

RESOLUTION

**TOWNSHIP OF HOWELL PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH ANCILLARY VARIANCE RELIEF AND
DESIGN WAIVER RELIEF**

**Approved: February 16, 2023
Memorialized: April 13, 2023**

MATTER OF: AAFHWP PROPERTY, LLC

APPLICATION NO.: SP-1085

WHEREAS, an application for preliminary and final site plan approval along with ancillary variance relief and design waiver relief has been made to the Howell Township Planning Board (hereinafter referred to as the “Board”) by AAFHWP Property, LLC (hereinafter referred to as the “Applicant”), on lands known and designated as Block 164, Lot 5.01, as depicted on the Tax Map of the Township of Howell (hereinafter “Township”), and more specifically located at 29 Howell Road in the SED (Special Economic Development) Zone; and

WHEREAS, the Applicant appeared before the Board during a remote public hearing held via the Zoom Remote Platform on February 16, 2023, with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, an application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Howell Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

I. Prior History

1. The Applicant previously filed the instant application in 2021. The Applicant specifically sought preliminary and final site plan approval and related relief to develop the subject Property by constructing two (2) one-story warehouse buildings with office space. Warehouse Building "A" was proposed to contain 325,737 square feet. Warehouse Building "B" was proposed to contain 98,828 square feet. Remote public hearings were conducted via the Zoom Remote Platform on September 2, 2021 and October 21, 2021. At the conclusion of the public hearing process, the Board denied the application by way of a tie vote to approve and memorialized its decision in a Resolution dated December 16, 2021.

2. The Applicant subsequently appealed the denial of the application to the Superior Court of New Jersey, Law Division, Monmouth County. The litigation was assigned Docket No.: MON-L-000269-22. The Court conducted a Pre-Trial Conference on April 12, 2022. Thereafter, on August 4, 2022, the Planning Board approved and memorialized on August 18, 2022, a Resolution entering into a Settlement Agreement with the Applicant to hold a Whispering Woods hearing on or before September 1, 2022. The Board was unable to hold the Whispering Woods hearing on or before September 1, 2022 because multiple members of the Board contracted COVID-19, therefore the Board did not have a quorum. The Court thereafter conducted a Case Management Conference on October 13, 2022. The Court then issued an Order dated October 14, 2022 establishing a timeline for trial in the event that the Whispering Woods hearing was not held by the Board before November 30, 2022. The Court further ordered that the testimony and the exhibits from the two (2) prior hearings from 2021 which included September 2, 2021 and October 21, 2021, were incorporated by reference into the remand for the Whispering Woods hearing.

3. The Applicant appeared before the Board during remote special public hearings held via the Zoom Remote Platform on November 22, 2022 and November 29, 2022 for the Whispering Woods hearing. At the conclusion of the Whispering Woods public hearing process, the Board denied the application and memorialized its decision in a Resolution dated December 15, 2022. The Court, thereafter, conducted a prerogative writ trial considering the original denial. On January 9, 2023, the Honorable Gregory L. Acquaviva, J.S.C. issued an Order (the "Order") determining that the Board's original denial was arbitrary, capricious and unreasonable, and remanding that application for the Board to consider the required design waiver relief and for the Board to impose reasonable conditions.

4. The Board had the right to appeal this decision. Thereafter, on February 16, 2023, the Board approved and memorialized on April 13, 2023, a Resolution entering into a second settlement agreement with the Applicant to hold a Whispering Woods hearing on or before February 16, 2023. The Board held a second Whispering Woods hearing on February 16, 2023.

II. The Second Whispering Woods Hearing

5. The subject Property contains 29.6 acres with 730 feet of frontage along Howell Road and 1,048 feet of frontage along Okerson Road/Michael Curtin Lane and is situated just north of the Howell Road/Route 33 entrance ramp. The subject Property is improved with two barn structures and a paved driveway from Howell Road that connects to an unpaved trail to Okerson Road. The remainder of the subject Property consists of cultivated fields. Public water and sewer are not available to the subject Property.

6. Pursuant to the terms of the Settlement Agreement, the Applicant proposes to develop the subject Property by constructing two (2) one-story warehouse buildings with office space. Warehouse Building "A" is proposed to contain 325,737 square feet. This space would be divided into 305,737 square feet of warehouse area and 20,000 square feet of office area.

Warehouse Building "A" would also have 55 loading bays, two (2) drive-in bays, and parking spaces accommodating 149 vehicles. Warehouse Building "B" would contain 98,828 square feet. The space would be divided with 89,828 square feet of warehouse area and 9,000 square feet of office area. Building "B" is also proposed to include 28 loading bays, two (2) drive-in bays and 86 parking spaces.

7. Access to the subject Property is proposed to be a full movement driveway to Okerson Road containing one (1) ingress and two (2) egress lanes, separated by a landscaped island. Access is also proposed via a left turn and right turn ingress (for passenger vehicles only) and right turn out only egress driveway from Howell Road. Full circulation is proposed around both buildings. A 16.5-foot-wide right-of-way dedication to Howell Township is also proposed along the Howell Road frontage. Additional site improvements consist of lighting, landscaping, above ground and subsurface stormwater management facilities, well houses, an irrigation pump house, sanitary sewer pump station, and fire water tank. The Applicant is also proposing off-site improvements to extend the sanitary sewer force main, gravity main and off-site pump station from Fairfield Road to the subject Property.

8. Counsel for the Applicant, Robert Simon, Esq., stated that the Applicant was proceeding pursuant to the Whispering Woods doctrine seeking preliminary and final site plan approval and ancillary relief.

9. Testimony was taken from Jeromie Lange, who identified himself as Director of Development for Active Acquisitions, the parent company of the Applicant. Mr. Lange also stated that he was licensed as a Professional Engineer and a Professional Planner, but was only presenting testimony as a representative of the Applicant. He testified that Building "B" of the amended plan had been flipped east to west. Mr. Lange stated that the loading docks were now on the western

side of the building, which was the interior of the site. He explained that the passenger car parking was now on the eastern side of the building.

10. Mr. Lange next testified that the Applicant was proposing a sound wall parallel to the eastern property line. He stated that the sound wall would be located at the fifty (50) foot side yard setback line, except for a portion, which would be within the front yard along Michael Curtin Lane. Mr. Lange explained that there would also be a fifty (50) foot landscaped buffer to the adjacent residential uses along with the sound wall.

11. Mr. Lange also stated that the drive aisles had been redesigned. He stated that the drive aisle along the eastern side of Building "B" was now twenty-five (25) feet wide. Mr. Lange testified that the truck court drive aisle, now on the western side of Building "B," was able to be widened from sixty-five (65) feet to seventy (70) feet. He further stated that there were now two (2) different entries into the truck court to better accommodate truck circulation. Mr. Lange further testified that the Applicant was proposing curb ramps every sixty-five (65) feet around the building and at drive aisle intersections. Mr. Lange explained, however, that the Applicant was seeking relief from providing curb ramps on the drive aisle along the southern and northern sides of the buildings because there were not any parking spaces on those sides nor any pedestrian traffic.

12. Mr. Lange next testified that two (2) buffers, one (1) on the eastern property line and one (1) on the western property line, were proposed. He stated that the western buffer was a farmland buffer and there were no changes from the initial plan. Mr. Lange further testified that the eastern buffer was similar to the initial plan, but now included the addition of the sound wall. He also noted that the sound wall would not eliminate any landscaping.

13. Mr. Lange also stated that the sound wall was a Class 30 sound wall. He stated that the sound wall would be an earth tone color, which would blend in with the landscaping. Mr. Lange further testified that the sound wall would block light from the site and mitigate sound. He then

explained that the Applicant was seeking variance relief from the front yard setback for the sound wall. He stated that the Ordinance also permitted a maximum height of four (4) feet for walls within the front yard, whereas the sound wall along with the berm would be fifteen (15) feet tall. Mr. Lange stated that the sound wall would be located within the front yard adjacent to Michael Curtin Lane. He testified that Michael Curtin Lane was a dead-end street with no intersecting driveways, therefore the sound wall would not block any sight triangles. Mr. Lange also stated that the sound wall would still block the light and sound for the adjacent residential lots.

14. In response to questions from the Board, Mr. Lange testified that permitting the sound wall within the front yard would provide the maximum amount of mitigation of sound. He also testified that the modifications to the plan were designed to reduce the impact of the sound.

15. Mr. Lange further testified that the Applicant was also seeking variance relief from walls within the front yard being required to be 50% open. He stated that compliance would render the sound wall ineffective. Mr. Lange further testified that the Applicant was seeking variance relief from a maximum height of eight (8) feet for retaining walls, where the Applicant was proposing a retaining wall with a height of nine (9) feet to support the sound wall.

16. Mr. Lange also explained that the Applicant could comply with the bulk requirements, but the sound wall would be less effective. He further stated that the Applicant was providing a berm and landscaping in addition to the sound wall in a "belt and suspenders" approach to mitigating the impact on the adjacent residential uses.

17. Mr. Lange further testified that the Applicant was seeking design waiver relief from screening the trash enclosures. He stated that the relief was technical because the screening being provided was not immediately adjacent to the trash enclosures. Mr. Lange explained that the trash compactors were located at the end of the loading docks and that landscaping would not be located

adjacent to loading docks. He opined that sufficient landscaping would be located at the end of the truck courts.

18. Mr. Lange also stated that the water tank design had been refined from the original plan. He stated that the Applicant was providing six (6) sanitary pumps, instead of one (1) large pump. Mr. Lange explained that changing to six (6) sanitary pumps freed up space to shift the water tank farther from Howell Road. He stated that the water tank was now located seventy-four (74) feet from Howell Road.

19. Mr. Lange next testified that the ingress driveway connecting to Howell Road was narrowed from thirty (30) feet wide to twenty (20) feet wide. He stated that the passenger car drive aisles were twenty-five (25) feet wide, whereas the Ordinance required variance relief for drive aisles wider than twenty-four (24) feet. Mr. Lange testified that the industry standard was drive aisles for trucks to be thirty (30) feet wide and for passenger cars to be twenty-five (25) feet wide. Mr. Lange testified that the Fire Official agreed with the proposed drive aisle width, which was confirmed by the Fire Official via email.

20. Mr. Lange next testified in regard to the truck passing comment in the Board Engineer's February 10, 2023 Report. Mr. Lange stated that the drive aisle had been revised to provide better radii around the corners of Building "A" in order to satisfy the concerns raised by the Board Engineer.

21. Mr. Lange also explained that the proposed lighting was compliant with the Ordinance, however, the Applicant preferred an alternative plan that complied with Illuminating Engineers Society (IES) standards. Mr. Lange stated that the IES standards were more appropriate for a warehouse use. He testified that the Applicant was willing to use either lighting plan and would leave it to the Board's discretion regarding which lighting plan was preferred.

22. Mr. Lange next testified that several changes had also been made to the grading and stormwater management system. He stated that the impervious coverage was less than 70%. Mr. Lange further testified that the Applicant would still honor its commitments made during the original hearing to mill and pave Okerson Road and to provide bollards.

23. Mr. Lange further addressed comments contained in the Board Engineer's February 10, 2023 Report. In regard to comment 2a), Mr. Lange stated that trucks would not be permitted on Howell Road, so the driveway access from Howell Road into the subject Property was not designed for trucks. In regard to comment 2b), Mr. Lange stated that there would not be a concern of truck overlap at the northeast corner of the site because trucks would not use that drive aisle since the building was flipped. He then explained that trucks tended to travel counterclockwise on sites, so the drive aisles operated more like one-way drive aisles for trucks. In regard to comment 5a), Mr. Lange stated that Okerson Road would be milled and Howell Road would be widened. Mr. Lange also testified that the environmental comments would be addressed at the time site work would begin.

24. The Applicant's Planner, Christine Cofone, P.P., AICP, testified that the variance relief being sought by the Applicant was related to the sound wall. Ms. Cofone testified that the Applicant was seeking variance relief from the height of the wall within the front yard setback, the sound wall not being 50% open within the front yard setback, and the height of the retaining wall that supports the sound wall. She opined that the variance relief could be granted under the "c(2)" criteria. Ms. Cofone explained that there was no need for the sound wall, therefore the Applicant could provide a compliant plan. However, she explained, the sound wall was a better plan because it provided a greater screen and mitigated sound. Ms. Cofone further testified that the variance relief promoted the general welfare and created a visually desirable environment. Ms. Cofone testified that the Applicant could modify the sound wall to reduce any negative impact, but that was

unnecessary because there was no negative impact. Ms. Cofone concluded that the variance relief was reasonable and a benefit to the neighborhood.

25. Ms. Cofone next testified in regard to the design waiver relief being sought by the Applicant. Ms. Cofone testified that the landscaped screen of the trash compactors met the intent of the design standard, but was technically not adjacent to the trash compactors. Ms. Cofone next testified that the lighting plan could comply with the design standards, but the IES standards was a better design for warehouses. Ms. Cofone opined that the waivers from the design standards were reasonable and that the purpose and intent of the design standards were met. She further testified that landscaping adjacent to the trash compactors would be impracticable, but the trash compactors were still screened.

26. Ms. Cofone further testified that the Applicant was also seeking design waiver relief from providing curb ramps along the drive aisles where there was no parking. She explained that there was no pedestrian circulation in the area, so the curb ramps would not be utilized. Ms. Cofone explained that there would be a safety concern for pedestrians if the curb ramps were in place along the drive aisles where there was no parking.

27. In response to questions from the Board, Mr. Lange confirmed that the Applicant would mill and pave Okerson Road.

28. The hearing was then opened to the public, at which time Manu Chopra, 7168 Westfield Court, Alexandria, Virginia, testified that his father owns a townhouse in the area. Mr. Chopra stated that he plays tennis and basketball in the area when he visits his father.

29. Kathy Okerson, 459 Okerson Road, testified that she was concerned about the stormwater runoff. The Board Attorney advised that the stormwater runoff was determined by the Court to be in compliance with the ordinance requirements. Ms. Okerson asked about the difference between the proposed lighting plan and the alternative lighting plan. In response, Mr. Lange stated

that the difference between the lighting plans was the evenness and the intensity. He explained that the IES standard had higher intensity in important locations on site and less intensity in other areas. He explained that the Township Ordinance lighting plan had more even light intensity throughout the site. Ms. Okerson testified that she was particularly concerned with light from the western side of Building "A," which would be closest to her property. Mr. Lange responded that the lighting would not offend adjacent properties because the lighting was enclosed. He further testified that there would not be any spillage. In further response, Mr. Lange testified that the lighting would not be like that of the Little League field lights across from Ms. Okerson's lot. He explained that sports lighting was very different than lighting for a warehouse.

30. Albert Cestero, 3 Howell Road, testified that he had lived at his property for forty (40) years. Mr. Cestero testified that there were two (2) active driveways on Michael Curtin Lane, one (1) being his own driveway that he uses more often than his driveway on Howell Road because of the traffic on Howell Road. Mr. Cestero asked if the Applicant would make improvements and provide sidewalks along Michael Curtin Lane. Mr. Cestero further testified that the Township had previous plans to provide sidewalks along Michael Curtin Lane, but later decided to not provide the sidewalks. Mr. Cestero further testified that NJDOT had provided crosswalks in anticipation of sidewalks and pedestrian traffic. He also stated that a railroad was located near the subject Property that was in the process of being reactivated and would cross Okerson Road and Howell Road. Mr. Cestero further stated that he appreciated the Board's denial of the earlier applications and was disappointed in the outcome of the court proceeding. Mr. Cestero stated that he had no issue with the height of the sound wall.

31. Jacqueline Cestero, 3 Howell Road, asked who would be responsible for the maintenance of the sound wall. Mr. Lange confirmed that the property owner would be responsible for the maintenance. Ms. Cestero further testified that she was confused in regard to the lighting

plans. She stated that she was concerned with light spillage because there were other properties in the area that had lights that spilled. The Board Engineer confirmed that the Ordinance required that any lighting not have any spillage and if there were spillage, code enforcement would be responsible for enforcing compliance. Ms. Cestero next testified that Michael Curtin Lane had no signage and that the Township neglected to maintain the roadway. Ms. Cestero further stated that she was concerned with tractor trailers turning around on Michael Curtin Lane as well as flooding on the road. The Board advised Ms. Cestero to bring her concerns of maintenance of Michael Curtin Lane to the Governing Body.

32. In response to a follow up question from the Board, Mr. Lange testified that the Applicant would provide sidewalk along its frontage of Michael Curtin Lane, but not pave Michael Curtin Lane.

33. There were no other members of the public expressing an interest in this application.

34. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the attached Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Howell Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Howell, hereby determines that the Applicant's request for preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 along with variance relief pursuant to N.J.S.A. 40:55D-70c and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted.

As previously stated, this application is being presented in the context of a Whispering Woods settlement hearing. The Board has entered into the Settlement Agreement with the purpose of creating a development for a permitted use which contains features which protect the neighboring properties which are in excess of Ordinance requirements. The Board finds the proposed site plan is consistent with the plan which was part of the Settlement Agreement.

I. Variance Relief

The Board finds that the Applicant has proposed a permitted use in the Zone but does require bulk variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds that the required variance relief all relates to the construction of the sound wall. As previously stated, the Ordinance does not require a sound wall to protect the neighboring properties. The Applicant is capable of designing a development which satisfies the Ordinance requirements and does not include a sound wall at all. The Applicant is also capable of designing a plan which includes a sound wall that complies with Ordinance requirements. Such a design, however, would result in a sound wall which is much less effective. The Board finds that the deviations from Ordinance requirements promote and advances the public welfare by reducing the sound generated by the permitted use. The Board therefore finds that the goals of planning enumerated at N.J.S.A. 40:55D-2 have been advanced and the positive criteria has therefore been satisfied.

The Board also finds that the negative criteria has been satisfied. The grant of variance relief will reduce noise. It will also not increase traffic or density beyond what is contemplated by the Ordinance. The Board therefore concludes that the grant of variance relief will not result in substantial detriment to the public welfare or substantial detriment to the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and that variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.

II. Design Waiver Relief

The Board first addresses the issue of design waiver relief from Section 188-106A. The Board finds that while this Section requires driveways with widths exceeding 24 feet to be approved by the Board, other Sections of the Ordinance permit the proposed 30 foot and 25 foot wide widths. The Board therefore finds that the Applicant has complied with the Ordinance requirement and that design waiver relief is not required.

The Board also finds that the Applicant is capable of complying with all lighting requirements. The Applicant has, however, proposed a plan which is compliant with IES standards. The Board finds that the IES standards better promote the appropriate levels of lighting in the various areas of the proposed development. The IES is further a highly regarded national standard which is widely used. The Board's own professionals further agree that the IES standard should be utilized. The Board therefore determines that the Applicant would encounter impracticable difficulty in developing the subject Property in the most efficient manner if the strict requirements of the Ordinance were enforced and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board further finds that the subject Property is heavily wooded and is not capable of being developed with most permitted uses at all if not partially cleared. The Board distinguishes the subject Property from other sites wherein similar uses have been proposed due to its limited size. The Board finds that the Applicant has proposed waiver relief to permit an in lieu of financial contribution in this instance. This contribution is appropriate considering the size and

shape of the subject Property. Waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate in this instance.

The Board also finds that requiring the landscaping of the beds of the bay door areas would be futile. This is because such plantings would have little likelihood of survival. This landscaping is also of limited utility considering that it would not be seen by anybody. The Board therefore finds that the strict applicability of the Ordinance would create practicable difficulties in developing the subject Property with this permitted use and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board also finds that the proposed screening associated with the trash enclosure is acceptable. The shape of the subject Property makes it difficult to provide screening directly adjacent to the trash enclosures. The proposal still has screening, but locates the screening in more logical locations resulting in the same effectiveness. The Board therefore concludes that the strict application of the Ordinance requirements would result in practicable difficulty in developing the subject Property and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is appropriate.

The Board also finds that the curb and ramp requirements are not practical for the proposed development due to the lack of pedestrian use in the area where relief is required. The Board finds that the proposed plan is more logical and represents superior planning. The Board concludes that the strict application of the Ordinance standards would create a practicable difficulty in developing the subject Property for its permitted use and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is appropriate.

III. Site Plan Approval

The Board finds it necessary to first discuss its statutory jurisdiction in the review of applications for site plan approval. The Board is vested with jurisdiction pursuant to the MLULs to review applications to confirm compliance with ordinance and any other applicable requirements and where there is non-compliance to exercise quasi-judicial power to either grant or deny relief.

The New Jersey courts have characterized this jurisdiction as being “tightly circumscribed”. A planning board is prohibited from basing its decision on whether a particular use should be permitted or prohibited. This is a legislative power which is solely vested with a governing body. Planning boards are explicitly prohibited from unlawfully usurping this jurisdiction for itself.

In the instant matter, this means that opinions of whether warehouses are a good or unwise permitted use in the SED Zone is well outside of this Board’s jurisdiction. This Board is limited by what is permitted in the Township’s Ordinance. The proposed use is permitted which ends the issue.

The Board also finds it necessary to discuss the issue of traffic in site plan applications. The New Jersey Courts have held that general increases in traffic were necessarily considered by a governing body when adopting ordinances making certain uses permitted. This means that the mere increase in traffic may not be used as a reason to deny an application for a permitted use.

The one exception involves safe ingress and egress from a site. A planning board is vested with the power to deny an application for a permitted use when ingress or egress is dangerous.

The increase in truck traffic associated with the proposed use therefore cannot support the denial of the instant application. Both the Applicant's professionals as well as Board's own professionals also reached the same conclusion that the proposed ingress and egress would be safe. The Board therefore concludes that traffic cannot support denial of the instant application.

The Superior Court has also issued an opinion with regard to the environmental issues associated with this application. The Superior Court has held that the on site contamination will be remediated during construction in accordance with a plan developed by an LSRP and subject to an RAO. The issue has therefore been removed from this Board's jurisdiction.

With the exception of the above referenced relief, the Applicant has satisfied all other site plan, zoning and design standard ordinances. The Applicant further agreed to all of the previously referenced conditions of approval. The Board therefore determines that preliminary site plan approval and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50 are appropriate in this instance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Howell on this 13th day of April 2023, that the action of the Planning Board taken on February 16, 2023, in regard to Application No. SP-1085 of AAFH Property, LLC for preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50, as well as variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby memorialized as follows:

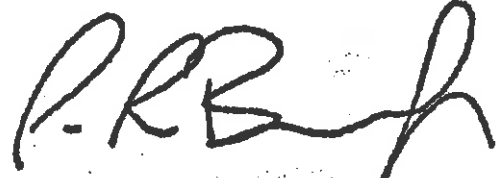
The application is granted subject to the following conditions:

1. All site improvement shall take place in the strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.

2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the reports of the Board professionals.
3. The Applicant shall install sidewalk along its frontage on Michael Curtin Lane.
4. The Property Owner shall maintain the sound wall.
5. The Applicant shall confirm that there will not be any spillage from the IES lighting plan subject to review and approval by the Board Engineer and Board Planner.
6. The lighting plan shall comply with IES standards.
7. The Applicant shall mill and resurface Okerson Road along the frontage of the subject Property to the Howell Township border.
8. Any environmental concerns raised in the Board Engineer's February 10, 2023 Report shall be addressed upon commencement of site work.
9. The Applicant shall provide an RAO upon completion of site remediation.
10. Trucks entering the subject Property shall not be permitted on Howell Road.
11. The Applicant shall provide a certificate that taxes are paid to date of approval.
12. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
13. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Howell, County of Monmouth, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the

Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.



Paul Boisvert, Chairman
Howell Township Planning Board

ON MOTION OF: Mr. Tannenhaus

SECONDED BY: Councilman Gasior

ROLL CALL:

YES: Mr. Greenfield, Ms. Talente, Mr. Tannenhaus, Councilman Gasior, Mr. Mercer and Chairman Boisvert

NO:

ABSTAINED:

ABSENT: Mr. Cristiano, Mr. Seaman and Mr. Kyle

DATED: April 13, 2023

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Howell Township Planning Board, Monmouth County, New Jersey at a public meeting held on April 13, 2023.



Eileen Rubano, Secretary
Howell Township Planning Board

HOWELL TOWNSHIP PLANNING BOARD
EXHIBITS
SP-1085 / AAFFHW Property LLC - Forman
Whispering Woods Settlement and Remand Hearing
Preliminary and Final Major Site Plan
February 16, 2023

- A-1 Submission Letter prepared by Colliers Engineering & Design dated 2/2/23
- A-2 List of Professionals testifying
- A-3 Utilities applications prepared by Colliers Engineering & Design dated 4/6/21
- A-4 Certified List of Property Owners dated 11/12/20
- A-5 Monmouth County Planning Board application dated 4/6/21
- A-6 Freehold Soil Conservation District application dated 4/6/21
- A-7 Site Plans consisting of thirty-four (34) sheets prepared by Colliers Engineering & Design dated 4/6/21, last revised 8/18/22
- A-8 Preliminary Assessment and Phase I Environmental Site Assessment prepared by Maser Consulting dated November 2020
- A-9 Stormwater Management Operations and Maintenance Manual prepared by Colliers Engineering & Design dated 8/18/22
- A-10 Supplemental Preliminary Infiltration Evaluation report prepared by Colliers Engineering & Design dated 12/8/22
- A-11 Traffic Impact Study prepared by Bright View Engineering dated 4/1/21
- A-12 Natural Resource Inventory report prepared by Colliers Engineering & Design dated 4/23/21
- A-13 Environmental Impact Report prepared by Maser Consulting dated April 2021
- A-14 Water Tank Sight Line Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 8/18/22
- A-15 WB-67 Circulation Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 8/18/22
- A-16 Garbage Truck Circulation Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 8/18/22

- A-17 Fire Truck Circulation Plan consisting of one (1) sheet prepared by Colliers Engineering & Design dated 8/18/22
- A-18 Buffer Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/1/22
- A-19 Site Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/1/22
- A-20 Existing Conditions Aerial Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/2/21
- A-21 Overall Existing Conditions Aerial Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/2/21
- A-22 ALTA/NSPS Land Title Survey consisting of one (1) sheet prepared by Colliers Engineering & Design dated 3/8/21
- A-23 Alternate Lighting Plan consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/30/21
- A-24 Right of Way Dedication Description prepared by Colliers Engineering & Design dated 8/16/21
- A-25 Right of Way Dedication Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 8/16/21
- A-26 Architectural Plans consisting of four (4) sheets prepared by Mitchell and Hugeback Architects, Inc. dated 8/18/22
- A-27 Roadway Improvement Plans consisting of three (3) sheets prepared by Bright View Engineering dated 8/17/22
- A-28 Utility Will Serve Letters
- A-29 Stormwater Management Report prepared by Colliers Engineering & Design dated March 26, 2021, last revised August 18, 2022
- A-30 Submission Letter for Remand Hearing submitted by Colliers Engineering & Design dated 2/2/23
- A-31 Stormwater Management Report prepared by Colliers Engineering & Design dated March 26, 2021, last revised February 1, 2023
- A-32 Supplemental Preliminary Infiltration Evaluation prepared by Colliers Engineering & Design dated 12/8/22

- A-33 Fully Compliant Architectural Plans, Revision 5, consisting of four (4) sheets prepared by Mitchell and Hugeback Architects, Inc. dated 8/16/21 last revised 2/1/23
- A-34 Fully Compliant Architectural Rendering, Revision 5, consisting of one (1) sheet prepared by Mitchell and Hugeback Architects, Inc. dated 2/1/23
- A-35 Landscape Plan Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-36 Trash Compactor Enclosure Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-37 Loading Dock Landscape Plan (North) Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-38 Loading Dock Landscape Plan (South) Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-39 Sidewalk Ramp Compliance Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-39A Alternative Sidewalk Ramp Compliance Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-40 Retaining Wall Compliance Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-41 Utility Consolidation Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-42 Utility Consolidation Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-43 Water Tank Sight Line Exhibit consisting of one (1) sheet prepared by Colliers Engineering & Design dated 2/1/23
- A-44 Office Sewer Plans and Sanitary Conveyance Map consisting of one (1) sheet prepared by Colliers Engineering & Design dated 9/27/22, last revised 12/13/22
- A-45 Architectural Plans consisting of four (4) sheets prepared by Mitchell and Hugeback Architects, Inc. dated 8/16/21, last revised 2/1/23 (Rev 4)

NOTICE

PLEASE TAKE NOTICE THAT ON FEBRUARY 16, 2023, THE PLANNING BOARD OF THE TOWNSHIP OF HOWELL GRANTED AN APPLICATION FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH DESIGN WAIVER RELIEF FOR BLOCK 164, LOT 5.01, AS DEPICTED ON THE TAX MAP OF THE TOWNSHIP OF HOWELL, AND MORE SPECIFICALLY LOCATED ON 29 HOWELL ROAD, HOWELL TOWNSHIP, MONMOUTH COUNTY, NEW JERSEY, APPLICATION NUMBER SP-1085 TO DEVELOP THE SITE WITH TWO (2) WAREHOUSE BUILDINGS AS A WAREHOUSE USE. MAPS AND ACCOMPANYING DOCUMENTS ARE AVAILABLE FOR REVIEW IN THE OFFICE OF THE PLANNING BOARD, HOWELL TOWNSHIP MUNICIPAL BUILDING, 4567 ROUTE 9 NORTH, HOWELL, NEW JERSEY.

AAFFHW PROPERTY, LLC