

RESOLUTION OF THE TOWN OF HARRISON PLANNING BOARD
RE: ACCORDIA HARRISON URBAN RENEWAL, LLC
CASE #19-04
APPLICATION FOR AMENDED PRELIMINARY AND FINAL MAJOR SITE FOR
PHASE II, “C” VARIANCE RELIEF, DESIGN WAIVERS, AND
DE MINIMIS RELIEF FROM RSIS STANDARDS
TAX BLOCK 133, LOTS 1.03 & 1.05
FOR HOTEL, RETAIL/COMMERCIAL, OFFICES AND RESIDENTIAL FOR
700 FRANK E. RODGERS BOULEVARD SOUTH
HARRISON, NEW JERSEY

I. RECITALS

WHEREAS, ACCORDIA HARRISON URBAN RENEWAL, LLC, 100 Passaic Avenue #150, Fairfield, New Jersey 07004 (“Applicant”) has made application to the Town of Harrison Planning Board (the “Board”) for Amended Preliminary and Major Site Plan Approval, “c” variance relief, design waivers, and a *de minimis* exception from the Residential Site Improvement Standards (“RSIS”) for the development now known as “Harrison Yards – Phase II” located on Block 133, Lots 1.03 & 1.05 and commonly known as 700 Frank E. Rodgers Blvd. So, Harrison, New Jersey (“Property”); and

WHEREAS, the “Property” measures approximately 5.8 acres in size and is located on the eastern side of Frank E. Rodgers Boulevard (CR 697) in the Mixed-Use District (“M-U District”) of the Waterfront Redevelopment Area. This project was part of a proposed overall project located on Lot 1.01 of Block 133, which has been subdivided into Lots 1.03, 1.04, and 1.05. However, as of date of this application, the subdivision is not yet reflected in the tax maps. The overall triangular-shaped property is approximately 9.73 acres in size, 2.63 acres of which is currently under construction for Phase I of this project. The lot is bounded on the north by railroad tracks and I-280, on the south by the Amtrak Railroad right-of-way, and on the west by Frank E. Rodgers Boulevard. The Applicant has indicated that portions of this property are located in Flood Zone AE and X according to FEMA Flood Insurance Maps; and

WHEREAS, the development on the “Property” was split into Phases I and II. Through the previous Applicant Heller Urban Renewal, LLC, on January 13, 2016 via Planning Board Resolution 14-08 the overall project received Preliminary and Final Major Site Plan and Subdivision approval for Phase I, Preliminary Site Plan approval for Phase II, and Preliminary and Final Major Subdivision with variance relief and de minimus relief from RSIS to subdivide the site into three lots (Lots 1.03, 1.04, and 1.05) and construct five buildings, Buildings A, B, C, D, and E; and

WHEREAS, Phase I of the 2016 approval, consisting of Buildings A and D on Lot 1.04, is currently under construction. Phase I includes 209 residential units, 8,495 square feet of retail space and 177 parking spaces. Phase II was approved for the construction of three buildings (Buildings B, C and E) containing a total of 431 residential units, 8,106 square feet of retail and 444 parking spaces within a structured parking garage. Building B on Lot 1.03 was proposed to be five stories with 92 residential units and 8,106 square feet of retail gross floor area. Building

C was proposed on Lot 1.03 with five stories containing 52 residential units. Building E was proposed for Lot 1.05 with eleven stories and 287 residential units. At the time of the 2016 approval, the designated redeveloper of the site was Heller Urban Renewal, LLC; and

WHEREAS, the first part of the Phase II development is proposed for Lot 1.03 (3.42 acres) and entails the construction of a 26-story building (“Building B”) consisting of 620 residential units, a 200-room hotel, an automated parking garage with 648 spaces, and 130,528 square feet of retail/commercial space. The design of Building B is unique in that it is proposed to be bisected by a covered driveway with an oculus. The easterly portion of the building will be an 11-story hotel with a rooftop restaurant. The westerly portion of the building is proposed to contain seven (7) stories of retail space, residential units and automated parking garage, with an additional 19 floors of residential units; and

WHEREAS, the second part of the Phase II development is proposed on Lot 1.05 (2.38 acres) and includes the construction of a 17-story building (“Building C”) consisting of 278 residential units, an automated parking garage with 571 spaces and 74,183 square feet of retail/commercial space. The applicant is proposing an additional 132 surface parking spaces across both lots (17 on Lot 1.03 and 115 on Lot 1.05); and

WHEREAS, Phase II overall consists of 898 residential units, 1,350 parking spaces, 204,709 square feet of retail/commercial space, 40,784 square feet of designated open space, and a 200-room hotel across 5.8 acres; and

WHEREAS, the Applicant is proposing to develop the easternmost corner of the lot as open space with a park is proposed to measure approximately 40,784 square feet in size; and

WHEREAS, the Applicant proposes a landscaped plaza north of the existing PATH Station; and

WHEREAS, the Applicant appeared before the Harrison Redevelopment Agency in September 2019 and before the Subdivision and Site Plan Review Committee (SSPRC) on March 10, 2020, April 22, 2020, and May 7, 2020; and

WHEREAS, Pursuant to the Redevelopment Plan, as amended by Ordinance No. 1313 on October 6, 2015, the Planning Board has the power to grant relief from the Redevelopment Plan’s bulk requirements and design standards, requested by the Applicant; and

WHEREAS, Applicant proposes to develop the Property with a mix of hotel, retail/commercial, offices, residential uses, parking and open space which is permitted in the Mixed Use District of the Waterfront Redevelopment Area; and

WHEREAS, the Applicant seeks variance relief from the Redevelopment Plan M-U District bulk requirements as follows:

1. Maximum Building Setback (page 28) – 10 feet is permitted, where more than 10 feet is proposed for Building B on Lot 1.03;

2. Maximum Building Setback (page 28) – 10 feet is permitted, where more than 10 feet is proposed for Building C on Lot 1.05;
3. Retail Depth (page 29) – The applicant is proposing retail space with a depth of 10’-8” at the closest point for Building B on Lot 1.03, where a minimum of 40 feet in depth is required;
4. Residential: Bedroom mix standards (page 29) – A maximum of 50% of all units must be 2- and 3- bedroom units, a maximum of 10% of which can be 3-bedroom units. The applicant is proposing for Building B on Lot 1.03 to have 21% of the 2- and 3-bedroom units be 3-bedroom units, and for Building C on Lot 1.05 to have 24% of the 2- and 3-bedroom units be 3-bedroom units; and

WHEREAS, the Applicant seeks design waiver relief from the Redevelopment Plan requirements as follows:

1. Loading Space & Service Areas (page 43) – The Applicant is proposing a drop-off/pick-up loading area adjacent to the building lobbies along Angelo Cifelli Drive, where no vehicular access to loading areas is permitted;
2. Streets, Utilities & Mechanical Equipment (page 56) – The Applicant is proposing at-grade transformers beyond the building envelopes, where such equipment is not permitted;
3. Concourse / Sidewalk Width (page 21) – The Applicant is proposing sidewalk widths of 10 feet along Angelo Cifelli Drive and South 5th Street, where sidewalk widths of 12 feet is required for Angelo Cifelli and 13 feet is required for South 5th Street;
4. Parking & Circulation / Screening of Parking Areas (page 44) – The Applicant is proposing 132 permanent surface parking spaces, which are not within structures or screened from street view, as required by the Waterfront Redevelopment Plan;
5. Architectural Standards / Maximum Building Envelope and Encroachments (page 40) – The Applicant is proposing for 76% of the block face to be occupied by building face, where 80% is required;
6. Garden Walls and Fences (page 41) – The Applicant is proposing chain link fencing around a portion of the park in the eastern corner of the site where chain link fences are prohibited;
7. Architectural Standards / Residential Window and Doors (page 42) – The Applicant is proposing doors which are flush with the trim and do not appear to be constructed of planks or raised panels, which is not permitted by the Waterfront Redevelopment Plan;
8. Architectural Standards / Residential Window and Doors (page 42) – The Applicant is proposing doors without concrete, masonry, or exposed steel lintels with a masonry construction, which is not permitted by the Waterfront Redevelopment Plan;
9. Architectural Standards / Roofs (page 42) – The Applicant is not proposing projections, such as cornices, beyond the building face on a building with a flat roof, which are required by the Waterfront Redevelopment Plan; and

WHEREAS, Applicant requires a RSIS de minimis exception regarding minimum

parking stall width as the Applicant is proposing parking stall dimensions of eight and a half (8.5') feet by 18 feet where nine (9') feet by 18 feet is required. (Note: the Applicant sets forth that this dimension is consistent with the prior approvals and Phase I); and

WHEREAS, the Board has considered Applicant's development proposal as depicted in the following plans (the "Plans"):

- a) Town of Harrison Standard Development Application with associated attachments and checklists, dated October 1, 2019;
- b) 18-page Resubmission Letter, prepared by MidAtlantic Engineering, dated April 14, 2020;
- c) 5-page Sustainable Building Requirement Checklist, dated April 13, 2020;
- d) Traffic Impact Study, prepared by Stonefield Engineering & Design, LLC, dated September 30, 2019, revised through June 3, 2020;
- e) 7-sheet set of architectural drawings of Building B, prepared by Architectura dated September 26, 2019, revised through April 14, 2020;
- f) 3-sheet set of architectural drawings of Building C, prepared by Architectura dated September 26, 2019, revised through April 14, 2020;
- g) 2-sheet set of elevation drawings, prepared by Architectura, dated September 26, 2019, revised through April 14, 2020;
- h) 1-sheet Oculus Perspective drawing, prepared by Architectura, dated September 29, 2019, revised through May 1, 2020;
- i) 21-sheet set of Amended Preliminary/Final Major Site Plan, prepared by MidAtlantic Engineering, dated September 26, 2019, revised through May 19, 2020; and
- j) One-sheet set of Plaza Landscape Exhibit, prepared by MidAtlantic Engineering, prepared May 14, 2020; revised through May 22, 2020 and

WHEREAS, the Board has considered all testimony, reports, exhibits and other evidence submitted in connection with the application; and

WHEREAS, the current application was the subject of duly noticed public hearings with all Plans & Exhibits available online and held as follows:

- a) June 18, 2020 (special meeting, via Zoom platform);

- b) June 24, 2020 (regular meeting, via Zoom platform);
- c) July 8, 2020 (special meeting, via Zoom platform);
- d) July 14, 2020 (special meeting, via Zoom platform); and

WHEREAS, Thomas Trautner, Esq., and Donna Erem, Esq. for the firm Chiesa, Shahinian & Giantomasi PC, One Boland Drive, West Orange, New Jersey, represented the Applicant at all public hearings; and

WHEREAS, the following Harrison Planning Board members were in attendance on June 18, 2020;

Chairman Arthur Pettigrew
Vice-Chairperson, Denis Perez
Member Councilman Laurence Bennett
Member Andrea Choffo
Member James Ellison
Member Carlos Mariano
Member Delfim Sarabando
Member John Starr

Also present, on behalf of the Harrison Planning Board, were:

McKinley Mertz, PP, AICP, LEED Green Associate, Heyer, Gruel & Associates,
Board Planner
Antonios Panagopoulos, PE, CME, T&M Engineering, Board Engineer
Mary C. Gaines, Board Secretary
Kunal Mehta, Zoom Host
Kathryn McGinty, Certified Court Reporter (CCR)
Michael R. Pichowicz, Esq., Board Attorney;

and;

WHEREAS, the following Harrison Planning Board members were in attendance on June 24, 2020;

Chairman Arthur Pettigrew
Vice-Chairperson, Denis Perez
Member Councilman Laurence Bennett
Member Andrea Choffo
Member James Ellison
Member Carlos Mariano
Member John Mulrenan
Member Delfim Sarabando

Member John Starr

Also present, on behalf of the Harrison Planning Board, were:

McKinley Mertz, PP, AICP, LEED Green Associate, Heyer, Gruel & Associates,
Board Planner
Antonios Panagopoulos, PE, CME, T&M Engineering, Board Engineer
Mary C. Gaines, Board Secretary
Deborah Rodriguez, Zoom Host
Kathryn McGinty, Certified Court Reporter (CCR)
Michael R. Pichowicz, Esq., Board Attorney;

and;

WHEREAS, the following Harrison Planning Board members were in attendance on July 8, 2020;

Chairman Arthur Pettigrew
Vice-Chairperson, Denis Perez
Member Councilman Laurence Bennett
Member Andrea Choffo
Member James Ellison
Member Carlos Mariano
Member Delfim Sarabando
Member John Starr

Also present, on behalf of the Harrison Planning Board, were:

McKinley Mertz, PP, AICP, LEED Green Associate, Heyer, Gruel & Associates,
Board Planner
Antonios Panagopoulos, PE, CME, T&M Engineering, Board Engineer
Mary C. Gaines, Board Secretary
Deborah Rodriguez, Zoom Host
Kathryn McGinty, Certified Court Reporter (CCR)
Michael R. Pichowicz, Esq., Board Attorney;

WHEREAS, the following Harrison Planning Board members were in attendance on July 14, 2020;

Chairman Arthur Pettigrew
Vice-Chairperson, Denis Perez
Member Councilman Laurence Bennett
Member Andrea Choffo
Member James Ellison
Member Carlos Mariano
Member John Mulrenan

Member Delfim Sarabando
Member John Starr

Also present, on behalf of the Harrison Planning Board, were:

McKinley Mertz, PP, AICP, LEED Green Associate, Heyer, Gruel & Associates,
Board Planner

Antonios Panagopoulos, PE, CME, T&M Engineering, Board Engineer

Mary C. Gaines, Board Secretary

Deborah Rodriguez, Zoom Host

Kathryn McGinty, Certified Court Reporter (CCR)

Michael R. Pichowicz, Esq., Board Attorney;

and;

WHEREAS, the following witnesses testified on behalf of Applicant and in support of the application:

1. Joseph Romano, Applicant Representative;
2. Conrad Roncati, Professional Architect (qualified as expert in the field of architecture);
3. Yair Goldberg, Automated Parking Garage Professional (qualified as expert in the field of automated parking);
4. Louis Zuegner, Professional Engineer (qualified as expert in the field of engineering);
5. Paul Phillips, Professional Planner (qualified as expert in the field of planning);
6. Matthew Seckler, Traffic Engineer (qualified as expert in the field of traffic engineering); and

WHEREAS, the following exhibits were duly marked and accepted into evidence:

1. Exhibit A1, Perspective 1 West Elevation, dated 6/8/2020;
2. Exhibit A2, Perspective 2 South Elevation, dated 6/8/2020;
3. Exhibit A3, consisting of

A101 Architectural Site Plan dated 4/14/2020

A102 Comparative Project Summary, dated 4/14/2020

- A103 Floor Plans Building B, dated 4/14/2020
- A104 Floor Plans Building B, dated 4/14/2020
- A105 Floor Plans Building B, dated 4/14/2020
- A106 Floor Plans Building B, dated 4/14/2020
- A107 Floor Plans Plans Building B/ Building Section/Summary, dated 4/14/2020
- A108 Floor Plans Building C, dated 4/14/2020
- A109 Floor Plans Building C, dated 4/14/2020
- A110 Building Summary Building C/Building Massing, dated 4/14/2020
- A201 Building Elevation - Building B, dated 5/1/2020
- A202 Building Elevation - Building B, dated 5/1/2020
- A203 Building Elevation - Building B, dated 5/1/2020
- A204 Building Elevation - Building B, dated 5/1/2020
- A205 Building Elevation - Building C, dated 5/1/2020
- A206 Building Elevation - Building C, dated 5/1/2020
- A207 Building Elevation - Building C, dated 5/1/2020
- A208 Building Elevation - Building C, dated 5/1/2020
- 4. Exhibit A4, A210, Oculus Sketch, dated 5/1/2020;
- 5. Exhibit A6, Overall Site Rendering, dated 6/4/2020;
- 6. Exhibit A7, Harrison Regional Aerial Imagery, dated 6/4/2020;
- 7. Exhibit A8, Traffic Impact Study, dated 6/3/2020;
- 8. Exhibit A9, Plaza Plan Rendering, dated 6/4/2020;
- 9. Exhibit A10, Building A Streetscape Photo, dated 6/18/2020;
- 10. Exhibit A11, Mural, dated 6/24/2020;
- 11. Exhibit A12, A213, Plaza Sketch 1 Birds Eye View, dated 6/24/2020;
- 12. Exhibit A13, A214, Plaza Sketch 2 Birds Eye View, dated 6/24/2020;
- 13. Exhibit A14, A29, Unitronics Parking Video

II. FINDINGS AND CONCLUSIONS

WHEREAS, the Board has made the following findings of fact and conclusions of law based upon the evidence before it:

A. INCORPORATION OF RECITALS

1. All Recitals are incorporated by reference into the Board’s findings and conclusions.

B. STANDING

2. Applicant has standing to bring this application before the Board as the owner of the Property and as the designated redeveloper.

C. OVERVIEW OF PROPOSED PRELIMINARY & FINAL SITE PLAN FOR PHASE II

3. In Phase II, the first part of the Phase II development is proposed for Lot 1.03 (3.42 acres) and entails the construction of a 26-story building (“Building B”) consisting of 620 residential units, a 200-room hotel, an automated parking garage with 648 spaces, and 130,528 square feet of retail/commercial space. The design of Building B is unique in that it is proposed to be bisected by a covered driveway with an oculus. The easterly portion of the building will be an 11-story hotel with a rooftop restaurant. The westerly portion of the building is proposed to contain seven (7) stories of retail space, residential units and automated parking garage, with an additional 19 floors of residential units. The second part of the Phase II development is proposed on Lot 1.05 (2.38 acres) and includes the construction of a 17-story building (“Building C”) consisting of 278 residential units, an automated parking garage with 571 spaces and 74,183 square feet of retail/commercial space. The applicant is proposing an additional 132 surface parking spaces across both lots (17 on Lot 1.03 and 115 on Lot 1.05); and

D. PROPOSED USE

4. The proposed mix of hotel, retail/commercial offices, residential, parking and open space uses are permitted in the Mixed Use district of the Waterfront Redevelopment Area.

E. PROPOSED REDEVELOPMENT

5. Based upon the plans submitted, the Phase II proposed development will consist of 898 residential units (727 studio or one-bedroom units, 134 two-bedroom units and 37 three-bedroom units), 204,709 square feet of commercial space across Buildings B and C; a 200-room hotel on Lot 1.03 (Building B); a 60,625 square foot sports hub in Building C on Lot 1.05; two structured parking garages with 1,219 automated parking stalls; 132 additional surface parking spaces (28 of these are compact spaces); and nine (9) parking spaces will be capable of electric vehicle (EV) charging

6. At the June 18, 2020 meeting, the Applicant’s representative, Joseph Romano, 100 Passaic Avenue, Fairfield, New Jersey, was sworn-in. Mr. Romano is a principal of the Applicant. The Property was purchased from Heller Industrial Parks over a period of time. Mr. Romano personally has been involved in redevelopment in Harrison since the year 1999. His vision, through this project, is to recreate true livable urban environments in the Harrison Redevelopment Area with apartments, retail uses and streetscapes. His opinion is that the Harrison Redevelopment Area to date is heavily residential with a minority amount of retail space consisting mostly of restaurants. This project would create a comprehensive self-

contained development that is truly livable and would create a vibrant street scene as commuters come home after 6 p.m. Given the current state of the economy, Mr. Romano stated the much larger scale residential portion of the development is needed to support the retail component. He explained Exhibit A-1. He testified the structures would be modernistic and blend into the PATH station. They would incorporate the old and new history of the town of Harrison. Mr. Romano stated the sports hub use to attract into the retail component for a portion of the property is a concept that may or may not happen.

7. At the June 18, 2020 meeting, the Applicant's architect, Conrad Roncata, for the entity Architectura, 1 Executive Drive, Fort Lee, New Jersey, was sworn-in. After placing his credentials on the record, he was qualified as a professional architect. He reviewed the plans he prepared with the Board. He also introduced and described various Exhibits marked, P-1, P-2, A-1, A-2, A-3 and A-4. Mr. Roncata stated the plans were developed in accordance with Mr. Romano's vision for the redevelopment of the Property. Steel and brick was used in the exterior design to express the steel and brick theme of the railroads, historic buildings and manufacturing buildings that are part of the town's history. Mr. Rocata described why the design waivers were needed. In addition, he described Building B and Building C, means of ingress and egress, as well as, their respective uses in detail. It was anticipated that a flagship hotel would anchor the project and the retail uses would follow. He reviewed the oculus and how it was incorporated to make the hotel lobby area very bright, airy and open to the sky void in the building up above. Connectivity to the PATH station and plaza was discussed at grade and at a second level above.

Mr. Roncata described the atrium and that a restaurant could be added later. There would be conference space, but no meeting rooms. Conference space was approximately 15,009 sq. ft on floor three and 4,000 sq. ft each on floors four through six and seven. The overall theme was for a destination project where persons would not only work and travel, but stay. Valet parking might be implemented, but there would be an automated garage. Building mechanicals (excluding rooftop HVAC) would be inside building and not visible. Also, there would be bike storage, an active rooftop on the lower levels and communal spaces for residents. Building materials would include a custom wall system and aluminum and glass that would withstand weathering. The materials would be similar to the PATH station.

8. At the June 24, 2020 meeting, Yair Goldberg, for the firm Utron (part of Unitronics Group), 1 Edward Court, Tenafly, New Jersey, the Applicant's automated parking systems consultant, was sworn-in. After placing his credentials on the record, he was accepted as an expert in the field of automated parking systems. Mr Goldberg stated there would be ten (10) bays at each building to accommodate parking service. The parking system is like a valet service without the valet. The system could be accessed by kiosk, phone app or other means for monthly users. He discussed there were methods to tailor the system to meet various demands. A parking video, Exhibit A-29, was introduced into the record. He described how spaces were assigned. The system is computer controlled and has the added benefit of being COVID-19 compliant since it is touchless parking. It is fully automated and very secure. The parking system has been successful in Hoboken, New Jersey, and will be soon implemented in Jersey City, New Jersey and other nearby places. The system will be on the backup generator in case power is interrupted. Mr. Goldberg described a parking cycle for the average resident would be under five (5) minutes. There would be five (5) bays each for parking cars and retrieving cars.

He described queuing and how thirty (30) cycles per bay times 10 would deliver a proper scheduling allocation. He set forth the best and worst case peak scenarios

9. At the June 24, 2020 meeting, the Applicant's professional engineer, Louis Zuegner, for the firm MidAtlantic Engineering, 5 Commerce Way, Hamilton, New Jersey, was sworn-in. After placing his credentials on the record, he was qualified as an expert in the field of engineering. He introduced several Exhibits into the record including A-6. He described how the ride share would operate on Cifelli Drive. He reviewed elevations and the size of parking spaces with the Board. He reviewed the parking that would be provided, both in the garages and surface parking. There would be a total of 1,313 parking spaces. He reviewed the uses and pedestrian circulation. Mr. Zuegner discussed connectivity with the PATH station and plaza. It was determined that the loading dock did not need a design waiver. There would be a fence around the green space and there would likely be electricity added depending on the ultimate use in the green space. Mr. Zuegner reviewed the flooding situation in the area and stated that sewer lines will be replaced and plans updated. Mr. Zuegner added that the green space fence would be decorative as much as possible. The project would be phased and would have interim surface parking while Building "B" was under construction.

10. At the July 8, 2020 meeting, the Applicant's attorney, Mr. Trautner, set forth that signage was not part of the Application and the Applicant would come back at a later date with a specific application to deal with the specific design for the signage. In addition, Mr. Trautner set forth that the Applicant would abide by a Green Standards Compliance Letter that was submitted with this application on April 13th. Also, with respect to fencing, the Applicant will install a decorative fence around the park area at least five feet high at the front, but could be higher, i.e. ten feet, based upon the input from the Board's professionals.

11. At the July 8, 2020 meeting, the Applicant's professional engineer, Louis Zuegner, continued his testimony under oath. He discussed the fencing, landscaping and lighting plans. He discussed the possibility of a tunnel under the railroad tracks and its connectivity with the crosswalks. "No Idling" signs would be added to the pick-up/drop off areas and the plans would be updated based upon the recommendations of the Board's professionals. A discussion ensued about traffic on Fifth Street and how sidewalks on Frank E. Rodgers Blvd. So. should be wider.

12. At the July 8, 2020 meeting, the Applicant's professional planner, Paul Phillips, for the firm Phillips Preiss, 33-41 North Street, Hoboken, New Jersey, was sworn-in. After placing his credentials on the record, he was accepted as an expert in the field of professional planning. Mr. Phillips stated that he reviewed the plans, Waterfront Redevelopment Plan, prior approval for the property and the reports of the Board's professionals. With regard to the variances and waivers, Mr. Phillips opined that there was a legitimate planning basis to grant them. He reviewed each variance and design waiver request with the Board. He stated that the Applicant was providing more retail space than what was required and it was a benefit and furthered purpose G of the MLUL list of purposes. He stated that the design waiver for loading was removed by the Board's planner. He set forth that the RSIS exception had been previously granted for stall sizes and the automated garage add one more reason to grant the exception again. Mr. Phillips opined that the relief requested met the positive and negative criteria of the

statute.

The Board's planning professional, McKinley Mertz, concurred with Mr. Phillips' testimony. She agreed that many of the variances and waivers are a result of the irregularly sized lots which caused irregularly sized building designs. Further, Ms. Mertz set forth that if the Applicant were to conform with most of the standards, it would not be keeping in line with the vision of the Redevelopment Plan and would produce a fairly undesirable layout and building design.

13. At the July 8, 2020 meeting, the Applicant's traffic engineer, Matthew Seckler, Stonefield Associates, 92 Park Avenue, Rutherford, New Jersey, was sworn-in. After placing his credentials on the record, he was accepted in the field of traffic engineering. Mr. Seckler described that he looked at the previous 2015 traffic study and conducted updated counts in the year 2019. He found the 2019 morning trip counts in the area were about four percent higher than the year 2015 while the evening trips counts in 2019 were four percent lower. He looked at the impact other projects that were approved and constructed had on the 2015 traffic study. While there will be a large number of people, large number of customers and a large number of workers that come through the area, they would not necessarily take their cars. He described the parking needs of the project's residents and retail uses. He introduced Exhibit A-7 into the record and described the garage's queuing process. He opined that the site has been designed appropriately and efficiently with respect to onsite circulation and garage design. In addition, he described how the traffic light signal timing at Bergen Street could be upgraded to assist with traffic flow. He said it was important to have the Fifth Street to Essex Street traffic flow in order to relieve traffic on Frank E. Rodgers Blvd. So. A discussion ensued that required that the traffic light at Bergen Street and Frank E. Rodgers Blvd. So be upgraded.

14. At the July 14, 2020 meeting, Joseph Romano, the Applicant's Representative resumed his testimony under oath. He stated that surface parking would be non-charged. The deck parking, the automated parking would all be charged spaces. In addition, there will be full security camera setup throughout the entire project and there will be lighting in the park area. He also stated that the Applicant intended to open a dialogue with PATH and Conrail on a number of connection issues including the opening of a tunnel under the railroad tracks. Mr. Romano discussed a design for a mural with soccer players and introduced Exhibit A-11, a rendering that would be on a flat brick surface. Appropriate lighting would be added.

15. At the July 14, 2020 meeting, Louis Zuegner, the Applicant's engineer, resumed his testimony under oath. He reviewed Exhibit A-6 with the Board. He stated there would be a redesign of the area on Frank E. Rodgers Blvd. So. to have fewer steps so that the lower level sidewalk area could be wider. The result would be a lower sidewalk of approximately eight feet instead of four feet and an upper sidewalk of six feet. In addition, the Applicant agreed to recessed doors, instead of doors opening into the upper sidewalk, for the retail space on the upper sidewalk area. A separate discussion ensued about the second level of the platform area since it was conceptual in nature. The Board and the Applicant agreed, as to the second level of the platform area, it would only be approved preliminarily and the Applicant would have to apply to the Board in the future to obtain final approvals.

16. Before the Board's deliberation, the Application was opened to public comment and public questioning of any and all witnesses and any and all materials. Seeing no person from the public coming forward, the public portion of the meeting was closed.

F. RELIEF FROM REDEVELOPMENT PLAN DESIGN STANDARDS

17. The relief requested from Redevelopment Plan design standards should be granted under the standards for relief set forth in the Redevelopment Plan.

G. RELIEF FROM RSIS

18. The Applicant is proposing a *de minimis* exception regarding minimum parking stall width dimensions of eight and a half (8.5') feet by 18 feet where nine (9') feet by 18 feet is required. (Note: the Applicant sets forth that this dimension is consistent with the prior approvals and Phase I).

19. The relief requested from the RSIS is reasonable and within the purpose and intent of the RSIS because an adequate parking supply will be provided at the site. In addition, literal enforcement is impracticable because of peculiar conditions pertaining to the development.

20. Further, the Board finds that this *de minimis* exception (a) is consistent with the intent of the RSIS and the Site Improvement Act, (b) is reasonable, limited, and not unduly burdensome, (c) meets the needs of public health and safety, and (d) takes adequate account of existing infrastructure and possible future surrounding development.

H. VARIANCE RELIEF

21. The applicant requested variance relief from the following items:

- a) Maximum Building Setback (page 28) – 10 feet is permitted, where more than 10 feet is proposed for Building B on Lot 1.03;
- b) Maximum Building Setback (page 28) – 10 feet is permitted, where more than 10 feet is proposed for Building C on Lot 1.05;
- c) Retail Depth (page 29) – The applicant is proposing retail space with a depth of 10'-8" at the closest point for Building B on Lot 1.03, where a minimum of 40 feet in depth is required;
- d) Residential: Bedroom mix standards (page 29) – A maximum of 50% of all units must be 2- and 3- bedroom units, a maximum of 10% of which can be 3-bedroom units. The applicant is proposing for Building B on Lot 1.03 to have 21% of the 2- and 3- bedroom units be 3-bedroom units, and for Building C on Lot 1.05 to have 24% of the 2- and 3-bedroom units be 3-bedroom units;

22. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c), provides this Board with the power to grant variances when the applicant satisfies the requisite burden of proof under

Section 70(c). The Applicant is entitled to relief under the criteria under Section 70(c)(1) when, in part, the Applicant can demonstrate that in a particular instance relating to a specific piece of property by reason of exceptional narrowness, shallowness or shape, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship. Separately, the Applicant is entitled to relief under Section 70(c)(2) criteria, when the applicant demonstrates, in part, that in a particular instance relating to a specific piece of property, the purposes of the Municipal Land Use Law will be advanced by allowing a deviation from the Redevelopment Plan requirements and the benefits of such deviation will substantially outweigh any potential detriment. In addition, under each situation (Section 70(c)(1) and Section 70(c)(2)), the Applicant has to demonstrate that the proposed relief will not substantially cause detriment to the public good and will not substantially impair the intent and purpose of the regulations adopted pursuant to the Municipal Land Use Law or, in this particular case, the Waterfront Redevelopment Plan. Then, in such instances, the variance may be granted to allow such departure.

23. The Board finds that in this particular instance, the variance relief being sought by the Applicant from the minimum building setbacks for Building B and Building C is technical in nature and is a result of irregular lot dimensions. Similarly, the retail depth for Building B is caused by the irregular lot dimensions. The mix of 3 bedroom units is favored because of the scope of the project and the height of the buildings. The Board and the Board's Planner agree with the Applicant's expert that these variances are not substantial.

24. Further, The Board finds that in this particular instance, the variance relief being sought by Applicant under Section 70(c)(1) may be granted because of exceptional narrowness, shallowness or shape of the Property. It was the opinion of the Applicant's professional planner and the Board's planner that many of the variances and waivers are a result of the irregularly sized lots which caused irregularly sized building designs. Further, the Board's planner set forth that if the Applicant were to conform with most of the standards, it would not be keeping in line with the vision of the Redevelopment Plan and would produce a fairly undesirable layout and building design.

25. In addition, the Board finds that in this particular instance, the variance relief being sought by Applicant under Section 70(c)(2) because many purposes of the MLUL were advanced, specifically: b. to secure safety from fire, flood, panic and other natural and man-made disasters; and g. to provide sufficient space in appropriate locations for a variety of agriculture, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

26. The Board finds that the variance relief under Section 70(c)(1) and Section 70(c)(2) will not substantially cause detriment to the public good and will not substantially impair the intent and purpose of the Redevelopment Plan. It finds that the relief that is being sought is consistent with the overall intent and purpose of the Waterfront Redevelopment Plan. There is no evidence before the Board indicating that granting this relief would in any way be detrimental to the public good, or in any significant manner inconsistent with the intent and purpose of the Waterfront Redevelopment Plan.

I. CONCLUSION

27. Subject to the conditions of this Resolution and in accordance with the materials submitted, the testimony provided and the reports of the Board's Professionals, and with there being no public comments offered, The Town of Harrison Planning Board finds that this application meets the requirements for the granting of amended preliminary and final major site plan approval for Phase II, "c" variance relief, design waivers, and a *de minimis* exception from the Residential Site Improvement Standards ("RSIS") for the development known as Harrison Yards – Phase II. .

III. APPROVAL AND CONDITIONS

NOW, THEREFORE, BE IT RESOLVED that this application by ACCORDIA HARRISON URBAN RENEWAL, LLC for preliminary and major site plan approval for Phase II, variance relief, relief from Redevelopment Plan design standards, and a *de minimis* exception from RSIS parking requirements be and hereby is granted subject to the following conditions:

1. Compliance with all applicable Town, County, State, and Federal laws, ordinances, regulations, and directives.
2. All construction, use and development of the Property shall be in conformance with the Plans approved herein, all findings, conclusions, terms and conditions of this resolution and, to the extent not inconsistent therewith, all representations of Applicant and its witnesses during the public hearing. Any material deviation from the terms of this condition shall be deemed a violation of the Land Development Ordinance and Waterfront Redevelopment Plan.
3. Applicant shall not begin any land disturbance (with the exception of disturbance incidental to demolition work, grading relative to flood zone requirements, or environmental remediation work pursuant to permits, if necessary, properly issued by the Construction Official and/or NJDEP, as the case may be) or construction pursuant to the approved Plans, and the Construction Official shall not issue a permit for construction on any approved lot, until:
 - (a) The approved Plans have been signed by the Board Chairman and Secretary and released to Applicant;
 - (b) Applicant shall submit an engineer's estimate for all proposed Phase II work (both on-tract improvements and off-tract right-of-way improvements pursuant to N.J.S.A. 40:55D-53(a)(1)) and, upon acceptance of the estimate by the Town Engineer or his designee, has posted inspection fees as required by ordinance;
 - (c) Applicant shall arrange for and attend a preconstruction meeting with the Town Engineer and such other Town officials as the Town Engineer shall designate; and
 - (d) Applicant shall obtain road opening permits for all work to be performed within a

public street. Thereafter, Applicant shall comply with all applicable road opening permit requirements in the course of the work.

4. Before the Board Chairman and Secretary sign the approved Plans:
 - (a) Applicant shall submit to the Board Engineer (a) proof that it has obtained approvals from all other governmental authorities with jurisdiction, including Town of Harrison approval of the townhouse stoop encroachments into the public right-of-way, or (ii) a certification from its engineer or attorney that no such approvals are required. Such authorities shall include, to the extent applicable, and without limitation, the County of Hudson (the "County"), the Hudson County Planning Board, Hudson-Essex-Passaic Soil Conservation District, New Jersey Department of Environmental Protection (including treatment works approval, flood hazard permit, and any approvals required by the Bureau of Safe Drinking Water) and New Jersey Department of Transportation.
 - (b) Applicant shall have paid all required application fees and technical review fees.
 - (c) Applicant's engineer shall submit any and all design which shall be reviewed and approved by the Board Engineer.
 - (d) Applicant shall submit six (6) complete sets of the Plans approved herein, with the following revisions, all of which shall be submitted to and approved by the Board Engineer.
 - (e) All plans and reports submitted by the applicant shall conform to the conditions and provisions in the letter from T&M Associates dated April 22, 2020, and from Heyer Gruel & Associates, dated June 9, 2020, all of which are attached hereto and incorporated herein by reference; the reports are attached as Exhibits A (T&M Associates) and B (Heyer Gruel & Associates).
 - (i) Although it appears that all comments from T&M Associates and Heyer Gruel & Associates have been addressed, the Plans shall be revised to address all outstanding comments of the Town Engineer, Board Engineer, Town Planner, and Board Attorney. Comments of the Board Attorney calling for a response from another Town or Board professional shall be deemed to be outstanding until such time as the response has been given, and addressed to the satisfaction of the responding Town or Board professional.
 - (ii) The Plans shall be revised to eliminate any design waivers for loading space & service Areas (page 43), concourse/sidewalk width (page 23) and chain link fence (page 41) requirements of the Redevelopment Plan;
 - (iii) The Plans shall be revised for fencing and lighting to be provided at the open space, park area consistent with the testimony provided at the

hearing;

- (iv) The Plans shall be revised to indicate that the Applicant, at its own expense, shall: (a) eliminate signage as it is not part of the Application and Applicant shall come back at a later date with a specific application to deal with the specific design for signage; (b) a redesign of the lower sidewalk area along Frank E. Rodgers Blvd. So. for fewer steps and provide for a lower sidewalk area of approximately eight feet (instead of four feet), an upper sidewalk area of six feet; (c) recessed doors instead of doors opening into the upper sidewalk, for the retail space on the upper sidewalk area; and (d) a mural with lighting depicting soccer players as set forth in the testimony during the hearing;
- (v) Further, the Plans shall be revised to indicate that the second level of the platform area is only approved preliminarily and the Applicant would have to apply to the Board in the future to obtain final approvals for the second floor platform area;
- (vi) With respect to costs related to the replacement, synchronization and timing issues of traffic control signals along Frank E. Rodgers Boulevard South, the Applicant shall provide their fair share of these costs in accordance with the law and subject to any conditions that are or may be imposed by the Hudson County Planning Board [also a condition of prior approval].
- (vii) Applicant shall fulfill the public art requirement in Phase II based upon the cost of construction of Phase II.
- (f) A copy of the site-wide RAO shall be provided to the Town of Harrison for their records upon receipt by the Applicant. It is anticipated that the RAO will not be finalized for many years [a condition of prior approval].
- (g) Applicant shall enter into a developer's agreement with the Town of Harrison. The agreement shall include, but shall not be limited to, provisions governing (a) Applicant's responsibility for traffic improvements in conformance with the conditions of this resolution, (b) Applicant's responsibility for public art, and (c) Applicant's obligation to deliver to the Town of Harrison, at such time(s) as may be required by the Town Attorney, a deed of dedication for any public right-of-way as described above in conformance with the Plans for this particular project.
- (h) Applicant shall provide performance guarantees for this particular project for improvements to Angelo Cifelli Drive, Fifth Street, and Frank E. Rodgers Blvd. So., and any other Right of Way, and for any and all other improvements to be dedicated to the Town of Harrison (including but not limited to public art). The requirement for a performance guaranty for these improvements shall include both the interim improvements shown in the Plans, and Applicant's proportionate

share (50%) of the cost of permanent improvements conforming to all applicable Redevelopment Plan standards. The amount of the performance guaranty for these permanent improvements (including the required 10% cash portion of the guarantee) shall be subject to adjustment on the third anniversary date of the issuance of the performance guaranty and on every three-year anniversary date thereafter, in order to account for changing construction costs. Such performance guarantees shall be satisfactory in form to the Town Attorney, and in amount to the Board Engineer. All such performance guarantees shall conform to all applicable provisions of the Municipal Land Use Law and the Land Development Ordinance. Notwithstanding the foregoing, in the event the County insists upon delivery of a performance guaranty for improvements to Frank E. Rodgers Boulevard South, the Applicant shall, in lieu of the performance guaranty required by this condition, deliver to the Board Engineer proof that such guaranty has been delivered to the County.

- (i) Applicant shall provide a performance guarantee for this particular project for all Phase II improvements, other than those set forth in (g) above, in accordance with N.J.S.A. 40:55D-53, The performance guaranty must meet all applicable requirements of N.J.S.A. 40:55D-53 and Ordinance Section 17-105.1. The amount of the performance guaranty shall equal 50% of the anticipated cost of all required labor and materials, calculated in conformance with current prices, plus a 20% contingency as permitted by N.J.S.A. 40:55D-53. Ten percent (10%) of the performance guaranty must be in cash. The amount of the performance guaranty (including the cash portion) shall be subject to adjustment on the third anniversary date of its issuance, and on every three-year anniversary date thereafter, in order to account for changing construction costs. Such performance guarantee shall be satisfactory in form to the Town Attorney and in amount to the Board Engineer. All such performance guarantees shall conform to all applicable provisions of the Municipal Land Use Law and the Land Development Ordinance and Redevelopment Plan.
- (j) Applicant shall supply “will-serve” letters from all utilities providing service to the project.

5. Applicant shall provide maintenance guarantees for all improvements covered by a performance guarantee. A maintenance guarantee shall be provided for each improvement prior to the release of the performance guarantee (or any portion thereof) given for such improvement. Such maintenance guarantee shall be governed by all applicable provisions of the Municipal Land Use Law and the Land Development Ordinance. Such maintenance guarantees shall be satisfactory in form to the Town Attorney and in amount to the Town Engineer.

6. All site improvements, screening, fencing and landscaping required by the approved Plans or the terms and conditions of this resolution shall be maintained in good condition for so long as any building, structure, or use approved herein shall remain on the Property.

7. Applicant’s construction activities shall be limited to those hours permitted by ordinance.

8. ALL NOTES INCLUDED IN THE APPROVED PLANS, INCLUDING NOTES REQUIRED BY THIS RESOLUTION, SHALL BE DEEMED TO BE CONDITIONS OF APPROVAL HAVING THE SAME FORCE AND EFFECT AS CONDITIONS EXPRESSLY SET FORTH HEREIN.

9. In the event Applicant fails to obtain approvals from any other governmental agency having jurisdiction, and addressing such failure requires (directly or indirectly) any change (other than a *de minimis* change) in the Plans approved herein, or in the event the approval granted by any other governmental agency with jurisdiction requires (directly or indirectly) any change in the approved Plans (other than a *de minimis* change) Applicant shall return to the Board to seek amended development approvals for any and all resulting changes.

10. In the event Applicant fails to satisfy any condition of this resolution, Applicant shall return to the Board to seek amended development approvals or other appropriate relief.

Voting to Approve Application Subject to Formal Resolution Detailing Conditions:

	Yes	No	Absent	Other
Chairperson Arthur Pettigrew	X			
Vice-Chairperson Denis Perez	X			
Member Councilman Laurence Bennett	X			
Member Andrea Choffo	X			
Member James Ellison	X			
Member Carolos Mariano	X			
Member Delfim Sarabando	X			
Member John Starr	X			

Voting to Approve This Formal Resolution Detailing Conditions:

	Yes	No	Absent	Other
Chairperson Arthur Pettigrew				
Vice-Chairperson Denis Perez				
Member Councilman Laurence Bennett				
Member Andrea Choffo				
Member James Ellison				
Member Carolos Mariano				
Member John Mulrenan				
Member Delfim Sarabando				
Member John Starr				

I certify that this is a true copy of a resolution duly adopted by the Town of Harrison Planning Board at a special public meeting held on August 12, 2020. This resolution memorializes an action of the Board taken on **July 14, 2020**.

Mary C. Gaines, Secretary