RESOLUTION

Granting Preliminary and Final Site Plan approval to Sheldon Elizabeth Co. for property located along U.S. Highway #1, Block 703, Lots 17.04 & 17.05 Application #19-1995

WHEREAS, Sheldon Elizabeth Co. ("Applicant") has applied to the Planning Board of the City of New Brunswick (the "Planning Board") for Preliminary and Final Site Plan approval along with Minor Subdivision approval in order to permit development of a 16 Theatre Movie Complex with a total of approximately 4,409 seats and related facilities, two (2) approximately 9,000 square feet restaurant sites with seating capacity of 300 persons maximum each, and a site location for development of approximately 70,000 square feet of retail space on property located in the Highway-Commercial (H-C) Zoning District along U.S. Highway #1, and designated as Block 703, Lots 17.04 & 17.05, as shown on the Tax Map of the City of New Brunswick, New Jersey; and

WHEREAS, the Planning Board considered the application, exhibits, testimony presented by the Applicant and its representatives and professionals, and public comment, at a scheduled public meeting and public hearing held on November 2, 1995; and

WHEREAS, proper public notice of the above hearing was given in accordance with the Municipal Land Use Law and City of New Brunswick ordinances, and the public had an opportunity to hear and comment upon said application; and

WHEREAS, the Technical Advisory Committee of the City of New Brunswick along with its Administrative Officer, Mr. Thomas G. Bogdan, administratively determined that Minor Subdivision approval on this application is not required for the requested lot consolidation provided that a consolidation Deed is recorded and filed with the Middlesex County Clerk’s Office in accordance with the provisions of N.J.S.A. 40:55D-54; and
WHEREAS, the Applicant presented the testimony of various persons in support of its application, as follows: Mr. Alfred R. Coco, P.E. & L.S. the supervising engineer of Menlo Engineering Associates, Inc., project engineers; Mr. Karl A. Pehnke, P.E., NJ Professional Engineer representing Schoor DeFalma Engineers and Design Professionals, project traffic consultants; Mr. Eric Hugger, Architect of the State of New Jersey, representing the firm of Fishbeck, Thompson, Carr & Huber, project architects; and

WHEREAS, the Applicant has submitted the following exhibits:


3. Project Summary for Raritan Heights dated October 16, 1995;


5. Traffic Access Study for Raritan Heights, City of New Brunswick, Middlesex County, New Jersey dated October 23, 1995;

6. Application and supporting materials submitted to the Planning board on October 16, 1995; and

WHEREAS, the Board considered the reports and comments from the Board’s professionals and consultants, together with the Technical Advisory Committee comments;

NOW THEREFORE, the Planning Board, after having given due consideration and deliberation to the application, testimony, plans and reports of the Applicant, the Applicant’s professionals and the Board’s consultants, together with public comment does hereby make the following findings of fact:

1. The Applicant is the owner of property known as Block 703, Lots 17.01 & 17.05 as shown on the Tax Map of the City of New Brunswick located along U.S. Highway #1 (the "Property").

2. The Property is currently occupied and operated as the U.S. 1 Flea Market.
3. The Property is located in the Highway Commercial (H-C) Zoning District where the development proposal of the Applicant is a permitted use.

4. The Applicant presented the testimony of Alfred R. Coco, P.E. & I.S., Mr. Karl A. Pehnke, P.E., and Mr. Eric Hugger, Architect of the State of New Jersey, representing the firm of Fishbeck, Thompson, Carr & Huber, project architects, who together testified concerning the overall proposal, the engineering and site plan details including Theatre signage, the various architectural and layout components of the Theatre Complex. Mr. Kenneth Benjamin, Vice President of Real Estate for Sony Theatres, provided information regarding various aspects of the anticipated operation of the theatres.

5. The various professionals provided detailed testimony that the Applicant proposes to develop 16 Theatre Movie Complex with a total of approximately 4,409 seats and related facilities, two (2) approximately 9,000 square feet restaurant sites with seating capacity of 300 persons maximum each, and a site location for development of approximately 70,000 square feet of retail space on property located in the Highway-Commercial (H-C) Zoning District along U.S. Highway #1, and designated as Block 703, Lots 17.04 & 17.05, as shown on the Tax Map of the City of New Brunswick.

6. The various professionals provided testimonial details associated with the construction of the Theatre Complex, details concerning the lighting and landscaping as proposed for the site, the Applicant’s intentions with respect to the proposed restaurant uses as noted on the site plan as to location and sizes, as well as the Applicant’s proposal with respect to the proposed approximately 70,000 square feet of retail space as same relates to the overall site plan and site configuration which included the protection and preservation of the exiting on site grave site.

7. The Applicant’s traffic consultant, Mr. Karl A. Pehnke, P.E., provided detailed traffic testimony as to the overall traffic impact, site traffic flows and access to the site. His testimony included the opinion that the existing driveway access permits which are grandfathered under the provisions of the State Highway Access Code remain valid for the development as proposed. Such testimony provided sufficient detail to satisfy the Board as to the reasonableness of the interior traffic patterns and proposed access to and from the site.
8. The proposed number of parking spaces exceeds the number of parking spaces required by the zoning ordinance of the City of New Brunswick and are ample and sufficient to accommodate the proposed use of the site for said Theatre Complex, restaurant uses and 70,000 square feet of future retail development.

9. The Applicant proposes extensive landscaping on the property which meets or exceeds the requirements of the City of New Brunswick.

10. The Applicant submitted a detailed and comprehensive drainage report prepared by Mr. Alfred R. Coco, P.E., which provided significant detailed drainage calculations representing sanitary and storm drainage information sufficient and satisfactory to the Board and its professionals. All on site sanitary and storm sewer utilities are to be privately owned and maintained.

11. The Applicant seeks no variances from the Zoning Ordinance of the City of New Brunswick.

12. The Applicant requests the following design waivers which the Board and its professional consultants have determined are reasonable and may be granted and which are not contrary to the best interests of the City of New Brunswick and its zoning ordinance. The waivers are as follows:

a. A waiver to permit the Water Distribution System Report to be submitted by the Applicant’s engineer prior to construction. The on site water distribution system will be privately owned and maintained.

b. A waiver to permit some lighting levels at the property line exceeding 0.25 foot candles along the project right-of-way adjacent to U.S. Highway #1 which will have no effect upon the intention of that section of the ordinance of design standards, since lighting levels adjacent to the southerly property line (the residential areas) meets design criteria;

c. A waiver to permit the minimum scale of the landscaping plan to be no less than "1 inch = 40 feet" versus the requirement of "1 inch = 30 feet" to provide consistency among all the submitted drawings;

d. A waiver from the requirement to replace all street trees along all thoroughfares since sufficient on site landscaping has been provided to supplement the plantings required by the ordinance since U.S. Highway #1 is the applicable thoroughfare in this application;
e. A waiver requesting the identification of the location of all existing 4 inch caliber trees since the area of disturbance is adjacent to the expansion of the parking area and the remaining trees along the sloped areas will remain;

f. A waiver for foundation planting detail of the theatre, retail area and restaurant pads which will be provided at the time of the issuance of building permits;

13. The Applicant has reviewed the report from Carr Engineering Associates, P.A. Dated October 23, 1995 providing comments and recommendations on the site plan. The Applicant has satisfactorily responded to the comments and recommendations as contained in the October 23, 1995 letter from Alfred R. Coco, P.E. & L.S., project engineer, which the Board deems adequate and sufficient response to all issues raised by Carr Engineering and the Technical Advisory Committee;

14. The Board does concur that Final Subdivision approval is not required since there will only be a lot consolidation, provided, that a consolidation Deed is recorded and filed with the Middlesex County Clerk’s Office in accordance with the provisions of N.J.S.A. 40:55D-54; and

15. The Board finds that the overall site plan and project proposal are presented and designed with sound engineering principals and in accordance with the design standards of the City of New Brunswick, subject to the conditions as set forth hereunder.

NOW THEREFORE, BE IT RESOLVED, by the Planning Board of the City of New Brunswick that, for the reasons set forth herein, the application of Sheldon Elizabeth Co. for Preliminary and Final Site Plan approval is hereby GRANTED together with the requested waivers, subject to the following conditions:


2. Receipt of the following permits or approvals:

   a.) N.J.D.E.P. Waterfront Development Permit, or verification of applicability of existing permits;

   b.) N.J.D.E.P. Freshwater Wetland Permit, or verification of applicability of existing permits;

   c.) N.J.D.E.P. Sanitary Sewer Permit;
d.) N.J.D.E.P. Potable Water Permit, if applicable;

e.) Compliance with Freehold Soil Conservation District requirements;

f.) Middlesex County Utility Authority approval, if applicable;

g.) N.J.D.O.T. approval, if required;

3. Posting of City of New Brunswick Performance Bond pursuant to City of New Brunswick Ordinance and Engineer review;

4. Recordation and filing of the Deed of lot consolidation with the Middlesex County Clerk's office;

5. Submission of the Water Distribution System Report and approval of same prior to construction;

6. Foundation planting detail to be submitted for Technical Advisory Committee review and approval.

7. Retail and Restaurant signage detail to be submitted for Technical Advisory Committee review and approval.

8. All on site sanitary and storm sewer and the water distribution system utilities are to be privately owned and maintained.

9. The existing on site grave site shall be protected and preserved.

PLANNING BOARD OF THE CITY OF NEW BRUNSWICK

Dated: 11/2/95

THOMAS G. BOGDAN
Secretary

DATE OF MEMORIALIZATION:

11/2/95
CITY OF NEW BRUNSWICK
PLANNING BOARD

Resolution

Granting Preliminary and Final
Site Plan Approval
to Sheldon Elizabeth Co. for
U. S. Highway #1, Block 703, Lots 17.04 & 17.05
Application No. 19-199

WHEREAS, Sheldon Elizabeth Co. ("Applicant") has applied to the Planning Board of the City of New Brunswick (the "Planning Board") for an amendment to the previously approved preliminary and final site plan in order to permit relocation of the restaurants and to enlarge the exterior of the movie theater on property located at U. S. Highway #1 in the H-C Highway Commercial District and designated as Block 703, Lots 17.04 & 17.05, as shown on the Tax Map of the City of New Brunswick, New Jersey; and

WHEREAS, the Planning Board considered the application, exhibits and testimony of the Applicant at a special public hearing of April 24, 1996; and

WHEREAS, proper public notice of the above hearing was given in accordance with the Municipal Land Use Law and City of New Brunswick ordinances, and the public had an opportunity to hear and comment upon the application; and
WHEREAS, the Applicant presented the testimony of Cary J. Spiegel and Alfred R. Coco, PE & LS in support of the application; and

WHEREAS, the Applicant has submitted and the Board considered the following exhibits:


2. Application and supporting materials submitted to the Planning Board on April 1, 1996; and

WHEREAS, the Board considered the reports and comments from the Board's consultants and the Technical Advisory Committee.

NOW, THEREFORE, the Planning Board, after having given due consideration and deliberation to the application, testimony, plans and reports of the Applicant and the Board's consultants, does hereby make the following findings of fact:

1. The Applicant is the owner of property known as Block 703, Lots 17.04 & 17.05 as shown on the Tax Map of the City of New Brunswick, located at U.S. Highway #1 (the "Property").

2. The Property is currently occupied by the former U.S. 1 Fita Market and various small buildings which are all in the process of being removed.
3. The Property is located in the H-C Highway Commercial District.

4. The Applicant presented the testimony of Cary J. Spiegel, vice-president of construction for Sony Theaters, who testified that the design change is to accommodate "stadium seating". He described this seating arrangement as having a 14" rise between rows in each auditorium, similar to a sports stadium. The IMAX Theater at Liberty Science Center is the only local theater that has similar seating. The chairs are also 6" higher than normal theater seats. The additional space required for this seating results in the building footprint being approximately 12,000 square feet larger but with no additional seating capacity.

5. The Applicant presented the testimony of Alfred R. Coco, PE & LS, who testified that the changes to the theater will result in a reduction of parking to 1,574 spaces. However, this is still in excess of the Ordinance requirements of 1,266 spaces. The restaurant location remains approximately the same but the building footprint is turned 90 degrees to allow better visibility of the rear store area. Additionally the New Jersey Department of Environmental Protection ("DEP") requires public access to the waterfront of the property. This required addition of steps along a redesigned retaining wall along the riverside parking area. The Applicant is still negotiating with DEP to remove this requirement.
6. The Applicant will use the Property as a theater complex with associated retail development and restaurants.

7. The Applicant reviewed the report from Carr Engineering Associates, P.A. dated April 4, 1996, providing comments and recommendations on the site plan. The Applicant agreed to each comment raised and will comply with same.

8. The Board finds that the site plan design is acceptable, complies with sound engineering principles and the design standards of the City of New Brunswick, subject to the conditions as set forth hereunder.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of New Brunswick that, for the reasons set forth herein, the application of Sheldon Elizabeth Co. for preliminary and final site plan approval is hereby GRANTED subject to the following conditions:

1. Compliance with the comments raised in the Board Engineer's report of April 4, 1996.

2. Compliance with all of the conditions set forth in the Board's Resolution of November 2, 1995.

3. The revised plans are subject to review and approval by the Technical Advisory Committee.

4. Recording and filing of the Deed of lot consolidation with the Middlesex County Clerk's Office.
5. Execution of a maintenance agreement for all on-site utilities.

6. Elimination of the access to the waterfront area is encouraged by the Board and is approved if the Applicant is successful in gaining New Jersey Department of Environmental Protection approvals without such access.

7. Posting of performance bonds pursuant to City of New Brunswick Ordinance and the Engineer's review.

8. Compliance with the requirements of the Freehold Soil Conservation District.

9. City of New Brunswick permits and/or fees.

PLANNING BOARD OF THE
CITY OF NEW BRUNSWICK

THOMAS BOGDAN,
SECRETARY
CITY OF NEW BRUNSWICK
PLANNING BOARD

Resolution

Granting Preliminary and Final
Site Plan Approval
to Loews Theatres, Inc. for
Route 1 South, Block 703, Lot 17.06
Application No. 8-1998

WHEREAS, Loews Theatres, Inc. ("Applicant") has applied to the
Planning Board of the City of New Brunswick (the "Planning Board") for preliminary and
final site plan approval in order to permit an addition to the existing Loews Theatres
building on property located at Route 1 South in the C-5A Highway Commercial District
and designated as Block 703, Lot 17.06, as shown on the Tax Map of the City of New
Brunswick, New Jersey; and

WHEREAS, the Planning Board considered the application, exhibits and
testimony of the Applicant at its regularly scheduled public hearing of June 10, 1998; and

WHEREAS, proper public notice of the above hearing was given in
accordance with the Municipal Land Use Law and City of New Brunswick ordinances,
and the public had an opportunity to hear and comment upon the application; and

WHEREAS, the Applicant presented the testimony of Kenneth B.
Preliminary and Final Site Plan Approval
Loews Theatres, Inc.
Block 703, Lot 17.06
Page 2

Benjamin, Alfred Cocco, P.E., Robert L. Fuller, A.I.A. and Carl Pelnke, P.E. in support of the application; and

WHEREAS, the Applicant has submitted and the Board considered the following exhibits:


2. Exhibits A-1 and A-2, elevation and layout renderings, prepared by Fishbeck, Thompson, Carr & Huber Architects consisting of two (2) sheets.

3. Application and supporting materials submitted to the Planning Board on June 2, 1998; and

WHEREAS, the Board considered the reports and comments from the Board's consultants and the Technical Advisory Committee.

NOW, THEREFORE, the Planning Board, after having given due consideration and deliberation to the application, testimony, plans and reports of the Applicant and the Board's consultants, does hereby make the following findings of fact:

1. The Applicant is the tenant of property known as Block 703, Lot 17.06 as shown on the Tax Map of the City of New Brunswick, located at Route 1 South (the "Property").
Preliminary and Final Site Plan Approval
Loews Theatres, Inc.
Block 703, Lot 17.06
Page 3

2. The Property is currently occupied by Loews Theatre.

3. The Property is located in the C-5A Highway Commercial District.

4. The Applicant presented the testimony of Kenneth B. Benjamin who testified about the operation of the theatre since the opening in November 1996 and the need for expansion. The proposed addition will have 7 auditoriums containing 1076 seats. The largest of the new areas will contain less than 200 seats. The expansion is necessary to allow for the ability to run new releases at more convenient times and for crowd manageability. The additional screens move crowds in and out with better control.

5. The Applicant presented the testimony of Alfred Coco, P.E., who testified about the site plan. The proposed addition to the theatre is approximately 21,000 square feet. To accommodate this addition approximately 63,400 square feet of previously approved retail space will be eliminated. There will be approximately 6,600 square feet of retail space retained. The Ordinance requires 1,245 parking spaces, the proposal provides 1,748 spaces all of which comply with the City’s design standards. The proposal studied the feasibility of a second means of access to the property but found same unworkable. The Applicant will continue to work with the City of New Brunswick Police and Fire Departments regarding public safety on the site. The Applicant has reviewed the report from Carr Engineering dated June 3, 1998 and will comply with the provisions contained therein.
5. The Applicant presented the testimony of Robert L. Fuller, A.I.A. who testified about the proposed addition. The exterior will match the existing building. The addition will be to the north end of the existing building. There will be 4 auditoriums with 194 seats and 3 with 100 seats. Improvements are being made to the barrier free seating areas and all auditoriums will have stadium seating. The addition will be accessed through the main entrance and will contain additional restroom facilities.

7. The Applicant presented the testimony of Carl Pehnke, P.E. who testified about traffic flow. The proposed addition will trade retail space for theatre space. Based upon actual traffic counts of the existing theatre the driveways will continue to provide acceptable standards of service. The peak traffic periods at the theatre will continue to be Friday and Saturday evenings after the peak traffic period for Route 1. Parking studies conducted on Friday and Saturday evenings show that the proposal will accommodate the demands of the additional screens.

8. The Applicant will use the Property as a movie theatre.

9. The Applicant reviewed the report from Carr Engineering Associates, P.A. dated June 3, 1998, providing comments and recommendations on the site plan. The Applicant agreed to each comment raised and will comply with same.

10. The Board finds that the site plan design is acceptable, complies with sound engineering principles and the design standards of the City of New Brunswick, subject to the conditions as set forth hereunder.
Preliminary and Final Site Plan Approval
Loews Theatres, Inc.
Block 703, Lot 17.06
Page 3

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of New Brunswick that, for the reasons set forth herein, the application of Loews Theatres, Inc. for preliminary and final site plan approval is hereby GRANTED subject to the following conditions:


2. Theatre management shall work with the City of New Brunswick Police and Fire Departments to jointly develop plans and policies regarding public safety at the site.

3. Compliance with the requirements of the New Jersey Department of Transportation.

4. Compliance with the requirements of the Freehold Soil Conservation District.

5. Compliance with the requirements of the Middlesex County Planning Board.

6. Posting of performance bonds pursuant to City of New Brunswick Ordinance and the Engineer's review.

7. City of New Brunswick permits and/or fees.

BE IT FURTHER RESOLVED that copies of this Resolution be forwarded to the City Tax Assessor, the City Engineer, the Board's Engineer, the City
Preliminary and Final Site Plan Approval
Loews Theatres, Inc.
Block 703, Lot 17.06
Page 6

Building Inspector and the Applicant.

The undersigned, Secretary of the City of New Brunswick Planning Board, hereby
certifies that the above is a true copy of a Resolution of Memorialization by said Board on
the 9th day of September, 1998 on the following vote:

THOSE IN FAVOR:
Brian Beck, Blanquita Valenti, Glenn Patterson &
James Dumas

OPPOSED:
None

PLANNING BOARD OF THE
CITY OF NEW BRUNSWICK

THOMAS G. BOGDAN
SECRETARY
RESOLUTION
NEW BRUNSWICK PLANNING BOARD

WHEREAS, Sheldon Elizabeth Company has applied to the Planning Board of the City of New Brunswick for an amended preliminary and final site plan approval regarding construction of the SONY Movie Theater along with two (2) restaurant pads on property located in the Highway/Commercial (H-C) Zoning District along U.S. Highway No. 1 and designated on the Tax Map of the City of New Brunswick as Block 703, Lots 17.04, 17.05 & 17.01; and

WHEREAS, the Planning Board previously provided preliminary and final site plan approval for the construction of a SONY Theater, 70,000 s.f. of retail space and two (2) 9,000 s.f. restaurant pads, said approval dated November 2, 1995; and

WHEREAS, the applicant subsequently received amended approvals for the addition of seven (7) movie screens and the elimination of the 70,000 s.f. of retail space, together with approval to construct a Boulder Creek Restaurant on one (1) of the 9,000 s.f. restaurant pads; and

WHEREAS, the applicant now seeks to further amend the site plan so as to eliminate the approved seven (7) screen addition and to reinstate the 70,000 s.f. of retail space; and

WHEREAS, a public hearing was conducted on June 12, 2002; and

WHEREAS, the applicant presented the following witnesses in support of the application:
A) Alfred Coco                Professional Engineer; and

WHEREAS, the applicant submitted an amended site plan dated May 10, 2002 and revised May 28, 2002; and

WHEREAS, after considering the evidence presented in support of the application, and there being no public comment, and after considering the reports and comments from the Board’s Professionals, the New Brunswick Planning Board makes the following findings of fact:

1) The project was originally approved for construction of a SONY Theater, 70,000 s.f. of retail space and two (2) 9,000 s.f. restaurant pads; and

2) The applicant subsequently received amended approval from the Planning Board for the addition of seven (7) movie screens and the elimination of the 70,000 s.f. of
retail. At that time, the applicant also received approval to construct a Boulder Creek Restaurant on one (1) of the 9,000 s.f. restaurant pads; and

3) The applicant now proposes to further amend the site plan so as to eliminate the seven (7) screen addition to the movie theater and reinstate the 70,000 s.f. of retail space which was originally approved. The location of the retail space is in the same location as previously approved and has the same dimensions; and

4) Recently, the applicant obtained title to an adjoining lot, Lot 17.01 which was conveyed to the applicant by the City of New Brunswick as a result of a land swap. The applicant further amends the site plan so as to include this parcel of property; and

5) After receiving approval for the expansion of the movie theater, market changes caused the applicant to reconsider and to not proceed with the expansion; and

6) A variance is not necessary for parking. The total number of required parking spaces for the movie theater, the proposed retail and the one (1) existing restaurant with the one (1) proposed restaurant is 1,297 parking spaces. There are presently 1,574 parking spaces on the site; and

7) If there should be construction of the retail complex or construction of a second restaurant, the applicant will have to return to the Planning Board for all issues regarding proposed signs and architectural details; and

8) The retail space is proposed to be a one (1) story office building; and

9) The applicant agrees to comply with any and all conditions set forth in the original approval resolution dated November 2, 1995; and

10) The applicant will provide bicycle amenities which are subject to the approval of the New Brunswick Technical Advisory Committee.

WHEREAS, after making such findings of fact, the New Brunswick Planning Board finds that the overall site plan and project proposal is presented and designed with sound engineering
principles and in accordance with the design standards of the City of New Brunswick subject to the conditions as set forth below.

NOW, THEREFORE, be it resolved by the Planning Board of the City of New Brunswick that the application for amended site plan approval by Sheldon Elizabeth Company is hereby granted subject to the following conditions:

1) Applicant shall comply with all conditions as set forth within the Board's previous Resolution adopted November 2, 1995 to the extent that said conditions remain applicable; and

2) Middlesex County Planning Board approval and/or a waiver of same; and

3) Final Building elevations shall be subject to review and approval of the Technical Advisory Committee and/or the Planning Board; and

4) Submissions of all necessary easements and/or access agreements to the board's counsel for review and approval before the filing of same; and

5) Submission of Certification of paid taxes; and

6) Bicycle amenities to approval of Technical Advisory Committee.


[Signature]
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19 U.S. HIGHWAY 1, LLC
1260 STELTON ROAD
PISCATAWAY, NEW JERSEY 08854

CITY OF NEW BRUNSWICK
ZONING BOARD OF ADJUSTMENT

ORDER AND RESOLUTION FOR SITE PLAN, USE
AND BULK VARIANCE APPLICATION APPROVAL

WHEREAS: 19 U.S. Highway 1, LLC, 1260 Stelton Road, Piscataway, New Jersey 08854 ("Applicant") seeks approval of its Preliminary and Final Site Plan and use variance application with bulk variances to construct three (3) buildings consisting of retail, residential and restaurant uses at 19 U.S. Highway 1, New Brunswick, New Jersey;

WHEREAS: The applicant requests approval to construct the proposed buildings for retail, residential and restaurant uses resulting in a request for approval of certain variances, to wit, use, maximum permitted height, maximum permitted impervious coverage and minimum front yard setback;

WHEREAS: The Applicant has requested of the City of New Brunswick, Zoning Board of Adjustment the granting of approval of its Preliminary and Final Site Plan and Use Variance Application to permit the proposed development at Lot(s) 7.02 in Block(s) 703 of the City of New Brunswick tax map upon property more commonly known as 19 U.S. Highway 1, New Brunswick, NJ.;

WHEREAS: A hearing was held before the Zoning Board of Adjustment on September 26, 2011 at which time the applicant was represented by, Thomas F. Kelso, Esquire, and evidence was presented through the testimony of Mr. Ron Aulenbach, Director of Engineering and Planning for Applicant, Mr. Karl Penke, Traffic Engineer and Mr. Les Nebenzahl, Licensed Professional Planner;

WHEREAS: Live testimony and certain documents, including exhibits in support of the application, were presented by the applicant and accepted and duly considered by the Board;

WHEREAS: The Board Attorney, Aravind Aithal, recused himself from participation in the application and was replaced for this application only by Mr. John Sullivan, Esq.;
WHEREAS: Members of the public in attendance were given an opportunity to comment and/or provide testimony; and,

WHEREAS: The Zoning Board of Adjustment has made the following findings and determinations:

1. The subject property is located in a C-5 zone,

2. The proposed site currently consists of a single lot housing an AMC multiscreen movie theater and a Dave’s Famous Barbeque restaurant, surrounded by a large parking lot in support of the current uses. Applicant proposes to construct three (3) additional buildings comprising approximately 12,350 square feet for general retail, 6,834 square feet for a restaurant, 1,728 square feet for a fast food restaurant and 236 residential units. One of the proposed buildings will be a mixed use building consisting of retail and residential space, with the proposed two remaining buildings for a restaurant and a fast food restaurant, respectively.

3. Applicant seeks certain variances, to wit: use, maximum permitted height, maximum permitted impervious coverage and minimum front yard setback.

4. Applicant proposes to construct the mixed use buildings consistent with the submitted Preliminary and Final Site Plan Raritan Heights prepared by Bradford J. Aller, P.E. dated July 19, 2010 with a final revision date of September 9, 2011, and Floor Plan and Elevations prepared by Steven R. Cuttani, P.E., dated October 11, 2010 with a final revision date of September 14, 2011 as both may be revised consistent with the decision of the Board.

5. The Board finds that the proposed development is inherently beneficial and serves the public good, thus presumptively satisfying the positive criteria as outlined under Smart SMR v. Fair Lawn Bd. Of Adj., 152 N.J. 309 (1998) and Steva v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992).
6. The Board finds that applicant has demonstrated that the grant of the requested use variance relief for the proposed development would carry out a purpose of zoning, specifically, N.J.S. 40:55D-2 (a), such reason(s) specifically found by the Board to promote the general purposes of zoning as required under Medici v. BPR Co., 107 N.J. 1 (1987).

7. The Board finds that the applicant has demonstrated that undue hardship exists because the property cannot reasonably be adapted to a conforming use without granting the requested relief.

8. The Board finds that applicant has demonstrated that the requested relief from the conditional use standards for maximum permitted height can be granted as the subject property can accommodate the proposed development.

9. The Board finds that the applicant has demonstrated that the proposed development of the property and that the variances requested can be granted without substantial detriment.

10. The Board finds that in applying a balancing test, the positive criteria and benefits from permitting the proposed development of the property as requested by applicant outweigh the negative criteria and detriments, which the Board specifically finds would be slight, if any.

11. The Board finds that to require the applicant to strictly adhere to the City’s Zoning Ordinance and bulk standards of the zone would work an undue hardship on the applicant.

12. The Board finds that the application for the requested variances can be granted without substantial detriment to the City’s zone plan, master plan or the public good.

13. The Board finds that the applicant has made a showing that the proposed development and accompanying bulk variances for front yard setback and maximum permitted impervious coverage can be granted under the flexible “c (2)” standard of the Municipal Land Use Law.
THEREFORE BE IT RESOLVED: That the Applicant is hereby granted Site Plan, Subdivision, Use, Conditional Use and Variance Approvals subject to the following conditions:

1. Compliance with the terms of the D & R Engineering Report dated September 22, 2011 for the above project.

2. Compliance with the terms of the Bignell Consulting Group Report dated September 22, 2011 for the above project.

3. Submission of all necessary easements and/or cross access agreements for review by the Board Counsel prior to filing of same.

4. Payment of a site performance bond to the New Brunswick Department of Engineering.

5. Submission of a site inspection escrow deposit for engineering inspection fees in an amount to be determined by the City Engineer.

6. Payment of all water connection fees to the New Brunswick Water Utility.

7. Payment of all sewer connection fees to the City of New Brunswick.

8. Issuance of a road opening permit from the City Engineer, if required.

9. Payment of a redeveloper fee, if applicable, to the City of New Brunswick.

10. Monetary contribution to the City's Tree Preservation Trust Fund in an amount to be determined by the T.A.C.

11. Planning review escrow funded for all anticipated post-approval reviews.

12. Payment of any other fees and taxes due to the City of New Brunswick, if applicable.

13. Middlesex County Planning Board approval or waiver, if necessary.

14. Freehold Soil Conservation District approval, if necessary.
15. Final site plan to be subject to T.A.C. review and approval.

16. Final landscaping plan to be subject to T.A.C. review and approval.

17. Final lighting plan to be subject to T.A.C. review and approval.

18. Final site grading plan to be subject to T.A.C. review and approval.

19. Final building elevations to be subject to T.A.C. review and approval.

20. All utilities and other site improvements to be maintained by the applicant at its sole expense.

21. All utilities proposed as part of this application to be constructed underground.

22. All temporary encroachments into the public right-of-way shall require City Council approval.

23. All construction staging shall be done on-site, unless an encroachment for same into the public right-of-way shall be approved by City Council.

24. Tracking pads shall be installed at all construction exits and all street cleaning shall be performed as per the directive of the Director of Public Works.

25. Replacement of damaged streets, curbs and sidewalks as per the direction of the City Engineer.

26. Applicant shall submit a plan for approval by the City Engineer to remediate geotechnical soil issues on the lot and authorize the start of the corrective work prior to issuance of a construction permit for any work other than site work for this project.

27. Applicant will submit a complete application to NJDOT for the construction of an emergency vehicle turn-around on Route 1 to supplement access to the site. If permitted, applicant shall submit a plan acceptable to NJDOT to finance and construct the turn-around. If application submits a complete application to NJDOT, issuance of construction permits shall not be withheld due to NJDOT’s non-action or non-authorization to construct a turn-around.
28. Execution of a Title 39 enforcement agreement.

29. As voluntarily agreed to by the applicant, the proposed garages will only be used for parking vehicles of the residents of this property.

30. Applicant shall review off-street sidewalk provision.

31. Applicant shall provide water report for staff review.

24. Applicant shall submit an application to NJDOT.

*The remainder of this page was left intentionally blank.*
BE IT FURTHER RESOLVED THAT: Copies of this Resolution be forwarded to the Tax Assessor, City Engineer, the Board’s Engineer, City Building Inspector and the Applicant.

The above is a memorialization of a motion to approve the application which was made by Mr. Cox and was duly seconded by Ms. Celey and passed on September 26, 2011 on the following vote:

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The undersigned, Secretary of the City of New Brunswick Zoning Board of Adjustment, hereby certifies that the above is a true copy of a Resolution memorialization by said Board on the 24th day of October, 2011 on the following vote:

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Glenn Patterson, Secretary  
New Brunswick Zoning Board of Adjustment