The Chairman called the regular meeting to order at 7:42 p.m. The meeting was video-streamed and broadcast.

OPEN MEETING STATEMENT
“In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this special hearing of the Planning Board of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, NJ, was mailed to the Bernardsville News, Bernardsville, NJ, and to the Courier News, Bridgewater, NJ all on January 11, 2016, and was electronically mailed to all those people who have requested individual notice.

“The following procedure has been adopted by the Bernards Township Planning Board. There will be no new cases heard after 10:00 p.m., and no new witnesses or new testimony heard after 10:30 p.m.”

ROLL CALL:
Members present: Alper, Axt, Baldassare, Harris, Kleinert, Malay, Piedici, Santoro, Moschello, Ross, Plaza

Members late: none

Members absent: none

Board Attorney Jonathan Drill, Esq., Board Engineer Tom Quinn, Board Planner David Banisch, and Township Planner David Schley were also present.

APPROVAL OF MINUTES
The motion was made by Ms. Alper and seconded by Ms. Kleinert to approve the minutes of November 3, 2015 as drafted.

Roll call:
Aye: Alper, Kleinert, Piedici, Santoro, Plaza
Abstain: Malay
(Mr. Baldassare, Ms. Axt, Mr. Harris, Mr. Moschello and Mr. Ross were ineligible to vote)

Motion carried

APPROVAL OF CHARGES AGAINST ESCROW ACCOUNTS

Roll call:
Aye: Alper, Axt, Baldassare, Harris, Kleinert, Malay, Piedici, Santoro, Plaza
Motion carried

APPROVAL OF RESOLUTIONS

RESOLUTION – ELRAC, LLC d/b/a Enterprise Rent-A-Car (PB15-006) - Block 1802, Lot 24 – 135 South Finley Avenue – Dismissal without Prejudice of Preliminary and Final Site Plan with Bulk Variances

The motion was made by Ms. Alper and seconded by Ms. Piedici to approve the resolution dismissing the application for lack of subject matter jurisdiction.

Roll call:
   Aye:  Alper, Axt, Baldassare, Harris, Kleinert, Piedici, Moschello, Plaza  
   (Mr. Malay & Mr. Ross were ineligible to vote)

Motion carried

RESOLUTION – Memorial Sloan Kettering Cancer Center (PB15-005) – Block 11301, Lot 8 – 136 Mountain View Boulevard – Amended Preliminary and Final Site Plan, Phase 1

Mr. Drill said four further revisions had been made to the draft resolution. The motion was made by Ms. Alper and seconded by Ms. Kleinert to approve the resolution incorporating these amendments.

Roll call:
   Aye:  Alper, Axt, Harris, Kleinert, Santoro, Plaza  
   (Mr. Baldassare, Mr. Malay, Ms. Piedici, Mr. Moschello and Mr. Ross were ineligible to vote)

Motion carried

Appointment of Landscape Committee – Bocina/Winter Major Subdivision – Walden Place

Ms. Axt, Mr. Harris and Mr. Santoro volunteered to be on this committee. The motion was made by Ms. Piedici, seconded by Mr. Malay, to accept these nominations; this was approved by a voice vote in favor.

HEARING – MOUNTAINVIEW CORPORATE CENTER, LLC (PB15-007) – Block 11301, Lot 1 – 180-181 Mountain View Boulevard – Final Site Plan Approval, Buildings E & F

Thomas Malman, Esq. represented the applicant. He said the applicant received preliminary approval for Buildings E & F in a resolution adopted on May 8, 2007. The applicant requested and was granted two one-year extensions of the preliminary site plan approval on September 8, 2009 and December 7, 2010. The applicant twice previously applied for final site plan approval; for both of those applications, the applicability of the Permit Extension Act (PEA) was acknowledged and those applications for final site plan approval were dismissed without prejudice.

Mr. Malman noted that the real estate demand for the approved office buildings was still low. The applicant will abide by the standard time limitation conditions. Mr. Malman said the applicant would comply with the comments in Mr. Schley’s March 1, 2016 review memo.
Public hearing was opened for questions of the applicant and comments on the application. Hearing none, the public portion of this hearing on this application was closed.

The motion was made by Mr. Santoro and seconded by Ms. Piedici to approve the application subject to the applicant complying with the comments in Mr. Schley’s March 1, 2016 review memo, including the standard time limitation conditions for final site plan approval.
Roll call:
   Aye:  Alper, Axt, Baldassare, Harris, Kleinert, Malay, Piedici, Santoro, Plaza
Motion carried.

CONTINUED PUBLIC HEARING – Ecological Solutions for Mine Brook Road, LLC (PB12-005B) – Block 4701, Lots 2.01 to 2.13 – Amended Preliminary and Final Site Plan & Subdivision
Ms. Alper, Mr. Baldassare, and Ms. Piedici recused themselves from voting on this application. Mr. Moschello and Mr. Ross are eligible to vote.

Andrew Camelotto, Esq. represented the applicant. He said this was the second hearing on an amendment to to remove a bio-retention swale from the original approved plans.

Michael Barth, 14 Annin Road, previously sworn, continued his questions of Mr. Eric Rupnarain, PE, on how the drainage system functioned, why the Board hired a hydrogeologist for an earlier application, the function of the swale that will be removed, the impact of snow and ice on the proposed system, where ground water recharge will be directed, and how the system is evaluated. Mr. Barth also asked about the flow of water on and over Mine Brook Road, the impact of this modification for the Dead River Bridge, and location of water collection swales along Mine Brook Road.

Mr. Plaza asked Mr. Rupnarain how the removal of the swale affects runoff for the site and how runoff is handled on the southern side of Mine Brook Road. Mr. Rupnarain said the swale was designed to direct water into a detention basin.

There was discussion on the impact of the removal of the swale on the quantity of water retained. It was noted that water quality issues have been addressed by this storm water design and the swale is not required to meet NJ Department of Environmental Protection and ordinance water quality standards.

Hearing no further questions, the public portion of this hearing for questions of Mr. Rupnarain was closed.

Mr. Rupnarain said the applicant would comply with all comments in Mr. Schley’s December 16, 2015 review memo.
Public hearing was opened for comments on the application. Michael Barth, 14 Annin Road, was sworn in. He asked the Board to deny this application, based on the applicant’s engineer having no calculations of water being retained in the swale. He said he has observed water going over Mine Brook Road. He is concerned that the applicant’s small pond will overflow and will impact the sewer system.

Hearing no further comments, the public portion of this hearing on this application was closed.

Board members discussed the testimony presented and agreed with the applicant that the storm water system is compliant without the swale and the amended plan is better because it will require much less land disturbance.

The motion was made by Ms. Kleinert and seconded by Mr. Santoro to approve the application subject to compliance with the comments in Mr. Schley’s December 16, 2015 review memo.

Roll call:
Aye: Axt, Harris, Kleinert, Malay, Santoro, Moschello, Ross, Plaza
Motion carried.

Comments by Members –
The review and approval of charges from Board professionals against escrow accounts was discussed. Mr. Drill cited case law and Mr. Malay explained why the Planning Board had asked to do this. There was discussion on who can sign the purchase orders; Ms. Florio will discuss this with the Township Treasurer.

There being no further business, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Frances Florio
Secretary to the Board
BERNARDS TOWNSHIP PLANNING BOARD

ELRAC, LLC d/b/a ENTERPRISE RENT-A-CAR
BLOCK 1802, LOT 24
135 SOUTH FINLEY AVENUE

APPLICATION #PB15-006

RESOLUTION MEMORIALIZING DISMISSAL OF APPLICATION FOR LACK OF SUBJECT MATTER JURISDICTION

WHEREAS, ELRAC, LLC d/b/a Enterprise Rent-A-Car (the “applicant”) submitted an application to the Bernards Township Planning Board (the “Board”) seeking site plan approval with “c” variances from various zoning ordinance regulations and exceptions from various site plan ordinance requirements (the “application”) to allow renovations to the 1,121 square foot first floor of the existing 2,023 square foot two-story frame building (the “building”) on property situated in the B-1 village business zoning district (the “B-1 zone”) located at 135 South Finley Avenue and designated on the Township tax map as Block 1802, Lot 24 (the “property”), for the purpose of changing the use of the property to a rental car facility consisting of a rental car office on the first floor of the building and an inventory of rental cars to be parked outdoors in an existing 12-space parking lot on the property (the “proposed development” or “proposed rental car facility”);

WHEREAS, the application was scheduled for a public hearing by the Board on February 16, 2016, at which time the Board determined for the reasons set forth below that the proposed rental car facility use was not permitted in the B-1 zone and was, therefore prohibited by ordinance section 21-10.3 which provides that “where a use is not specifically permitted in any zone, it is prohibited”;

WHEREAS, the Board then, by motion duly made and seconded, voted to dismiss the application for lack of subject matter jurisdiction;

WHEREAS, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN DISMISSING THE APPLICATION:

1. Ordinance section 21-10.6, subsection “a.1.,” identifies the permitted uses for the B-1 zone, provides that the B-1 zone is “designed for retail sales and services,” and lists approximately a dozen uses as being “permitted,” with the following two uses being the only permitted uses that could arguably apply here:

(a) Retail sales and services.
(b) Professional offices.
2. The applicant appears to have initially taken the position that the proposed rental car facility was a permitted “office” in the B-1 zone. The applicant then appears to have changed its position and currently takes the position that the proposed rental car facility is a permitted “retail sales and services” establishment.

3. As to the applicant’s position that the proposed rental car facility is a B-1 zone permitted “retail sales and services” establishment, the Board notes and finds that retail sales and services is defined in ordinance section 21-3 as follows (emphasis added on certain words and phrases):

RETAIL SALES AND SERVICES
Shall mean the sale of goods for use or consumption off the premises, which goods are intended to meet the food, clothing, furnishing or recreational needs within the Township and/or the sale of services, which services are either arranged for or take place on the premises. Such sales and services shall be available to all residents of the Township regardless of age or sex.

The Board finds and concludes that the definition of “retail sales and services” uses does not include automotive uses. Specifically, the Board finds and concludes that the proposed rental car facility use is not a sale of goods, does not fall within the “food, clothing, furnishing or recreational needs” aspect of the definition, and does not fall within the category of “sale of services, which services are either arranged for or take place on the premises.” As such, the Board finds and concludes that the proposed car rental facility is not a permitted “retail sales and services” establishment.

4. While the applicant no longer takes the position that the proposed car rental facility is a permitted office in the B-1 zone, for purposes of completeness, the Board finds and concludes that the proposed rental car facility use does not fall within the definition of a “professional office” as is permitted in the B-1 zone. Office is defined in ordinance section 21-3 as follows:

OFFICE
A. GENERAL OFFICE
Shall mean executive and administrative offices including professional offices.
B. PROFESSIONAL OFFICE
Shall mean office uses for the medical, legal, financial, design, real estate and scientific (excluding research) professions and the arts.

The Board finds and concludes that, while the proposed rental car facility use most certainly includes a “general office,” it most definitely does not involve a “professional office.”
5. Certain automotive uses are permitted in the B-1 zone. Specifically, ordinance section 21-10.6 a.3 permits “Automotive service stations” as a conditional use as follows: (a) Automotive service stations in accordance with Section 21-12. Automotive service stations are defined in ordinance section 21-3, as follows:

AUTOMOTIVE SERVICE STATION
(GASOLINE STATION)
Shall mean a place where gasoline, kerosene or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly to motor vehicles, including sale of accessories, greasing, oiling and light motor service on the premises.

Significantly, however, there is no mention of automobile, motor vehicle or car rental in the definition of “automotive service station.” As such, the Board finds and concludes that the proposed car rental facility is not a conditionally permitted “automotive service station” in the B-1 zone.

6. The only place in the zoning ordinance where motor vehicle rental is referenced is in the ordinance section 21-3 definition of public garages. Ordinance section 21-3 defines public garages as follows (emphasis added on certain words and phrases):

GARAGE, PUBLIC
Shall mean any building, premises or land, other than an automotive service station, in which or upon which a business, service or industry involving the storage, maintenance, cleaning or major repair of motor vehicles, or the retail sale or rental of new or used motor vehicles, prepackaged motor fuels or motor vehicle parts is conducted or rendered.

Despite the fact that the proposed car rental facility is included in the definition of “public garage,” the further fact is that “public garages” are not listed as permitted in any zone district in the Township. This fact leads the Board to conclude that the proposed car rental facility is not a permitted use.

7. The Board notes and stresses that ordinance section 21-10.3 (which is titled “Prohibited Uses”) provides that “where a use is not specifically permitted in any zone, it is prohibited.” Because automobile, motor vehicles and/or car rental is not listed as a principally or conditionally permitted use in the B-1 zone, the Board concludes that the proposed car rental facility is a prohibited use on the property in accordance with ordinance section 21-10.3.
8. While N.J.S.A. 40:55D-70b expressly authorizes a zoning board of adjustment to issue interpretations of the zoning ordinance and to hear and decide special questions, and such interpretations are final and binding on the zoning officer, other enforcement officials, and on the planning board, Colts Run Civic Ass’n v. Colts Neck Board of Adj., 315 N.J. Super. 240, 246 (Law Div. 1998), our courts have recognized that planning boards have implicit authority to interpret ordinances if required to decide applications pending before them, including interpreting ordinances to determine whether or not the planning board has subject matter jurisdiction over an application pending before it. Fallone Properties v. Bethlehem Planning Board, 369 N.J. Super. 552, 566-567 (App. Div. 2004); Terner v. Spyco, Inc., 226 N.J. Super. 532 (App. Div. 1988); Galanter v. Howell Planning Board, 211 N.J. Super. 218 (App. Div. 1986). The Board concludes that it has authority to interpret the Township ordinances here in order to determine whether or not it has subject matter jurisdiction over the application.

9. Based upon all of the factual findings and legal conclusions set forth above, the Board’s ultimate legal conclusions are as follows:

a. Because the proposed car rental facility is a prohibited use on the property, the application requires a “d(1)” use variance pursuant to N.J.S.A. 40:55D-70d(1) in order for the applicant to construct and operate the proposed development on the property.

b. In accordance with N.J.S.A. 40:55D-20, -60 and -70d, only the Board of Adjustment has subject matter jurisdiction to grant applications involving “d” type variances.

c. As such, the Board concludes that it does not have subject matter jurisdiction over the application and must dismiss the application on that basis.

NOW, THEREFORE, BE IT RESOLVED BY THE BERNARDS TOWNSHIP PLANNING BOARD, BY MOTION DULY MADE AND SECONDED ON FEBRUARY 16, 2016, THAT THE APPLICATION IS HEREBY DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

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VOTE ON MOTION DULY MADE AND SECONDED ON FEBRUARY 16, 2016:

THOSE IN FAVOR: ALPER, AXT, BALDASSARE, HARRIS, KLEINERT, PIEDICI, SANTORO, MOSCHELLO & PLAZA.

THOSE OPPOSED: NONE.

************************************************************************
The above memorializing resolution was adopted on March 8, 2016 by the following vote of eligible Board members:

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I, Frances Florio, Secretary to the Planning Board of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Planning Board on March 8, 2016.

___________________________________
FRANCES FLORIO, Board Secretary
WHEREAS, Memorial Sloan Kettering Cancer Center (“MSK”) owns a 25.615 acre lot in the Mountain View Corporate Center with a street address of 136 Mountain View Boulevard which is designated on the Bernards Township (the “Township”) tax maps as Block 11301, Lot 8 (the “property”), which property is situated in the E-3 Office zoning district (the “E-3 zone”), and the applicant obtained from the Bernards Township Planning Board (the “Board”) as memorialized in a Resolution adopted on July 20, 2004 amended preliminary and final site plan approval with variances and exceptions (the “2004 approvals”) to permit the construction of an outpatient cancer care center to consist of a building containing 162,290 square feet of floor area and 406 parking spaces in two phases: Phase 1 consisting of 85,000 square feet of floor area and 277 parking spaces, 269 of which were to be located in a two-level parking deck with 8 surface spaces (the “Phase 1 improvements”); and Phase 2 consisting of building and parking expansions to add (a) 77,290 square feet of floor area to the building for a total of 162,290 square feet of floor area, and (b) 129 parking spaces for a total of 406 parking spaces (the “Phase 2 improvements”) (together referred to as the “proposed development”);

WHEREAS, the applicant constructed all of the Phase 1 improvements, except a total of 274 instead of 277 parking spaces were constructed in Phase 1, which means the 129 parking spaces to be constructed in Phase 2 will result in a total of 403 parking spaces for the proposed development and, in addition to the Phase 1 improvements, the applicant constructed 4,035 square feet of the Phase 2 floor area, such that a total of 89,035 square feet of floor area has been constructed;

WHEREAS, the applicant made application to the Board for amended preliminary and final site plan approval for Phase 1 of the proposed development (the “application”) to increase the number of Phase 1 surface parking spaces by 104, which would increase the total approved Phase 1 parking spaces from 274 to 378, but some of the 104 parking spaces are proposed in the same location as the existing 8 surface spaces so the net increase in parking spaces under the proposed amended site plan for Phase 1 of the proposed development will be 96 spaces, which would increase the total approved
Phase 1 parking spaces from 274 to 370 and, because the proposed Phase 1 expanded parking area is in the same location as 20 of the Phase 2 parking spaces, the net increase in the total overall number of parking spaces after construction of the Phase 2 improvements will be by 76 spaces, which would increase the total overall number of spaces for the proposed development from 403 to 479 (the “proposed amended surface parking spaces”);

WHEREAS, during the course of the hearing on the application, the applicant amended the application to request modification of a portion of condition #15 on page 7 of the 2004 resolution regarding the hours of lighting, and the notices prepared by the applicant contained a sufficient “catch-all” provision to cover the request for the modification of the condition so that the Board retained procedural jurisdiction over the application;

WHEREAS, in addition to the proposed Phase 1 amended surface parking spaces, the application also includes the following amendments to Phase 1 of the proposed development: new and relocated site light poles, new and transplanted shade and ornamental trees, a bio-retention basin with an underdrain and a manufactured water quality treatment device (together referred to as the “proposed Phase 1 amended site improvements”);

WHEREAS, the Board has exclusive subject matter jurisdiction over the application in accordance with N.J.S.A. 40:55D-20, -46, -50 and -51;

WHEREAS, the application was deemed to be complete;

WHEREAS, a number of documents were submitted by the applicant, Board experts, Township experts and officials, and outside agencies with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. “Memorial Sloan Kettering Amended Phase 1 Preliminary and Final Site Plan” prepared by Christopher M. Hager, PE (of Langan Engineering) dated and signed June 20, 2015, last revised August 13, 2015, consisting of 16 sheets (the “amended site plan”),

2. “Parking Evaluation” Memorandum prepared by Langan dated June 8, 2015 (the “Parking Memorandum”),

3. “Stormwater Management Design” Memorandum prepared by Langan Engineering dated June 30, 2015 (the “Stormwater Memorandum”),
4. “General Soils Information” Memorandum prepared by Langan Engineering dated August 25, 2015 (the “Soils Memorandum”), and

5. “Environmental Impact Assessment” Memorandum prepared by Langan Engineering dated August 26, 2015 (the “EIA”);

WHEREAS, the Board considered the application at a duly noticed public hearing on November 17, 2015, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Donna M. Erem, Esq. (of Chiesa Shahinian & Giantomasi, PC), and the Board was represented by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, the following individuals testified under oath during the hearing, were subject to cross-examination, and their testimony is part of the record in this matter:

1. Christopher Hager, PE (applicant’s engineering expert),
2. David Banisch, PP (Board’s planning expert), and
3. Thomas J. Quinn, PE, CME (Board’s engineering expert);

WHEREAS, the following exhibits were entered into evidence during the hearing, are on file with the Board, and are part of the record in this matter:

A-1 Amended Site Plan Drawing 7.02,
A-2 Amended Site Plan Drawing 20.01,
A-3 Amended Site Plan Drawing 21.01,
A-4 Amended Site Plan Drawing 24.01, and
A-5 Color rendering;

WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS:

A. FACTUAL FINDINGS

1. **The Property, Zoning, Prior Approvals and Existing Improvements.** As set forth above, the property is a 25.615 acre lot located in the Mountain View Corporate Center which is situated in the E-3 zone. “Hospitals and medical clinics” are principal permitted uses in the E-3 zone pursuant to ordinance section 21-10.5.a.1.(e). The property currently contains the applicant’s principally permitted outpatient cancer care center (which is considered a medical clinic) which was approved by the Board via the 2004 approvals. The 2004 approvals allowed the cancer care center to replace an office building that had been previously approved by the Board in 1999 and 2001. The cancer care center consists of a building containing 89,035 square feet of floor area, a 266 parking space two-level deck, and 8 surface parking spaces (for a total of 274 parking spaces). As set forth above, the Board granted the 2004 approvals to permit the proposed development to consist of a building containing 162,290 square feet of floor area and 406 parking spaces in two phases: (a) the Phase 1 improvements consisting of 85,000 square feet of floor area and 277 parking spaces, 269 of which were to be located in a two-level parking deck with 8 surface spaces; and (b) the Phase 2 improvements consisting of building and parking expansions to add (1) 77,290 square feet of floor area to the building for a total of 162,290 square feet of floor area, and (2) 129 parking spaces for a total of 406 parking spaces. The applicant constructed all of the Phase 1 improvements, except a total of 274 instead of 277 parking spaces were constructed in Phase 1, which means the 129 parking spaces to be constructed in Phase 2 will result in a total of 403 parking spaces for the proposed development. In addition to the Phase 1 improvements, the applicant constructed 4,035 square feet of the Phase 2 floor area, such that a total of 89,035 square feet of floor area has been constructed.

2. **The Application and Requested Relief.** As set forth above, the application seeks amended preliminary and final site plan approval for Phase 1 of the proposed development to increase the number of Phase 1 surface parking spaces by 104, which would increase the total approved Phase 1 parking spaces from 274 to 378. However, some of the 104 parking spaces are proposed in the same location as the existing 8 surface spaces so the net increase in parking spaces under the proposed amended site plan for Phase 1 of the proposed development will be 96 spaces, which would increase the total approved Phase 1 parking spaces from 274 to 370. Further, because the proposed Phase 1 expanded parking area is in the same location as 20 of the Phase 2 parking spaces, the net increase in the total overall number of parking spaces after construction of the Phase 2 improvements will be by 76 spaces, which would increase the total overall number of spaces for the proposed development from 403 to 479. As also set forth above, the application also seeks modification of a portion of condition #15 on page 7 of the 2004 resolution regarding the hours of lighting. Finally, in addition to the proposed Phase 1 amended surface parking spaces, the application also includes proposed Phase 1 amended site improvements, consisting of the following amendments to Phase 1 of the proposed development: new and relocated site light poles,
new and transplanted shade and ornamental trees, a bio-retention basin with an underdrain, and a manufactured water quality treatment device.

3. **No Need for an Exception from the Site Plan Ordinance Parking Stall Dimension Requirement.** The applicant initially believed that it required exceptions from site plan ordinance section 21-39.1.b, which requires 10-foot by 20-foot stalls, or 9-foot by 20-foot stalls if located in an open parking lot used for long term parking by employees, because the applicant’s proposed Phase 1 amended surface parking spaces will be 9 feet by 18 feet in size. The reason the applicant initially believed this exception relief was required was because such relief was required for the parking spaces in the two-level deck (and was granted) at the time of the 2004 approvals. However, all of the proposed new surface parking spaces provide a 2 foot overhang area and the ordinance at issue permits parking spaces to be reduced from 20 feet to 18 feet in length if such an overhang is provided. Additionally, the Board finds that the proposed 9 foot width is ordinance compliant because the ordinance at issue permits 9 foot wide spaces if the spaces are used for “long-term parking such as for employees” as opposed to “short term parking such as for retail shopping.” Based on the testimony provided, the Board finds that the spaces at issue will either be used by employees or by clients where those clients will be parking for long periods of time, not short periods of time.

4. **Review of the Request for Modification of Condition #15 on Page 7 of the 2004 Resolution regarding Lighting.** The Board’s findings as to the request for modification of condition #15 on page 7 of the 2004 resolution regarding the hours of lighting are as follows. The 2004 resolution contains a condition set forth in paragraph 15 on page 7 which provides: “The lighting shall be limited to no more than 175 watt metal halide light fixtures on the driveway, and 70 watt metal halide fixtures in and on the garage. All fixtures shall have flat lenses and full cut off optics. The lighting plans for the sign shall be revised to reflect 32 watt florescent bulbs. All lights on the drives and decks shall be turned off by 9:00 p.m. unless there is a special event at the facility. All lighting shall be subject to an in-service inspection by the Township Engineer to determine if wattage may be reduced without creating any negative impact.” The Board finds that it imposed the above condition in the first instance to save electricity when the lights were not needed and in the second instance to protect neighboring properties from unnecessary light glow. The applicant asked to modify the fourth sentence of the condition to allow the lights along the drives and the drop off / pick up area in front of the building to be allowed to remain on until 11 pm to accommodate clients and employees of the cancer center. Based on the location and orientation of the building on the property, the Board was satisfied that the increase in duration of lighting from 9 pm to 11 pm would have only positive benefits to the applicant’s clients and employees and no negative detrimental impacts on the surrounding buildings and travelling public. As such, the Board finds that modification of the condition as requested was consistent with its intent in imposing the condition in 2004 and, accordingly, good cause exists to warrant modifying the condition to delete the replace the fourth sentence of the condition with the following two sentences: “All lights on the decks shall be turned off by 9:00 p.m. unless there is a special event at the facility. All lights along the drives and the drop off / pick up area in front of the building shall be
turned off by 11:00 p.m.” A note restating the entire condition as modified will be required to be added to the amended site plan.

5. **Amended Preliminary and Final Site Plan Review.** The Board’s findings as to amended preliminary and final site plan review are as follows:

   a. **Compliance with Ordinance Provisions.** Provided that the exceptions from the site plan ordinance requirements identified above are granted, provided that the modification of condition #15 of the 2004 resolution is granted, and provided further that the conditions set forth below are imposed and complied with, the Board finds that the application and amended site plan will comply with all applicable zoning ordinance regulations, all other applicable site plan ordinance requirements, and all conditions of prior approvals.

   b. **Compliance with Matters Vital to Public Health.** Provided that the conditions set forth below are imposed and complied with, the Board finds that the application will have no negative impact on matters vital to the public health, such as water supply, sewage disposal, stormwater drainage, and traffic circulation. In fact, water supply and sewage disposal will not change as a result of the proposed modifications to the existing site improvements. And, the Board finds that stormwater quality will be brought up to today’s standards and on-site traffic circulation will be enhanced by the proposed Phase 1 amended site improvements.

B. **CONCLUSIONS**

1. **Condition Modification.** The Board’s conclusions regarding the request to modify condition #15 on page 7 of the 2004 resolution regarding the hours of lighting are as follows:

   a. **Standards for Modifying a Prior Approval Condition.** Our courts have held that a Board has the power to modify and/or amend prior approval conditions if “enforcement of the restrictions would frustrate an appropriate purpose”, upon a “proper showing of changed circumstances”, or upon “other good cause” warranting modification and/or amendment. See, Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), certif. denied 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). N.J.S.A. 40:55D-12a recognizes the authority of a board to modify previously imposed conditions and requires that public notice be given “for modification or elimination of a significant condition or conditions in a memorializing resolution in any situation wherein the application for development for which the memorializing resolution is proposed for adoption required public notice.” As to the “good cause” grounds, our courts have held that the Board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or amend the condition is consistent with or contrary to that intent. See, Sherman, 242 N.J. Super. at 430. In this regard, our courts have held that the Board is not limited to the four corners of the resolution to determine intent and can consider Board minutes of the underlying hearing, transcripts if available, and/or expert reports filed with the application. The object is to determine how
significant the condition was, meaning whether the underlying approval would not have been granted without the imposition of the condition, or whether the condition was imposed for general welfare purposes only, meaning to advance the general welfare but not critical for the survival of the underlying approval. Id.

b. **Conclusion to Modify Condition #15 on page 7 of the 2004 Resolution regarding the Hours of Lighting.** As set forth above in the factual findings, the Board was satisfied that the increase in duration of lighting from 9 pm to 11 pm would have only positive benefits to the applicant’s clients and employees and no negative detrimental impacts on the surrounding buildings and travelling public. As such, the Board further found that modification of the condition as requested was consistent with its intent in imposing the condition in 2004 and, accordingly, good cause existed to warrant modifying the condition to delete the replace the fourth sentence of the condition with that set forth above.

2. **Amended Preliminary and Final Site Plan Review.** The Board’s conclusions as to amended preliminary and final site plan review are as follows:

a. **Standards for Amended Preliminary and Final Site Plan Review.** N.J.S.A. 40:55D-46b and 50a are the focal points for preliminary and final site plan review. N.J.S.A. 40:55D-46b provides that the Board “shall” grant preliminary approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. Further, N.J.S.A. 40:55D-46b provides that if there is “any substantial amendment in the layout of improvements proposed by the developer that have been subject to a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development” and the Board “shall, if the proposed development complies with the ordinance . . . [amended] preliminary approval.” Thus, if the application complies with all ordinance provisions, the Board must grant approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are exceptions:

1. The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

2. The second exception is where the application does not comply with all ordinance requirements but a condition can be imposed requiring a change that will satisfy the ordinance requirement. In that case, the Board can either grant approval on the condition that the application is revised prior to signing the plan to comply with the ordinance requirement or the Board can adjourn the hearing to permit...
the applicant the opportunity to revise the plans to comply with the ordinance requirement prior to the Board granting approval. However, there are exceptions. While N.J.S.A. 40:55D-46a allows the site plan and engineering documents required to be submitted to be in “tentative form for discussion purposes for preliminary approval” and the architectural drawings to be in preliminary form, the Board cannot grant preliminary approval subject to later submission of additional information which is fundamental to an essential element of a development plan. The reason for this is because, at the time of preliminary review, the Board is under an obligation to deal with matters vital to the public health and welfare such as stormwater drainage, sewage disposal, water supply, and traffic circulation safety, which would include access and circulation for fire trucks. See, Field v. Franklin Twp., 190 N.J. Super. 326, 332-333 (App. Div. 1983) (“Certain elements – for example, drainage, sewage disposal and water supply – may have such a pervasive impact on the public health and welfare in the community that they must be resolved at least as to feasibility of specific proposals or solutions before preliminary approval is granted”), certif. denied, 95 N.J. 183 (1983); D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 83-84 (App. Div. 1992) (without percolation tests being submitted, stormwater drainage and septic disposal, matters vital to the public health and welfare, could not be resolved), certif. denied, 130 N.J. 18 (1992); Dowel Associates v. Harmony Twp., 403 N.J. Super. 1, 30-32 (App. Div. 2008), certif. denied, 197 N.J. 15 (2008) (upholding the trial court’s ruling that “feasibility is something less than permissibility,” and holding that essential elements of a development that are vital to public health and safety such as stormwater drainage and sewerage disposal must be resolved “at least as to feasibility of specific proposals” prior to preliminary approval being granted (citing Field, supra.); Morris County Fair Housing Council v. Boonton Twp., 228 N.J. Super. 635, 642-645 (Law Div. 1988) (affirming a planning board’s denial of preliminary site plan approval for an affordable housing development because the applicant failed to calculate the stormwater flow so could not prove the feasibility of its stormwater management plan, which the court found was a fundamental element of the development and had to be resolved prior to preliminary approval).

b. Conclusions to Grant Amended Preliminary and Final Site Plan Approval. As set forth above in the factual findings, provided that the conditions set forth below are imposed and complied with, the Board found that the application and amended site plan will comply with all applicable zoning ordinance regulations and site plan ordinance requirements. As such, the Board concludes that amended preliminary and final site plan approval for Phase 1 of the proposed development can and should be granted, subject to the conditions set forth below being imposed and complied with.

3. Imposition of Conditions. Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to insure that the positive criteria is satisfied); Eagle
Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to insure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2015), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON NOVEMBER 17, 2015 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

C. RELIEF GRANTED

1. Modification of Condition #15 on page 7 of the 2004 Resolution. Subject to the conditions set forth below, condition #15 on page 7 of the 2004 resolution is modified to delete and replace the fourth sentence of the condition with
the following two sentences: “All lights on the decks shall be turned off by 9:00 p.m.
unless there is a special event at the facility. All lights along the drives and the drop off /
pick up area in front of the building shall be turned off by 11:00 p.m.”

2. **Amended Preliminary and Final Site Plan Approval.** Subject to the conditions set forth below, preliminary and final site plan approval is granted to the amended site plan referenced above.

**D. CONDITIONS**

1. **Revisions to Amended Site Plan and Other Documents.**

Revisions to the amended site plan and other documents set forth below shall be made by notes and/or drawings to the satisfaction of the Board expert(s) who filed the report or testified as well as to the satisfaction of the Township Engineer and Township Planner as set forth below. All revisions shall be made by September 8, 2016 (which is six (6) months from the date of the adoption of the within resolution on March 8, 2016). In the event that the applicant fails to revise the amended site plan and other documents as required and/or fails to obtain signatures on the amended site plan as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plat, plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) Any dispute(s) concerning satisfaction of any conditions related to the revisions of the plans/plats may be brought to the Board for resolution by written letter application submitted by the applicant without the necessity for public notice but on written notice to the Township Engineer and Township Planner.

a. **Following comments emanating in the memo to the Board from David Schley, PP, AICP, Township Planner, dated November 11, 2015, relating to the amended site plan:**

(1) Sheet 01.00 – Revise the zoning schedule to address the following:

   (a) Specify that the lot area requirement is the minimum lot area as measured within 550’ of the front property line, and that a variance was previously granted.

   (b) Since the building and the parking deck are a single structure, show only one set of setbacks, as shown on the 2004 plans.
(c) Clarify that the 89,035sf of building area shown for amended phase 1 is actually the previously approved phase 1 building area (85,000sf) plus a portion of the previously approved phase 2 building area (4,035sf).

(d) Amend the parking requirement calculations to identify the approved floor areas and number of physicians in each phase, and to indicate how many spaces are proposed in each phase under the current proposal. Identify the previously approved exception.

(2) Sheet 20.01 – Reduce the width of the proposed 10 feet wide parking spaces to 9 feet. The gained pavement area may be utilized to increase the number of proposed parking spaces provided that the overall amount of pavement remains substantially the same.

(3) Sheet 20.01 – In the easterly row of handicap parking spaces, clarify/correct the 5 foot wide access aisle that is labeled “8 ‘van.”

(4) Sheet 20.01 – Provide a similar Parking Statistics table for phase 2 as is provided for phase 1.

(5) Sheet 20.01 – Add a note stating: “Accessible routes from the handicapped parking spaces into the building shall comply with the New Jersey Uniform Construction Code. In the event an improvement designed for handicapped accessibility is not subject to the NJUCC, the applicant’s engineer shall certify that the improvement has been constructed in compliance with all applicable standards and guidelines of the Americans with Disabilities Act, prior to final approval by the Township.

(6) Sheet 24.02 – Add the following tree removal and protection notes:

   a. All construction activity shall comply with the tree removal and protection standards of Section 21-45.

   b. If during construction, it is determined by the applicant and the Township Engineer that a tree designated for removal can be preserved, said tree shall be protected in accordance with Township standards. Appropriate credit shall be given toward the tree replacement requirements if the tree is preserved.

   c. If during construction, it is determined by the Township Engineer that a tree designated for preservation cannot be protected in accordance with Township standards, the tree shall be removed and replacement trees shall be required.

(7) Sheet 24.02 – In the tree identification/replacement schedule, delete the references to 89 reserve trees planted in 2004. The
current proposal includes the removal of 25 crabapple trees, all of which were planted by the applicant and are <4” diameter. Replacement trees are not required by ordinance. The applicant proposes to plant 18 new shade / ornamental trees and various shrubs and other plantings, and proposes to transplant 26 existing shade / ornamental trees that will be displaced by the proposed construction.

(8) N/A

(9) Sheet 25.10 – Provide a detail for light pole fixture type D.

(10) Sheet 28.02 – In the curb cut spillway detail, specify stone size for the splash pad.

(11) N/A

(12) N/A

(13) Revise the plan to address any and all comments from the Liberty Corner First Aid Squad.

(14) Revise the plan to address any and all comments from and/or conditions imposed by Somerset-Union Soil Conservation District.

b. Following comments emanating in the memo to the Board from Thomas J. Quinn, PE, CME (of EKA Associates, PA) dated November 15, 2015, relating to the amended site plan:

(1) Drawing 01.00 – Cover Sheet

(a) Revise the tax block designation in the title to reflect the correct block number.

(b) Clarify / correct the Zoning Requirements table with regard to the previously approved Phase I impervious coverage. According to the table, the current plan proposes an increase of 0.84 acres over the previously approved Phase I plan, while the drainage reports and calculations utilize an increase of 0.52 acres.

(c) Revise the Zoning and 200-Foot Property Map to include a 200’ radius boundary and a north arrow. All block and lots within the 200’ radius must be identified.

(2) Drawing 07.02 – Campus Key Plan
(a) Confirm that all covenants and easements which encumber the property are accurately shown and labeled on this plan.

(3) Drawing 08.01 – Site Demolition Plan

(a) Add a staging plan to the plan set to address how and where emergency drop-offs will occur during construction.

(4) Drawing 20.01 – Site Plan

(a) Identify all existing refuse and loading areas on the plan.

(b) Indicate the color and width of the all proposed pavement markings on the plan.

(c) The drop-off area shall include “No Parking” or “Fire Lane” signs as needed or required by the Township fire official.

(d) Clarify / correct the discrepancy between the Parking Statistics Table which indicates a total of 266 structured parking spaces and the plan labels which indicate 269 spaces.

(5) Drawing 21.01 – Grading, Drainage and Utility Plan

(a) Add a berm on the western side of the proposed bio-retention basin to prevent a large unaccounted for off-site area from directing runoff into the proposed basin and impacting the hydraulics of this feature.

(b) It appears that some existing storm piping may be abandoned in the proposed condition. The disposition of all existing storm pipe not utilized during the proposed condition must be noted (i.e. fill with lean concrete).

(c) Inlet and outlet invert elevations shall be provided for the Water Quality Treatment Device.

(d) A close up detail shall be provided of the proposed storm system configuration in the area of the proposed water manufactured treatment device to clarify the connectivity of the existing and proposed features.

(6) Drawing 23.01 – Erosion and Sediment Control Plan

(a) The temporary parking area shall be shown to be restored with topsoil, seed and mulch.
(b) A temporary sediment riser shall be shown for the bio-retention area.

(c) The Erosion and Sediment Control Plan and Details are subject to approval by the Union-Somerset Soil Conservation District.

(7) Drawing 23.10 – Erosion and Sediment Control Details

(a) Add Hay bale Barriers as they are not shown on the plan.

(8) Drawing 25.01 – Lighting Plan

(a) Clarify / correct the inconsistency between the lighting schedule and the regarding light designation symbols.

(9) Drawing 28.01 – Site Details

(a) Add a section detail for the temporary parking area.

(b) The seasonal high water table elevation must be identified in the Bio-Retention Area Detail to confirm that it is at least one foot below the bottom of the gravel layer per NJMBP standards.

(c) The bio-basin detail must indicate that the basin planting area will contain a terrestrial forested community consistent with an 80% TSS removal for a planting soil bed of 18”.

(d) Concrete footings for the sign details shall be shown.

(e) The sign post type shall be identified in the sign details.

(f) The Fire Lane sign detail is shown to be movable. The applicant must discuss the practically of this type of sign as opposed to a standard M.U.T.C.D. Fire Lane – No Parking sign with the Fire Official and obtain approval for its use. Otherwise, revise the plan to show the standard M.U.T.C.D. Fire Lane – No Parking sign.

(10) Drawing 28.02 – Site Details
(a) A detail is required for the outlet control structure showing all inlet and outlet pipes and invert elevations.

(b) Clarify / correct the discrepancy between the Shoulder Drain Detail which reflects a 6” perforated pipe with the plan which reflects a 4” perforated pipe.

(c) A mountable Belgian block curb detail shall be provided.

c. Following comments emanating in the memo to the Board from Thomas J. Quinn, PE, CME (of EKA Associates, PA) dated November 15, 2015, relating to the Stormwater Memorandum:

(1) The County soil survey indicates that on-site soils are HSG “B”. The applicant’s engineer has indicated that no recharge is being proposed because of the present of shallow rock in the three test logs performed, making the soils analogous to an HSG “D”. In order to justify the change in the presumed HSG rating, required soil testing procedures are outlined in Appendix E. The applicant’s engineer shall submit documents re: on-site testing consistent with Appendix E. Otherwise, the applicant shall revise the plan accordingly.

(2) To accurately reflect the drainage boundary depicted on Figure -5, the applicant must construct a berm along the uphill side of the proposed bio-retention area to prevent the basin from collecting additional off-site runoff. Revise the plan accordingly.

(3) Referring to Table A: Existing and Proposed Land Cover from the Water Quality Calculations, the total proposed impervious area of 2.11 acres differs from the total impervious area of 2.18 acres as shown on Figure-2. Clarify / correct this discrepancy.

(4) Submit and add as an appendix to the Stormwater Memorandum a summary sheet of the referenced hydrographs.

(5) The drainage area of Hydrograph No. 2 (Bio-Retention Area) differs from what is shown on Figure-5. Clarify / correct this discrepancy.

(6) The Stormwater Memorandum only routs the water quality hydrograph through the proposed bio-retention basin, however runoff from all storms will be directed through this feature, and therefore all storms must be routed in order to determine how the basin will function hydraulically under all proposed conditions. Revise the Stormwater Memorandum accordingly.
(7) The weighted curve number calculations utilize a curve number of 64 for pervious areas. This value is not substantiated by any of the values provided by the TR-55 Manual and must be rationalized. All stormwater calculations shall be revised accordingly.

(8) The design of the manufactured water quality device must be confirmed for the proposed water quality discharge calculated in the Stormwater Memorandum, as well as bypass associated with larger storm events.

d. Following comments emanating in the memo to the Board from Thomas J. Quinn, PE, CME (of EKA Associates, PA) dated November 15, 2015, relating to the EIA:

(1) The EIA explains how the outpatient center replaced Building D on the previously approved Mountain View Corporate Center development. However, Figure-2 of the stormwater management narrative indicates that the total impervious cover from the parking garage and the parking lot expansion is comparable to the previously approved Building D and parking lot. This is inconsistent with the testimony presented during the hearing. It must be confirmed that all the impervious cover associated with the entire cancer center building, parking garage and parking areas is equal to all or less than all the impervious cover associated with the previously approved Building D and parking area.

e. Following comment emanating in the memo to the Board from David Banisch, PP, AICP dated November 17, 2015, relating to the amended site plan:

(4) Add “IVS,” “VH,” and “LIR” to the landscaping schedule on the plan as they appear to be missing.

f. Following comment emanating from Board members during the November 17, 2015 Hearing:

(1) Add a note to the plan re-stating all five sentences of condition #15 on page 7 of the 2004 resolution, but replacing the fourth sentence of the condition with the following two replacement sentences: “All lights on the decks shall be turned off by 9:00 p.m. unless there is a special event at the facility. All lights along the drives and the drop off / pick up area in front of the building shall be turned off by 11:00 p.m.”

Design, Construction and Location of Improvements. The applicant shall be required to design, construct and locate the proposed improvements in substantial conformity with the amended site plan referenced above after it has been revised and signed in accordance with condition #1 above.
3. **Landscaping.** All landscaping, as installed, shall conform to and be in accordance with the landscape plan approved and signed by the Board, and which landscape plan shall include any and all the landscaping changes required by condition #1 above. The landscaping shall be installed prior to the issuance of a permanent certificate of occupancy, completion or approval (whichever is applicable) and prior to the release of any performance guaranty. If the applicant applies for a certificate of occupancy, completion or approval during a non-planting season, the applicant may obtain a temporary certificate without installation of the landscaping but if and only if the applicant posts a performance guaranty in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season. The applicant shall have a continuing obligation to maintain all landscaping in perpetuity for its intended purpose (i.e., for screening if planted for buffering purposes or for aesthetics if planted for enhancement purposes), which shall include but not be limited to repairing and/or replanting any and all landscaping that becomes damaged and/or dies. (This continuing maintenance obligation is in addition to, and notwithstanding, the fact that a maintenance guarantee may or may not be required in any particular application.) In the event that Township Planning / Engineering Department personnel determine that utilization of an outside expert (e.g. Board landscape architectural expert) is necessary to fulfill the intent of this section, all costs and expenses of such outside experts shall be reimbursed to the Township by the applicant.

4. **Maintenance Manuals.** A maintenance manual per NJDEP Best Management Practice standards shall be submitted for all stormwater facilities proposed on the property for review and approval by the Board Engineer.

5. **Submission of Digital Plans.** The applicant shall submit digital copies of all plans and documents in formats acceptable to the Township Engineering Department.

6. **Affordable Housing Non-Residential Development Fee.** The applicant shall be required to pay an affordable housing non-residential development fee into the Township’s affordable housing trust fund as required by applicable law.

7. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 10 days of the adoption of a resolution, within 10 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable).

8. **Pre-Construction Meeting.** The applicant shall attend a pre-construction meeting with the Township Engineering Department prior to the start of any construction activity.
9. **Time to Obtain Construction Permits and Commence and Complete Construction.** The applicant shall apply for and obtain construction permits by March 8, 2018 (which is within two (2) years of the date the within resolution is adopted on March 8, 2016). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain all construction permits, the within approvals shall automatically expire and become null and void. The applicant shall also have one (1) year from the date of issuance of the first construction permit to commence construction and obtain the first permanent certificate of occupancy, completion or approval (whichever is applicable). If during said one (1) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy, completion or approval (whichever is applicable) is not obtained, the within approvals shall automatically expire and become null and void.

10. **Specific Approvals and Permits.** The within approvals shall be conditioned upon the applicant obtaining permits and/or approvals from all applicable agencies and/or departments including (if applicable) but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

   a. Township Board of Health (N/A).
   b. Somerset County Department of Health (N/A).
   c. Bernards Township Sewerage Authority (N/A).
   d. Somerset - Union County Soil Conservation District certification / approval of the soil erosion and sediment control plan.
   e. Somerset County Planning Board approval of any aspect of the proposed development within its jurisdiction, and
   f. NJDEP approval of any aspect of the proposed development within its jurisdiction.

11. **Subject to Other Approvals and Laws.** The within approval and the use of the property remains subject to all conditions of prior Board approvals not eliminated or modified by the within approval. The within approval and the use of the property are also conditioned upon and made subject to any and all laws, ordinances, requirements and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of the property are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. In the event of any inconsistency(ies) between the terms and conditions of the within approval and any approval(s) required above, the terms and/or conditions of the within approval shall prevail unless and until changed by the Board.
upon proper application. The applicant shall comply with all conditions of the 2004 resolution which memorialized the 2004 approvals, with the sole exception being condition #15 on page 7 of the 2004 resolution which has been modified as set forth above. The applicant shall comply with condition #15 of the 2004 resolution as modified above.

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VOTE ON MOTION DULY MADE AND SECONDED ON NOVEMBER 17, 2015:

THOSE IN FAVOR: ALPER, CARLUCCI, KLEINERT, PAVLINI, SANTORO, AXT, HARRIS & PLAZA.

THOSE OPPOSED: NONE.

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The above memorializing resolution was adopted on March 8, 2016 by the following vote of eligible Board members:

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I, Frances Florio, Secretary to the Planning Board of the Township of Bernards in the County of Somerset, do hereby certify that the foregoing is a true and correct copy of the memorializing resolution duly adopted by the said Planning Board on March 8, 2016.

FRANCES FLORIO, Board Secretary