

RESOLUTION

Township of West Orange

Planning Board

PB 24-01 West Essex Highlands, Inc./ Warner Road

Block: 179 Lot: 32; Zone: IH-1

Decided on May 6, 2026

Memorialized on June 10, 2026

**Application for Preliminary and Final Major Site Plan Approval with Bulk Variance to
Develop a 496-Unit Inclusionary Multifamily Residential Development**

WHEREAS, West Essex Highlands, Inc. (Hereinafter the “Applicant”) has made an application for Preliminary and Final Major Site Plan approval with Variance to develop a 496-unit inclusionary multifamily residential development on a vacant 120 acre property in the northwest corner of the Township fronting Warner Road, also known as Block: 179; Lot 32 (the “Property”), in the IH-1 zone; and

WHEREAS, properly noticed public hearings were conducted on July 30, 2024, July 31, 2024, August 14, 2024, September 11, 2024, October 30, 2024, November 13, 2024, December 11, 2024, January 29, 2025, February 26, 2025, March 19, 2025 (no testimony due to technical problems), April 30, 2025, June 4, 2025, June 23, 2025, June 30, 2025, July 16, 2025, July 30, 2025, August 13, 2025, August 25, 2025, September 3, 2025, September 17, 2025, October 22, 2025, October 29, 2025, November 10, 2025, December 3, 2025, December 10, 2025, January 14, 2026, January 28, 2026, February 11, 2026 (no testimony- adjourned due to death in the family of attorney), March 4, 2026, April 15, 2026 (no testimony or deliberation) and May 6, 2026;

WHEREAS, the Applicant was represented by Bryan D. Plocker, Esq of Hutt, Shimanowitz & Plocker, P.C.; and

WHEREAS, the Applicant provided testimony from Mark Hoffman, Partner with Garden Homes and principally responsible for the design, development and construction of the West Essex Highlands, Inc. project, Paul Anderson, PE. of Anderson Consulting Services, LLC, as a professional engineer, and Laurance D. Appel, R.A., of Appel Design Group, P.A., as a professional architect, Karl A. Pehnke, P.E. of Langan Engineering and Environmental Services, LLC, as a traffic engineering expert, Mark Seel, P.E. of Langan Engineering as a geotechnical engineering expert, and John McDonough, LA,PP as a professional planner, and

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package and additional supplemental revised reports:

ITEM	SIGNED BY	DATE/REVISION
Preliminary and Final Site Plan Drawings (60 sheets)	Paul W. Anderson P.E. of Anderson Consulting Services.	6/24/2024
Stormwater Management Report	Paul W. Anderson, P.E. of Anderson Consulting Services	6/24/2024 revised 10/28/2024
Traffic Impact Study	Karl A. Pehnke, P.E. and Eric J. Vilorio, P.E.	6/19/2024
Comments Letter to CME review memorandum	Paul W. Anderson, P.E.	6/27/2024
Topographic Survey of Tax Lot 32, Block 179 (1 sheet)	Jeffrey S. Grunn, PLS, Lakeland Surveying	9/6/2023
Architectural Plans (24 sheets)	Laurence D. Appel, R.A. of Appel Design Group	5/13/2024
Settlement Litigation Agreement between West Essex Highlands, Inc. and the Township of West Orange		4/23/2020
Drainage Report	Paul Anderson, P.E. of Anderson Consulting Services	10/30/2023
Planning Board Resolution		4/5/2006

Planning Board Resolution		2/2/2005
Planning Board Resolution for Block 166, Lots 702 and 8		5/5/2005
Planning Board Resolution for Block 167 Lots 25-2301, 30-3001-3002-3003-3004-3005		5/5/2005
Geotechnical Investigation Report	Atilla Sencar, P.E. of Sor Consulting Engineers, Inc.	4/19/2021
Subsurface Investigation Report, Subsurface Stormwater Management System	Antilla Sencar, P.E. of Sor Consulting Engineers, Inc.	4/19/2021, 5/23/2023, 2/12/2024, 4/4/2024 and 5/23/2024
Subsurface Investigation and Global Stability Memorandum	Mark K. Seel, P.E. of Langan Engineering and Environmental Services, LLC	1/14/2025
Executive Summary of Global Stability Study for Eastern Slope near Building D	Mark K. Seel, P.E. of Langan Engineering and Environmental Services, LLC	1/14/2025
De Minimis Exception Request Letter	Bryan D. Plocker, Esq. of Hutt Shimanowitz & Plocker	7/18/2024
De Minimus Exception Request Letter	Bryan D. Plocker, Esq. of Hutt Shimanowitz & Plocker	6/3/2025

WHEREAS, Applicant submitted additional exhibits to the Board during the course of the hearings as follows:

ITEM	EXHIBIT	DATE
Applicant Engineer's Power Point	A-1	7/30/2024
Architect's Power Point	A-2	7/31/2024
Foundation Exposure	A-3	8/14/2024
Email from DEP	A-4	7/31/2024
Higher resolution of Seel report page 2	A-5	9/15/2025
Easement Agreement	A-6	2/14/1989
Declaration of Easement Right of Way Agreement between Allied Signal and Essex Fells Country Club with cover letter	A-7(1)	1/19/1988
Letter from Byran D. Plocker, submitting Easement	A-7(2)	10/22/2025

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

WHEREAS, Bruce I. Afran, Esq. represented WeCare and individual objectors to the Application; and

WHEREAS, objectors provided documents, reports and testimony from Sean Walsh, P.E. of Princeton Hydro as a professional engineer, Mark Gallagher, Vice President of Princeton Hydro as an expert in wetlands ecology and hydrology, Geoffrey Goll P.E. President of Princeton Hydro as an environmental and geotechnical engineer, Emile DeVito (Ph.D. Forestry), Professor Luke Bulter, Ph.D. (Zoologist and Avian Biologist), Alexander Litwornia, P.E. (Traffic), William H. Green, III, P.E., John Hasse, Ph.D. (Professor of Geography); and

WHEREAS, the Board reviewed and considered the Application and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters and reports of its professionals at the hearing, including review memos dated June 26, 2024 and July 29, 2024 from John J. Hess, P.E., PP, CME (Township Engineer), Traffic Impact Study dated July 26, 2024 from Kevin E. Chen, P.E., PTOE of CME, Report dated October 29, 2025 by John J. Hess, P.P., P.E., CME regarding response to Objector's Traffic Review, Report by John J. Hess, P.E., P.P., CME dated August 15, 2025 regarding Response to Objector's Stormwater Management System Review, Preliminary and Final Site Plan Review #3 dated June 13, 2025 by John J. Hess, PE, PP, CME, Review Report of Environmental Conditions dated July 1, 2024, a report dated October 16, 2024 and power point presentation from Wayne D. DeFeo, LEED AP, BD&C, Principal of DeFeo Associates, a report dated November 6, 2024 from Wayne DeFeo, Principal of DeFeo Associates, Memorandum from Fire Chief Anthony A. Vecchio dated August 1, 2024, a Planner's Report by Gerard M. Haizel, PP, AICP, Principal of Nishaune Group, Township Planning Consultant dated June 30, 2024, a supplemental report from CME dated August 15, 2025 by John Hess, PE, PP, CME re: response to Objector's Stormwater Management System Review with testimony from Ryan MacNeil of CME regarding the stormwater management plan offered by Applicant and with

a review and comparison to the report prepared by Objector's expert, Geoffrey Goll, P.E. of Princeton Hydro, Report of Samuel N. Kleinberg, P.E. of CME dated October 28, 2025, testimony of Samuel N. Kleinberg, P.E. regarding slope stability and geotechnical engineering for the site and report of Michael Dziubeck, P.E. of CME dated December 8, 2025 regarding Sanitary Sewer Review #1;

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant requested approval for Preliminary and Final Major site plan approval with one c variance and two RSIS exceptions to develop a four hundred and ninety-six (496) unit residential development, of which one hundred (100) units to be designated affordable units.
2. The proposed development included residential amenities including a clubhouse with a swimming pool, a pet kennel and dog park, walking trails and roof amenities on Building D.
3. The proposed development was the result of a Settlement of Litigation Agreement dated April 2020 between West Essex Highlands, Inc.(the Applicant), West Essex Highlands Condominium Association and the Township of West Orange. The Settlement Agreement was approved pursuant to court order in connection with litigation involving the Township and its obligation to provide affordable housing within the Township.
4. On August 11, 2020, the Township introduced the IH-1 Zoning District for the site in question with said ordinance being adopted on October 20, 2020.

5. The proposed multifamily development is permitted as a principal use in the IH-1 District, and the proposed amenities are permitted as accessory uses in the zone.
6. The subject property encompasses a total of 120 acres, and is located in the northwestern area of the Township and is bordered by West Essex Highlands Condominium and The Grande at Pleasantdale Chateau single family development to the south, Mayfair Drive and Rosemont single-family developments to the east, Howell Drive to the north, and the Township of Essex Fells to the West.
7. The site is unimproved and heavily vegetated with mature trees.
8. Wayne DeFeo, LEED AP, BD&C, of DeFeo Associates was retained by the Board to provide testimony as to the health of the forest. Mr. DeFeo testified that the forest is unhealthy due to massive deer foraging and the onset of beech disease to the beech trees, and diseased and dying Ash trees. There are few young trees in the current forest, few seedlings and an overwhelming presence of invasive plants. It was Mr. DeFeo's opinion that the use of deer fencing would allow the remaining non-developed acres of forest to regenerate.
9. Primary access to the site will be from Kuzik Drive and Warner Road from the south, via Oval Road and Eagle Rock Avenue. The Applicant committed to installing a traffic signal at the intersection of Oval Road and Eagle Rock Avenue to manage the anticipated increase in traffic.
10. The layout of the site called for four (4) 4-story residential buildings, which would be located at the approximate center of the site. Each of the buildings would have a mix of one, two and three-bedroom apartments, some of which will include a den.

11. The plans demonstrated that the project will be built to the west of the ridgeline as required by the IH-1 ordinance; however, Building D, which is closest to the ridgeline was at its closest point was 13 feet from the ridge of a steep slope.
12. The proposed development included a total of four hundred and ninety-six (496) apartments, of which 20% (100) would be designated as affordable housing units.
13. Applicant proposed that the site would be accessed from the south from Kuzik Drive, which would be extended onto the site, where it would be 22 feet in width and would be lined with a 4-foot-wide sidewalk on each side.
14. The proposed roadway would continue past the proposed location of the dog park before extending to the east, with proposed Building A (consisting of two sections, A-1 and A-2) on the southern side and Buildings B and C on the opposite (north) side. As the road continued east past the Clubhouse, there was a traffic circle to allow traffic to go to the north where the road would enter the surface parking area in front of Building D (also in two sections, D-1 and D-2).
15. There was a proposed gated emergency access roadway to the north to access the cul-de-sac on Howell Drive between Lots 8 and 9 of Block 179.17.
16. Objectors introduced testimony from Traffic Engineer, Alexander Litwornia who prepared a report dated August 22, 2025. Mr. Litwornia testified that it was his opinion that due to the single entrance into and out of the site this entire project should be considered a cul-de-sac and he further criticized the traffic design as having a grade that is too steep as he believed the maximum grade permitted was 5% for a minor collector road. Litwornia further criticized the proposal to install a traffic light at Oval

Road at Eagle Rock Avenue due to its close proximity to the traffic light already at Laurel Avenue intersection of Eagle Rock Avenue.

17. In response to Alexander Litwornia's testimony, Applicant's traffic expert, Carl Pehnke, testified that the site has three (3) points of access: Warner Road, Howell Drive (emergency access) and Kuzik Drive. As such, the site is considered a "minor collector." With respect to Oval Road, Mr. Pehnke also testified that Oval Road has two points of access: from Eagle Rock Avenue and the Essex Fells Emergency Access road.
18. As to Mr. Litwornia's opinion that the proposed roads exceeded the required 5% grade, Mr. Pehnke testified that the plans show that the site is graded at 5% incline of the intersection and none of the proposed driveways and roads in the plan exceed 10%, which is compliant with the required standards. Mr. Pehnke also refuted Mr. Litwornia's testimony that the sidewalks adjacent to the proposed roads were not ADA compliant because of the grade. Mr. Pehnke testified that the sidewalks adjacent to roads are permitted to run at the slope of the roadway and still be ADA compliant and he gave the example of a handicapped ramp being 8% grade.
19. Finally, with respect to Mr. Litwornia's testimony that the signal at Oval Road would have a low level of service and was too close to the Laurel Avenue signal, Mr. Pehnke testified that there is no law or standard that prevents signals to be within 1,000 feet of each other and the signal can be coordinated with the Laurel Avenue signal; however, Mr. Litwornia cited The Manual on Uniform Traffic Control Devices, Section 4C.07 which does state that coordinated signal systems warrants should not be applied where

the resultant spacing of traffic controls would be less than 1,000 feet apart. No evidence of warrants for the close proximity of the proposed signal was presented.

20. To the southeast of Building A, a two-story maintenance building was proposed which would include a maintenance office and storage on the first floor and two (2) two-bedroom apartments on the second floor.

21. To the south of the maintenance building was a proposed dog kennel building which included a washing station and training area in the basement. On the first floor there was a proposed dog clinic and an office and two additional offices on the second floor.

The south and east of the kennel building was the proposed fenced in dog park.

22. Proposed parking was as follows:

BUILDING	DWELLING UNITS	REQUIRED PARKING (Spaces)	GARAGE (Enclosed Provided)	SURFACE PARKING (Spaces provided)	TOTAL PARKING PROVIDED
A-1	63	124.5	175 (For both A-1 & A-2)	90 (for both A-1 & A-2)	265 (For both A-1 & A-2)
A-2	59	117			
B	69	134.6	73	68	141
C	139	268.6	203	84	287
D-1	80	154.4	293 (For both D-1 and D-2)	90 (For both D-1 and D-2)	383 (For both D-1 and D-2)
D-2	86	166.7			
Total	496	966.4	744	332	1,076

23. The site has a varied topography which the Applicant proposed to incorporate the parking garages under each of the residential buildings.

24. The application was reviewed by the Site Plan Review Advisory Board (“SPRAB”) on March 12, 2024, and a report was issued summarizing the findings of the Board by Paul Grygiel, AICP, PP, Township Planner dated March 18, 2024.
25. The plans and testimony of Applicant’s engineer, Paul Anderson established that the proposed sanitary sewer system is a gravity flow system to the low point of the property near Building D and shall have its own sewer pump station to pump to the West Orange system. There is an existing system across the site from another condominium complex, and the applicant will not be modifying or connecting into that other system.
26. The landscape plans show that of the 120.5 acres located within the property boundary, the proposed area of disturbance is 27.85 acres and within that area of disturbance, approximately 5,900 trees will be removed, and 5,409 trees are required to be replaced on site; however, pursuant to the ordinance the Applicant would receive credit for 7,123 trees replaced with the installation of 33.6 acres of deer fence. The total number of trees that will actually be planted on site will be 279 trees.
27. The Applicant proposed to install and maintain 36.6 acres of deer fencing to preserve the undisturbed wooded area which will in turn, allow for the regeneration of the forest understory and allow for the native vegetation to re-generate and create a healthier forested area.
28. According to the Ordinance related to Zone IH-1, 212 trees shall be provided for each acre of disturbance which, for this application, would be 5,904 trees that are required to be replaced on site. The 33.6 acres of deer fencing results in a credit of 7,123 trees and the Applicant is proposing to plant an additional 279 native trees on site. Therefore,

Applicant proposed to plant 1,498 trees more than what the ordinance required when factoring in the credit from the deer fence.

29. In addition to the native trees that Applicant proposed to plant, they agreed to plant 1,013 native shrubs and 2,320 native grasses and ground covers throughout the site.
30. The Board's environmental expert, Wayne DeFeo, LEED AP, BD&C, offered testimony which supported the position that the installation of deer fencing on the undisturbed portion of the property would create a healthier forest by permitting the underbrush to regenerate and so that new saplings, which are currently in short supply due to the ravishing of the deer, can grow to full sized trees which will in turn, provide additional benefits such as allowing native plants to regrow, and more stormwater absorption to take place.
31. Stormwater management is governed by the 2021 storm water regulations. The DEP determined that the project met the requirements of the Stormwater Management rules promulgated by the DEP and issued a permit dated November 15, 2024, which was provided to the Board.
32. Five (5%) percent of the parking stalls were provided for Electric Vehicles (EV) and another 5% of the parking stalls were proposed as EV make-ready. The project provided full parking, without the application of EV credits.
33. The buildings were designed with life safety in mind as they were fully sprinklered, had three (3) hour fire rated walls and floors in the lobby and garage and upstairs were one-hour fire rated. There were also areas located within each building to allow someone to be in a safe place waiting for first responders.

34. There was a trash compactor in each building and trash would be collected from a room on each floor with a chute to the compactor and then brought out for collection. Recycling was to be collected inside a trash room within each building and then taken out for collection. Both trash and recycling would be collected by a private hauler.
35. The clubhouse building was nestled into the slope of the property and was completely ADA accessible. The proposed Clubhouse amenities would change over time to meet the needs of the residents.
36. The Board accepts the testimony that due to the slope of the property, some portions of the ground floor have foundations that are more than 50% exposed, but rather than constructing retaining walls, the proposed architectural design creates more interesting architecture and allows for more landscaping. Additionally, the Applicant agreed to a condition suggested by the Board that a green wall on a louvered frame be installed which is an attractive alternative to camouflage the additional foundation above grade.
37. While by Code no more than 50% of foundation should be exposed above, grade (thus necessitating a variance) the percentages of each building foundation above grade varies: 76.5% for Building A, 76.4% for Building B, 69.1% for Building C and 54.8% for Building D. Members of the public would not see the exposed foundation of Building A unless they were visiting the building and the exposed foundation of Building C can only be seen from the Clubhouse.
38. The proposed design also provided green design features that included lighting, plumbing fixtures, AC/HVAC, roofs to accommodate future solar panels, downward lighting and energy efficient windows and appliances.

39. The affordable units were to be built on the shorter side of the buildings but were interspersed among market-rate units. Some of the market rate apartments had dens and were slightly larger than the affordable units. All of the apartments had the same HVAC, washers/dryers and similar bathrooms. The Applicant agreed to accept as a condition that all the apartments will have materially similar appliances in both the affordable units and market rate units.
40. Applicant's traffic engineer, Karl Pehnke, testified that Oval Road, which provides access to the site from Eagle Rock Avenue is excessively wide and has the capacity to accommodate the traffic from the project. Additionally, Applicant is committed as per the Settlement Agreement, to work with the Township and County of Essex (as Eagle Rock Avenue is a county road) to install a traffic signal at the intersection of Eagle Rock Avenue and Oval Road and it is anticipated that "A" level service will be provided at the intersection of Eagle Rock and Oval Road once that signal is installed.
41. The site has three (3) points of access: from Warner Road, Kuzik Drive and emergency access from Howell Drive. The Applicant was concerned that daily traffic would be a burden on Kuzik Drive and so they offered that Kuzik Drive access would be for emergency access only (gated) and therefore they requested a de minimus exception to RSIS.
42. The Applicant requested two deviations from RSIS, specifically: the proposed closing of Kuzik Drive access (with emergency access exception) creating a loop road where there are greater than 1,000 average daily traffic trips, and, removal of a section of sidewalk located along the south of Building A, extending to the main roadway to the

west of the proposed traffic circle and extending to the west of side of the Warner Road extension.

43. The Board rejected the request for an exception to close the Kuzik Drive access and had serious concerns about the fact that opening access to Kuzik Drive, which is only a block and a half long and is not an actual separate access point to the proposed development, is merely a short loop extension and not a separate road. The request to close Kuzik Drive would concentrate traffic even more significantly within the development.
44. The development area embraced the Township's Complete Streets resolution as it provides sidewalks, ADA accessible curb openings, marked crosswalks, street trees and is bicycle friendly. There are sidewalks on both sides of the streets with the exception of on Warner Road where sidewalks are on one side only because there are no homes in that location but still providing a connection to the development. However, the Board took notice that once out of the complex, there were no sidewalks along Oval Road making pedestrian access to Eagle Rock Avenue and connections to mass transit by foot dangerous.
45. At Building D, the sidewalks are located on just one side of the street and Applicant agreed to install a walkway from Building D to the clubhouse.
46. Objector's traffic expert, Alexander J. Litwornia, P.E. provided a report dated August 22, 2025, and testimony where he opined that the application created a single cul-de-sac with an estimated daily traffic would be over 5,100 trips per day when the existing townhouse development is taken into account.

47. The Board's engineer issued a response to the Objector's expert dated October 29, 2025. The Board engineer opined that the average daily traffic for the 496-unit apartment complex is approximately 2,728 trips per day which requires a second means of ingress and egress and the proposed development included two means of ingress and egress via Warner Road and Kuzik Drive as well as emergency access via Howell Drive. Members of the Board; however, indicated that they were very familiar with the roadway into the proposed complex and Warner Road was the only access road into the complex as Kuzik Drive was merely a short distance road that also fed into Warner Road and provided no real secondary traffic path to or from the proposed development.
48. The Board engineer disagreed with the Objector's expert (Litwornia) and agreed with the Applicant's engineer that the roadways should be classified as minor collector roadways with total volume that should not exceed 3,500 trips. The Board engineer further opined that if the de minimis exception from RSIS to allow for the closure of access to Kuzik Drive (except in emergency situations) is granted then Warner Road would be classified as a multi-family cul-de-sac with a maximum of 1,000 average daily trips which would be exceeded by the proposed development, thereby requiring a de minimis exception.
49. The Board's engineer also disagreed with the opinion of engineer Litwornia and opined that the Applicant is not required to widen the roadway widths of the adjacent existing roadways.
50. While Mr. Litwornia opined that the roadways within the complex were too steep and would contribute to accidents, the Board engineer opined that pursuant to RSIS Table 46, the maximum allowable grade for a minor collector roadway is 10% and the

Preliminary and Final Site Plan drawings indicate that the proposed roadway slopes are compliant with that standard.

51. The Applicant's geotechnical engineering expert, Mark K. Seel, P.E. of Langan Engineering, testified that he was retained to assess whether Building D, located close to the top of a slope, is safe to build.
52. The Board acknowledged and accepted the testimony of Mr. Seel that the soil profile in the area of Building D is dense and overlays hard rock with a subsurface of dense vegetation cover. Mr. Seel considered the area of Building D to be a shallow slope of 10-17 degrees and that it was stable as to where Building D would be built.
53. Mr. Seel opined that the area where Building D was to be built is inherently stable now and he anticipated it would continue to be stable after the building is constructed.
54. Mr. Seel testified that the closest part of Building D is about 13 feet from the top of the slope and there is low seismic risk. Mr. Seel further noted that controlled blasting techniques would be employed so that any blasting would be done safely without any risk to the slope.
55. The Board considered the testimony of Sean Walsh, a Civil Engineer from Princeton Hydro who was presented by the Objectors in response to the testimony provided by the Applicant regarding storm water management of the project. Mr. Walsh testified that the testing done by the Applicant's engineer did not demonstrate mottling (coloration in the soil that shows the seasonal high-water table) and therefore he questioned the sufficiency of Applicant's soil testing.
56. The Board's engineering expert, John Hess, of CME, issued a report (August 15, 2025) in response to the testimony and report of Mr. Walsh and noted that based on their

review of the Applicant's submission and the New Jersey Stormwater Best Management Practices Manual, ("NJ BMP Manual"), there are instances where mottling can be absent from a soil profile and therefore observing mottling in a soil profile is not a requirement. Additionally, Mr. Hess noted that Chapter 12 of the NJ BMP Manual specifically outlines the methods for determining the seasonal high-water table (SHWT) when mottling is not observed. The Board's engineer concluded that the Applicant's Engineer's method of determining the SHWT was consistent with the NJ BMP Manual.

57. Sean Walsh of Princeton Hydro also testified that it was his opinion that peak flow rates shown on the Applicant's storm water testing results were not correct and that this means that there will be more run-off so there can be more flooding.
58. The Board's expert, CME, agreed that there appeared to be some discrepancies with the groundwater mounding calculation methodology completed by the Applicant's engineer as compared to the methodology outlined in the BMP Manual; however, the Board engineer noted that pursuant to N.J.S.A. 7:8 alternative stormwater management calculations may be used if the design engineer demonstrates to the review agency that that proposed measure and its design will contribute to the achievement of the design and performance standards established by N.J.S.A. 7:8. The Board engineer also took note of the fact that Special Condition #2 of the NJDEP Permit issued to the Applicant determined that the project met the requirements of the Stormwater Management Rules at N.J.A.C. 7:8.
59. Mr. Walsh also testified that the wetlands would be affected by the development because currently the water runoff is equal distribution, but after the development he

opined that the storm water runoff would travel down the road to the basins so instead of equal runoff there will be a change in the wetlands. Mr. Walsh further testified that despite the DEP already approving the project under the previous DEP regulations, Walsh's opinions were based upon the new DEP regulations.

60. The Board's expert noted in response to the report and testimony of Mr. Walsh that impacts to the Freshwater Wetlands are under the jurisdiction of the New Jersey Department of Environmental Protection (NJDEP) and the Applicant received the necessary Freshwater Wetland Permit from the DEP.
61. Objector's engineering expert, Walsh, suggested that the stormwater flow calculation were two times what they should be and that the Applicant should therefore create much larger catch basins.
62. Mr. Walsh also pointed out that the sanitary sewer line on the plans runs through the infiltration basin. While the Board's expert engineer initially suggested that the sewer lines should be encased in cement as a condition of approval to prevent any infiltration of sewer lines into the basins, ultimately the Board engineer opined that the sewer lines be changed to a different location outside of the infiltration basin. The Applicant amended its plans to move the sewer lines from outside the infiltration basin.
63. In response to the CME report of August 15, 2025, Mr. Walsh returned to the Board and testified that he found it "suspicious" that the Applicant's engineer's used an alternative method for calculating the time of concentration to determine peak flow, but they did not state what that alternative method was and they did not provide a justification for why the alternative method was employed.

64. Mr. Walsh also pointed out in his testimony on October 29, 2025, that CME agreed that the sanitary sewer line proposed by the Applicant on the original plans that runs through the stormwater basin should be moved out of the basin, yet, the DEP approved the stormwater plan with the sanitary sewer running through the stormwater basin, suggesting that the fact that the DEP approved the plan, should not also be the subject of the Board's review because the issue was one of safety for the public.
65. The Objectors also introduced testimony from Emile DeVito, an expert in forestry, forest ecology and zoology to respond to the testimony of the Board's environmental expert (Wayne DeFeo). Mr. DeVito testified that the removal of the trees from the 143 acres present now will reduce the forest to 9 acres as "core" forest. The reduction of core forest will mean that certain animal species that require "core" forest animals (box turtle and wood thrush, for example) would disappear. DeVito admitted that there were no protected species in the forest as determined by the DEP.
66. Professor Luke Butler, PhD testified on behalf of the objectors as an avian biologist expert. He observed the forest bird life and saw 20 different bird species that will likely be decreased due to less forest being left after development. None of the bird species are protected species.
67. Objector, We Care Inc., introduced testimony from Mark Gallagher, Vice President of Princeton Hydro regarding wetland ecology and hydrology. Mr. Gallagher explained how the wetlands function at the site and that the development will modify the flow of storm water and change the environment of the wetlands. Mr. Gallagher opined that the DEP looks at compliance with the statute and water quality after construction from recharge, but the DEP does not review post construction changes to the environment.

68. Mr. Gallagher admitted that while he was aware that the DEP had issued an LOI to the Applicant, and he had read the LOI, he did not review all the supporting documents that were provided to the DEP that formed the basis for the decision by the DEP to issue the LOI. Mr. Gallagher admitted that before issuing an LOI, the DEP inspects the soils of a site, reviews hydrology and vegetation. Gallagher also admitted that during the 20 months that the matter was pending before DEP, no one from his firm had submitted any comments related to the application for this site.
69. The Mayor of neighboring Essex Fells testified that Essex Fells owns 17 acres of land known as the Essex Fells Country Club. Located in close proximity to border of the property in question and along the Canoe Brook River. Essex Fells owns a water treatment plant that the Borough of Essex Fells is investing 2.7 million dollars to process clean drinking water. The Mayor offered concern, but no proof by way of expert testimony, that the flooding in the area that occurs several times a year will be made worse if the project is built. While the Mayor offered concern that additional flooding may harm future drinking water, he offered no proof by way of expert opinion, test results or engineering design criticism.
70. In response to the Mayor of Essex Fells testimony, the Board Engineer pointed out that the flooding problem being experienced in Essex Fells may be due to blockages downhill from the area in question which are located in Essex Fells and not due to stormwater flowing from West Orange.
71. Gregory Mascera, Esq., attorney for Verona Township, advised the board that there is a resolution from the Verona Planning Board that limits development on Howell Drive to single family homes. He requested that if the application is approved that the

Applicant should be required to appear before the Verona Planning Board due to the proposed emergency access for first responders on Howell Drive. Though requested, the Township of Verona never supplied any resolution or contract that evidenced that the lots on the West Orange side of Howell Drive were subject to the limitations set forth by the Verona Planning Board regarding the Verona property.

72. Geoffrey Goll, P.E. President of Princeton Hydro testified as a geotechnical expert on behalf of We Care (objectors). He questioned the sufficiency of the geological testing done by the Applicant, specifically as related to Building D and the ridge line. Mr. Goll offered questions as to whether the ground had sufficient stability to support Building D, but he could not provide any degree of engineering certainty that there would be a ground failure or collapse if Building D is constructed as planned by Applicant.
73. In response to the testimony of Geoffrey Goll, P.E., Applicant offered testimony of Mark Seel, P.E. of Langan Engineering. Mr. Seel pointed to the report of Mr. Goll as proof that the rock strength in the area of Building D would support the building and that the slope to the west of the ridgeline would remain stable. Mr. Seel testified that Langan Engineering did not recommend blasting for the construction, but rather excavators and chemical expanders would be the preferred method of construction. Should blasting become necessary, a controlled blasting would entail precise sequencing that would minimize removal of rock beyond the blast site. Mr. Seel also noted that the report of Princeton Hydro and the testimony of Mr. Goll did not make any findings that Langan's analysis were in error.
74. Objectors to the project introduced testimony from William H. Green, III, P.E. that suggested that the Applicant's plans did not show required evidence of a water supply

- to the project. He also testified that these details are necessary to establish that there can be fire suppression supplied, that there would be sufficient water for the peak hours of use of the site. Green suggested that either a well or a water tower would be needed.
75. Objector engineering expert Green also testified that he did not see any evidence of a sewer system on the Applicant's plans. He opined that the Applicant would need to install pumping stations for the sewer system and none are provided on the plans.
76. The Board engineer, Ryan MacNeil testified that water and sewer connections are not provided in detail at the Planning Board site plan review but are a requirement of a post approval condition which is the usual and customary method of detail required to establish sufficient sewer and water connections. In a report to the Township Engineer dated December 8, 2025, Michael Dziubeck, P.E. of CME, reviewed the sanitary sewer plans submitted by the Applicant and provided conditions that must be satisfied by the Applicant.
77. The sewer plan is depicted on Site Plan pages SP-18, and SP-19 to SP-24 depict enlarged details of specific sewer construction with the proposed pump station depicted in SP-23.
78. With respect to water supply to the site, the Applicant provided evidence that water would be supplied by New Jersey Water (a signed agreement with New Jersey Water was provided by the Applicant to the Board's professionals) and the utility plans (SP 18 Overall Utility Plan, SP19-24 representing enlarged views of sections) depict the water lines (shown marked with a "W") which demonstrate the feasibility of the proposed water source.

79. Objectors also introduced testimony from Geof Goll of Princeton Hydro. Mr. Goll opined that using “factors of safety” the slope on the property has a naturally low safety factor. The suggestion of Mr. Goll was disputed by the Applicant’s geotechnical engineer, Mark Seel, who testified that the calculations shown in the Goll report confirmed that the slope was stable and could sustain the weight and mass of building D (the building closest to the ridge line.) Mr. Goll also admitted that the Applicant was not proposing any disturbance east of the ridge line.
80. The Board’s engineering consultant, Samuel A. Kleinberg, of CME provided an opinion as to whether Building D position on the site and proximity to the slope was a potential danger to any of its occupants or surrounding properties. Mr. Kleinberg reviewed the reports and information provided by both Applicant’s engineering expert (Seel) and Objector’s expert (Goll) and issued a report dated October 28, 2025. Mr. Kleinberg testified that he was not provided with the conservative ground water analysis from Langan. Mr. Kleinberg recommended that Langan provide the output study; however, Mr. Kleinberg confirmed that it was unlikely that there would be any slope failure at the site.
81. Mr. Kleinberg testified that both Langan and Princeton Hydro both came out with safety factors of greater than 1.5 which means that both studies indicate that the slope is not unstable. Mr. Kleinberg opined that the 1.5 safety factor was sufficient for this project and the proposed location for Building D did not have any significant impact on slope stability.
82. Mr. Kleinberg considered many scenarios that were highly unlikely but ultimately concluded that the location of Building D was to the west of the slope as required by

the Ordinance and the construction of Building D would not extend into the slope or present any probable safety concerns.

83. The Township Fire Chief reviewed the plans and issued findings in a memorandum dated August 1, 2024, in which he opined that there would be no significant obstacles, both as to access to the complex and all buildings for any firefighting needs that may arise.

84. The Application requires the following variance relief from the Board:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED
25.19.e.10- Maximum exposure of perimeter walls for basements, cellars, or building foundations	50%	54.8% as to Building D 69.1% as to Building C 67.4% as to Building B 76.5% as to Building A

85. John McDonough, P.P. a licensed professional planner, testified on behalf of the Applicant that the Application is an inclusionary housing development that was designed in accordance with a Fair Share Housing Plan and Settlement so that 100 affordable housing units could be built while preserving over 90 acres of wooded and undeveloped land.

86. The project is located in the IH1 zone which was created for the purpose of providing housing for all income levels and is in keeping with the goals of the Township Master Plan, Fair Share Housing Element which references this development and this location.

87. The proposed Application is directed at satisfying the third-round obligations of the Township's affordable housing needs and is consistent with the goals of the Master Plan.

88. Mr. McDonough testified that the Application meets all the ADA and Electric Vehicle standards and conforms with the applicable DEP regulations. The project meets all the bulk standards for the zone with the exception of one minor bulk variance for exposure of building foundation walls and two RSIS exceptions.
89. With respect to the c variance relief regarding the foundation exposure, Mr. McDonough testified that they requested more than 50% exposure of the foundation so as to minimize disturbance on the property. The need for the variance is due to the terrain of the property and thus satisfies the c1 criteria. The foundation exposure is mitigated by landscaping with foundation plants and live plant screens.
90. The Applicant's expert planner also testified that the variance for the foundation exposure may also be granted on the basis of c2 criteria because the benefits of providing affordable housing and the public need for economically suitable housing outweighs the relatively modest design exception. Additionally, the design as proposed will promote more efficient use of land and economy of scale while also preserving 90% of the woodlands adjacent to the buildings.
91. Mr. McDonough made note of the applicability of the case Pizzo Mantin Group v. Township of Randolph, 137 N.J. 26 (1994) which states that when an application for sub division or site plan meets all requirements of the subdivision or site plan and zoning ordinances, the Applicant is generally entitled to approval and a denial must be based on specific failures to meet the stated ordinance standards.
92. The requested variance for the foundation exposure could be avoided if the Applicant did more extensive excavation but as suggested by Mr. McDonough, the Board finds

that the benefits of leaving a slightly larger area of foundation exposure with mitigating landscaping is a much better alternative.

93. There are two *di minimus* exceptions requested from RSIS: (1) The loop road closing of Kusik Drive when there is an expected greater than 1,000 average daily trips (as per the traffic expert Penke) can function safely and efficiently by limiting Kusik Drive access for emergency access only. (2). That there is sidewalk on one side of the road in a small part of the development. Inclusion of a sidewalk on both sides is impractical and serves no planning purpose as the overall project is bicycle and pedestrian friendly with well-marked and lighted crosswalks.
94. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board's review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an "ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met." N.J.S.A. 40:55D-46a further provides that "The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient." N.J.S.A. 50:55D-46b provides that "if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development" and "the planning board shall, if the proposed

development complies with the ordinance and this act, grant preliminary site plan approval.” N.J.S.A. 40:55D-50a. provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

95. A Board may also deny an application if an Applicant fails to provide sufficient information on fundamental elements of a plan that may have pervasive impact on the public health and welfare of the community. Field v. Mayor and Council of the Township of Franklin, 190 N.J. Super. 326, 332-333 (App. Div. 2021).
96. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance as part of site plan or subdivision review. The variance proofs are the same as

for “c” variances as set forth in N.J.S.A. 40:55D-70. A c(1) variance may be granted for reasons of exceptional topographical conditions or physical features uniquely affecting a specific piece of property such that the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c (2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

97. The criteria for an RSIS exception (set forth in N.J.A.C. 5:21-3.1) are: 1. Is the exception consistent with the intent, 2. Is the exception reasonable, limited and not unduly burdensome, 3. Does it meet the needs of public health and safety and 4. Does it take into account existing infrastructure and possible surrounding future development.
98. The Board considered applying almost 50 conditions to the application in the event that the Application was approved.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. The use at the site is a permitted use.

2. The requested variance for exposure of the foundation wall satisfies the c (1) criteria as the exposed foundation wall is necessary due to the topography of the property and presents a better alternative than more extensive excavation to bring the foundation walls into compliance and also satisfies the c(2) criteria because the benefits of providing affordable housing and the public need for economically suitable housing outweighs the relatively modest design exception.
3. As to the requested RSIS waivers, the Board finds that the request for a removal of a sidewalk on a small section of the property is a di minimus exception that should be granted as the inclusion of a sidewalk on both sides is impractical and serves no planning purpose as the overall project is bicycle and pedestrian friendly with well-marked and lighted crosswalks on the site itself (but not as to the only road that leads into the development).
4. The request for closure of Kuzik Drive access is denied as the Board finds the closure does not satisfy the criteria to allow a di minimis exception. Closing access to Kuzik Drive, except for emergency vehicles, would result in Warner Road being classified as a multi-family cul-de-sac and there would be an excess of 1,000 average daily trips over recommended traffic counts.
5. A majority of the Board; however, did not find that the benefits of the project outweighed any negatives and further found that significant public health and welfare issues that would damage the community existed. Specifically, half of the voting board members found that there were significant public safety issues to the proposed project as they were concerned about internal traffic inside the complex because it has only one true ingress and egress point, even with the opening of Kuzik Drive, and as such

created a public safety threat. Though there are proposed emergency access points through Essex Fells and Howell Drive, there was no defined safety access plan. Board members voting in opposition to the application concluded that it is a serious public safety issue that the application did not have a true second access road for almost 500 new potential families. Also related to significant traffic issues was the fact that Applicant did not offer any warrants for the Oval Road traffic light proposed by Applicant as an off-site improvement to relieve traffic issues to access Eagle Rock Avenue from Oval Road and the proposed traffic light was not supported by the Manual on Uniform Traffic Control Devices. Board members who voted to deny the application also concluded that though the Township has an affordable housing obligation, there are grave concerns about the negative effect to the environment from the removal of thousands of trees which are core forest and the fact that potential residents of the site would have an unsafe path if they choose to walk from the site to the main road for purposes of using public transportation as there are no sidewalks once a pedestrian steps foot outside of the development. Therefore, adding to the public safety issues, should the only true access to the complex on Oval Road be closed, pedestrian traffic would be the only way into or out of the complex, and those pedestrians would find themselves subject to dangerous walking conditions on the roads leading to the complex which have no sidewalks. Additionally, as this project is offered as an inclusionary development, persons who would qualify for the affordable housing units would find themselves without any means of safe ingress and egress (even outside of an emergency closure) unless they own an automobile. Furthermore, the Board members who voted against the application were not convinced that the proposed storm

water management plan would protect the surrounding community from flooding as testified to by Sean Walsh of Princeton Hydro. It was Walsh's opinion that the peak flow rates shown on the Applicant's storm water testing results were not correct indicating that there would be more run-off resulting in more flooding. Walsh also testified that the stormwater flow calculations were two times what they should be and that it was suspicious that the Applicant's engineer used an alternative method for calculating the time of concentration to determine peak flow without disclosing the alternative method or providing a justification as to why the alternative method was employed. Therefore, Applicant did not sustain the burden of proof necessary for the Board to approve the application for preliminary and final site plan.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that Preliminary and Final Major site plan approval is **denied**.

Adopted:

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on May 6, 2026

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			N			
J. Guarino	X		Y			
L.Klein		X	Y			
S. McCartney			Y			
F. Noborine					---	
C. Morgan					---	
S. Scarpa			N			
W. Wilkes						---
L. Kapferer			N			
J. Cardoza			N			
R. Bagoff			Y			

Vote on Memorialization on June 10, 2026:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper						
J. Guarino						
L.Klein						
S. McCartney						
S. Scarpa						
C. Morgan						
F. Noborine						
W. Wilkes						
L. Kapferer						
J. Cardoza						
R. Bagoff						