

**FLORENCE TOWNSHIP  
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION NO. Z.B.-2022-11**

*Application ZB #2021-14*

**RESOLUTION OF MEMORIALIZATION  
APPLICATION OF  
NFI REAL ESTATE, LLC  
("WAINWRIGHT" TRACT)  
USE VARIANCE  
PRELIMINARY MAJOR SITE PLAN  
BLOCK 167.01, LOTS 2.01, 2.05, 3.01, 3.02 & 4  
SM SPECIAL MANUFACTURING ZONE DISTRICT  
DENIAL**

**Decided:** May 31, 2022  
**Resolution Memorialized:** September 1, 2022

**WHEREAS**, NFI Real Estate, LLC, has made application to the Florence Township Zoning Board of Adjustment, seeking a use variance pursuant to NJSA 40:55-D-70(d)1, and preliminary major site plan approval with bulk variances and design exceptions to allow development of stormwater basins, parking and loading areas, a septic disposal system and an access driveway accessory to a 50-ft. tall 1,105,000 sq. ft. industrial warehouse proposed to be constructed on adjoining lands in Mansfield Township, at a 216 acre property (98 acres in Florence Township and 118 in Mansfield Township) which is located at 1091 Florence Columbus Road, and with regard to the Florence Township part of the overall parcel, is known on the official Tax Map of the Township of Florence as Block 167.01, Lots 2.01, 2.05, 3.01, 3.02 and 4.

**WHEREAS**, the adjoining lands in Mansfield Township that are part of the overall parcel are known on the official tax maps of Mansfield Township as Block 47.02, Lots 3.01, 5 & 6, these lands are in Mansfield Township's ODL Office Distribution Laboratory Zone District in which proposed 1,105,000 sq. ft. industrial warehouse was a permitted use, and the Mansfield Township Joint Land Use Board approved development of the warehouse on those lands by way of that Board's Resolution 2022-01-01;

**WHEREAS**, Florence Township Ordinances prohibit construction of accessory buildings and structures when no principal structure is located on the same lot, no principal structure is proposed on the Florence Township part of the overall parcel to which the proposed stormwater basins, parking and loading area, septic disposal system and access driveway can be accessory, so a use variance for uses and improvements not permitted in the zone is a necessary predicate to consideration of the requested preliminary major site plan;

**WHEREAS**, the Florence Township part of the overall parcel upon which development is proposed lies in Florence Township's SM Special Manufacturing Zone District in which distribution center and warehouse buildings with a maximum height of 30 ft. are allowed as-of-right;

**WHEREAS**, the remainder of the Florence Township part of the overall parcel lies in Florence Township's AGR- Agricultural Zone District, and no development is proposed at this time on these lands;

**WHEREAS**, the applicant was the contract purchaser of the subject property at the time of submission of its application and has subsequently become the owner of the subject property;

**WHEREAS**, the applicant is represented by John Gillespie, Esquire, of Parker McCay;

**WHEREAS**, the Board took jurisdiction of the application at its December 6, 2021 regular meeting for the purpose of reviewing administrative completeness of the application, granted certain submission waivers based upon the recommendations of the Board Engineer, Mr. Dougherty, as set forth in his letter of November 29, 2021, found the application sufficiently complete to be heard with certain testimony concerning the nature of the proposed use being deferred to the substantive hearing on the application, and scheduled the public hearing on the application for the Board's January 10, 2022 re-organization meeting;

**WHEREAS**, through email correspondence dated January 5 and 6, 2022, Mr. Gillespie informed Board officials that proper notice had not been mailed and published for a January 10, 2022 hearing, requested that the public hearing on the application be opened at the Board's February 7, 2022 regular meeting, and consented to an extension of time for decision by the Board consistent with this delay;

**WHEREAS**, upon a finding that the applicant had mailed and published proper notices of hearing, the Board, after working through a lengthy agenda with other substantial applications, opened the public hearing on the application at its February 7, 2022 regular meeting, at which the applicant's Chief Development Officer, Michael Landsburg, appeared, was sworn, and offered his testimony, along with the arguments and representations of counsel, in support of the application;

**WHEREAS**, the applicant's Engineer, Rodman R. Ritchie, PE, of Taylor Wiseman Taylor, Engineers, LLC, appeared, was sworn, was accepted as an expert in the field of site and civil engineering, and offered his testimony in support of the application;

**WHEREAS**, at the conclusion of Mr. Ritchie's testimony, Mr. Dougherty discussed his review letter of December 17, 2021 with the applicant's representatives and the Board, and thereafter, due to the late hour and with the consent of Mr. Gillespie to an extension of time for decision by the Board, the Board adjourned the public hearing to the time and date certain, without further mailed or published hearing notices, of the Board's March 7, 2022 regular meeting;

**WHEREAS**, the Board re-opened the public hearing at the Board's March 7, 2022 regular meeting at which the applicant's Sound Expert Norman Dotti, PE, of Russell Acoustics; Traffic Expert, Robert Hoffman, PE, PTOE, of Traffic Planning & Design, Inc.; and Professional Planner, Paul Philips, PP, AICP, of Philips Price, were each sworn, were accepted as experts in their respective fields, and offered their testimony in support of the application;



**WHEREAS**, in the course of the March 7, 2022 the Board also heard further testimony from Mr. Dougherty concerning his review letter, Ms. Fegley discussed her review letter of December 20, 2021 with the applicant's experts and the Board, the Township's Fire Code Official, Brian Richardson, discussed his review letter of December 17, 2021, and the Board heard extensive public comment on the application;

**WHEREAS**, due to the late hour, and with the consent of Mr. Gillespie to an extension of time for decision by the Board, the Board adjourned the public hearing to the time and date certain, without further mailed or published hearing notices, of the Board's April 4, 2022 regular meeting;

**WHEREAS**, the Board re-opened the public hearing at the Board's April 4, 2022 regular meeting, the Board resumed hearing public comments, and Matthew Madden, Esquire of Madden & Madden entered his appearance on behalf of the Florence Township Mayor and Township Council to voice their objections to the proposed development;

**WHEREAS**, Mr. Madden offered his arguments and representations along with the testimony of Planner Mark Remsa, PP, AICP, and Traffic Expert Lee M. Klein, PE, PTOE, of Klein Traffic Consulting, LLC, each of whom were sworn, were accepted as experts in their respective fields, and offered their testimony in opposition to the application;

**WHEREAS**, following the presentation of the Township's opposition testimony, the Board heard additional comment from members of the general public, thereby concluding public comment on the applicant's case-in-chief, and Mr. Gillespie asked on behalf of the applicant for an adjournment of the public hearing to the time and date certain of the Board's May 2, 2022 regular meeting in order to allow time for him to prepare for cross examination of Mr. Remsa and Mr. Klein, to allow time for his experts to have further discussions with Township Fire Code Official Richardson about his concerns, and to allow the Board's Engineer and Planner to review and offer comment upon an updated Environmental Impact Statement ("EIS") that had been submitted on behalf of the applicant on March 28, 2022;



**WHEREAS**, along with his request for an adjournment, Mr. Gillespie consented to an extension of time for decision by the Board concomitant with the requested adjournment, and the Board adjourned the public hearing to the time and date of the Board's May 2, 2022 regular meeting without further mailed or published notices of hearing;

**WHEREAS**, at the Board's May 2, 2022 regular meeting, one of the Board's professionals was unavailable due to illness, which made further hearing of the subject application unworkable that evening, and the Board determined to schedule a special meeting on May 31, 2022 solely for the purpose of the continued hearing on the subject application, and, hopefully, its conclusion;

**WHEREAS**, upon a finding that the applicant had mailed and published proper notices of hearing, the Board re-opened the public hearing at the Board's May 31, 2022 special meeting, the applicant's Engineer, Mr. Ritchie, provided additional testimony concerning the updated EIS, a recently submitted septic system feasibility study and "will serve letter" from New Jersey American Water, and other details which he sought to clarify in light of opposition testimony and public comments; the Board's Engineer and Planner each discussed their review of the updated EIS and other recent submissions, and Mr. Landsburg and Mr. Hoffman each provided additional testimony in light of comments from the Board and public;

**WHEREAS**, at the conclusion of the applicant's rebuttal and supplemental testimony, and Board discussion, the Board re-opened the hearing for public comment on new matter only and heard comments from members of the general public, as well as Mr. Madden and Mr. Remsa on behalf of the Township's opposition;

**WHEREAS**, thereafter, Mr. Gillespie offered an extensive summation of his client's application, and the factual and legal justifications in the proofs before the Board that would support approval of the application, and the Board concluded the hearing on the application by way of a successful motion to deny the requested relief;

**WHEREAS**, the Florence Township Zoning Board of Adjustment has made the following findings of fact and conclusions of law:

Findings of fact:

1. The property which is the subject of this application is located at 1091 Florence Columbus Road, and is known on the official Tax Map of the Township of Florence as Block 167.01, Lots 2.01, 2.05, 3.01, 3.02 and 4.
2. These lands in Florence Township, comprised of 98 acres, are part of an overall parcel 216 acres in size, which lies in both Mansfield and Florence Townships at the northwest corner of the Florence-Columbus Road and Interstate 295 interchange.
3. The adjoining lands in Mansfield Township that are part of the overall parcel are comprised of 118 acres and are known on the official tax maps of Mansfield Township as Block 47.02, Lots 3,01, 5 & 6. These lands are in Mansfield Township's ODL Office Distribution Laboratory Zone District and are governed by the development standards set forth in a Redevelopment Plan that was adopted by the Mansfield Township governing body by way of Mansfield Township Ordinance 2017-11. The applicable Redevelopment Plan adopts by reference the zoning standards of Mansfield Township's ODL Zone District.
4. NFI Real Estate, LLC, has made application to the Florence Township Zoning Board of Adjustment, seeking a use variance pursuant to NJSA 40:55-D-70(d)1, and preliminary major site plan approval with bulk variances and design exceptions to allow development in Florence Township of stormwater basins, parking and loading areas, a septic disposal system, and the sole driveway for access to the proposed development, all being accessory to a 50-ft. tall 1,105,000 sq. ft. industrial warehouse proposed to be constructed on the Mansfield Township part of the overall parcel.
5. Florence Township's Ordinances prohibit construction of accessory buildings and structures when no principal structure is located on the same lot, no principal structure is proposed on the Florence Township part of the overall parcel to which the proposed stormwater basins, parking and loading area, septic disposal system and access driveway can be accessory, so a use variance for uses and

improvements not permitted in the zone is a necessary predicate to consideration of the requested preliminary major site plan.

6. The Florence Township part of the overall parcel upon which development is proposed lies in Florence Township's SM Special Manufacturing Zone District in which distribution center and warehouse buildings with a maximum height of 30 ft. are allowed as-of-right.
7. The remainder of the Florence Township part of the overall parcel lies in Florence Township's AGR- Agricultural Zone District, and no development is proposed at this time on these lands.
8. The applicant was the contract purchaser of the subject property at the time of submission of its application and has subsequently become the owner of the subject property. Therefore, the applicant has standing to bring this application to the Board.
9. The applicant has submitted proofs of service of notice and proof of publication adequate to fulfill statutory notice obligations, and the Board therefore has jurisdiction to hear this application.
10. The deviations from bulk and design standards applicable in the SM Zone District that are incorporated into the proposed development are as follows: Ordinance §91-256 requires 1148 car parking spaces, but 604 parking spaces are proposed; Ordinance §91-74 requires installation of sidewalks along all streets, highways and roadways, but no sidewalks are proposed along Florence-Columbus Road; Ordinance §91-114A requires all car parking spaces to be 10ft. x 20ft., but 9 ft. x 18 ft. car parking spaces are proposed; Ordinance §91-114B requires two-way parking aisles to be 25ft. wide but 24ft.-wide drive aisles are proposed; Ordinance §91-82B requires street trees along the Florence-Columbus road frontage to be planted 70 ft. apart while street tree spacing of 120 to 170 ft. is proposed; Ordinance §91-113 requires curbing in loading areas and driveways, but no curbing is provided in certain areas; Ordinance §91-112 requires that parking and loading areas be buffered from adjoining streets, and the proposed buffer plantings on the submitted plans do not comply with applicable ordinance standards.
11. The applicant has submitted the following documents in support of its application



- a. October 16, 2021 transmittal letter of Rodman R. Ritchie, PE, of Taylor, Wiseman & Taylor, Engineers/Surveyors/Scientists, dated 10/19/2021;
- b. November 3, 2021 letter of John C. Gillespie, Esquire, amending the previously submitted preliminary major site plan application to include a request for use variance relief;
- c. A completed Township of Florence Land Development Application;
- d. A document entitled "Florence Township: for Wainwright parcel, Explanation of Application," not signed or dated;
- e. A completed Township of Florence Variance Application Checklist of Submission Requirements;
- f. A completed Township of Florence Site Plan Application Checklist of Submission Requirements;
- g. A Township of Florence Tax Collector's Certification that no taxes were due on the subject property at the time of the application;
- h. Application and escrow fees as required by ordinance;
- i. Ownership disclosure as required by statute;
- j. A map entitled "Existing Conditions Plan, 1091 Florence Columbus Road, Block 167.01, Lots 2.01, 2.05, 3.01, 3.02 and 4, Block 47.02, Lots 3,01, 5 & 6, Florence and Mansfield Townships" prepared by Samuel S Previtera, PLS of Taylor, Wiseman & Taylor, Engineers/Surveyors/Scientists, dated 9/16/2021, which shows the property outbounds and existing conditions;
- k. Metes and bounds legal description of the subject property prepared by Samuel S Previtera, PLS of Taylor, Wiseman & Taylor, dated October 1, 2021;
- l. Deeds memorializing conveyance of certain easements and parcels from the subject property to several utilities, the New Jersey Turnpike Authority, and the New Jersey Department of Transportation;
- m. A series of site plan drawings comprised of 29 sheets entitled "Wainwright Tract Preliminary Site Plan, 1091 Florence Columbus Road, Block 167.01, Lots 2.01, 2.05, 3.01, 3.02 and 4, Florence Township Tax Map Sheet 18, Block 47.02, Lots 3,01, 5 & 6, and Mansfield Township Tax Map Sheet 9"

prepared by Rodman R. Ritchie, PE, of Taylor, Wiseman & Taylor, Engineers/Surveyors/Scientists, dated 10/14/2021;

- n. A Phase I Environmental Assessment prepared by Robert L. Carter, Jr., Principal Environmental Scientist, Carter Geoscience, LLC, dated September 30, 2022;
- o. An Environmental Impact Statement prepared by Taylor, Wiseman Taylor and dated October 15, 2021;
- p. A Municipal Services and Utilities Impact Statement, prepared by Rodman R. Ritchie, PE of Taylor, Wiseman Taylor, dated October 5, 2021;
- q. A Stormwater Management Report, prepared by Ryan P. Havey, PE, of Taylor, Wiseman, Taylor, dated September 22, 2021;
- r. Tier A MS4 NJDPDES Permit Application Attachment D- Major Stormwater development Summary, prepared by Ryan P. Havey, PE, of Taylor, Wiseman, Taylor, dated October 4, 2021;
- s. A Preliminary Septic System Evaluation Design Report prepared by Rodman R. Ritchie, PE of Taylor, Wiseman Taylor, dated October 11, 2021;
- t. Architectural plans entitled “Proposed Warehouse Wainwright Tract” comprised of 2 sheets prepared by Kerry R. Haber AIA, of Bernardon Architecture, Interior Design, Landscape Architecture, dated 10/15/2022;
- u. A traffic impact study entitled “Wainwright Site Warehouse Traffic Impact Study”, prepared by Robert Hoffman, PE, PTOE, of Traffic Planning and design, Inc., dated October 13, 2021;
- v. A compendium of public documents submitted under cover of Mr. Gillespie’s letter of April 28, 2022 by which he asked the Board to take “judicial notice” of these documents (and which the Board did accept into evidence in the course of the Board’s May 31, 2022 special meeting), including: Florence Township Master Plan (as last amended in 1999); Florence Township Master Plan Re-examination Report dated May 9, 2018, adopted May 22, 2018, and Resolution PB 2018-16; Florence Township Planning Board minutes meetings of April 24, 2018 and May 22,

2018; Florence Township Code Sections 91-29 through 257, inclusive, and 91-74; Florence Township Council Resolution 2017-151; Florence Township Council meeting minutes of meetings of June 21, 2017 and July 19, 2017; Mansfield Township Joint Land Use Board Resolution 2022-01-01; Mansfield Code Sections 65-41 and 42, 65-96, 65-97, 65-99 (as they existed at the time of approval of the proposed warehouse on the Mansfield part of the overall parcel in January 2022); Northern US 130 Regional Transportation and Circulation Plan, Burlington County New Jersey; and November 1, 2016 correspondence from Burlington County Bridge Commission (Mark A. Remsa, Director) to New Jersey State Planning Commission;

- w. Notification letter and Application to NJDEP, dated November 9, 2021, prepared by DuBois & Associates for a Freshwater Wetlands Letter of Interpretation Line Verification Extension, General Permit 11, Transition Area Waiver Averaging and Flood Hazard Area Verification Methods 5 and 6 and Individual Permit;
- x. Flood Hazard Control Act Application and Environmental Report, Freshwater Wetlands protection Act Statement of Compliance Report, prepared by DuBois & Associates, dated November 4, 2021;
- y. Plan of Wetlands, comprised of 2 sheets prepared by Taylor, Wiseman, Taylor, dated June 27, 2006;
- z. FHA Verification Plan comprised of 2 sheets prepared by Taylor, Wiseman, Taylor, dated November 1, 2021;
- aa. Revised Environmental Impact Report, dated March 2, 2022, prepared by DuBois & Associates;
- bb. Response letter from Carter Geoscience dated April 5, 2022;
- cc. Engineer's Report: Floodplain Analysis, prepared by Taylor, Wiseman, Taylor, dated November 1, 2021;
- dd. NJDEP LURP application and Property Owner certification;
- ee. NJDEP Natural Heritage Database letter dated November 4, 2021;



- ff. An Executive Summary of Feasibility for Discharge to Groundwater, dated May 2, 2022 and prepared by Bayer-Risse Engineering, Inc.;
- gg. A “Will Serve Letter” from New Jersey American Water Company dated May 27, 2022;
- hh. A colorized aerial view of the site and surrounding properties which was introduced and accepted into evidence in the course of the February 7, 2022 public hearing as Exhibit A-1;
- ii. A color rendered version of the site plan which was introduced and accepted into evidence in the course of the February 7, 2022 public hearing as Exhibit A-2
- jj. A series of sound graphs and associated aerial location exhibit prepared by Norman Dotti, PE, which were introduced and accepted into evidence collectively in the course of the March 7, 2022 public hearing as Exhibit A-3
- kk. A traffic count comparison provided by the applicant’s traffic expert which was introduced and accepted into evidence in the course of the May 31, 2022 public hearing as Exhibit D-1;
- ll. An Existing Condition Plan dated 4/20/2022 presented by the applicant’s traffic expert which was introduced and accepted into evidence in the course of the May 31, 2022 public hearing as Exhibit D-2;
- mm. A Conceptual Roadway Improvement Plan dated 4/20/2022 presented by the applicant’s traffic expert which was introduced and accepted into evidence in the course of the May 31, 2022 public hearing as Exhibit D-3;
- nn. Exhibit D-4 which was introduced and accepted into evidence in the course of the May 31, 2022 public hearing which includes 13 documents mined from the websites of Florence and Mansfield Townships and Burlington County to which Mr. Landsberg made general reference in the course of his May 31, 2022 testimony
- oo. A County-prepared Powerpoint presentation from July 28, 2020 which was submitted to the Board under cover of Mr. Gillespie’s letter of April 28, 2022, which was the subject of testimony of testimony by Mr. Landsburg

at the Board's May 31, 2022 special meeting, and which was thereafter accepted into evidence by the Board.

12. The Board's Engineer, Hugh J. Dougherty, P.E., C.M.E. of Pennoni Associates, Inc., Consulting Engineers, submitted review letters dated November 29, 2021, December 17, 2021 and April 22, 2022 commenting upon the application, which are hereby incorporated into the record.
13. The Board's Planner, Barbara Fegley, PP, of Environmental Resolutions, Inc., Engineers, Planners, Surveyors, Scientists, submitted review letters commenting upon the application dated December 20, 2021 and April 28, 2022, which are hereby incorporated into the record.
14. The Township Fire Official, Brian T. Richardson, submitted review letters commenting upon the application dated December 17, 2021 and March 8, 2022 which are hereby incorporated into the record.
15. The Florence Township Environmental Commission submitted its comments on the proposed development by way of a memorandum dated November 23, 2021, which is hereby incorporated into the record.
16. The Township's Chief of Police, Brian Boldizar, submitted a review memorandum dated January 7, 2022 which is hereby incorporated into the record.
17. The Burlington County Planning Board acknowledged receipt of a preliminary site plan application concerning the proposed development by letter dated November 17, 2021.
18. This Resolution memorializes the decision of the Board to deny the requested use variance. The applicant presented and submitted extensive testimony and proofs concerning the requested use variance as well as an application for preliminary major site plan approval with associated bulk variances and design exceptions. Because the Board denied the requested use variance, it did not decide the preliminary major site plan, and the associated bulk variance and design exceptions, to which the use variance is a necessary predicate. Therefore, these findings of fact are limited to those findings necessary for the Board decide the use variance application.

19. Both testimony and argument were presented by the applicant and objectors concerning the relevance of the Florence Township Planning Board's 2018 Master Plan Re-Examination Report, and the acknowledgment in that Report that in 2017 the Township's governing body withdrew its prior support for a Planning Area change and Wastewater Management Plan Amendment concerning the subject and nearby properties. The proposed Planning Area change would have re-designated the subject property from Planning Area-4 (PA-4 Rural) to Planning Area-2 (PA-2 Suburban), and would have enabled legally a proposed Wastewater Management Plan Amendment that sought to include the subject and nearby properties in a new sewer service area.

When the application which is the subject of this Resolution was submitted, and at this time, the subject property remains in Planning Area-4 and is outside of any designated sewer service area under the applicable county-wide Wastewater Management Plan. The applicant's representatives acknowledged in the course of the public hearing on the application that approval of an amendment by the New Jersey Department of Environmental Protection and Burlington County to the county-wide Wastewater Management Plan would be required for approval of a septic system of the size proposed at the subject property by the applicant.

The Township governing body's actions with regard to Planning Area designations and Wastewater Management planning, and the applicant's outside agency approval obligations, are interesting, but they are irrelevant to the Board's role of hearing and deciding this application for a variance from local ordinances pursuant to NJSA 40:55D-70(d). The Board's powers are derived solely from the Municipal Land Use Law, NJSA40:55D-1 et seq. (the "MLUL"), and the Board must address the statutory variance criteria as set forth in the MLUL and judicial interpretations of those statutes. The governing body's roles in wastewater management planning and Planning Area designations derive from other statutes and regulations, and absent specific duly adopted changes to the Master Plan and zoning ordinances (which had not been adopted at the time this application was submitted, or at the time of the Board's May 31, 2022 decision on this



application), the governing body's policy statements in furtherance of statutory authorities other than those it wields pursuant to the MLUL (and the Planning Board's documented acknowledgement of them) are not proper subjects for consideration by this Board.

Accordingly, the evidence and testimony placed before the Board concerning the governing body's actions with regard to Planning Area designations and Wastewater Management planning will not factor in the Board's decision on this variance application under the applicable statutory criteria and governing caselaw.

20. Similarly, the Board's members cannot help but be aware that the Florence Township Planning Board has been very publicly engaged in the development and adoption of a new comprehensive Master Plan. When the application which is the subject of this Resolution was submitted, and when the Board decided this application on May 31, 2022, no new Master Plan elements had been adopted by the Planning Board. Accordingly, the master plan against which the use variance which is the subject of this Resolution must be gauged is the Township's duly adopted 1999 Master Plan.
21. As brought to the Board's attention in Mr., Gillespie's summation at the May 31, 2022 hearing, the 1999 Florence Township Master Plan has a very specific discussion of the relationships between the SM and GM Zone Districts and the purposes behind the SM Zone designation of the subject property, which lies at the northwest corner of the Florence-Columbus Road and I-295 interchange. The Master Plan discussion is quoted in full below:

The SM and GM Areas on the Southeastern Boundary with Mansfield Township. The Burlington County Resource Recovery Facility is located in the GM designated portion of this area, south of I-295. Although it is an essential public facility, the Recovery Facility is also very objectionable to adjacent homeowners. As a result, future residential development is inappropriate in the areas adjacent to the facility because of

unavoidable impacts from it. The fact remains, however, that there are many existing residences in the general area in both Florence and Mansfield townships. **It is a goal of this plan to minimize impacts on these residences by designating the future land use for the adjacent area (north of I-295) as SM Special Manufacturing. SM is the most appropriate future land use for the area north of I-295 because it is less likely to result in offsite impacts than permitted by a GM designation.** In addition, it is intermediate in the permitted intensity of development between the Recovery Facility in the GM area and the existing homes to the east, north and west. This type of transition is especially important because of the general openness and flat topography in the area. **GM General Manufacturing as a category of land use is inappropriate in this area because it would permit an extension of potentially high impact uses in an area where a transition to less intensive impact is more appropriate.** On the positive side, this area on the north side of I-295 has attributes for special manufacturing types of uses not fully recognized in previous township master plans. These attributes include proximity to an interchange on the newly completed I-295, together with a convenient connection to the anticipated new Route 130/Turnpike Extension interchange. In addition, **the openness and relatively flat topography which characterize the area make it very visible.** The future pattern and character of development in this area will exert a strong influence on the character of the entire area in both Mansfield and Florence Townships. **This visibility from the interstate and from some of the main roadways into and through Florence and Mansfield Townships can be an important attribute to commercial uses that need high visibility, a characteristic**

**more common to SM than GM uses.** It is hoped that these attributes may lead to long awaited replacement for the economic benefits lost to the Florence region with the closing of the Roebling Steel Mill. (emphasis added).

Significantly, the 1999 Master Plan highlights the Planning Board's concern with the intensity of uses in the SM Special Manufacturing Zone properties in the area where the subject property is located, and the potential negative externalities of uses in that area. The quoted passage from the 1999 Master Plan specifically compares the less intense uses allowed in the SM Zone with the more intense and impactful uses allowed in the GM General Manufacturing Zone, says why those more intense GM uses should not be allowed in the SM Zone, and says why SM uses are better suited for particular properties, like the subject property which are north of I-295.

22. The existing ordinances governing the permitted uses in the SM and GM Zones are consistent with the concerns about intensity and negative externalities expressed in the 1999 Master Plan. In the SM Zone, pursuant to Ordinance §91-252, the maximum allowable building height is 30 ft., but in the GM Zone, Ordinance §91-242 allows a maximum allowable building height of 75 ft. Among the permitted uses in the SM Zone specified by Ordinance §91-250 are: "Distribution centers and warehouses", but "Wholesale distribution centers and warehouses" are permitted in the GM Zone under Ordinance §91-241. "Manufacturing of light machinery", "Fabrication" of a number of products, food "Preparation", "Lumberyards" and "Laboratories" are all permitted in the SM Zone, while "Manufacturing plants of a type which manufacture, assemble or treat products from raw or previously prepared materials, including but not limited to factories and steel-and wire making processes[,] are allowed in the GM Zone. The governing body sought to distinguish the scale, intensity and nature of the permitted uses in the two zones with these differing standards in accord with the principles stated in the Master Plan.



23. The Board notes that had the proposed principal building been located on the Florence Township part of the overall parcel, a substantial height variance pursuant to NJSA 40:55D-70(d)6 would have been necessary under the standard for the SM Zone District set forth in Ordinance §91-252.
24. The applicant's planning expert, Mr. Philips, acknowledged the necessity for the requested use variance pursuant to NJSA 40:55D-70(d)1 to allow the proposed accessory uses on the Florence Township lands without a principal use on those lands, but he testified that the use variance is just a "technical" variance because the underlying zoning in Florence permits warehouse distribution uses. He further testified that the sole reason for the use variance is that the proposed principal building will be wholly on the Mansfield Township part of the overall parcel and that the overall parcel should be treated as a single tract for development.

Mr. Philips asserted that the zoning of the Mansfield and Florence parts of the property are "complimentary", and that the proposed development plan which places only accessory improvements in Florence Township makes sense in light of the physical and environmental constraints of the overall parcel. He added that in his opinion, the requested use variance would advance purposes a, d, g and m of the Municipal Land Use Law as set forth in NJSA 40:55D-2, and that taken together these facts give rise to special reasons that would support the requested use variance. Mr. Philips opined that he could see no substantial detriment to the public in light of the proposed placement of the accessory uses relative to adjacent properties and no impairment of the zone plan in light of the zoning in the two Townships. Mr. Philips further opined that the necessary reconciliation of the proposed accessory uses with the omission of them in Township ordinances as required under the *Medici* holding can be made since warehouse distribution uses like the proposed principal use are contemplated in the SM Zone.

25. Mr. Philips' testimony did not address the substantial difference between the permitted maximum building height in Florence Township's SM Zone of 30ft. and the actual building height of 50ft. that was approved by the Mansfield Township Planning Board for the proposed principal building to be located on the Mansfield Township part of the overall parcel. Mr. Philips did not provide any testimony

that compared specifically and qualitatively the permitted uses and associated development standards in the Florence SM Zone with those of the adjoining Mansfield ODL Zone. From Mr. Philips testimony, the Board knows only that warehouse and distribution uses in 50 ft.-tall buildings are allowed in the Mansfield ODL Zone, but nothing at all about any qualifications or limitations on those uses which may be found in Mansfield's ordinances, or how genuinely consonant the warehouse distribution uses permitted in Florence Township's SM Zone are with the Mansfield ODL uses. The Redevelopment Plan that was attached to Mansfield Township Ordinance 2017-11, and which was later accepted into evidence by this Board is not helpful because it contains no substantive zoning standards and merely adopts by reference the zoning standards of Mansfield Township's ODL Zone District.

Because Mr. Philip's testimony was founded on an unsupported assertion that the zoning of the Mansfield and Florence parts of the overall parcel are "complimentary", and because his testimony does not address the substantial difference in allowable building heights in the SM and ODL Zones, the Board does not find Mr. Philip's testimony credible with regard to the special reasons, absence of substantial impairment of the zone plan and the enhanced quality of proof required under the *Medici* holding for a use variance pursuant to NJSA 40:55D-70(d)1.

26. Mr. Remsa provided planning testimony to the Board on behalf of the objecting Florence Township Mayor and governing body. Most significantly for the Board, he asserted that Mansfield's ODL Zone allows more intense warehouse uses than the Florence SM Zone because the Mansfield ODL Zone allows much taller buildings than Florence allows in its SM Zone. Mr. Remsa opined that the subject property is not particularly suited to the proposed accessory uses because of this mismatch in the intensities of development allowed in Florence and Mansfield. Mr. Remsa also asserted that there would be a substantial detriment to the public good as a consequence of the more intense development sought by the applicant because it would result in additional traffic.

Mr. Remsa provided additional testimony in support of his position that the subject property is not particularly suited to the proposed use. This additional testimony was based in his interpretation that the Florence Township Planning Board's acknowledgment in its 2018 Re-Examination Report of the Township governing body's actions with regard to the Planning Area designation and sewer service areas in the area that includes the subject property was thereby adopted as a policy recommendation by the Planning Board. For the reasons set forth above concerning the 2018 Re-Examination Report, this Board declines to adopt this aspect of Mr. Remsa's reasoning concerning special reasons and the particular suitability of the subject property for the proposed use.

Mr. Remsa offered additional testimony concerning the bulk variances and design exceptions necessary for approval of the development as it was proposed, and he opined that these deviations also show the unsuitability of the site for the proposed use. Some of the initially requested ordinance deviations were the subject of later proffers to ameliorate by the applicant that were discussed on the record in the course of the public hearings (i.e. buffers), and others are perceived by this Board as typical design choices that have no direct bearing on site suitability. For these reasons, the Board has not relied upon this aspect of Mr. Remsa's testimony.

27. None of the professional experts or lay witnesses who testified before the Board provided a comparative analysis of the traffic impacts of the proposed 50 ft. tall building with the 30 ft. tall building that would be allowed under Florence Township's standards applicable to the SM Zone District.
28. In addition to the arguments and testimony of Mr. Madden, Mr. Remsa and Mr. Klein on behalf of the Florence Township Mayor and governing body, public comment was offered on the application by: Kristan Marter, Christine Pukenas, Michelle Rosenblum, Cynthia Constantini, John Fratinardo, Adam Schoen, James Fevola, John D'Aquisto, Dennis Slaboda, and John O'Callaghan. No member of the public expressed support for the application.



### Conclusions of Law

The Board begins its analysis with the observation that it is the applicant's burden to prove its entitlement to the requested relief, and the Board finds that the applicant has not met this burden with regard to the requested use variance pursuant to NJSA 40:55D-70(d)1. Because the applicant's expert planning testimony was founded on an unsupported assertion that the zoning of the Mansfield and Florence Township parts of the overall parcel are "complimentary", but did not address the substantial difference in allowable building heights in the SM and ODL Zones (or any other specific zoning standards in the two zones), and therefore the intensity of the proposed use, the Board did not find that testimony credible and probative with regard to the special reasons, absence of substantial impairment of the zone plan and the enhanced quality of proof necessary for approval of a use variance pursuant to NJSA 40:55D-70(d)1.

The Board further observes that as a matter of applicable case law and common sense, it is obliged, and should, consider the overall parcel that lies in both Mansfield and Florence Townships as a single parcel for development. None of the proofs before the Board provided a comparative analysis of the traffic impacts of a principal building on the overall parcel that conforms to the 30 ft. height limit of Florence Township's SM Zone District with the proposed 50 ft. tall building that was approved by the Mansfield Land Development Board. Absent such proofs, the Board is obliged to rely upon the purposes stated in the 1999 Florence Township Master Plan for including the subject property in the SM Special Manufacturing Zone District, and the refined distinctions made between the SM Zone District uses and standards and those of the adjoining GM Zone District in the implementing Florence Township zoning ordinances. In reliance upon the 1999 Master Plan and the applicable zoning ordinance sections, the Board finds that the proposed building on the overall parcel that is 67% taller than allowed, and accessory uses associated with that building, would be a more intense use than the Planning Board and governing body intended at the subject property, would be substantially detrimental to the public good, and would substantially impair the zone plan and zoning ordinance.

Comity, and practical considerations oblige adjoining municipalities to be respectful of each other's development standards and regulations. No municipality has the power to

impose its development standards on another. The practical effect of approval of the requested use variance would, however, be to impose the Mansfield Township ODL standards that allow substantially more intense uses upon lands in Florence Township that have been deliberately zoned for uses of lesser intensity for specific, protective reasons. This is especially significant with regard to the proposed single entrance driveway for the entire proposed development on the overall parcel because this driveway will not only transit across the part of the overall parcel that is in Florence Township, but will also debouche onto roads within Florence Township.

It is axiomatic under the MLUL that having zoned property for particular uses, municipalities may not then deny such uses because of traffic impacts or other negative externalities. Landowners have a right to develop in accordance with the prevailing zoning, municipalities are presumed to have anticipated the effects of their zoning, and ad hoc generalized considerations of the public welfare may not be used to block development.

This case is the obverse of that situation. Here, the Florence Township Planning Board and governing body have pointedly chosen uses and standards with an anticipated level of intensity and have explained why they have done so. The application before the Board contemplates development that is substantially more intense than anticipated by the governing body, and, therefore, allowed in the SM Zone District. There is no credible, probative evidence before the Board that would allow it to deviate from the zoning standards set down by the governing body or which would justify this Board rethinking the determinations of the Planning Board and governing body that link the height of permitted structures with their anticipated intensity. In the absence of such evidence, it would be improper for the Board to arrogate to itself an authority to second-guess the policy determinations of the governing body.

For theses reasons, the Board is obliged to deny the requested use variance. Because the Board has determined that denial of the requested use variance is appropriate, it is not necessary for the Board to make any findings concerning the preliminary major site plan and associated bulk variances and design exceptions.

**NOW, THEREFORE, BE IT RESOLVED** by the Florence Township Zoning Board of Adjustment in the County of Burlington and State of New Jersey that the application of NFI Real Estate, LLC, seeking a use variance pursuant to NJSA 40:55-D-70(d)1, to allow development of stormwater basins, parking and loading area, a septic disposal system and an access driveway accessory to a 50-ft. tall 1,105,000 sq. ft. industrial warehouse proposed to be constructed on adjoining lands in Mansfield Township, at a 216 acre property (98 acres in Florence Township and 118 in Mansfield Township) which is located at 1091 Florence Columbus Road, and with regard to the Florence Township part of the overall parcel, is known on the official Tax Map of the Township of Florence as Block 167.01, Lots 2.01, 2.05, 3.01, 3.02 and 42, be, and hereby is, **DENIED**, subject to the following conditions:

1. The Board has relied upon the testimony of the witnesses and factual findings discussed in the body of this Resolution, and such testimony and findings are incorporated as conditions of this Resolution as though set forth at length herein.
2. All taxes and escrow fees for professional review must be paid current and in full.
3. Publication of a brief notice of this decision in the official newspaper of the municipality within 10 days of the date hereof.

The decision set forth in this Resolution shall run with the land and be binding on all successors in interest, purchasers and assignees.



**MOTION TO DENY USE VARIANCE:**


Moved by : Vice Chair Buddenbaum  
Seconded by : Mr. Patel  
In Favor : Vice Chair Buddenbaum, Mr. Patel, Mr. Cartier, Mr. Puccio,  
Mr. Studszinski, Ms. Sullivan  
Opposed : Chairman Lutz  
Abstain: Mr. Sovak  
Recused : None  
Absent : None

**MOTION TO ADOPT RESOLUTION:**

Moved by : Mr. Cartier  
Seconded by : Mr. Patel  
In Favor : Mr. Cartier, Mr. Patel, Mr. Buddenbaum, Mr. Puccio,  
Mr. Studzinski, Ms. Sullivan  
Opposed : None  
Abstained : Chairman Lutz, Mr. Sovak  
Absent : None

**FLORENCE TOWNSHIP  
ZONING BOARD OF ADJUSTMENT**

Dated: 9/01/2022

  
Larry Lutz, Chairman

**CERTIFICATION**

**BE IT REMEMBERED** that the within written Resolution was duly adopted at a regular meeting of the Florence Township Zoning Board of Adjustment held on September 1, 2022 and memorializes a decision taken by the Board on May 31, 2022.

Dated: 9/1/22

  
Dennis Puccio, Secretary