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.;

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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. Cattani, 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 Sica 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 an 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