

**TOWNSHIP OF FRANKLIN
ZONING BOARD OF ADJUSTMENT
COUNTY OF SOMERSET, NEW JERSEY**

**VIRTUAL MEETING
April 1, 2021**

This Regular Meeting of the Township of Franklin Zoning Board of Adjustment was held virtually at 475 DeMott Lane, Somerset, New Jersey and was called to order by Vice Chairman Shepherd at 7:30 p.m. The Sunshine Law was read, and the roll was called as follows:

PRESENT: Cheryl Bethea, Bruce McCracken, Joel Reiss, Alan Rich, Gary Rosenthal, Robert Shepherd, Richard Procanik, and Kunal Lakhia

ABSENT: Vaseem Firdaus and Robert Thomas

ALSO PRESENT: Daniel Lagana, Board Attorney, Mark Healey, Planning Director, and Christine Woodbury, Planning & Zoning Secretary

Due to technical difficulties, recording started a number of minutes into the meeting and the Resolution and first hearing were not captured on video. However, a tally of the voting for both the Resolution and the first hearing was made available and is enumerated below.

RESOLUTIONS:

- **150 Pierce Street, LLC / ZBA-20-00017**

Mr. Reiss made a motion to approve the Resolution, as submitted. Mr. Rosenthal seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Mr. Procanik, and Mr. Lakhia

AGAINST: None

HEARINGS:

- **SHARONDA COPELAND / ZBA-21-00004**

Applicant is seeking a C Variance to construct an in-ground pool at 14 Larsen Road, Somerset; Block 399, Lot 19, in an R-20 Zone.

Mr. Reiss made a motion to approve the Application with Variances. Vice Chair Shepherd seconded the motion, and the roll was called as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Mr. Procanik

AGAINST: None

Again, due to technical difficulties, recording started a few minutes into the following hearing, and some of the beginning testimony was not captured here.

- **HAMILTON STREET DEVELOPMENT, LLC / ZBA-20-00023**

D(1) Use Variance, Preliminary & Final Major Site Plan in which the Applicant was seeking to build a three (3)-story apartment building with a total of nine (9) apartments at 587 Hamilton Street, Somerset; Block 204, Lots 18-2,2 in the Hamilton Business District (HBD) Zone.

Testimony of the Architect, Mr. Michael Testa, was already in progress at the start of the recording. He had entered into the record as Exhibit A-1, the colored rendering of the building.

Mr. Testa indicated that they had not encountered any issues with residential units located on the ground floor with other developments he had worked on. He indicated that the 3D rendering shown on the screen was just put together based upon comments from the Township Planner, Mr. Healey. Mr. Testa then noted that there was a greater area between the building and the curb, approximately 10 ft. as shown on the plans, which stepped the building back away from the street.

Vice Chair Shepherd then asked for clarification regarding whether there would be any green space or whether there would be an approximately 10 ft. wide sidewalk in front of the building. Mr. Testa stated that there would be a sidewalk in front of the building, but that the Site Engineer would have the exact dimensions and describe the elements that would be in that area.

Mr. Reiss then asked if the tenants would be prohibited from placing bars on the first-floor windows. Mr. Lanfrit indicated that if the Board felt that it was appropriate, they could discuss with the Applicant. A discussion ensued regarding high impact glass on the ground floor windows.

Vice Chair Shepherd opened the meeting to the public for questions of the Architect.

Mr. Joseph Rivera, 10 Miller Avenue, Somerset, NJ, came forward and asked Mr. Testa whether or not balconies for the building were considered since he did not see any in the rendering presented. Mr. Testa stated that due to the proximity of the building to the lot line, any kind of balcony would be extending over the property line, and they therefore were not included. Mr. Rivera then asked how they planned to provide cooling for the apartments, and Mr. Testa indicated that the heating/cooling unit would be inside a closet in the apartment, with external condensers located in the center of the roof in a hollowed-out area and screened

on all four sides. Mr. Rivera then asked about the need for a variance for the additional requested height of the building. Mr. Testa stated that the height they were requesting was 40 ft. at the higher tower points, with the main roof at 38 ft. 7 inches. Mr. Lanfrit indicated that the building met the height requirements of the ordinance at the maximum allowed of 40 ft. In response to Mr. Rivera's question regarding the setback requirements of the HBD Zone, Mr. Lanfrit indicated that they met the setback requirements that would be testified to by the engineer.

Mr. Healey then clarified for the Board and the public that the allowed building height in the zone was 40 ft. He added that the Applicant did need a variance, technically, for the building height at the corners where it was 42 ft., 2 inches. Mr. Healey then asked the architect whether he could make the building comply at the corners with the 40 ft. requirement. Mr. Testa indicated that he could but felt it would be detrimental to the appearance of the building. He noted that most buildings have architectural enhancements at the corners; and he had included a pointed element at the top of the corner tower that put the height over the 40 ft. requirement. Mr. Healey then discussed the two different classifications of "C" variances; one was a hardship variance and the other was if it resulted in a better zoning alternative. Mr. Testa indicated that he felt that the proposed design created a better aesthetic look and streetscape for the building than the massing of the components. He added that in the Hamilton Street Business District Overview, 112-203M that addressed building designs for those on corner lots that encouraged special design treatment of corner buildings, including architectural embellishments relating to its location on a corner lot.

Mr. Mohammed Hassan, 11 Miller Avenue, Somerset, NJ, came forward and asked whether the building would block the view of the traffic on Hamilton Street to the left. Mr. Testa indicated that the 3D rendering of the building showed the building much closer to the street than what was on the Site Plan. He indicated that the Site Engineer would go into more detail and explain how the building would not block the sight triangle.

Mr. James Willis, area resident, came forward and asked about whether the parking could be placed underneath the building. Mr. Lanfrit explained that the Site Engineer would be explaining that the parking would be placed in the rear of the building and that they met the parking requirements.

Seeing no one further coming forward, Vice Chair Shepherd closed the meeting to the public.

Mr. Ronald J. Sadowski, Site Engineer, 10 Edward Avenue, Edison, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Sadowski explained what currently existed on the property, noting that there was a 2-1/2 story residential structure that had access from both Miller Avenue as well as Hamilton Street. He indicated that there was quite a bit of pavement on the property (50% of the 12,500 sq. ft. was impervious), with the other 50% comprised of grass in fair to poor condition. Mr. Sadowski indicated that their development would include the demolition of all structures currently on the property. He then briefly went through all of the bulk requirements of the zone and indicated where their proposal stood in relation to those requirements. Mr. Sadowski then briefly went through the bulk requirements of the zone, indicating where the Applicant stood, including lot area setback requirements, frontage requirements. He noted that they required 10,000 sq. ft. of building area required, with 12,500 sq. ft. proposed. He went on to state that the lot frontage requirement was 100 ft., and they had 100 ft. along Miller Avenue and 125 ft. along Hamilton

Street. For the main structure, Mr. Sadowski stated that the minimum front yard for the HBD was 0 ft., and they had that on both frontages. He then added that the minimum side yard setback was 5 ft., which they provided on the Hamilton Street side of the building. When discussing the required total side yard setback, the requirement was 15 ft. where they were providing 75 ft. on both sides of the property. Mr. Sadowski then testified that they were permitted to have 40 ft. building height, where they had 38.58 ft. in the main portion of the building and approximately 42 ft. at the corner towers. He noted that three (3) stories were permitted, which they were proposing, and stated that they were not proposing any accessory structures on the property. He then told the Board that the maximum building coverage that was permitted in the zone was 40%, and they were at 28.3%, with total allowed impervious coverage allowed was 85% and they were proposing 81.1%.

Mr. Sadowski then utilized his colored rendering of the Site Plan to show the building, the parking, and also discussing the landscaping, the lighting, and storm water management. He noted that they had 17 parking spaces within the parking lot, which he stated met the requirements for the nine (9) units that included seven (7) 1-bedroom units and two (2) 2-bedroom units. He added that they also included two (2) ADA parking spaces within the parking lots closest to the building. Mr. Sadowski then detailed the trash enclosure area for trash and recycling, noting that it was shielded on three (3) sides with the same materials as used on the proposed building and was surrounded by landscaping to provide some additional screening. He also added that there would be a bike rack for those who want to use bicycles for means of transportation or exercise. Mr. Sadowski then showed the fence along the two side yards of the property, a solid PVC white fence, as well as a decorative, non-structural landscape block wall in the same area. He then described the landscaping for the project as including street trees along both roadways as well as some interior trees (evergreen and shade trees) with some low-lying shrubbery as well.

Mr. Sadowski then went on to state that they would be capturing the additional run-off from the site, and the excess run-off would be detained and discharged underground into a drywell system. He added that their intent was to have the roof leaders from the building tie in directly to the underground system. In addition, Mr. Sadowski noted the three (3) parking spaces that would be made up of pervious asphalt, which would give additional retention of run-off so that the run-off from the developed site would be less than what currently existed on the site. He then told the Board that the site would not see any change in run-off onto adjacent properties so that those properties would not be adversely affected by the development.

Mr. Sadowski then drew the Board's attention to the Lighting Plan, noting that they had three (3) lights that they were proposing for the site to illuminate the parking area, with a light pole on the far end of the building that would face the building as well as two (2) wall-mounted lights that would face the parking lot. He then testified that they were proposing light shields so that there would be no light spillage onto any adjacent properties

Mr. Sadowski then discussed the Hamilton Business District streetscape improvements that included street trees, trash/recyclable cans, a bench as well as decorative lighting along the frontages of both Miller and Hamilton. He noted that the sidewalk, at its widest from the curb on Hamilton Street to the face of the building, was 13 ft. Mr. Sadowski testified that it was reduced in some areas where they had a bench or tree wells planted with trees. He then told the Board that all of the developments that had recently been approved along Hamilton Street included soldier course pavers and outline pavers throughout the site. He added that they all

included wide concrete sidewalks and would be following the same scheme on the subject property.

Mr. Sadowski then addressed some concerns from residents regarding visibility and sight distance from the driveway as well as for vehicles at the intersection of Miller and Hamilton Street. He indicated that as motorists approach the stop bar at the intersection, there was sufficient visibility to the east to Hamilton Street and no impediments to the west. Mr. Sadowski also added that there were sufficient sight distances from the driveway onto Miller Avenue, again with no impediments since there were no structures within the sight triangle there. He then told the Board that Hamilton Street is a County road and that the County had reviewed the plans that were submitted in conjunction with the Application.

Mr. Sadowski indicated that they would be able to comply with all of the staff comments and recommendations. He did, however, want to discuss the item that came up on the CME Associates engineering report, dated March 3, 2021, related to the sidewalk width. He told the Board that Residential Site Improvement Standards (RSIS) required six (6)-foot wide sidewalks at locations of head-on parking and they showed five (5) feet on the Site Plan. For those parking spaces that were along the building, Mr. Sadowski proposed that they include pre-cast wheel bumpers to prevent vehicle overhang to allow for the six (6)-foot separation but keep the five (5) ft. wide sidewalk there. He testified that he would discuss that proposal with CME Associates to receive agreement.

For the record, Mr. Sadowski testified that they would be able to comply with the following staff reports, including: Franklin Township Sewerage Authority memo, dated March 30, 2021, Franklin Township Fire Prevention Director memo, dated March 25, 2021, Environmental Commission memo, undated, requesting some pervious pavement on the site that they already discussed, Franklin Township Police Dept., dated March 10, 2021, Franklin Township Planning report, dated March 9, 2021, CME Associates Engineering report, dated March 3, 2021, and the Somerset County Health Dept., February 1, 2021, and had no objection to the project, as well as from Somerset County Planning Board, dated January 13, 2021 and the Delaware & Raritan Canal Commission (DRCC), who declined jurisdiction based upon the size of the project.

Mr. Sadowski then discussed the topic of tree removal and tree replacement, which came up in Mr. Healey's Planning report and from a previous questioner, noting that Mr. Healey indicated that they complied with the tree replacement requirements Section 222. He stated that they had three (3) existing trees on the property that they were planning to remove and were planning to plant five (5) 2-1/2 inch caliper trees from the recommended list along Hamilton Street and Miller Avenue as well as two (2) additional trees and other shrubbery within the site.

Mr. Rich then asked for clarification regarding the storm water run-off. Mr. Sadowski repeated his earlier testimony by saying that the run-off after construction of the proposed building would be less than what is currently on the property. He then discussed the less than full lawn on the property and told the Board that the proposal including landscaping areas throughout the property. He added that they would be having an underground system beneath the parking lot that the roof leaders would tie into as well as areas of pervious areas to collect the runoff. A discussion ensued, and Mr. Sadowski stated that they could increase the number of pervious paved parking spaces on the site to decrease the possibility of runoff

going downhill on Miller Avenue, but the Township did not allow pervious pavement within the drive aisles in parking areas. He reminded Mr. Rich that they were already capturing 100% of the building's run-off in an underground system. A discussion ensued among the Board. Mr. Healey suggested that, if the Board were inclined to approve the Application, that they could put language into the Resolution stating that the Applicant would have to work out those details with CME Associates. Mr. Lanfrit indicated that they had already addressed all of the run-off coming from the subject site after construction and did not feel that a condition of approval should be included to address water run-off issues down to the end of Miller Avenue. Mr. Daniel Lagana, Board Attorney, expounded upon that topic by explaining that the Applicant's project came in under the maximum amount of impervious coverage allowed in the zone at 81.1% where 85% was allowed, as well as brought up the fact that the project was categorized as a minor development because they were only adding approximately .09 acres increased impervious coverage.

Mr. Sadowski then gave an explanation to the Board and public as to why the project was considered a minor development for storm water management purposes and how it affected the overall storm water management design. He spoke of the differences between the requirements of what was considered a minor development as opposed to a major development when it came to storm water management design. Mr. Sadowski noted that a minor development was required to control run-off to limits of existing conditions, up to 100% of the existing conditions. He went on to state that a major development, then the Applicant had to reduce the proposed flows to percentages less than 100%, with inclusions of water quality into the design and becomes more complex.

Mr. Lagana, Board Attorney, asked Mr. Sadowski regarding some conditions listed in the CME Engineering report regarding storm water management such as providing the maintenance agreement and the manual. Mr. Sadowski indicated he did not have any issues complying with those issues of approval. Mr. Lagana then asked if it were possible to install catch basins in the drive aisle that could be directed to the underground detention system instead of doing impervious pavement. Mr. Sadowski indicated that the system was designed to capture the run-off from the roof only, and they would have to enlarge the underground system to include catch basins, which exceeded what the Applicant was required to do and would allow the roof leaders to overflow if they were attempting to contain the run-off from the parking lot. He also added that they were going to maintain the topography of the property so that run-off would continue as it did today by draining to Hamilton Street and Miller Avenue and then proceeding down Miller Avenue.

Mr. Lagana then asked how tall the proposing fencing on the property would be, and Mr. Sadowski indicated it would be a 6 ft. high PVC fence. Mr. Lagana then asked if Mr. Sadowski felt that the proposed fencing would block headlight glare from the adjacent neighbors coming from the parking lot, and he answered in the affirmative stating that there was also additional landscaping and shrubbery there as well. They then discussed the proposed stacked block wall along the perimeter and stated that it would be a maximum of 4 ft. tall. He noted that the proposed walls were included to accommodate for the drop in topography on the site.

Mr. Lagana then asked Mr. Sadowski to explain how trash would be collected from the site and how the associated vehicle would enter and exit the site. Mr. Sadowski explained that they placed the dumpster on an angle so that the refuse truck could come in and front load

and back out of the site onto Miller Avenue to continue down to Hamilton Street to continue along the County road. A discussion ensued regarding whether there was any room on-site to perform a “K” turn, and Mr. Sadowski stated that if there were cars in the parking spaces, they would not be able to accommodate that kind of turning movement. He noted that he felt that the location chosen for the dumpster was the one that works best for the site. Mr. Sadowski stated that they could discuss the timing for pickups from the dumpster to eliminate collection during the heavy traffic hours of the day.

Mr. Lagana then asked if there was a reason that they were asking for a waiver from the design standards to provide a 6 ft. wide sidewalk at the rear of the building. Mr. Sadowski stated that making the sidewalk 6 ft. wide would require them to push all of their parking closer to the adjacent property and would reduce the buffer there and not be able to provide a landscaping buffer in front of the wall and fence area.

Mr. Rich then asked where the dumpster was located on the Dairy Delite property, and Mr. Sadowski indicated that their dumpster was located just on the other side of the proposed wall/fence behind the proposed area for the dumpster on the subject site.

Mr. McCracken opened a discussion regarding on-street parking, referring to the aerial photograph in Mr. Healey’s Planning report. Mr. Sadowski stated that because of the intersection of Main Street and Hamilton Street, we would not have the ability to add any additional street parking on Hamilton Street other than the one (1) parking space that was already there and approved.

Mr. Healey then discussed the competing objectives here with the Application and stated that whenever they can increase the number of on-street parking spaces, they do increase them to increase the parking supply. He noted that the Police Dept. did bring up the situation with an intersection with Main Street right in front of the Hamilton Street frontage of the subject property. Mr. Healey did state that the County did have jurisdiction there since Hamilton Street is a County roadway, so he felt that the Applicant needed to have a conversation with the County to see how many parking spaces would be allowed and where they could be located. Mr. Lanfrit agreed to speak to the County and confirm what they want to see in that location regarding off-street parking spaces as well as having a discussion with the Township Police Dept. A discussion ensued.

Vice Chair Shepherd then opened the meeting to the public for questions of Mr. Sadowski’s testimony.

Mr. Joseph Rivera, 10 Miller Avenue, Somerset, NJ, came forward and asked how the complex would manage parking for guests, considering it appeared that the on-site parking was just for the residents. Mr. Lanfrit stated that the RSIS standards set forth the number of parking spaces needed for the types of units proposed. He then noted that there were nine (9) units and 17 parking spaces provided and assumes that there were enough parking spaces for residents, with the rest available for guests/visitors. Mr. Rivera asked what controls would be put in place, if any, to control the parking space assignments, and Mr. Lanfrit indicated that it was an open parking lot at that time. He added that if there were issues down the road, the owner of the property could elect to assign parking spaces at that time. Mr. Rivera then asked how they would ensure that the parking lot would not become a general parking lot for the entire neighborhood. Mr. Lanfrit stated that they would most likely

post signs stating that it was not a public parking lot, and tenants would have to register their cars with the owner when they sign their lease and others would be removed by the landlord. Mr. Rivera then asked if they could put the driveway entrance on Hamilton Street rather than Miller Avenue to provide more direct access, and Mr. Lanfrit stated that the County would not allow for that and the current location was preferred for safety concerns. Mr. Rivera then asked who their target audience was and how were they managing lack of green space on-site for pets/children. Mr. Lanfrit then stated that seven (7) of the units were one (1)-bedroom apartments, so there was minimal chance that there would be children living in those; however, they did have green areas on the property. Mr. River then asked if there would be security cameras facing the property, and Mr. Lanfrit stated they had not look into that, but that there probably would be. Finally, Mr. Rivera asked whether the PVC fence would be maintained over time, and Mr. Lanfrit indicated that the property would be maintained by the landlord and that Franklin Township, if notified, would notice the property owner that maintenance was required.

Mr. Mohammed Hassan, 11 Miller Avenue, Somerset, NJ, came forward and asked for clarification regarding run-off from the property. Mr. Sadowski reiterated his earlier testimony to say that all of the water that falls on the subject property would drain towards the parking lot and off the site through the access driveway. He added that there would be no runoff from the site that would go onto adjacent properties.

Mayra Calvan, 22 Miller Avenue, Somerset, NJ, came forward. Ms. Calvan stated that her three (3) children play outside in the street on Miller Avenue and wondered what the consequences of the project would have on the increased traffic on Miller Avenue, specifically. She asked if they could have street bumps placed along Miller Avenue. Mr. Lanfrit indicated that the traffic counts that were done showed that most of the traffic generated from the site would go out to Hamilton Street, with very little going out through the residential neighborhood. As far as providing speed bumps, Mr. Lanfrit stated that Ms. Calvan would have to take that up with the Township Council.

Ms. Sandra Willis, 17 Miller Avenue, Somerset, NJ, came forward and asked if an Impact Statement had been done to assess whether the height of the proposed building would affect the efficiency of solar panels on nearby residences. Mr. Lanfrit indicated that they did not do that kind of study, and that there was no requirement in the ordinance for that. Mr. Sadowski indicated that the building was 70 ft. away from the edge of the property line abutting the residential properties, and any solar panels on the roof of the subject structure would have no impact on any other solar panels. Ms. Willis was also concerned about how close the corner of the building was to the cross walk that goes across Miller Avenue. Mr. Sadowski indicated that there was a stop sign on Miller Avenue, prior to the crosswalk, and that the stop bar, stop sign and cross walk met the municipal traffic standards. Mr. Lanfrit also explained that the both the County and the municipal Police Dept. had reviewed the sight triangles at the intersection. Ms. Willis then asked why they needed to put a building with three (3) stories on that corner, and Mr. Lanfrit stated that the ordinance allowed everything that they were proposing, except for the commercial element on the first floor.

Seeing no one further coming forward, the meeting was closed to the public.

Mr. Mark Siegle, Planner, 724 12th Avenue, Toms River, NJ, came forward and was sworn in. The Board accepted his qualifications. Mr. Siegle utilized an exhibit that had been submitted

as part of the plan. He then described the subject property, the neighborhood, and why they were there before the Board that evening. He noted that the subject property was abutted by detached residential uses to the north, commercial property to the east, a detached residential use across Miller Avenue to the west, and a vacant lot and mixed-use building across Hamilton St. to the south. Mr. Siegle then told the Board that multi-family residential uses were permissible in the zone, but only permitted above an above-ground commercial use. He noted that they were seeking a D(1) Use Variance relief from the Board to be able to put residential units on the first floor. Mr. Siegle testified that the proposal met all other bulk standards for parking, setbacks, and coverages. He did add, however that there was a minor deviation for height. He then went on to discuss how a D(1) variance required an analysis as to how the proposal met the three (3)-prong test set forth in the Medici case, asks if there were any special reasons in relation to the proposed use that benefitted the public good and advanced the purposes of zoning. He added that the second prong included whether there were any substantial detriments to the public good, the zoning plan, the zone ordinance, to the proposed development. Thirdly, he described the next prong as to whether the positive benefits substantially outweigh any detriments from the proposed development. He also mentioned the enhanced burden of proof that comes with the Medici case which was to reconcile the granting of the variance when zoning did not permit the use within the zone. He then drew the Board's attention to the positive criteria, by stating that the proposed project advanced the purposes of zoning found in Section D-2 of the Municipal Land Use Law (MLUL) to include Purpose E by providing an appropriate population density concentrations that would preserve the environment and was achieved by developing multi-family housing among an accessible, walkable corridor with the proposed setbacks, height, parking, in accordance with the Master Plan and zoning ordinance. He further went on to state that the Master Plan found that the proposed proportions were appropriate for the subject location. Mr. Siegle then indicated that the proposal supports Purpose G by providing sufficient space for a variety of uses, including multi-family housing to meet the needs of New Jersey residents with access to jobs, transit, shopping, and schools without reliance on cars to access these items. Mr. Siegle also indicated that the project also promoted Purpose I for the inclusion of a desirable visual environment that included an attractive residential building with interesting architectural elements on a residential scale and by providing an aesthetic upgrade to the right-of-way by providing the standard streetscape on both frontages. The positive criteria for granting the D(1) Use Variance were satisfied because the site was particularly suited for the proposed development as it furthers multiple purposes of zoning, in the form of setbacks, coverages and heights that comply in the zone. He further testified that it also promoted the general welfare by providing the construction of the type of housing units, specifically smaller, residential units, which were encouraged in the 2015 Hamilton Street Master Plan Update and 2016 Master Plan Re-Examination in a walkable location which would support commercial uses along Hamilton Street by creating a greater population in proximity to such uses. In addressing the negative criteria, he told the Board and public that the Applicant must prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance. He noted that the revitalization of the Hamilton Street corridor was included in both the 2015 Hamilton Street Master Plan as well as the 2016 Master Plan Re-Examination to encourage private investment in redevelopment as a major goal. Mr. Siegle testified that the proposal was consistent with that intent and fostered an attractive, vibrant, pedestrian-friendly Main Street type of environment consisting of mixed-use development. He also indicated that minus the commercial element within the proposal, it did provide an attractive building that contributes positively to the pedestrian realm and would eliminate some of the negatives of

commercial uses that included excessive parking located in the front of the building along Hamilton Street, large minimum setbacks, multiple driveway access points with long, expansive blank walls. He then testified that the project included proposed height, setbacks, and parking lot location consistent with Main Street type development and reduced site access drives by removing a curb cut off of Hamilton Street, further benefitting the walkability of the area. Also included in the project, according to Mr. Siegle were the standard streetscapes on both frontages consistent with the Hamilton Street design standards. Mr. Siegle then drew the Board's attention to the change in circumstance since the zoning was last updated and removed residential only buildings from the list of approved uses in the HBD Zone. He noted that the growth of e-commerce in recent years, which had been accelerated by the COVID-19 pandemic, thereby changing consumer preferences, and resulted in the closures of many brick and mortar commercial businesses. He then noted that currently, there lies a significant amount of commercial space lying vacant along the Hamilton Street corridor, with many recently constructed. Mr. Siegle showed a visual representation of that very scenario in the exhibit he was showing on the screen that showed the number of vacant commercial spaces along Hamilton Street. He indicated that the vacancies were in both the older as well as the newer buildings in the area. Due to the testimony given and the data shown in the exhibit, Mr. Siegle expressed his opinion that the benefits to the public good and welfare would substantially outweigh any detriments from the granting of the D(1) Use Variance. He then stated that the height variance could be justified under a C(2) justification or flexible "C" where the benefits in granting the variance were shown to be greater than another development alternative. He added that corner lots in the HBD Zone were encouraged to have accentuated corners that was provided by the proposed standing seam roof and pillars that exceeded the maximum height allowed in the zone (40 ft.) by 2 ft. and a few inches. Mr. Siegel felt that by eliminating that element, it would lessen the architectural interest of the corner, and testified that the benefits would outweigh any benefits.

Mr. Siegle stated that he felt the residential only building that was being proposed would have a positive effect on the neighborhood because if a commercial use were constructed on the first floor, there would be more "come and go" traffic possibly clogging up the neighborhood side streets. He added that there would also be less trips generated from a residential building than a commercial use and the addition of three (3) more residential units would also support the commercial business in the area as well as those that come along in the future.

Vice Chair Shepherd expressed his concern for having first floor residential units creating a "dead space" on Hamilton Street. Mr. Siegle stated that he felt the building, as proposed, fostered a walkable environment with the building pulled right up to the front of the property line. He added that the front of the building would get the same treatment as other buildings along Hamilton Street that complied with the HBD Streetscape.

Mr. Mohammed Hassan, 11 Miller Avenue, Somerset, NJ, came forward. He told the Board that the ice cream parlor that was next to the proposed site, had typically very long lines when they were open for business, with the line forming and going down the sidewalk in front of the proposed property. He stated that he felt these lines would queue in front of people's apartments should the Application be approved. Mr. Siegle indicated that he felt that that was an operations issue for the Dairy Delite to address to create a more orderly queue onto their site. He added that they were trying to foster a pedestrian-friendly environment, and that a first-floor resident should expect to have active pedestrian movements in front of their apartments.

Ms. Sandra Willis, 17 Miller Avenue, Somerset, NJ, came forward. Ms. Willis did not see the proposed location as a particularly beneficial spot for one (1)-bedroom apartments that might attract college students who would ride their bicycles down to Easton Avenue where they congregate. A discussion ensued and an explanation was given to Ms. Willis as to what the Zoning Board was hearing and deciding upon that evening. Mr. Siegle, Mr. Lagana, Board Attorney, Mr. Lanfrit and Mr. Healey, Township Planner, all weighed in and explained to Ms. Willis the elements of the testimony that the Board had to consider based upon the testimony given at the hearing.

Seeing no one coming forward, Vice Chair Shepherd closed the meeting to the public.

Vice Chair Shepherd then asked if a Traffic Consultant would be providing testimony that evening. Mr. Lanfrit stated that if the Board wanted to hear Traffic testimony, he could carry the hearing to the next meeting. However, Mr. Lanfrit stated that the issue with respect to traffic was that the site was designed and met all of the standards for the parking spaces and was all contained in a report submitted with the Application. He added that they had adequate parking on the site, pursuant to the RSIS standards and that the sight distances at the intersection were adequate. The Board agreed that it was unnecessary to have the Traffic Consultant provide testimony since a residential use of this nature would not substantially change the traffic flow in the area, particularly since there would not be any commercial element to the building.

Mr. Lagana, Board Attorney, then asked Mr. Sadowski for clarification on something that they spoke about earlier in the hearing regarding storm water management. Mr. Lagana's question was related to a comment in CME's Engineering report related to Ordinance 330-5. In regard to the overflow of the system, Mr. Sadowski indicated that the overflow would occur with the drainage leaders from the roof in an unusually heavy rain event where the underground system would not be able to handle the volume. He noted that the overflow would drain over land either to Hamilton Street and then down to Miller Avenue or onto Miller Avenue directly. Mr. Lagana then asked if the three pervious paved parking spaces would prevent the water from flowing off of the parking lot into Miller Avenue. Mr. Sadowski indicated that the pervious pavement would only do that for the designed storm, which was three (3) inches of runoff for every square foot of impervious cover. He went on to explain that any storm above that would not allow the pervious asphalt to handle it and that additional runoff then would then run onto Miller Avenue. Mr. Lagana then read the following from the ordinance, "The infiltration measures shall be designed with an overflow to the surface which shall be stabilized and directed to an existing storm water conveyance system or in a manner to keep the overflow on the developed property." Mr. Sadowski indicated that they did not have a storm water conveyance system in place and were going to deal with the run-off as he explained. Mr. Lagana indicated that he would defer to the reviewing engineer and have the Applicant comply with the requirements of a minor development as part of any condition of approval. Mr. Sadowski reiterated his earlier testimony stating that they would comply with all of the comments of the CME Engineer's report and revise the plans, as necessary, to satisfy all conditions.

Mr. Rich wanted to put on record the letter the Board received, dated March 25, 2021, from the office of Fire Prevention and wanted to make sure that the Applicant would be able to comply with the four (4) items included. Mr. Lanfrit stated that they did already agree to comply with all of the comments on the Fire Prevention letter.

Mr. Reiss wanted to make sure that the Board agreed to not allow bars on the ground floor windows. Vice Chair Shepherd indicated that it was on his list to include in any Resolution.

Vice Chair Shepherd then opened the meeting to the public for comments regarding the Application.

Mr. Vincent Dominach, Township Economic Development Director and Executive Director of the Hamilton Advisory Board, came forward. He told the Board and public that the Hamilton Advisory Board was responsible for the upkeep of the area, and the Board reviews applications like the one they were hearing that evening. He added that he was happy to report that the Advisory Board unanimously agreed and recommended that the Application that is being discussed, as presented that evening, be approved. Mr. Dominach indicated that the importance of not having the retail component on that type of building in that set location was important because there was probably a 40%-50% vacancy rate down the street and the idea with the Master Plan and subsequent reports was to get people on the street. He stated that to add retail space to the subject building would likely remain vacant. He then explained that the majority of the residential units in the building were one (1)-bedroom units, that the Advisory Board recommended, so that it would not introduce kids. From an economic development perspective, Mr. Dominach stated that it was especially important to note, as Mr. Siegle already pointed out in his analysis that evening, that you had to look at the street as a whole. He added that the fact is that the street needed more people on the street and did not need more commercial spaces at that time as recommended by the Hamilton Advisory Board. He then discussed the minor height variance that was being requested and noted that the Advisory Board also recommended that the variance be granted because, as the professionals stated, there was supposed to be an architectural treatment on buildings located at the corner intersections in that district. He then stated that it would not look the same without that treatment. Mr. Dominach then pointed out that the Applicant testified that they agree to comply with all applicable staff reports and meet all storm water regulations. In conclusion, Mr. Dominach indicated that he and the rest of the Hamilton Advisory Board unanimously, and without objection, recommend that the subject Application be approved as submitted.

Mr. Joseph Rivera, 10 Miller Avenue, Somerset, NJ, came forward and was sworn in. Mr. Rivera gave his opinion regarding the general nature of notifications regarding upcoming projects coming to an area, stating that he felt the Township could do a better job of informing the residents other than just sending a letter. He indicated that he did find out that the Township had a website that could be accessed for more information from attending the meeting that evening, which was helpful. Mr. Rivera indicated that he felt that the Applicant was only doing what was necessary and not considering the impacts to the neighborhood the project was being built in. He gave the example of solar panels that many residents were already invested in and that he was in the process of getting them, and the Applicant was building a three (3)-story building with no concern for the effect it would have on residents' existing solar panels. He felt that there should be a solar panel assessment done for the neighborhood to ensure that their investment would not be made less efficient due to the height of the proposed building. Mr. Rivera then expressed his concern for what the new tenants would bring to the area, especially if they were college students who would normally just go down to Easton Avenue where bars, restaurants and other stores already exist. He also stated that he had a concern for noise level if the tenants would be college students living

there. Mr. Rivera then expressed his concern for the lack of controls in the parking lot, with the overflow going out onto Miller Avenue, as well as the potential for tenants hanging out in the parking lot and having BBQ's and the security concerns that go with that. He also mentioned the perceived impacts to quality of life for residents without having much green space for pets/kids.

Ms. Sandra Willis, 17 Miller Avenue, Somerset, NJ, came forward and was sworn in. Ms. Willis expressed her opinion that the large building proposed was totally out of character for the neighborhood that was remarkably diverse, culturally and by family types of all kinds, in a quiet, family neighborhood that had green spaces and was not "urban" in nature. She was concerned for property values and felt that most Boards would take into consideration the character of the neighborhood when reviewing applications the proposal would be placed in. She felt the building should be only two (2) stories high and no more to not exceed the height of a two(2)-family home. She felt that the proposal would attract transient tenants, which would devalue their properties and ruin the character of the neighborhood. Ms. Willis, in her conclusion, asked the Board not to approve the project.

Mr. Mohammed Hassan, 11 Miller Avenue, Somerset, NJ, came forward and was sworn in. Mr. Hassan indicated that his home was directly behind the proposed building. He stated that he felt that Hamilton Street should be all commercial buildings, with no residential involved. Mr. Hassan then told the Board that being directly behind the proposal, his privacy would be affected by having the third story residents able to look into his property. He stated that he was also looking into solar panels and felt that it would not be feasible for him any longer due to the shadow of the proposed building. Mr. Hassan was also not happy that he and his family would be subjected to the trash from the complex right next to his property as well as extra traffic/noise from residents/guests coming and going at all hours and safety concerns for his children. He also expressed concern that there was no green space for potential children who might live in the apartments and felt that the value of his home would now be devalued due to the proposed apartment building being placed right next to his property. He also felt that the first floor of the building, if approved, should include commercial to bring services to the community/neighborhood. Mr. Hassan told the Board that he was opposing the construction of the apartment building and hoped that they would do the same.

Ms. Dennise Walton, 593 Hamilton Street, Somerset, NJ, came forward and was sworn in. Ms. Walton stated that she owned the property on the corner of Hamilton St. and Miller Avenue directly across the street (Miller Avenue) from the subject property. She told the Board that she had lived at her residence for 25 years and opposed the Application because she felt it would negatively affect the quality of life on Miller Avenue and surrounding areas for the following reasons, including the congestion that a nine (9)-unit apartment building would bring, the noise level and the parking concerns that did not accommodate for guests. She mentioned that the church across the street is not as busy due to the pandemic, but before that, they would use Miller Avenue for their parking on both sides of the street. She said she had safety and security of the building as well as for the children who walk on the sidewalks to get busses and who frequent the ice cream store. Ms. Walton also was concerned should the apartments be rented by college students.

Mr. Henry Lee, 23 Miller Avenue, Somerset, NJ, came forward and was sworn in. Mr. Lee stated that he had lived in his residence for over 25 years in a quiet neighborhood and was concerned for the noise, congestion, and traffic the proposed apartment building would bring.

Mr. Lee stated that he was opposed to the project because the neighborhood was currently comprised mostly of single-family homes with children playing in the area and he was concerned for their safety.

Ms. Mayra Calvan, 22 Miller Avenue, Somerset, NJ, came forward and was sworn in. Ms. Calvan expressed her concern that their quiet neighborhood would be changed with the inclusion of the proposed apartment building. She expressed concern for the safety of her three (3) children who play outside and on the street not knowing who the tenants would be. Ms. Calvan also indicated that she was afraid that the noise level and traffic in the area would increase and change the character of the neighborhood.

Mr. Carl Wright, 139 Fuller Street, Somerset, NJ, came forward and was sworn in. Mr. Wright indicated that he was the Councilman of the 4th Ward and wanted to make sure that everyone involved had taken note of the complaints of the residents he represented. He enumerated the concerns stated by the residents as building height to the parking. He represented that if the County did not do what the Applicant wanted, he felt that they needed to take a better look at that situation. Mr. Lanfrit opposed Mr. Wright being able to speak related to the Application since he was a current Councilman in the Township. Mr. Lagana interjected by stating that if Mr. Wright was a current Township Council member, he felt that his opinion could have undue influence on the Board and could be prejudicial. Mr. Lagana noted that the Board had heard all of the testimony and all of the public questions/comments and felt that Councilman Wright giving his own opinion would be inappropriate at that time. When questioned by Vice Chair Shepherd as to whose decision it was to allow or not allow Councilman Wright to speak, Mr. Lagana, Board Attorney, indicated that the Applicant's attorney, Mr. Lanfrit, expressed an objection to Mr. Wright speaking, and that he gave his legal opinion on the matter. Mr. Lagana then added that ultimately, the Board could decide if they would allow Mr. Wright to speak. Vice Chair Shepherd, after hearing that Mr. Lagana's description and explanation of the reasoning to not allow Councilman Wright to speak on the matter was based upon a legal protection for the Board of Adjustment, the Vice Chair agreed to not allow Mr. Wright's opinion into the record. Councilman Wright also gave deference to Mr. Lagana's legal opinion and Vice Chair Shepherd's decision to not allow him to speak.

Seeing no one further wishing to speak on the Application, Vice Chair Shepherd closed the public portion of the hearing.

Mr. Lanfrit then gave his closing summation and included the fact that the subject property was not in the R-7 Residential Zone. He indicated that the property was within the Hamilton Street Business District (HSBD) and then went on to explain the purpose of the Hamilton Street Business District, which was to encourage commercial and residential development as well as smaller apartments, which was the focus of the Application. Mr. Lanfrit stated that including commercial business on the first floor would have a greater impact on their peace and quiet than a building with all residential units would. He then respectfully requested that the Board grant the D(1) Use Variance, the de minimus height variance and the Site Plan approval that they were seeking. A discussion ensued among the Board.

Mr. Shepherd made a motion to approve the Application for D(1) Variance for first floor apartments and the C(2) Variance to allow the building to be as tall as 42 ft. He noted that the Resolution would be limited in that no tenants in the apartments on the first floor would be allowed to install bars on any windows, that the landlord shall maintain all site plan amenities

without regard to any expiration and that the Applicant and the Township Engineer shall discuss and confirm that the drainage plan provided by the Applicant met the requirements for a project of that size. Additionally, Mr. Rich added that the Applicant needed to ensure that the proposed fence was kept in good repair and that an array of solar panels was placed on the roof. Mr. Lagana, Board Attorney, added that high impact windows should be installed on the first-floor apartments, that there be compliance with the correspondence from the Fire Prevention Director, submitted March 25, 2021, to include installation of bumper curbs at the rear of the building to substantiate the RSIS waiver, confer with the Police Dept. regarding any parking spaces in front of the building, and comply with all of the Engineer report requirements. Mr. Reiss seconded the motion and the amendments, and the roll was called as follows:

FOR: Ms. Bethea, Mr. McCracken, Mr. Reiss, Mr. Rich, Mr. Rosenthal, Vice Chair Shepherd, and Mr. Procanik

AGAINST: None

MEETING ADJOURNED:

Vice Chair Shepherd made a motion to adjourn the meeting at 10:00 p.m. The motion was seconded, and all were in favor.

Respectfully submitted,

Kathleen Murphy, Recording Secretary
April 24, 2021