

PRINCETON PLANNING BOARD

_____	)	FINDINGS OF FACT
In the Matter of the Application of	)	AND
<b>217 Witherspoon LLC</b> for Preliminary	)	CONCLUSIONS OF LAW
and Final Major Site Plan Approval with	)	
Variances	)	File No. P2222-244P
_____	)	

Be it resolved by the Planning Board of the Municipality of Princeton that the action of this Board on April 13, 2023 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site"), located in the Residence-Business (RB) Zoning District/Affordable Housing Overlay-7 (AHO-7) Zoning District and identified as Block 21.04, Lot 3, with an address of 217 Witherspoon Street, is located at the northeast corner of Witherspoon Street and Witherspoon Lane, bordered to the west by Witherspoon Street and residential homes in the Witherspoon-Jackson Historic District, to the south by Witherspoon Lane and commercial uses, to the north by the Franklin Avenue Phase II redevelopment area, and to the east multi-family residential properties.

2. The 0.52-acre lot is developed with a two-story brick office and retail building that fronts on Witherspoon Street with a 38-space parking lot to the rear. The parking lot is accessed via an ingress-only driveway on Witherspoon Lane and an egress-only driveway on Witherspoon Street across an existing sidewalk. A telecommunication tower and related equipment are located on the roof of the building. Ancillary telecommunication equipment is also located on the ground in the parking lot area, partially shielded by a brick wall enclosure

adjacent to the entry driveway on Witherspoon Lane. The building contains a mix of retail and office uses, including Hilton clothing store that fronts on Witherspoon Street.

## PROPOSED PLAN

3. The Applicant proposes to construct a new three-story structure in the rear of the lot consisting of four attached residential units, each with four bedrooms and four and a half bathrooms and a basement. The existing commercial building will remain, as will a portion of the existing parking lot between this building and the proposed dwelling units; a portion of the parking lot will be eliminated to make way for the new dwelling units. The higher flat roofs of the new structure will be solar-ready, but solar panels are not proposed with this application. A bicycle enclosure for use by occupants of both the commercial and residential buildings is proposed at the northern end of the residential structure. Additional exterior bicycle parking facilities are proposed in three other locations onsite. The access driveway to Witherspoon Street is to be eliminated and repurposed as a pedestrian walkway and a dedicated waste enclosure. Vehicular access to and from the parking lot is proposed to be solely from the existing Witherspoon Lane access point (currently only ingress), which is to be expanded for use as a full-movement driveway. No changes are proposed to the existing commercial building, but the air conditioning unit located in the parking area will be relocated.

4. Twenty-three parking spaces are proposed for the Site, including three compact spaces, one ADA van accessible space, and two spaces for EV charging. Fifteen bicycle parking spaces are proposed, including nine dedicated for long-term within the proposed bike storage room.

5. The proposed residences are permitted uses in the RB Zoning District. The application does not propose any affordable housing and does not utilize the AHO-7 overlay district, as further discussed below.

## RELIEF SOUGHT

6. The Applicant seeks preliminary and final major site plan approval with 12 variances and one design waiver, as follows:

*Variances –*

- **#1** – From Section B17A-274, to permit coverage (defined as “the area covered by all buildings on a lot, expressed as a percentage of the lot area”) greater than 30% whereas a maximum of 30% is permitted;
- **## 2, 3, 4** – From Section B17A-274 and B17A-201, to permit less than the required minimum dimension of 20 feet of usable open space for three of the dwelling units;
- **## 5, 6** – From Section B17A-274, to permit side yard setbacks of 12.6 feet for Unit A and 8 feet for Unit D, where a minimum of 20 feet is required;
- **## 7, 8, 9, 10** – From Section B17A-274, to permit rear yard setbacks of 15.2 feet, 15.6 feet, 15.6 feet, and 16.9 feet for Units A, B, C and D, respectively, where a minimum 25 feet is required;
- **#11** – From Section B17A-387(a), to permit parking spaces to be 8.5 feet wide by 18 feet deep, whereas parking spaces of 9 feet wide by 19 feet deep are required; and
- **#12** – From Section B17A-387(c), to permit parking spaces to be provided within a required front yard, whereas parking spaces must not be provided within a required front yard.

*Waiver –*

- From Section B10B-203(b)(1), which requires the parking aisle width in a two-way aisle to be at least 24 feet, whereas a drive aisle width of 22 feet is proposed.

THE APPLICANT

7. The Applicant is 217 Witherspoon LLC, also the owner of the property.

NOTICE AND HEARING

8. Proof of notice and publication was filed and found to be satisfactory.

9. The hearing was properly noticed for this application. The notice stated that the hearing would be held at the meeting of the Board scheduled for April 13, 2023 and the application was heard on that date. At the hearing, the Applicant and all other interested parties were given the opportunity to present evidence and to be heard.

#### PLANS

10. At the hearing, the Board considered the following plans and reports submitted by the Applicant:

- Plan set entitled, “Major Site Plan – 217 Witherspoon Street – Block 21.04 Lot 3 Tax Sheet 124, Princeton New Jersey,” prepared by Kensho Resources LLC (James J. Chmielak, P.E.), 15 sheets, dated June 15, 2022, revised through November 30, 2022
- Architectural plan set entitled, “271-221 Witherspoon: 4 New Dwelling Units,” prepared by Marina Rubina Architect (Maria Rubina, R.A.), Sheets A0 through A3.3, dated November 28, 2022
- Boundary and Topographic Survey, prepared by VS Land Data, dated June 3, 2021

#### MUNICIPAL REPORTS

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

- Memorandum from Justin Lesko, A.I.C.P., P.P. to the Board, dated April 6, 2023
- Memorandum from Dan Dobromilsky, L.L.A. to the Board, dated April 6, 2023
- Memorandum from Daniel Weissman, P.E., Land Use Engineer and Derek Bridger, Zoning Officer to the Board, dated March 30, 2023
- Memorandum from Princeton Environmental Commission to the Board, dated March 22, 2023
- Memorandum from Princeton Shade Tree Commission to the Board, dated February 14, 2023
- Letter memorandum from Victor Anosike, P.E. (McMahon Associates) to Daniel Weissman, dated April 3, 2023

#### EXHIBITS AND APPLICANT’S REPORTS

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

- Exhibit PB-1 Sheet 4 of Site Plan
- Exhibit A-1 – PPT slide presentation (40 slides)
- Exhibit A-2 – Elevations
- Traffic and Parking Impact Analysis prepared by BFJ Planning (Georges Jacquemart, P.E., P.P., AICP), dated December 2, 2022
- Fire Protection Narrative prepared by Kensho Resources LLC, dated June 15, 2022
- Environmental Information Statement prepared by Kensho Resources LLC, undated, revised November 30, 2022
- Green Development Checklist narrative, dated December 5, 2022
- Application for Site Plan Review – Preliminary and Final Major Site Development including Narrative, dated June 13, 2022
- Notice of Appeal & Application for Development including Narrative, dated June 13, 2022

#### TESTIMONY AND PUBLIC INPUT

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

Ryan Kennedy, Esq. represented the Applicant. Howard Mimnaugh, its principal; Marina Rubina, R.A., its architect; James J. Chmielak, P.E., P.P., its engineer; Georges Jacquemart, P.E., its traffic engineer; and Susan Favate, AICP, P.P., its planner testified on the Applicant's behalf.

The following municipal staff and professionals gave advice to the Board at the hearing:

Justin Lesko, AICP, P.P., Planning Director; Daniel Weissman, P.E., Land Use Engineer; Derek Bridger, Zoning Officer; Victor Anosike, P.E.; and Martina Baillie, Esq.

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

Michael Floyd, 64 Harris Road, queried whether the proposed development offered an alternative to affordable housing in Princeton and expressed support for it being rental property. He questioned the choice of Paul Robeson to be featured on the mural given his popularity as a

symbol of the Witherspoon neighborhood already and noting other minority groups in the neighborhood. Finally, he expressed concern over the potential traffic impact of the development.

Donna Liese, 28 Witherspoon Lane, expressed concern over the potential impact of any increased traffic from the development given the narrowness of Witherspoon Lane.

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

### *Zoning*

14. The RB Zoning District within which the Site is located is governed by the bulk regulations that apply to the Residence-Office (RO) District, which contains regulations for residential and non-residential uses. The proposed attached dwelling structure has different bulk requirements from the existing retail-office building fronting on Witherspoon Street, and the creation of the new building creates a kind of “sub-lot” within the existing lot that must meet the bulk requirements of Section B17A-204 and B17A-274. Although a number of variances are necessitated by the proposed development, the Board finds that, for the reasons set forth below, these may be granted without substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance, and they advance one or more purposes of the Municipal Land Use Law.

### *Master Plan Goals*

15. The proposed development meets several Master Plan goals. It will “[m]aintain a balanced community that offers a mix of land uses while providing appropriately scaled community infrastructure and services.” It will “[p]reserve the existing character and mix of commercial, residential, and other land uses.” It encourages the “use of sound urban design and energy saving principles in new construction and redevelopment projects.” Importantly, it offers a diversity of housing options that meets a present and future housing need within Princeton

while retaining the small-town quality and diversity of life within the community, consistent with the vision of Princeton.

16. Located within walking distance of downtown Princeton, the proposed development will provide opportunities for a range of demographics, from single families, ageing populations or young professionals. Thus, it will serve Princeton's diverse and growing population but also its older established population. It favors smaller development over large multi-unit developments, complementing Princeton's historic small-town character, while also offering a modern, environmentally sensitive design that tastefully juxtaposes the new with the older established Princeton. The mural to be featured on the south-facing wall of the new dwelling units and visible from the intersection of Witherspoon Street and Witherspoon Lane adds a special element to the design, intended to create a landmark with the idea of encouraging civic engagement and support for the arts.

#### *Affordable Housing*

17. Princeton's affordable housing ordinance requires any residential development providing a minimum of five new housing units at a density of six or more units per acre to provide a minimum affordable housing set-aside of 20 percent to be included in the development (T10B-336(b)(2)). With four dwelling units, the proposed development does not trigger this set aside.<sup>1</sup> In addition, the Applicant indicated that is not utilizing the Affordable Housing Overlay-7 (AHO-7) district as its application was deemed complete before this ordinance was adopted. The Applicant also indicated that certain constraints relating to the existing commercial building (commercial leases and the communications tower) meant that that part of the Site could not be redeveloped at present, such that a more holistic development of the Site could not be done now.

18. Concern was expressed by some Board members, as well as municipal staff at the review stage of the application, that what could have been an opportunity to create more much needed affordable housing in Princeton is missed as a result of these circumstances. To be clear, a developer is not required to provide affordable housing with fewer than five residential units at

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<sup>1</sup> Developers cannot circumvent this requirement by subsequently subdividing the property ("No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. ...." (T10B-336(e))).

a density of six or more units per acre, nor is it even required to utilize the AHO-7 affordable housing overlay. A developer also cannot reasonably be expected to hold off on a desired redevelopment such as the present application so that at some point in the future a more holistic plan with affordable housing might be possible and more desirable for Princeton. Given the concerns expressed, and in the spirit of collaboration, the Applicant readily agreed to a condition that if there is any future residential development on the Site, the 20 percent set aside will apply to all the dwellings, factoring in those approved by this application. See Condition 24ee.

*Site Plan Criteria*

19. In addition to the foregoing findings of fact, the following findings are made with respect to the criteria set forth in Sections 10B-226 (a) through (p) of the Ordinance:

*(a) Ecological Considerations. Pursuant to Section 10B-226(a) of the Ordinance, the development shall result in minimum impairment of the regenerative capacity of aquifers and other groundwater supplies, result in minimum degradation of unique land types and have minimal adverse impact upon the critical areas.*

The proposed development will decrease the impervious coverage on site and increase the amount of landscaped areas, replacing existing impervious pavement with landscaping and, by condition of this approval, using permeable pavers for the new walkway and sidewalk areas. The Site is not within an area of critical or endangered species and contains no mapped wetlands. It is already developed, and the proposed development will maintain the existing geologic and topographic features.

Subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

*(b) Landscape. Pursuant to Section 10B-226(b) of the Ordinance, the historic and natural character of the landscape shall be preserved, insofar as practical and environmentally desirable, by minimizing tree and soil removal. If the development of the site*



*necessitates the removal of established trees, special attention shall be given to the planting of replacements or to other landscape treatment.*

Three trees are to be removed (one being the condition requiring the removal of the Tree of Heaven on the south-easterly part of the Site), and the Applicant will be planting 10 new ones, exceeding the number required to be replaced by ordinance. As noted, the amount of landscaping on site will be increased, and the Applicant agreed, as conditions of this approval, to work with the Municipal Landscape Architect to work out an appropriate landscape plan and tree protection plan.

Subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

*(c) Relation of Proposed Structures to the Environment. Pursuant to Section 10B-226(c) of the Ordinance, proposed structures are to be related harmoniously to themselves, the terrain, existing buildings, roads and historically significant features, if any.*

The proposed project is the redevelopment of a fully developed site in a densely-developed older neighborhood with a mix of residential and commercial uses. The view from Witherspoon Street and the surrounding neighbors on that side will be minimally impacted as the existing building on Witherspoon provides a buffer from the proposed new structure and maintains the existing feel of the street. The proposed lighting at the entrance of the new dwellings, the parking areas and at the property line of the non-residential use is within required limits of illumination and will minimize light pollution and maximize energy conservation through use of LED light fixtures. The proposed design is harmonious to itself and the surrounding area, in accordance with the ordinance.

Accordingly, the Board finds that this criterion is satisfied.

*(d) Scenic, Historical, Archeological, and Landmark Sites. Pursuant to Section 10B-226(d) of the Ordinance, scenic, historical, archaeological, and landmark sites and*

*features that are located on or adjacent to the proposed development shall be preserved and protected insofar as practicable.*

The proposed site is not located within an historic district and there are no scenic, historical, archeological or landmark sites on or adjacent to the proposed development. This criterion therefore does not apply.

*(e) Surface Water Drainage. Pursuant to Section 10B-227(e) of the Ordinance, a proposed development shall be designed to provide for proper surface water management through a system of controlled drainage.*

The project is not subject to the regulations of the Stormwater Management Ordinance since there is a decrease in impervious surface and the area of disturbance is less than half an acre. As noted, the Applicant agreed to use permeable pavers for the new walkway/sidewalk areas, further reducing the impervious coverage. Roof leaders will be directly tied into the Municipal Separate Storm Sewer System.

Subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

*(f) Driveway Connections to Public Streets. Pursuant to Section 10B-226(f) of the Ordinance, all entrances and exit driveways to public streets shall be located with due consideration for traffic flow and so as to afford maximum safety to traffic on the public streets.*

The Site is currently served by one ingress-only driveway on Witherspoon Lane and one egress-only driveway on Witherspoon Street. The egress driveway has limited sight distance crossing the sidewalk on Witherspoon Street as it is located immediately adjacent to the existing street-fronting building. The proposed development will convert the driveway on Witherspoon Lane to both ingress and egress and converts the egress-only driveway on Witherspoon Street to pedestrian access only. The newly converted driveway on Witherspoon Lane will be located adjacent to an existing brick wall that shields the telecommunication

equipment, but separated by a mountable curb adjacent to the wall to establish a 6-foot-wide sight triangle for exiting vehicles and maintain appropriate sight conditions for vehicles exiting the parking lot across the sidewalk onto Witherspoon Lane. The bumpout will be mountable so that larger vehicles, such as delivery trucks and fire/emergency vehicles, can maneuver in and out of the parking area more easily by driving over the bumpout if necessary.

The elimination of the egress-only driveway from the Site onto Witherspoon Street and conversion into a pedestrian-only access way will improve safety on Witherspoon Street as cars will no longer be exiting the Site over the curb onto Witherspoon Street. The Applicant agreed to reduce the driveway apron and depressed curb to help restore that part of the streetscape. Pedestrians will still be able to freely access the Site from Witherspoon Street. Garbage and recycling will be located within the repurposed driveway adjacent to Witherspoon Street, where it will be directly and more easily accessible for pickup. The Board finds that the conversion of that driveway represents an overall improvement of the Site.

With respect to the improved full access driveway at Witherspoon Lane, the Applicant's traffic and civil engineers demonstrated that the driveway can safely accommodate the anticipated traffic flow and emergency vehicle access, and the Municipal Fire Official and traffic and land use engineers agreed. Although Princeton's largest fire truck (Tower 60) is not able to enter the Site, the second largest truck (Ladder 60) can comfortably enter. The proposed development represents no change in that respect, as this was always the driveway that would be used for ingress by emergency and other vehicles. With the Witherspoon Street vehicular egress being eliminated, a fire truck will now exit onto Witherspoon Lane as well. The Applicant's traffic consultant and the Municipal Fire Official testified that this arrangement is safe and acceptable. Because a fire truck would not be able to circulate around the parking area unless a majority of the parking spaces were eliminated, it will have to back out of the driveway onto Witherspoon Lane to exit. The Board recognizes that this maneuver is not ideal, but it is satisfied, based on the testimony and Applicant's expert and submissions, confirmed by the Municipal Fire Official, that this can be done safely, even with cars parked along Witherspoon Lane.

The Board also recognizes that concentrating all vehicular access at the Witherspoon Lane driveway could create more difficulty for the circulation on that road. At a width of 16 feet, Witherspoon Lane is unquestionably narrow, and, as a neighbor who commented at the hearing described, it is presently challenging for two lanes of traffic to simultaneously get in and out of the road from Witherspoon Street. The Applicant's Traffic Engineer, Mr. Jacquemart, testified in response that, although narrow, Witherspoon Lane can accommodate two lanes of traffic and that the main problem occurs at the corner intersection with Witherspoon Street. He presented exhibits showing site accessibility for cars and emergency vehicles. He testified that the increase in traffic resulting from the new development does not, however, represent a significant change in the existing conditions or problem for several reasons. First, the expected number of new vehicle trips generated by the new residential development is very low, based on traffic generation data published by the Institute of Transportation Engineers (11<sup>th</sup> Edition) for general urban/suburban conditions: no more than 3 trips during each of the AM, PM, and Saturday mid-day peak hours. It was further noted that the parking lot has been frequently used by off-site drivers generating car trips that will be reduced or eliminated once those spaces are replaced with residential units with associated low vehicular demand and "private parking" signage is installed. His conclusion, and that of the Municipal Traffic Engineer, is that the additional trips generated by the new development is insignificant and no adverse traffic impact is anticipated.

Second, driving in the area, especially on Witherspoon Lane given its narrowness, occurs at a very low speed, and the sight conditions at the intersection with Witherspoon Street are good. This further lessens the risk of accidents. Finally, the Applicant agreed to several conditions to further address concerns around the increased use of the Site. To reduce unauthorized use of the private parking lot, signage will be installed at the entrance of the driveway indicating that it is "Private Parking" only, and another sign will indicate that parking is by permit only. This will deter unauthorized drivers and help reduce all but necessary traffic to and from the Site.

For the foregoing reasons, and subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

(g) *Traffic Effects.* Pursuant to Section 10B-226 (g) of the Ordinance, the site development proposal shall minimize adverse traffic effects on the road networks serving the area in question either existing or included in the Master Plan.

As noted above, the proposed development will have minimal impact on traffic in the vicinity of the Site, and the Board is persuaded by the testimony and submissions in support of this finding. The centrality within Princeton of the development and availability of other means of transportation lessens residents' dependence on cars to get around, as residents are within walking and biking distance of businesses and services and public transportation service points. Bicycle use is encouraged and facilitated by the provision of bicycle storage on site.

Subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

(h) *Pedestrian and Bicycle Safety.* Pursuant to Section 10B-226 (h) of the Ordinance, pedestrian and bicycle circulation shall be separated from motor vehicle circulation. Safe and convenient pedestrian circulation shall be provided on the site and its approaches. The pedestrian plan shall be designed to minimize adverse effects of vehicular traffic upon sidewalks and bicycle paths.

Pedestrian access to the residential dwellings will be provided via sidewalks connecting to both Witherspoon Lane and Witherspoon Street. Pedestrian access via Witherspoon Lane is contiguous to the existing sidewalk network. The elimination of the vehicular egress across the Witherspoon Street sidewalk will increase pedestrian safety and comfort on Witherspoon Street while pedestrians will be able to access the Site via the repurposed driveway that connects the new dwelling to surrounding properties. Pedestrians accessing the dwellings this way or residents moving between the residential units and the trash/recycling area will be guided across the parking area by markings or a crosswalk to be provided by the Applicant as a condition of approval. The Applicant also agreed to work with the

Municipal Land Use Engineer to work out improved ADA-accessibility to the units where and if possible.

Subject to the Applicant meeting the conditions set forth herein addressing this criterion, the Board finds that this criterion is satisfied.

*(i) On-Site Parking and Circulation. Pursuant to Section 10B-226 (i) of the Ordinance, the location, width, and layout of interior drives shall be appropriate for the proposed interior circulation. The location and layout of accessory off-street parking and loading spaces shall provide for efficient circulation and the safety of pedestrians and vehicles.*

A total of 23 parking spaces are proposed for the combined commercial and new residential uses, including 3 compact spaces, which meets the minimum zoning requirements. One space is designated for accessible parking and two spaces are designated for EV charging, for which the Applicant gets two credits, resulting in 23 rather than the 25 spaces otherwise required by ordinance. Rather than dedicating parking spaces for the new dwelling units, parking permits will be granted for the residential and commercial occupants and, to deter unauthorized use by other vehicles, the parking area will have signs indicating “Private Parking” and “Parking By Permit Only.” Although the parking area will be shared by the commercial and residential uses, these uses have different time periods of peak parking demand, resulting in beneficially lower anticipated peak parking demand.

Nine covered long-term bicycle spaces (eight for the new residential units and one for the commercial building) and six short-term spaces (two for the residential units and four for the commercial building) are being provided. The long-term bicycle parking spaces will be provided in a bicycle storage room to the north of the residential units while the short-term spaces are provided next to the residential units and commercial units in groups of two.

A design waiver from the surface parking design standards (Section T10B-203(a)(7)) to not provide a turning bay was initially identified, but the Applicant’s Traffic Engineer and Planner testified that this was not necessary as other means of turning are available

on Site in that vehicles will, if the lot is full and turning space is limited, be able to “hammerhead” out of the parking area using the cross hatched area next to the ADA parking space. The Municipal Land Use Engineer, Mr. Weissman, concurred that this provides an alternative means of turning and that the waiver was therefore not needed.

The Applicant agreed to remove the chain link fence along the northerly property line and provide a vegetated buffer instead and was open to working with the municipal staff on possible future connectivity with that property. This will establish adequate and attractive natural screening of the parking area from the adjoining property.

Subject to the Applicant meeting the conditions relating to this criterion, the Board finds that this criterion is satisfied.

*(j) Utility Services. Pursuant to Section 10B-226 (j) of the Ordinance, the Applicant must achieve assurances that the necessary infrastructure and utilities are available from on-site, municipal, or private systems, including sanitary sewer, potable water, and irrigation water.*

The proposed development will be served by utilities located on Witherspoon Lane, including electric, sanitary, gas, and water services. It was noted by the Municipal Fire Official at the hearing that the nearest existing fire hydrant is over 500 feet away and that a new fire hydrant closer to the developer should be installed to ensure adequate fire safety infrastructure. Accordingly, the Applicant agreed to install a public fire hydrant for the municipality’s benefit at a location to be determined by the Municipal Fire Official, and will pay the upfront cost of such installation but will be reimbursed by future developers of neighboring properties who stand to benefit from such installation. A Developer’s Agreement is required to set forth this condition and the terms thereof.

Subject to the Applicant meeting the conditions set forth herein relating to this criterion, the Board finds that this criterion is satisfied.

*(k) Disposal of Wastes. Pursuant to Section 10B-226 (k) of the Ordinance, there shall be adequate provision for the disposal of all solid, liquid, and gaseous wastes and for the avoidance of odors and other air pollutants.*

A trash and recycling enclosure is proposed within the repurposed driveway adjacent to Witherspoon Street. The Applicant agreed to provide a path or marking for pedestrian wayfinding from the residential units to the trash enclosure across the parking area. Waste is required to be handled by a private hauler for both the commercial building and residential units. Subject to the Applicant meeting the conditions set forth herein relating to this criterion, the Board finds that this criterion is satisfied.

*(l) Noise. Pursuant to Section 10B-226 (l) of the Ordinance, all applicable federal, state, and local regulations dealing with the control of outside noise which is expected to be generated at the site shall be complied with.*

The Applicant will be required to comply with Princeton's noise ordinance and limits on construction hours. Accordingly, the Board finds that this criterion is satisfied.

*(m) Advertising Features. Pursuant to Section 10B-226 (m) of the Ordinance, the size, location, height, design color, texture, lighting and materials of the signs or outdoor advertising structures features shall not detract from the design of proposed buildings and structures of the surrounding properties*

No advertising features are proposed. This criterion therefore does not apply. It is noted that a condition of approval is that the Applicant work with the municipal staff to ensure that the proposed mural on the side of the new building does not trigger any sign ordinance requirements.

*(n) Special Features. Pursuant to Section 10B-226(n) of the Ordinance, outside storage areas, service and machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures shall be subject to*



*such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent any adverse effect upon the environment or nearby property.*

None are proposed. Therefore, this criterion does not apply.

(o) *Waterway Corridors. Pursuant to Section 10B-226(o) of the Ordinance, site plans shall be designed so as to preserve from disturbance waterway corridors.*

No waterways are on or adjacent to the site. This criterion therefore does not apply.

(p) *Special Technological Impacts. Pursuant to Section 10B-226(p) of the Ordinance, where the proposed site development involves emissions, noise, wastes, materials, equipment, or other hazards which require specialized expertise to evaluate, the administrative officer shall refer the Applicant's submissions to the municipal-retained environmental consultant (or to several consultants where more than one field of expertise is involved), requesting an independent review of the environmental impact of the project to be set forth in a report to the board having review jurisdiction. The cost of these studies shall be charged to the Applicant's escrow account established pursuant to section 10B-32.*

None are anticipated. Therefore, this criterion does not apply.

20. Conclusion re preliminary and final major site plan approval. The Board finds that, with the variances and waiver granted and conditions imposed, the Applicant has satisfied all municipal major site plan requirements. Accordingly, preliminary and major site plan approval is granted.

#### FINDINGS AND CONCLUSIONS RE: VARIANCES

21. The application necessitates 12 variances. The Applicant provided testimony in support of the c(2) "flexible c" variance (*N.J.S.A. 40:55D-70c(2)*), which requires showing that

one or more purposes of the MLUL would be advanced by a deviation from the zoning ordinance and that the benefits of such deviation substantially outweigh any detriment. An applicant also has to meet the negative criteria, that the variance can be granted without substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

22. The variances and Board's action on them are as follows:

a. Variance (#1): From Section B17A-274, to permit coverage (defined as "the area covered by all buildings on a lot, expressed as a percentage of the lot area") greater than 30% whereas a maximum of 30% is permitted.

Variance granted. Granting the variance would advance MLUL purpose "a," to provide for the appropriate development of land, purpose "e," to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment, and purpose "i," to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The existing building coverage is 16.6%, where 3,738 s.f. is the existing commercial building footprint and 22,579 s.f. is the square footage of the whole lot. The proposed additional building coverage shown in the plans submitted to the Board is 17.4% (where 3,960 s.f. is the proposed footprint of the four units, divided by 22,579 s.f.). Building coverage considers the size of the whole lot and adding a new building of 3,960 s.f. Would bring the lot coverage to 34.1%, but because the Applicant agreed, as a condition of the Board granting variances ##5 and 6, to revise the design so that the principal exterior walls of the new units meet the side yard setbacks, that number is expected to change. Granting this variance advances the MLUL purposes in that this project creatively repurposes a portion of an already developed site in a more efficient way, optimizing use of the site by converting redundant parking space into much needed residential housing in a central location, walkable for the prospective residents, with an attractive architectural design that is consistent with and complementary to the surrounding neighborhood. Importantly, while the building coverage will increase, the impervious coverage will actually decrease due to the rear parking spaces being

eliminated to make way for the new building. Thus, no adverse impact on storm water management is expected from the increased building coverage, and the Site's storm water management will benefit from the new landscape and green infrastructure elements being proposed (e.g. the trees in front of the dwelling and green roof). The positive impacts of granting the variance therefore outweigh any potential negative impact.

This variance may be granted without substantial detriment to the public good or substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance because the increase in coverage results from an improvement of the Site that does not adversely impact the wider public. It does not impair the intent and purpose of the Zone Plan since several Master Plan goals and objectives, identified in paragraphs 15 and 16, are being advanced. It also does not impair the intent and purpose of the Zoning Ordinance, which is to provide for appropriate coverage in relation to the lot size and to manage storm water runoff. For the forgoing reasons, the Board finds that the proposed coverage is appropriate and that storm water runoff will not be negatively impacted by the development. The Board therefore finds that the negative criteria have been satisfied.

Accordingly, this variance is granted.

b. Variations (## 2, 3, 4). From Sections B17A-274 and B17A-201, to permit less than the required minimum dimension of 20 feet of usable open space for three of the dwelling units.

Variations granted. The open spaces provided for Units A, B, and C are 924 s.f., 762 s.f., and 762 s.f., respectively. (1,190 s.f. is provided for Unit D, which meets the minimum 20-foot dimension requirement.) Thus, these units meet the minimum required 600s.f. of open space, but not the minimum dimension of 20 feet per the definition of Usable Open Space (Section B17A-201), necessitating these variations. The same MLUL purposes would be advanced for these variations as for variance "a" in that the proposed use and site layout optimize the available land given the existing constraints with minimal or no disruption to the neighboring properties while adding critical residential housing within walking distance of downtown

Princeton. By meeting the required amount of open space for each unit but not the dimensional requirement, the open space plan meets the spirit of the ordinance, if not the letter. The benefits of such deviation therefore substantially outweigh any detriment.

The negative criteria are satisfied as well. The Applicant demonstrated that these variances can be granted without substantial detriment to the public good as the main impact of the open space configuration is felt by only the future tenants of the building and will not impact the wider public. Nor will granting the variances substantially impair the intent and purpose of the Zone Plan because the Master Plan goals and objectives identified in paragraphs 15 and 16 are being advanced. It does not impair the intent and purpose of the Zoning Ordinance either, as adequate open space for residential dwellings is being provided to all of the units.

Accordingly, these variances are granted.

c. Variances (## 5, 6). From Section B17A-274, to permit side yard setbacks of 12.6 feet for Unit A and 8 feet for Unit D, where a minimum of 20 feet is required.

Variances granted. The side yard setback calculations for the end units, A and D, are based on the one-story building components that encroach into the side yard setbacks, the utility room attached to Unit A and the bicycle storage room attached to Unit D. The Board discussed whether these portions of the building could be considered accessory structures, eliminating the need for these variances, but the structures do not meet the minimum required distance from the principal structure. However, these non-livable spaces are dedicated to accessory uses, thus the overall impact of them is less than if the dwelling units themselves encroached on the setback. A Board member inquired whether the width of the new units could be narrowed so as to eliminate the side yard setback encroachments. Ms. Rubina, the Applicant's Architect, explained that the building design was optimal and consistent with other neighborhood dwelling unit widths whereas the impact on the neighboring properties as a result of granting the variances is not substantial. The Applicant agreed to revise the design so that the principal exterior walls of the units do not encroach into the side yard setback, as set forth in Condition 24a. With such modification, only the utility room, bicycle room, bay windows, and various

façade articulations will extend into the side yard setbacks. A vegetated buffer will be installed along the northerly property line, whereas the southerly neighbors are already buffered by Witherspoon Lane. Granting the variance would advance the same MLUL purposes as for variance “a,” for similar reasons. The benefits therefore substantially outweigh the modest detriment, and the “flexible c” positive criteria are therefore satisfied.

The negative criteria are satisfied as well. The Applicant has demonstrated that the requested variances can be granted without substantial detriment to the public good since the deviation does not significantly impact the neighboring properties or general public. Nor is the intent and purpose of the Zone Plan impaired since, as noted, several Master Plan goals and objectives, identified in paragraphs 15 and 16, are being advanced. Similarly, no impairment will result to the intent and purpose of the Zoning Ordinance, which is to ensure adequate side yards, and the proposed side yards are adequate.

Accordingly, these variances are granted.

d. Variances (## 7, 8, 9, 10). From Section B17A-274, to permit rear yard setbacks of 15.2 feet, 15.6 feet, 15.6 feet, and 16.9 feet for Units A, B, C and D respectively, where a minimum 25 feet is required.

Variances granted. Granting these variances would advance the same MLUL purposes as for variance “a,” for similar reasons. Ms. Rubina explained that the site design along the parking lot is intended to create a layered effect, with the parking, landscaping, pedestrian walkway, dwelling units and rear yards all juxtaposed in ways to create a sense of neighborhood intimacy and privacy but also connectivity among the units themselves as well as with the neighboring properties. Shifting the building footprint forward to meet the rear yard setbacks could be done, but it would gut these meaningful design connections and eliminate the opportunity for landscaping and the pedestrian walkway in the front of the building. The Board finds that the result would be a significantly less compelling and attractive design. The detriment to granting the variances, on the other hand, is minimal and will mainly affect the residents of the new building. The rear yards are replacing concrete parking spaces with greenery, and whereas

cars could previously park right up against the rear property line, the new building will be set back further than the parking spaces and thereby actually creates more distance from the neighboring properties on the easterly property line. For the foregoing reasons, the Board finds that the benefits of granting these variances outweigh the detriments, and the “flexible c” criteria are met.

The negative criteria are satisfied as well. The Applicant has demonstrated that the requested variance can be granted without substantial detriment to the public good since the deviation does not negatively impact the neighboring properties or general public and actually benefits the properties south of the development by increasing the setback of the building from that property line. The intent and purpose of the Zone Plan is not impaired since, as noted, several Master Plan goals and objectives, identified in paragraphs 15 and 16, are being advanced. Nor does it impair the intent and purpose of the Zoning Ordinance, which is to ensure adequate rear yards, whereas the proposed design provides adequate rear yards.

Accordingly, these variances are granted.

e. Variance (#11). From Section B17A-387(a), to permit parking spaces to be 8.5 feet wide by 18 feet deep, whereas parking spaces of 9 feet wide by 19 feet deep are required.

Variance granted. The Applicant’s Planner, Ms. Favate, testified that the proposed smaller parking spaces are consistent with other parking spaces in the area and with the compact site design. The proposed spaces are sufficient in size to safely accommodate vehicles. It is noted that the depth of 18 feet is permitted under the Township code requirements, which provide for parking spaces to be 9 feet by 18 feet. Granting this variance would advance the same MLUL purposes as for variance “a,” for similar reasons. The benefits of granting the variance therefore substantially outweigh the detriment, and the “flexible c” criteria are met.

The negative criteria are satisfied as well. This variance can be granted without substantial detriment to the public good because it will enable the Applicant to meet the parking

requirement without detracting from the design of the dwelling units, and the smaller parking space size will impact mainly the commercial tenants and residents of the Site. Nor will granting the variance substantially impair the intent and purpose of the Zone Plan since, as noted, several Master Plan goals and objectives, identified in paragraphs 15 and 16, are being advanced. Nor does it impair the intent and purpose of the Zoning Ordinance, which is to establish a safe and sufficient size of parking spaces, and that is being provided.

Accordingly, this variance is granted.

f. Variance (#12). From Section B17A-387(c), to permit parking spaces to be provided within a required front yard, whereas parking spaces must not be provided within a required front yard.

Variance granted. The proposed parking within the residential dwelling “sub lot” is located at the front of the dwellings. Although this is technically the front yard area of the new dwellings, it is not the front yard of the larger lot, and there is no impact on the Witherspoon Street frontage. Granting this variance would advance the same MLUL purposes as for variance “a,” for similar reasons. The benefits substantially outweigh the detriments as it permits residential parking to be located conveniently next to the dwelling units and will not negatively impact the Witherspoon Street streetscape. The “flexible c” criteria are therefore met.

The negative criteria are satisfied as well. This variance can be granted without substantial detriment to the public good because it will maintain the existing condition with respect to the lot frontage on Witherspoon Street and maximizes use of the property for the proposed development. Nor will granting the variance substantially impair the intent and purpose of the Zone Plan since, as noted, several Master Plan goals and objectives, identified in paragraphs 15 and 16, are being advanced, or impair the intent and purpose of the Zoning Ordinance, which is to prevent parking in front yards, and there will be no parking in the front yard on Witherspoon Street.

Accordingly, this variance is granted.

## FINDINGS AND CONCLUSIONS RE: WAIVER

23. The application necessitates one waiver. The Board may grant exceptions (or “waivers”) from the site plan approval requirements “as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval” if “the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship.” (*N.J.S.A. 40:55D-51(b)*). The waiver and Board’s action on it are as follows:

- a. Waiver: From Section B10B-203(b)(1), which requires the parking aisle width in a two-way aisle to be at least 24 feet, whereas a drive aisle of 22 feet is proposed.

Waiver granted. The Applicant proposes reducing the drive aisle from a width of 24 feet to 22 feet to increase the space for landscaping and the viability of trees on the Site. This waiver was not originally proposed by the Applicant but was identified as a possible solution during the Board’s extensive discussion of ways to increase space for the viability of proposed trees on the Site. Mr. Jacquemart testified that although 24 feet is standard, the width of the drive aisle can be decreased to 22 feet while maintaining sufficient space for cars to drive in and out of the parking area, a conclusion with which the municipal engineers agreed. If the parking lot were full, a car turning in that needed to exit would still be able to hammerhead out of the lot by using the cross hatched area by the ADA space to turn around, the same maneuver that would have to be used if the lot were full and the drive aisle were 24 feet wide. There will be a six-foot-wide triangle bump-out at the driveway entrance next to the brick wall enclosure of the telecommunications equipment designed to keep vehicles at least six feet away from the wall and establish a safe cone of vision for exiting drivers while at the same time providing a degree of flexibility as drivers would be able to mount the triangle when entering or existing when it is safe to do so. This sight triangle feature will not be impacted by the narrowing of the drive aisle. The ordinance requires that parking areas have adequate driveways and turning areas such that vehicles can move around without requiring other vehicles to move out of the way. Based on the testimony supporting the desirability of having more space for landscaping and the viability of proposed trees as a result of narrowing the drive aisle, the Board finds this waiver request



reasonable and within the general purpose and intent of the ordinance, which is to ensure adequate and safe drive aisles in parking areas, and that is being provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from modifying the site plan in a beneficial way when there is no obvious downside to doing so. This waiver is therefore granted.

#### CONDITIONS REQUIRED

24. The Board finds that, in order to address the concerns expressed during the course of the hearing, the approval granted is subject to the following conditions:

##### Site plan

a. The principal exterior walls of the new units shall meet the side yard setback requirements, with allowances for bay windows, the utility room, bicycle storage room and other façade articulations to extend beyond the principal exterior walls. The Applicant shall provide the revised plans to the Land Use Engineer and shall show the new building coverage.

b. The north direction icon is not pointing in the same direction on the architectural and engineering drawings. This shall be corrected.

##### Landscape

c. Prior to construction, the condition, location, and tree protection plan for the existing trees to remain shall be reviewed on-site by the Applicant and Municipal Landscape Architect to determine if any modifications of the tree protection plan or construction work (utilities, etc.) is appropriate.

d. The selection of a mix of shade tree species shall be considered as the landscape design is refined for review and approval.

- e. The arborvitae trees along the rear of the property shall be individually identified on the Landscape and Tree Protection Plan.
- f. The Applicant shall work with the Municipal Landscape Architect to work out a landscape plan in front of the new units, including the type and location of the proposed trees. A root barrier shall be specified along the walk(s) where the trees are planted. The plan shall ensure that there is enough room for the trees to grow.
- g. The landscape plan worked out by the Applicant and Municipal Landscape Architect shall be reviewed by and be subject to approval of the Landscape Subcommittee.
- h. The Applicant shall use a non-invasive native species for ground cover.
- i. The Tree of Heaven located on the south east property line shall be removed.
- j. The English ivy along the south east property line shall be removed.
- k. The Applicant shall remove the chain link fence along the northerly property line and provide a vegetated buffer instead, subject to the review and approval of the Landscape Subcommittee.

#### Traffic, circulation and parking

- l. The driveway apron and depressed curb at the Witherspoon Street driveway shall be reduced as this driveway is proposed to be repurposed and only used for roll-off trash containers to be picked up from Witherspoon Street.
- m. Gates shall be installed in the fences between the back yards to facilitate access to the rear of the new units by fire and emergency services. Details of the fences shall be shown on the plans.
- n. A sidewalk or crosswalk between the residential units and the trash/recycling area shall be provided/indicated to accommodate pedestrian and bicycle movement between these areas.

- o. The Applicant shall work with the Municipal Land Use Engineer to work out any improved ADA-accessibility.
- p. The 24' drive aisle shall be reduced to 22' to increase space for landscaping and the viability of proposed trees on the Site.
- q. The compact parking space adjacent to the ADA parking space shall be reduced to 15 feet in depth and the sidewalk widened adjacent to the existing building to provide more sidewalk area should parked vehicles extend over the sidewalk.
- r. Two parking lot signs shall be installed, subject to review and approval by the Municipal Land Use Engineer:
  - a. A sign indicating that parking is by permit only.
  - b. A sign at the entrance of the parking lot indicating "Private Parking."
- s. The wheel stops behind the existing building shall remain, and additional wheel stops shall be added to the extent needed, as determined by the Municipal Land Use Engineer.

#### Storm Water Management

- t. The Applicant shall use permeable pavers for the new walkway/sidewalk areas, subject to the review and approval of the Landscape Subcommittee.

#### Green Infrastructure

- u. The Applicant shall provide green roofs on the lower roofs of the residential units, subject to the review and approval of the Landscape Subcommittee.
- v. The Applicant shall make the upper roof of the residential units solar-ready.

- w. The Applicant shall make every effort to install solar panels expeditiously.
- x. The Applicant shall look into use of bird-safe glass.
- y. The Applicant shall look into use of a geothermal heat pump HVAC system.
- z. The Applicant shall explore use of DeepRoot's Silva Cell green infrastructure for on-site storm water management and healthy tree growth.
- aa. The Applicant shall incorporate green construction to the extent practicable.

#### Emergency Services

bb. If electric bicycle charging facilities will be provided, these shall be subject to the review and approval of the Municipal Fire Official with respect to fire safety requirements.

cc. The Applicant shall install a fire hydrant at a location to be determined by the Municipal Fire Official. The Applicant shall pay the upfront costs of installing the hydrant, but shall be reimbursed for the costs thereof to the extent that future developers of neighboring properties benefit therefrom, and which shall be required as a condition of site plan approval to pay a pro rata share of the costs of the installation of the hydrant. The Municipal Land Use Engineer shall determine the appropriate pro rata contribution of future developers based on the size and anticipated use of the development. The Applicant and Municipality shall enter into a Developer's Agreement setting forth the terms of the foregoing arrangement.

#### Other

dd. The Applicant shall pay the affordable housing fee in accordance with Section T10B-360.

ee. If the Applicant or any other party having a sufficient interest in the property in the future files an application to construct more residential dwelling units on the property, whether or not a subdivision is proposed, the 20 percent set aside obligation and regulations as set forth in the AHO-7 ordinance or Municipality-wide affordable housing regulations (Section T10B-336), as

may be applicable, shall apply to all the dwelling units, factoring in those approved in this application, whether or not a unit approved in this application has been sold to a third party. If the Applicant or its successor at such time has already paid the affordable housing fee required by this approval, it shall be entitled to a refund of it if the second application is approved and certificates of occupancy for the residential units provided for in the second approval are issued. The refund will be paid using monies from the Affordable Housing Trust Fund to the extent that such monies are available. If some or all of such monies are not available, such monies as are available shall be paid to the Applicant or its successor when they become available. This refund requirement shall not apply after ten years from the date of approval of this application has been granted.

ff. The Applicant shall prepare a deed notice in the form of a deed to itself setting forth the language of the foregoing condition with respect to future residential development so that any future purchasers of the property are on notice thereof. The deed notice shall be reviewed and approved by the Board Attorney prior to be recorded.

gg. The Applicant shall take any steps necessary to terminate the 7' easement shown on sheet S1.

hh. The Applicant shall work with the Municipal Staff to ensure that the proposed mural does not trigger any sign ordinance requirements.

ii. The Applicant shall comply with the Municipality's noise ordinance for the timing of construction.

jj. The Applicant shall submit to the Municipal Land Use Engineer an estimate of the cost of construction of the site improvements for determination of any required performance guarantee and inspection fees.

kk. As required by ordinance, the applicant shall be required to post a performance guarantee for all site improvements and inspection fees for the installation of all improvements, which shall be reviewed and approved by the Municipal Land Use Engineer.

II. The Applicant shall, if necessary, secure approvals from the following agencies:

- Mercer County Planning Board
- Mercer County Soil Conservation District
- Princeton Sewer Department

#### CONCLUSION

Based on the foregoing, the Board at its April 13, 2023 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

Adopted:

Vote on motion: 4/13/2023

FOR: Wilson, Capozzoli, Cohen, McGowen, O'Donnell, Quinn, Taylor, Tech-Czarny

AGAINST: No one

ABSTAIN: No one

Vote on findings: \_\_/\_\_/2023

FOR:

AGAINST:

ABSTAIN:

ABSENT: Sacks, Chao, Bottigheimer