higher end tenants at this point and will have a larger anchor tenant. The applicant explained that the tenants expressly stated that if they couldn't get a monument sign that they would not sign the lease. Jim has concerns with the placement of the signs; he thinks they should be shifted north of where they are proposed now.

Ed Brady, engineer, will address the variances for impervious coverage and loading spaces. 62% is being asked for where 60% is the maximum allowable; this is for the lot with the gas and convenience store on it. They are providing 12 loading spaces for the site which requires a variance as well since 22 are required. Trucks can use the center entrance or come in the rear off of Irick Road. They will meet with the Fire Marshal to add striping and fire lanes.

Revised grading and drainage plans need to be provided as well as stormwater management plans to the Board Engineer. The applicants wanted to make sure this layout was acceptable to the Board, they agree to provide these items. Jim thinks the layout might change once they secure tenants, however, the applicants indicate this isn't so. If preliminary approval is granted, they will submit for County approval this

month. Jim would like to have another technical meeting with the applicants which they agree to.

Barbara Fegley reviewed some of the items in her report. The applicants agree to provide litter receptacles. Landscaping has not been provided along the common property line shared with Burlington Township but they agree to do so. The bank will not require exterior trash enclosures; they have a shredding company that will remove everything. Barbara would like to see more sidewalks added; the applicants agree to meet with her. The applicants are seeking to significantly reduce the amount of landscaping along the frontage of the site in order to increase visibility of the retail space. They are agreeing to provide more low growing shrubs and plants in exchange for the canopy trees. The applicant indicated that the proposed development on the adjacent lot in Burlington Township will closely mirror that what is proposed here in Westampton. Jim asked for a status update for water and sewer. A concept plan was submitted to Mt. Holly MUA and was approved; NJ American Water is most likely who will provide water service although it could be Burlington Township.

Solicitor Swartz reviewed the eight variances being requested in the most recent public notice. All landscaping deviations are being treated as waivers and not variances.

The meeting was opened to the public for comment. Tim Cook of Cook's Motors was sworn in before the Board. He asked about the realignment of Irick Road. He owns Cook's Motors across the road from the site. He thinks it is a great plan. There being no further comment from the public, the meeting was closed for public comment.

Dave Barger asked about the gas station down the road; that wouldn't count since it was further down the road; it was not at the intersection of 541 and Irick Road. He asked if there were any updated architectural plans; they were not available at this time. He asked if any progress had been made with PSE&G and trying to go for underground utility lines; the lines will remain overhead. Jim Winckowski advised there is no way they would go for this.

Dave Guerrero asked if a variance was being requested for the signage on the gas station canopy; the applicants stated that there was one and it was included in the eight variances summarized by the solicitor.

Ms. Haas made a motion to approve the application for preliminary major site plan and minor subdivision along with variances and waivers; the motion was seconded by Mr. Applegate. Mr. Applegate, Mr. Barger, Mr. Blair, Mr. Borger, Ms. Haas, Mr. Guerrero and Mr. Myers voted yes.

Correspondence:

Kingdom Church, Block 1411, Lot 21. Gene Blair gave a brief history of the project; one of the conditions of the approval was the construction of a sidewalk along

Rancocas Road. The project has long since been completed but Kingdom Church (now known as Change Church) is saying it is impossible to move two anchors for utility poles in order to install the sidewalk. Gene had made some phone calls and found out that this could indeed be done. Mr. Barger brought up a point and said why don't we have the applicant modify the plan to have the sidewalk go around the poles and guide wires. There is a grading issue there but it should not be impossible. The applicants did agree to install sidewalks; however, they are trying to take the easy way out. The Board would request that the applicant's counsel appear before them to discuss in January 2019.

RFPs for 2019 LDB Engineer & Solicitor.

The Board went into executive session to discuss the professional appointments for 2019. The Board went back into open session at 10 PM.

Open Meeting for public comment

No comments were made.

Comments from Board members

Dave Guerrero commented that the intersection at Irick and Woodlane is terrible; is this something the LDB can recommend be looked into, perhaps by going to the Township Committee. Jim can email the County engineer's office on behalf of the Board and the project (Fountain Square) that was just approved. Woodlane Road needs to be made straight, a new bridge constructed across the turnpike. It is a huge project but is a good idea.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Marion Karp, Secretary
Westampton Township Land Development Board

RESOLUTION: 23-2018

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: 979 Woodlane Road, LLC

BOARD'S DECISION: Continued Application for Preliminary and Final Major Site Plan Approval with Use and Bulk Variances

PROPERTY ADDRESS: 939 Woodlane Road – Block 11.04, Lot 3

ZONING DISTRICT: R-3 Residential Zoning District

DATE OF HEARING: December 5, 2018

WHEREAS, 979 Woodlane Road, LLC (“Applicant”) filed an application with the Westampton Land Development Board (“Board”) requesting preliminary and final major site plan approval with use and bulk variances to redevelop the existing gasoline service station and convenience store located on the property with a new 3,000 square foot 7-Eleven convenience store and gas station in the R-3 Residential Zone. The property is located at 939 Woodlane Road, Westampton, New Jersey, designated as Block 11.04, Lot 3 on the Township Tax Map (“Subject Property”); and

WHEREAS, the Board had jurisdiction to hear this matter (the “Application”) under the New Jersey Municipal Land Use Law (“MLUL”), *N.J.S.A. 40:55D-1 et seq.*; and

WHEREAS, prior to the December 5, 2018 Board meeting, the Applicant, through its attorney, Kenneth L. Pape, Esq, the Applicant submitted a letter requesting the Application to be continued to the next regularly scheduled public Board meeting in January 2019 to allow the Applicant to be heard on its application; and

WHEREAS, the Board Chairman announced the Applicant’s request at the December 5, 2018 meeting to advise any members of the public present for the Application that the Application would be heard at the next meeting; and

WHEREAS, in light of the Board Chairman’s announcement to the public at the December 5, 2018 public meeting, the Board determined that the Applicant would not be required to notice and advertise the Application again for the January 2019 meeting.

NOW, THEREFORE, BE IT RESOLVED, by the Land Development Board of the Township of Westampton, that the Applicant's request for preliminary and final major site plan approval within Application for preliminary major subdivision and site plan approval with use and bulk variances to redevelop the existing gasoline service station and convenience store located on the property with a new 3,000 square foot 7-Eleven convenience store and gas station in the R-3 Residential Zone was and is hereby **CONTINUED**, subject to the testimony and representations set for on the record by the Applicant, and any conditions set forth herein.

WESTAMPTON LAND DEVELOPMENT BOARD

BY:

Gary Borger, Chairman

ATTEST:

Marion Karp, RMC, CMR, Board Secretary

DATE MEMORIALIZED: _____

RESOLUTION: 24-2018

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: Highview Homes, LLC

BOARD'S DECISION: Granted Application for Preliminary Major Subdivision and Major Site Plan Approval with Bulk Variances & Waivers

PROPERTY ADDRESS: 2035 Burlington-Mount Holly Road (CR 541) – Block 807, Lot 1

ZONING DISTRICT: Commercial “C” Zoning District

DATES OF HEARING: November 7, 2018 and December 5, 2018

WHEREAS, Highview Homes, LLC (the “Applicant”) submitted an application for preliminary subdivision and site plan approval and requesting certain bulk variances and waivers to the Westampton Land Use Development Board (“Board”) to develop the property located at 2035 Burlington-Mount Holly Road (CR 541), Westampton, New Jersey, designative as Block 807, Lot 1 on the Township Tax Map (“Subject Property”); and

WHEREAS, the Applicant’s application proposed to develop the site as a shopping center with 7 separate lots consisting of a gas station with a 5,525 square foot convenience store, a 3,660 square foot bank, two (2) fast food restaurants with drive-thru totaling 9,200 square feet, a 250 seat restaurant totaling 10,300 square feet, a four story 150 room hotel with a footprint of 24,175 square feet and a retail shopping center totaling 60,625 square feet in the Commercial “C” Zone.

WHEREAS, the Board had jurisdiction to hear this matter (the “Application”) under the New Jersey Municipal Land Use Law (“MLUL”), *N.J.S.A. 40:55D-1 et seq.*; and

WHEREAS, at the November 7, 2018 Board meeting, the Applicant was represented by William F. Hyland, Jr. Esq. of Hyland Levin LLP. The Board heard testimony from the Applicant’s witnesses and professionals as to the purpose, location, and details of the proposed major site plan and requested variance relief; and

WHEREAS, although no revised or amended application or plans were provided at the time of the November 7, 2018 meeting, at the meeting the Applicant sought to amend the subdivision from 7 lot major subdivision down to a 2 lot major subdivision, in order to reduce the number of variances as outlined in the Board’s professional review letters; and

WHEREAS, at the November 7, 2018 Board meeting, the Board discussed the Application and the Board Professionals offered recommendations. The Application was opened

to the public for comment, and any members of the public wishing to comment on the Application were given the opportunity to do so; and

WHEREAS, prior to the Board rendering a decision to grant or deny the Application, the Applicant requested the Application be tabled and the hearing continued until the next regularly-scheduled Board meeting so the Applicant can address comments and concerns raised by the Board, Board Professionals, and members of the public during the November 7, 2018 Board meeting; and

WHEREAS, the Applicant again appeared before the Board at the December 5, 2018 Board meeting, where the Applicant was represented by Richard Hluchan, Esq., of Hyland Levin LLC. The Board heard further testimony from the Applicant's witnesses and professionals as to the purpose, location, and details of the proposed major subdivision and major site plan along with requested variance relief; and

WHEREAS, at the December 5, 2018 Board meeting, the Board again discussed the Application and the Board Professionals offered recommendations. The Application was opened to the public for comment, and any members of the public wishing to comment on the Application were given the opportunity to do so; and

WHEREAS, prior to the December 5, 2018 Board meeting, the Applicant revised its plan and amended its application to provide for two (2) proposed lots instead of the original 7 proposed lots, wherein the lots were identified as proposed lots A and B, both of which front on Burlington-Mount Holly Road and Irick Road and Lot A will be 2.933 acres and will contain a 5,585 square foot convenience store with gas station and Lot B will be 21.248 acres and will contain a 3,660 square foot bank with drive-thru tellers; a 4,800 square foot drive-thru restaurant; a 2,400 square foot drive-thru restaurant; a 9,000 square foot building with 6,900 square foot of retail space and 2,100 square foot drive-thru restaurant; a 4-story, 125 room hotel with a 16,100 square foot footprint; a 40,000 square foot retail building and attached 22,500 square foot retail building; and an infiltration basin for the development on both lots; and

WHEREAS, based on all the evidence submitted to the Board and testimony presented at the November 7, 2018 and December 5, 2018 public hearings, the Board renders the following factual findings and conclusions of law in addition to any contained in the preceding paragraphs:

1. The Applicant, Highview Homes, LLC, seeks preliminary major site plan and preliminary major subdivision approval with bulk variance relief and waivers to permit the creation of two (2) proposed lots (Lot A and Lot B), both of which front on Burlington-Mount Holly Road and Irick Road and Lot A will be 2.933 acres and will contain a 5,585 square foot convenience store with gas station and Lot B will be 21.248 acres and will contain a 3,660 square foot bank with drive-thru tellers; a 4,800 square foot drive-thru restaurant; a 2,400 square foot drive-thru restaurant; a 9,000 square foot building with 6,900 square foot of retail space and 2,100 square foot drive-thru restaurant; a 4-story, 125 room hotel with a 16,100 square foot footprint; and a 40,000 square foot retail building and attached 22,500 square foot retail building in the Commercial "C" Zone. The Subject Property is 2035 Burlington-Mount Holly Road (CR 541), Westampton, New Jersey, designative as Block 807, Lot 1 on the Township Tax Map.

2. The Application also requires the grant of *N.J.S.A. 40:55D-70c* bulk variances in connection with the preliminary major subdivision and preliminary major site plan approval to permit several deviations from the bulk requirements of the C-Zone set forth in the Township Code.

3. Prior to the December 5, 2018 hearing, the applicant revised and resubmitted proper notice, acknowledging that the project had been revised to a 2-lot subdivision and site plan and proposes a relocation of a portion of Irick Road and requesting variances from ordinance requirements (i) to allow a shopping center identification sign on Route 541 (Burlington-Mount Holly Road) with a height of 25 feet, an area of 126 square feet and tenant panels, where a sign with a maximum height of 15 feet, an area of 100 square feet and without tenant panels is permitted; (ii) to allow a shopping center identification sign on Route 637 (Irick Road) with tenant panels where no tenant panels are permitted; (iii) to allow four tenant pad site monument identification signs on Route 541, which are 12.5 feet high and 42 square feet where no tenant pad site monument identification signs are permitted; (iv) to allow a gas station convenience store identification sign with a height of 20 feet where a height of 15 feet is permitted; (v) to allow a gas station convenience store facade sign with the height of 5.2 feet and area of 67.7 square feet where a sign with the height of 3 feet and then area of 60 square feet is permitted; (vi) to allow two spanner signs under the gas pump canopy where none are permitted; (vii) to allow the shopping center to have 12 loading spaces where 22 loading spaces are required; (viii) to allow landscaping along the County road frontage that may be considered insufficient by ordinance standards if such variance is required; and (ix) to allow the gas station convenience store lot to have a lot coverage of 62% where 60% is the maximum permitted.

4. The following witnesses and professionals appeared and testified in favor of the Application during the November 7, 2018 and December 5, 2018 hearings: Gary Vecchio and Edward Brady, the Applicant's Engineers, Nathan Mosley, the Applicant's Traffic Engineer, Cecilia Byrne Schmidt, the Applicant's Landscape Architect, Andrew Dorin, the Applicant's Architect and the Applicant's principal, James Botti.

5. The Applicant submitted the following exhibits during the November 7, 2018 and December 5, 2018 hearings:

A1 – Colored Aerial Site Plan

A2 – Photo Board of Selected Projects

A3 – Rendered Site Plan

A4 through A14 – Architect “3D Rendered Photos” based on technology prepared by Architect

A15 – Concept Plan on top of Existing Conditions

A16 – Concept Plan with Road Conditions

A17 - Overall Plan

A18 – Rendered Site Plan (Revised)

A19 – Proposed Tree Requirements

A20 – Proposed Lot Signs

A21 – Proposed Sidewalks and Signs

A22 – Aerial Site Plan (Revised)

A23 – Updated Concept Plan
A24 – 12/5/2018 Pad Site Signage #4
A25 – Project ID Sign #6

6. At the December 5, 2018 hearing, Mr. Hluchan presented and introduced the Application to the Board, reminding the Board as to the details of the Application and the Applicant's prior presentation from the November 7, 2018 Board Meeting. Mr. Hluchan then explained that since the Applicant's prior hearing, the plans had been revised and the application amended to address many of the Board's concerns.

7. The Board began the December 5, 2018 meeting by hearing testimony from the Applicant's professionals and the Applicant's principal regarding changes to the Application from the prior hearing.

8. Ms. Byrne Schmidt, the Applicant's Landscape Architect, testified as to the summary of changes to the plan, explaining that Applicant reduced the plan from a 7-lot subdivision down to a 2-lot subdivision; an addition of a roundabout to Irick Road; the addition of a 20-foot setback to Irick Road; a reduction to the hotel room count from 150 rooms down to 125 rooms, thus reducing the footprint of the hotel; the relocation of a drive-thru restaurant; the deletion of the 250 seat restaurant, replacing it with a retail building; the enlarging of the retail strip center; delineation of dumpsters within the site; with the exception of the bank, the locating of loading areas on the pad sites; the inclusion of a bus stop and proposed sidewalks on the plan; a second entrance to the gas station / convenience store property; a reduction to parking; the additions of trees along Route 541; the widening of the access drive and sign locations on the Subject Property. In response to the Board, Ms. Byrne Schmidt acknowledged that the Applicant will comply with all Township Ordinances regarding the hotel and acknowledged that should the Applicant determine at a later date that they require variances for the hotel, unless the variances are use variances, which may require a new preliminary approval, the Applicant may need to request an amendment to its preliminary approvals granted herein. Ms Byrne Schmidt also acknowledged that fire lanes will be provided at the time of final approval and a revised lighting plan will be provided to the Township professionals as a condition of approval.

9. Mr. Mosley, the Applicant's Traffic Engineer, testified regarding the modifications to the plan including the proposed roundabout, which was added for traffic calming measures; dual left turn lanes from Irick Road; an alternative access to the gas station/convenience store; a dedicated deceleration lane added to the plan and testimony regarding the larger signs requested by Applicant to offer a safety benefit to drivers from a traffic perspective. In response to questions from the Board, Mr. Mosley explained the Applicant has met with the County informally and they will be submitting plans to the County shortly for its review.

10. Mr. Dorin, the Applicant's Architect, testified regarding signage that the size, height, and number of signs all require variances. Mr. Dorin testified that the main sign is a multi-tenant sign and there is also a need for individual pad site signs. The main sign identifies the tenants at the rear of the site, with a proposed height of 25 feet and a width of 18 feet, for a total of 127.4 square feet in size and is proposed to be located in the center of the entrance to the site; the individual pad site signs are requested to be provided and as monument style being 12.6 feet in

height and 8 feet in width; the sign on the gas station/convenience store lot is proposed to be 20 feet in height; and the sign facing Irick Road is proposed to be 15 feet height and 10 feet wide, and will be compliant in size. The Board Engineer, discussed a change to the location of the gas station/convenience signage and the Applicant agreed to work with the Board Engineer. Testimony was provided that the spacing between the signs is 250 feet and 160 feet along Route 541 and that the Applicant requires a variance for all signs because only one sign is permitted per lot pursuant to Township Ordinance; the hotel, will be a 4-story hotel and signage will be on the side of the building and there will be no free-standing sign and, since pylon signs are not allowed per Township Ordinance, the Applicant agreed to add a base to the two free standing signs to comply with the ordinance. The Township Planner discussed the number and proximity of the pad site signs to the building. The Applicant testified that they are in the midst of negotiating with prospective tenants and such tenants would not executed leases without a monument sign.

11. There are certain conditions and information that has not been provided to the Board relative to the request for approval as evidenced and requested in the Board Engineer's reports, the Board Planner's reports and the November 7, 2018 and December 5, 2018 hearings, and further the Applicant was still negotiating with its major tenants and was not sure if such tenants would have any further requests or requirements. The Applicant acknowledges and accepts that the approval granted is specifically based on the Applicant's application, as revised, the testimony of the Applicant and its professionals, and the Board's professional reports, which together, make up the record, and that the Applicant agrees to work with Board professionals and provide additional documentation and information to the satisfaction of the Board as provided in the record and that any amendment that may be required hereafter, may require either a new preliminary approval or an amended approval as the case may be.

12. Edward Brady, the Applicant's engineer addressed the variances for impervious coverage and loading spaces. Mr. Brady testified to the need for 62% impervious coverage where 60% is allowed on the gas station/convenience store site and that the Applicant is proposing 12 loading spaces for the retail strip center, which requires 22 spaces per ordinance.

13. The Board Engineer, Jim Winckowski, PE, CME, presented and discussed his Review Letters, each incorporated by reference herein. The Applicant agreed, as a condition of approval, to comply with all the recommendations and conditions set forth in the Board Engineer's Review Letters except as may be specifically noted on the record. Additionally, the Applicant acknowledged that it will provide revised grading and drainage plans as well as stormwater management plans to the Board Engineer as a condition of approval.

14. The Board Planner, Barbara J. Fegley, AICP, PP, presented and discussed her Review Letters, incorporated by reference herein. The Applicant agreed, as a condition of approval, to comply with all the recommendations and conditions set forth in the Board Planner's Review Letters except as may be specifically noted on the record. Additionally, the Applicant agreed to provide litter receptacles, Applicant agreed to provide landscaping along the common property line shared with Burlington Township; the bank will not requires trash enclosures as they have a shredding company that will remove the refuse; the Applicant agreed to provide more low growing shrubs and plants along the frontage of the site in lieu of canopy trees, all as a condition

of the approval. The Applicant agreed that the location, if any, of outdoor amenities or on-site backup electric generators for the hotel shall be determined at the time of final approval.

15. After testimony presented by the Applicant's witnesses and professionals, the matter was opened to the public for comment, and the following member of the public appeared at the December 5, 2018 hearing:

- Tim Cook – testified about the re-alignment of Irick Road. Mr. Cook owns Cook's Motors across the road from the site and asked various questions regarding the re-alignment and the effect on his business. Mr. Cook thought the plan was great.

16. With regard to the request for bulk variance relief, through the evidence submitted and testimony presented by the Applicant, the Board finds that the Applicant has sustained the burden of proof to support the following variances in accordance with the statutory requirements set forth in the MLUL, *N.J.S.A.* 40:55D-70c(2):

- Signage - to allow a shopping center identification sign on Route 541 (Burlington-Mount Holly Road) with a height of 25 feet, an area of 126 square feet and tenant panels, where a sign with a maximum height of 15 feet, an area of 100 square feet and without tenant panels is permitted. §250-25J and §250-25J(2).
- Signage - to allow a shopping center identification sign on Route 637 (Irick Road) with tenant panels where no tenant panels are permitted. §250-25J.
- Signage - to allow four tenant pad site monument identification signs on Route 541, which are 12.5 feet high and 42 square feet where no tenant pad site monument identification signs are permitted. §250-25J(2).
- Signage - to allow a gas station convenience store identification sign with a height of 20 feet where a height of 15 feet is permitted. §250-25G.
- Signage - to allow a gas station convenience store facade sign with the height of 5.2 feet and area of 67.7 square feet where a sign with the height of 3 feet and then area of 60 square feet is permitted. §250-26D(11)(a).
- Signage - to allow to spanner signs under the gas pump canopy where none are permitted. §250-26D(11).
- Off-Street Loading - to allow the shopping center to have 12 loading spaces where 22 loading spaces are required. §250-22R(1).
- Impervious Coverage - to allow the gas station/convenience store lot to have a lot coverage of 62% where 60% is the maximum permitted. Ordinance §250 Attachment 2.
- Landscaping - to allow landscaping along the County road frontage that may be considered insufficient by ordinance standards if such variance is required. §196-8B(3)(c).

The above deviations from the Township Code requirements serve several purposes of the MLUL, specifically: promotion of the general welfare of the community by encouraging development and increasing the property value of the Subject Property; *N.J.S.A.* 40:55D-2a; providing adequate open space at the Subject Property for the proposed uses; *N.J.S.A.* 40:55D-2c; providing sufficient space in an appropriate location for a needed commercial use that will be carried out in an environmentally friendly way to meet the needs of Township citizens; *N.J.S.A.*

40:55D-2g; and by improving the visual appearance and aesthetics of the Subject Property by including the 3 façade signs and proposed landscaping. *N.J.S.A.* 40:55D-2i.

17. Through the evidence submitted and testimony presented by the Applicant, the Board finds that the benefits of the requested variances substantially outweigh any detriment, of which there is none, that the variances can be granted without substantial detriment to the public good, and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance due to the permitted use in the C Zone, need for the business in the Township, and large, suitable size of the Subject Property. *N.J.S.A.* 40:55D-70(c)(2).

18. The Board further finds that the requested variance relief:

- a. relates to a specific piece of property, namely the Subject Property;
- b. that the purposes of the MLUL would be advanced by a deviation from the Township Zoning Ordinance requirements;
- c. that the variance can be granted without substantial detriment to the public good; and
- d. that the benefits of the deviation substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance.

19. With regard to the requested preliminary major subdivision and preliminary major site plan approval, through the evidence submitted and testimony presented by the Applicant's witnesses, professionals, the Board's professionals, and members of the public, the Board finds and concludes that the proposed major site plan complies with all site plan and other standards, specifications, and requirements established by the Township's Zoning Ordinance not addressed by variances and waivers as detailed herein, and that the Subject Property is suitable for the proposed development given the size of the Subject Property and permitted commercial uses in the C Zone. *See, e.g., Levin v. Livingston Twp.*, 35 *N.J.* 500, 510-11 (1961); *Pizzo Mantin Group v. Randolph Twp.*, 261 *N.J. Super.* 659 (App. Div. 1993), *aff'd. as modified*, 137 *N.J.* 216 (1994).

NOW, THEREFORE, BE IT RESOLVED, by the Land Development Board of the Township of Westampton, that the within Application for preliminary major subdivision and preliminary major site plan approval along with bulk variance relief and waivers for the construction of two (2) proposed lots (Lot A and Lot B), both of which front on Burlington-Mount Holly Road and Irick Road and Lot A will be 2.933 acres and will contain a 5,585 square foot convenience store with gas station and Lot B will be 21.248 acres and will contain a 3,660 square foot bank with drive-thru tellers; a 4,800 square foot drive-thru restaurant; a 2,400 square foot drive-thru restaurant; a 9,000 square foot building with 6,900 square foot of retail space and 2,100 square foot drive-thru restaurant; a 4-story, 125 room hotel with a 16,100 square foot footprint; and a 40,000 square foot retail building and attached 22,500 square foot retail building in the Commercial "C" Zone upon motion duly made by Ms. Haas and seconded by Mr. Applegate was and is hereby **GRANTED**, subject to the testimony and representations set forth on the record by the Applicant, and any conditions set forth herein.

ROLL CALL VOTE

	<u>Ayes</u>	<u>Nays</u>	<u>Abstentions</u>	<u>Recusal</u>
Applegate	x			
Barger	x			
Blair	x			
Borger	x			
Guerrero	x			
Haas	x			
Myers	x			

IT IS FURTHER RESOLVED, the above relief is subject to the following conditions:

1. The Applicant agrees to meet with the Township professionals relative to pedestrian walks and other requirements to protect the public health safety and welfare as a condition of approval.
2. The Applicant has agreed to supplemental plantings within the triangular piece of Lot B, adjacent to the Burlington Township border as a condition of approval.
3. The Applicant agrees to revise the buffer planting behind the 4,800 square foot drive-thru to screen the loading area and trash enclosure as a requirement of a final approval.
4. The Applicant agrees to revise the overall site plan to indicate the floor area ratios for each of the proposed lots as a condition of approval.
5. The applicant agrees to provide testimony at the time of final approval for each of the proposed uses, including projected hours and days of operation, activities and services, number of employees, types and volumes of solid waste and recyclables generated and truck types, truck scheduling and trip frequency for deliveries and waste removal.
6. The applicant shall provide lighting plans, architectural design or details, demolition plans, cross-access, parking and drainage easements, and the vacation of Irick Road at final approval.
7. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Board Engineer's Review Letters except as may be specifically noted on the record and will work with the Board Engineer to resolve all issues contained in said Review Letters.
8. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Board Planner's Review Letters except as may be specifically noted on the record and will work with the Board Planner to resolve all issues contained in said Review Letters.
9. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Fire Marshal's Report.

10. All agreements, conditions and representations made by the Applicant or imposed upon the Applicant as set forth in the record of this matter regarding this application shall be fully satisfied by the Applicant and/or successors in interest.

IT IS FURTHER RESOLVED, the above relief is subject to the following standard conditions:

1. That the Application, all exhibits, testimony, map, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for approval. In the event that it is determined by the Board, on non-arbitrary, non-capricious and reasonable grounds, that the Application, exhibits, testimony, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought by the Applicant, the Board may review its approval and rehear the Application, if circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice;
2. Upon discovery by the Board of clear and convincing evidence of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the facts at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems appropriate at that time, consistent with the MLUL and case law, including but not limited to a reconsideration of its prior approval, a rehearing, a modification of its prior approval, or such other action as appropriate. In addition, at any time within 45 days after the adoption of this resolution, a party of interest may appeal to the Superior Court for an order vacating or modifying any term or condition as set forth herein;
3. The Applicant shall indemnify and hold the Township harmless from any Claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to *N.J.S.A. 40:55D-12(c)*, and publication of the notice of public hearing in this matter in accordance with the law;
4. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed;
5. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being

granted herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required;

6. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner;
7. The Applicant must pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law;
8. The Applicant assumes all risks should the Applicant fail to obtain any other construction or other municipal permits required with respect to the relief as granted herein during the statutory appeal period associated with the language of this resolution;
9. The Applicant must obtain any other construction or other municipal permits required with respect to the relief as granted herein;
10. The Applicant shall comply with all of the representations and stipulations as contained in the application and as represented through testimony in support of the application.

WESTAMPTON LAND DEVELOPMENT BOARD

BY:

Gary Borger, Chairman

ATTEST:

Marion Karp, RMC, CMR, Board Secretary

DATE MEMORIALIZED: _____

SZAFERMAN LAKIND

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November 13, 2018

Via FedEx

Marion Karp, Board Secretary
Westampton Township Land Development Board
Municipal Bldg.
710 Rancocas Rd.
Westampton, NJ 08060

Re: Resolution: 1-2015

Dear Ms. Karp:

Per our telephone conversation this morning, and as you will recall, this firm represents Kingdom Church, now known as Change Church (hereinafter “the Church” or “Church”), which is the owner of property located at 895 Rancocas Road, Westampton, New Jersey 08060, identified as Block 1411, Lot 21 on the Tax Map of the Township of Westampton, New Jersey.

As you will further recall, in February 2015, the Westampton Township Land Development Board (“the Board”) granted the Church a “D” variance to allow it to use the property as a church and for related activities. As part of that approval, the Board required the Church to make several site plan improvements, including installation of a sidewalk along Rancocas Road, County Route 626. (See, Resolution: 1-2015, Conditions of Approval, page 4, paragraph 2, attached hereto as Exhibit “A”.)

The Church has diligently completed all site plan improvements. Those improvements have been inspected and approved by officials of Westampton Township. However, for reasons beyond its control as discussed herein, the Church has not been able to construct the sidewalk and, therefore, requests a modification of Resolution: 1-2015 to eliminate the sidewalk condition so that a final Certificate of Occupancy may be issued.

In order to construct the sidewalk, the Church's construction contractor, Mr. Martin Shelton of P.J.R. Construction Group Inc., contacted PSE&G about relocating the guy wires from poles along Rancocas Road which are preventing the construction and which will obstruct the usage of the sidewalk by pedestrians and endanger their safety. However, in multiple discussions with PSE&G representatives, PSE&G refused to relocate the guy wires even if the Church provides easements which ostensibly would permit the relocation. PSE&G maintains that the poles and guy wires are in support of a public transmission line rather than a service line to the Church's property, and therefore refuses to relocate the guy wires. (See Exhibit "B" which contains PSE&G's December 15, 2016 memorandum to Mr. Shelton from PSE&G's Bob Breland, and correspondence from the undersigned to Mr. Breland dated May 9, 2017 and June 6, 2017 requesting that PSE&G formally set forth its policy regarding the relocation of guy wires generally, and particularly regarding the relocation of the guy wires in this case. No response to the Church's letters have been received from PSE&G, and further telephone calls to Mr. Breland and other representatives of PSE&G have not been returned.)

As recognized in the 2018 Edition of Cox's New Jersey Zoning & Land Use Administration, "When an approval has been granted subject to conditions, the [Municipal Land Use] statute recognizes that the municipal agencies may entertain an application to modify or eliminate one or more of such conditions." Id. at Section 24-7(b), page 527. Such an application is consistent with modifications of contracts where unanticipated or intervening factors occur without contributing fault by the party seeking such modification. In those circumstances, a discharge from, and modification of the contract is appropriate and warranted. Consistent with this legal proposition, the New Jersey Supreme Court in M.J. Paquet v. N.J. DOT, 171 N.J. 378 (2002), affirmed a determination by the N.J.D.O.T. to eliminate a provision of a publically bid contract because of a change in federal regulations which made the performance of the provision impracticable.

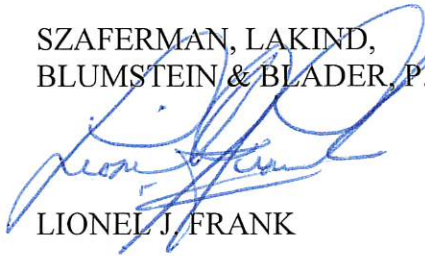
In this case, the failure of PSE&G to move the guy wires to permit the Church to meet one of the conditions of approval makes the satisfaction of the sidewalk condition impossible.

Consequently, the Church respectfully requests the Board to eliminate this one remaining condition from Resolution: 1-2015 to permit a final Certificate of Occupancy to be issued to the Church.

It is my understanding from you that this matter will be placed on the December 5, 2018 agenda of the Board. Kindly advise whether the Board will require a representative of the Church to appear at the December 5th meeting, and if so, whether the Board will also require the Church to provide notice of the meeting to the public, or whether the Board simply determines that the matter may be handled administratively.

Very truly yours,

SZAFERMAN, LAKIND,
BLUMSTEIN & BLADER, P.C.



LIONEL J. FRANK

LJF/aa
Enclosures

cc: Pastor Darius Daniels (via email)
Stuart A. Tucker, Esq. (via email)
Ramone Harper (via email)
Glenn Richardson (via email)
Gene Blair, Construction Code Official (via first class mail)
John Wisniewsky, Mayor (via first class mail)
Michael E. Avila, P.E. and P.P. (via first class mail)
Harry W. McVey, P.P., A.I.C.P. (via first class mail)