

**IN THE MATTER OF THE APPLICATION OF:
95 TENAFLY, LLC
BLOCK 1005, LOT 8
PB#1-19-06**

Mr. Warms offered the following Resolution and moved its adoption:

RESOLUTION

WHEREAS, 95 Tenafly, LLC (the “Applicant”), as the contract purchaser of the property known as 95 County Road, in the Borough of Tenafly, County of Bergen, State of New Jersey which property is currently designated on the tax assessment map of the Borough of Tenafly as Block 1005, Lot 8 applied to the Planning Board of the Borough of Tenafly through its attorney, Richard Stewart, Esq., seeking preliminary and final site plan approval, major soil moving permit, variances, exceptions and waivers as set forth below; and

WHEREAS, the Applicant presented proof in the form of an affidavit that it complied with the statutory requirements of service of notice of the application and of publication of the public hearings to be held on the within application; and

WHEREAS, the Planning Board heard this application during public hearings on October 30, 2019, November 6, 2019, December 11, 2019, January 22, 2020, February 26, 2020, November 18, 2020, December 16, 2020 and January 27, 2021, during which the Applicant presented the following exhibits:

1. Plans entitled “Preliminary and Final Site Plan for 95 Tenafly, LLC Proposed Bottle King”, prepared by Dynamic Engineering dated August 22, 2019, last revised March 10, 2020 containing fourteen (14) sheets;

2. Plans entitled “Proposed New Retail Building for Bottle King, 95 County Road, Tenafly, New Jersey” prepared by SWS Architects dated August 16, 2019, last revised March 11, 2020 containing five (5) sheets;
3. Traffic Impact Study for 95 Tenafly, LLC prepared by Dynamic Traffic dated August 21, 2019, last revised February 11, 2020;
4. Soil Moving Application dated February 14, 2020;
5. Plan entitled “Cut-Fill Exhibit, 95 Tenafly, LLC Proposed Bottle King” prepared by Dynamic Engineering dated May 11, 2020 consisting of one (1) sheet;
6. Exhibit A-1 which is a survey entitled “ALTA/NSPS Land Title Survey” prepared by Dynamic Survey LLC, dated July 15, 2019;
7. Exhibit A-2 which is a plan entitled “Aerial Map Exhibit” Sheet #1, prepared by Dynamic Engineering, dated October 30, 2019;
8. Exhibit A-3 which is a colorized version of “Site Plan Rendering” prepared by Dynamic Engineering dated October 30, 2019;
9. Exhibit A-4 which is a plan entitled “Alternate Vehicle Circulation Plan” prepared by Dynamic Engineering dated October 30, 2019;
10. Exhibit A-5 which is a colorized rendering of the proposed Bottle King building with sign;
11. Exhibit A-6 which is a colorized version of “Site Plan Rendering” prepared by Dynamic Engineering dated December 11, 2019;
12. Exhibit A-7 which is a colorized version of “Site Plan Rendering” prepared by Dynamic Engineering dated February 26, 2020;

13. Exhibit A-8 which is Sheet 14 of the site plan set titled “Vehicle Circulation Exhibit” dated February 26, 2020 highlighting the difference between this and the plan dated December 11, 2019;
14. Exhibit A-9 which is a rendering of building signage according to ordinance (15” letters);
15. Exhibit A-10 which is a rendering of the building signage as proposed (48” letters);
16. Exhibit A-11 which is a rendering dated February 24, 2020 of the proposed monument sign reduced in height from 12 feet to 7 feet;
17. Exhibit A-12 which is a rendering of the proposed 50 foot flagpole located closer to the street than the building;
18. Exhibit A-13 which is a rendering of the proposed 50 foot flagpole located closer to the building than the street;
19. Exhibit A-14 is a rendering of a 25-foot flagpole located closer to the building in compliance with ordinance;
20. Exhibit A-15 which is a photo of the flagpole/flag at the Glen Rock Bottle King store taken at a distance of 200 feet;
21. Exhibit A-16 which is a colorized rendering of site plan sheet 1 of 1 dated September 23, 2020;
22. Exhibit A-17 which is a photograph of the Glen Rock Bottle King store flagpole/flag which is 50 feet high taken from a distance of 186 feet;
23. Exhibit A-18 which is an email from Richard Stewart dated December 27, 2020 in response to J. Lamb emails on notice issues;

24. Exhibit A-19 which is a screenshot taken by Richard Stewart, Esq. of a Microsoft Bing search of Joo Eun Han showing a Linked-In page of Joo Eun Han indicating this person is the office manager of Fine Wine & Spirits in Tenafly, N.J.; and

WHEREAS, an organization known as Concerned Citizens of Tenafly, Inc. (the “Objector”) represented by John J. Lamb, Esq. objected to the application and presented the following exhibits:

25. Exhibit O-1 which is a letter dated December 9, 2019 from Ira Weiner, Esq. to the Tenafly Planning Board;

26. Exhibit O-2 which is a letter dated October 25, 2019 from County of Bergen, Department of Planning and Engineering to Dynamic Engineering regarding this application;

27. Exhibit O-3 which is a screenshot of “The Vineyard Market” website (4 pages);

28. Exhibit O-4 which is a memo dated October 29, 2019 from Tenafly Police Chief Robert Chamberlain;

29. Exhibit O-5 which is a copy of application submitted by 95 Tenafly LLC to the Tenafly Planning Board;

30. Exhibit O-6 which is Bottle King Corporate Directory;

31. Exhibit O-7 which is the LDR definition of floor area;

32. Exhibit O-8 which are a series of objections regarding notice and jurisdictional issues (emails from John J. Lamb, Esq. dated November 3, 6, 13, 16, 17 and letter from John J. Lamb, Esq. dated November 3, 2020);

33. Exhibit O-9 which is Traffic Report prepared by Michael Maris dated December 11, 2020 with Michael Maris resume attached thereto;

34. Exhibit O-10 which is a series of emails from J. Lamb, Esq. dated January 26, 2021, December 16, 2020 and December 17, 2020;

35. Exhibit O-11 which are Slides 1-4 prepared by Peter G. Steck PP and a 3-page resume of Mr. Steck; and

WHEREAS, a list of the members of the Objector was submitted to the Board and is attached hereto as Exhibit A; and

WHEREAS, the Planning Board received and reviewed the letter reports of the Board Engineer, Schwanewede/Hals Engineering, dated September 25, 2019, October 25, 2019, December 10, 2019, January 20, 2020, February 24, 2020 and June 8, 2020; and

WHEREAS, the Planning Board received and reviewed the planning reviews prepared by the Board's planning consultant, Burgis Associates, Inc., dated September 30, 2019, October 25, 2019, January 20, 2020, February 24, 2020 and May 1, 2020; and

WHEREAS, the Planning Board received and reviewed the letter reports of the Tenaflly Police Chief, Robert Chamberlain, dated September 30, 2019, October 29, 2019, December 11, 2019, January 22, 2020 and April 14, 2020; and

WHEREAS, the Planning Board received and reviewed the letter report of the Tenaflly Fire Official, Alden Blackwell, received March 3, 2020; and

WHEREAS, the Planning Board received and reviewed the comment from the Director of the Tenaflly DPW dated December 18, 2019; and

WHEREAS, the Applicant presented the testimony of Brett Skapnetz, a professional engineer licensed in the State of New Jersey, whose testimony can be summarized as follows:

1. He described the existing site which has frontage on both Piermont Road and County Road. Although currently vacant the site was last used as a Kia automobile

dealership. A full movement driveway on County Road is existing and two curbcuts on Piermont Road currently exist.

2. He testified that the existing improvements are proposed to be razed and a new retail store for a Bottle King liquor store is proposed.
3. The existing freestanding Kia sign is in the right-of-way of County Road and will be removed. The drive aisles are currently non-conforming and the parking spaces are non-conforming. The existing impervious coverage on the site is 53,508 s.f. or 91.1% and this application will reduce the impervious coverage by nearly 5,000 s.f. to 82.3%.
4. Applicant initially proposed a full movement driveway on County Road and proposed two driveways on Piermont Road. The second driveway on Piermont is just to serve the loading area. He testified that the trucks used by Bottle King are generally 28 feet. After hearing from the Board, the Applicant removed one driveway on Piermont Road and agreed to prohibit left turns out of the site onto County Road.
5. The application initially proposed 57 parking spaces with a 30-foot drive aisle. The parking stalls were initially proposed to be 9' x 18' rather than Tenafly's 10' x 18' for retail uses with shopping carts. After hearing the Board's concerns, the Applicant increased the parking stall size to 9.5' x 18' which resulted in 2 fewer parking spaces.
6. He testified that the proposed improvements will reduce the impervious coverage on the property. The drainage patterns will not change. Stormwater is collected on site and discharged to storm sewers on Piermont Road.
7. Skapnetz testified that the hours of operation for the proposed Bottle King store would be 9:00 a.m. to 10:00 p.m. Monday through Saturday and on Sunday from

12:00 p.m. to 6:00 p.m. He further testified that generally there would be 7 employees during the day and 5 employees during the night.

8. He testified trash gets picked up twice a week.
9. In connection with the Soil Moving Application he testified that 265 cubic yards of soil are to be moved; and

WHEREAS, the Applicant presented the testimony of Stephen Schwartz, a registered architect licensed in the State of New Jersey, whose testimony can be summarized as follows:

1. He showed architectural plans of the proposed building which is facing County Road and is setback approximately 186 feet from the front property line and approximately 200 feet from County Road. The rear of the building faces Piermont Road and is setback nearly 45 feet from the rear property line and approximately 65 feet from Piermont Road.
2. The Applicant proposes various signage in connection with the building. Bottle King typically uses 40-inch high letters. He explained that there are two building-mounted signs located on the east and north facades. A monument sign is requested on the County Road frontage. Originally a freestanding sign was not proposed for the Piermont Road entrance driveway however upon the suggestion of the Board engineer the Applicant proposed a freestanding sign by the Piermont Road driveway. The Kia dealership has existing freestanding signs on both Piermont Road and County Road. The proposed new freestanding signs were reduced in size during the course of the application from 12 feet to 7 feet. During the course of the application, the Applicant withdrew the request for the northerly facing building mounted sign.

3. The mechanicals are on the roof and are hidden from view from Piermont Road and County Road.
4. The building has a canopy which extends five feet, three inches to cover pedestrians. There are glazed windows by the entry way and sconces along the northern wall.
5. The floor area of the store is 13,784 square feet with a mezzanine area used solely for storage of 2,711 square feet and a manager's office on the second level of 126 square feet; and

WHEREAS, the Applicant next presented the testimony of Ken Friedman, a principal of the Applicant, who testified in summary as follows:

1. Deliveries typically occur between 9:00 a.m. and 12:00 p.m. and most deliveries occur on Tuesdays and Fridays.
2. The manager of the store comes in at 8:30 a.m. The remainder of the employees arrive at 8:45 a.m. and there are generally five employees on a shift.
3. The busiest times of the year are at Christmas, New Years and Thanksgiving; and

WHEREAS, the Applicant presented Cory Chase, a professional engineer in the State of New Jersey, who was accepted as an expert in traffic engineering, whose testimony can be summarized as follows:

1. He reviewed the site circulation and parking on the site. Currently there are two right in/right out driveways onto Piermont Road since that is a one-way road at that point. There is one full movement driveway along County Road. Applicant proposes one right in/right out driveway along Piermont Road and one left in/right in/right out driveway along County Road. Initially, a full movement driveway was proposed on

County Road, however, after hearing concerns from the Board, Applicant revised the plan to prohibit left turns out of the site onto County Road.

2. He explained that 67 parking spaces are required per the Tenafly Land Development Regulations (“LDR”) and the plan provides 55 spaces. He testified that is a sufficient number of parking spaces for a liquor store use of this size in accordance with the Institute of Transportation Engineers (“ITE”) manual. He opined based on the ITE manual that an average peak parking demand would be 29 parking spaces. Further, the ITE manual indicates that the 85th percentile peak parking demand equates to 47 parking spaces. Therefore, he maintained that 55 parking spaces were sufficient.
3. Although a parking stall width of 10 feet is required by the LDR for retail with shopping carts, the Urban Land Institute suggests widths of between 8.5 to 9 feet for retail uses. He thought 9.5 feet was more than adequate for the proposed use with shopping carts and is in compliance with accepted engineering design standards. The applicant originally proposed 9’x18’ spaces but revised its plans to provide 9.5’x18’ spaces during the course of the proceedings.
4. The adjacent streets will not experience any significant degradation in operating conditions as a result of this project; and

WHEREAS, the Applicant presented the testimony of Michael J. Pessolano, a licensed professional planner in the State of New Jersey, whose testimony can be summarized as follows:

1. The proposed Bottle King liquor store is a retail use which is permitted in the applicable zone district which is the B-2 Business Zone.
2. The lot is nearly 12 times larger than the minimum lot size required in the zone. The site is irregular in shape in that it consists of two rectangles jogged in the middle. It is

- a through lot with frontage on two streets which means inevitably there will be parking between a road and the building.
3. He opined the parking variance is appropriate because 55 parking spaces are proposed and, based on testimony of the traffic expert, Mr. Chase, 47 spaces are actually needed at the peak use of the site. The calculation to arrive at 67 parking spaces includes mezzanine space which is a storage element here and not retail floor area. Here the supply meets demand and avoids overpaving which allows more planting areas, larger buffers and reduction in impervious coverage. This is a benefit to the community.
 4. A variance for parking in the front yard is appropriate under both c1 and c2 analysis. It provides the public with safe, convenient and efficient parking which is a clear benefit over strict compliance. This presents a better zoning alternative and is a long-standing condition associated with the site. A hardship exists because this is a through lot and renders it a practical necessity to utilize either or both front yards for parking. There is no substantial detriment as the layout is compatible with the Chase Bank to the north and similar to the existing configuration on the site. The zone intent for a vibrant business area is met with viability and aesthetics.
 5. The variances related to the size of signs either freestanding and/or affixed to the building are all relatively minor because they are driven by how far back the building is setback from the road. The LDR requires a minimum front yard setback of 15 feet and in this case the building is setback 186 feet from County Road. Accordingly, the building mounted signs must be oversized to be seen from such a great distance. The signage promotes clear and safe visibility and identification of the building. The

signs do not face or impact a residential neighbor, they continue existing signage used on the site. The overall sign package is tasteful and unified. Appropriate signage helps avoid sudden stop and turning movements. The signage is not obtrusive or unattractive. It blends in with the building mass. The freestanding signs continue to use existing signage as used by the Kia dealership except the signs were reduced in size in response to Board concerns so it is an improvement over the existing condition.

6. The flagpole is an accessory structure and it shows patriotism and is permitted but not at this size. The large size is needed because it is setback so far from the road. Due to how far it is setback it minimizes impact to any neighbor and reduces its visual impact. The flagpole height and size of flag is needed to be proportionate with the building and enable the flag to be seen and appreciated without visual conflict with the building and signage.
7. He opined why exceptions to parking space size and placement of trash enclosure were appropriate based on the testimony presented; and

WHEREAS, the Objector presented witnesses as well. The Objector first presented the testimony of Mr. Michael Maris, who was accepted as an expert in traffic engineering, whose testimony can be summarized as follows:

1. His traffic counts were 15% higher than those of the Applicant's expert although he doesn't know why the counts were higher.
2. Two intersections further away from the site were not analyzed but they should have been to determine the impact of the project.
3. Turning movements into the site from County Road presented safety issues; and

WHEREAS, Objector presented the testimony of Peter Steck, a licensed professional planner in the State of New Jersey, whose testimony can be summarized as follows:

1. For relief from the zoning ordinance, the benefits under the flexible planning variance, c(2), should be to the public and not a benefit to just the Applicant and in this case the benefits are just to the Applicant.
2. Since the Applicant is proposing to raze the existing structure, the Applicant could have designed a fully conforming building. He testified that there is a significant shortage of parking as proposed. He also testified that the ordinance does not permit freestanding signs and the building should be up closer to the property line with no parking between the building and the curb;
3. Applicant has not satisfied its burden under c(1) because there is no hardship in complying with the ordinance in this case. All variances are self-created; and

WHEREAS, there was an opportunity for the public and all parties to question each of the witnesses as well as to comment on the application and no members of the public other than Objector made any public comment concerning the application; and

WHEREAS, having heard all of the testimony and after having examined all of the exhibits, the Planning Board of the Borough of Tenafly makes the following findings and conclusions:

1. Appropriate public notice of the holding of the hearings was given by the Board several times and appropriate announcements of the giving of such notice was made by the presiding officer at each meeting as required by the Open Public Meetings Act.
2. The Applicant complied with statutory requirements for giving notice of the hearing of the application, including giving public notice by means of a legal advertisement in an

appropriate newspaper and mailing notice to all neighboring property owners within 200 feet and/or delivering by personal delivery said notice.

3. At the first hearing in the matter and on subsequent dates the Objector argued that the Applicant's notice was defective due to its sufficiency essentially because it did not properly advise the public of the scope of the project and specific variances requested. The Board reviewed the form of notice and each time determined that the Applicant's notice was sufficient since (a) it complied with the requirements of the Municipal Land Use Law (MLUL) and (b) fairly apprised the public of the proposed use and scope of the application. Perlmart v. Lacey Township Planning Board, 295 N.J. Super. 234, 237 (App. Div. 1996).

4. The Applicant was initially the contract purchaser at the time of filing the application and then during the course of the proceedings became the owner of the subject property.

5. The property is located on the westerly side of County Road in the B-2 Business Zone District. The site is 58,568 square feet in size and is currently developed with a vacant Kia car dealership. The site is a through lot with frontage on County Road and Piermont Road.

6. The property is relatively flat sloping from County Road toward Piermont Road. The site is bordered to the south by The Learning Experience Day Care Center and a commercial property and to the north by a Chase Bank branch and the Piermont Mews residential condominium.

7. The property is commonly known as 95 County Road and is currently designated as Block 1005, Lot 8 on the tax map.

8. The Applicant proposes to demolish the existing building and site improvements and construct a new retail building with parking. The Applicant seeks preliminary and final site

plan approval, variances, and exceptions as well as a major soil moving permit to construct a 16,745 square foot Bottle King liquor store with associated parking. There would be 13,784 square feet of retail space on the first floor, 2,821 square feet of storage space in the mezzanine and a 140 square foot office on the second floor.

9. Access to the site is proposed from both County Road and Piermont Road. The building is to be setback 186 feet from the property line along County Road and 44.8 feet from the property line along Piermont Road. The proposed parking is to be located between the building and County Road. A second, separate driveway for deliveries was originally proposed from Piermont Road. During the course of the hearing the delivery/loading area was redesigned as set forth below and the second driveway on Piermont Road eliminated.

10. 57 parking spaces were originally proposed for the site. Per the LDR, the parking requirement for a retail store is 1 parking space for every 250 square feet of gross floor area. Applicant initially calculated the site to require 55 parking spaces. However, upon cross-examination, the architect acknowledged he did not include the mezzanine and second floor office in the total calculation of square footage because the mezzanine is to be used solely for dead storage of product and the office was not used as a retail area. However, as a mezzanine and office, it needed to be counted and accordingly, the Board required the Applicant to revise its plans to indicate the additional square footage and revise any calculations that depended upon square footage. The additional square feet require a total of 67 (16,745 s.f./250 s.f./space) parking spaces under the LDR.

11. The size of the proposed parking spaces was initially 9 feet x 18 feet where 10 feet x 18 feet is required under the LDR for retail use where shopping carts are utilized. Subsequent to the initial application, in response to Board comments, the size of the parking

stalls was increased to 9.5 feet x 18 feet and due to the increase in size the number of parking spaces were reduced from 57 to 55.

12. The proposed parking area is accessed from both County Road and Piermont Road by a 30-foot wide traffic aisle which is wider than required by ordinance. During the course of the hearings, the traffic aisle was reduced slightly in size in accordance with the Board engineer suggestion and also moved further to the south away from the residential complex to the north. That resulted in an increase in the buffer from 3 feet to 8 feet along the northern property line by the residential complex.

13. Perpendicular parking spaces in the front of the property along County Road require a variance for parking within the front yard. However, the Board notes that these spaces are located about the same setback as the existing parking on the site and were recommended by the Board engineer because it creates a better design and circulation.

14. As originally proposed, the loading area for the building was to be accessed from a 35-foot wide driveway from Piermont Road. Responding to the Board Engineer's suggestion, the loading area was reconfigured and turned to face the north to be accessed from the northerly drive aisle. Reconfiguring the loading area permits larger trucks to access the loading area, provides a longer loading space, permit trucks to access the site from both County Road and Piermont Road and permits additional landscaping to be provided along Piermont Road to screen the rear of the building, the loading area and the dumpster area. It also removed the second 35-foot wide driveway along Piermont Road.

15. Objector's planner maintained that a side yard setback variance was needed because the building is only set back a few feet from The Learning Center property. The B-2 zone provides that no side yard setback is required but if provided it must be a minimum of 13

feet. However, the Board heard testimony from the Applicant's professionals that a canopy extended out from the building (5.3 feet) all the way to the property line creating no side yard setback in conformity with the LDR. More importantly, the Board engineer determined that no variance was needed as the canopy was part of the building and thus the proposal complied with the LDR. The Board finds that is reasonable and agrees with that determination.

16. The existing stormwater is controlled by seepage pits and has a 6-inch diameter overflow pipe to the drainage system in Piermont Road. The stormwater from the proposed site is to be collected in new storm inlets and piped to additional seepage pits. It will then connect to the existing 6-inch overflow pipe to the drainage system in Piermont Road. The proposed drainage system has been designed to provide greater on-site storage capacity than existing conditions. These drainage improvements would benefit the community as it would reduce stormwater flows from the site than what currently exists.

17. The Board engineer indicated that the impervious coverage will be reduced by 4,953 square feet from existing conditions and that satisfies the groundwater recharge and water quality requirements.

18. During the course of the hearings, the Applicant made several changes to the plans in response to comments from Board members and its professionals. Some of those changes to the site plan consist of the following:

- A. Shifting the building 2.5 feet to the south in order to increase the buffer along the northerly property line with the residential condominium complex from 3 feet to 8 feet. This expanded buffer was accomplished by reducing the width of the sidewalk along the northerly side of the building by 2.5 feet to 5 feet; and

- B. Reconfiguring the loading dock area to eliminate an extra driveway on Piermont Road and provide a compliant loading space area and make it easier to maneuver into the loading space area. This was done by reorienting the loading area and providing access from the on-site driveway. Additional landscaping was added along Piermont Road to screen the loading area and rear of the building; and
- C. Increasing the width of the parking space stalls from 9 feet to 9.5 feet wide and adding hairpin striping; and
- D. Reconfiguring the parking area to extend the driveway area into the site from County Road in order to provide a larger separation between the driveway entrance and the drive aisle; and
- E. Prohibiting left-turn movements out of the site at the County Road driveway; and
- F. Agreed to a condition suggested by the Board that if, in the future, left-hand turns into the site from County Road became a traffic and safety problem as determined by Tenafly Police Department, Applicant would come back to the Board to address the issue(s) as the Board has done with other applications; and
- G. Relocated proposed sign, light pole and landscaping along Piermont Road to be within the property and agreed that no sign, lighting or landscaping will be proposed within the Piermont Road Right-of-Way except for street trees.

19. In addition, changes were made over the course of the proceedings to the architectural plans as comments were received from both the Board and its professionals. The changes included the following:

- A. Reducing the number of Bottle King signs on the building. Applicant removed the sign facing the north so just the building sign facing east toward County Road remains; and
- B. The Applicant studied the sight lines to the mechanicals on the roof from the condos on the north side of the property and as a result relocated the HVAC units on the roof to be further south and not be in the line of sight of the residential condominium units to the north; and
- C. Added sight lines on the architectural plans to better demonstrate proposed signage, flagpole, rooftop equipment and existing signage along County Road; and
- D. The proposed free-standing monuments signs on County Road and Piermont Road were reduced in height to 7 feet from 12 feet. The existing free-standing signs for the Kia dealership which are old and dilapidated are at 15 feet on County Road and 6 feet on Piermont Road.

20. The Board finds that the proposed plan involves a permitted retail use. The development of the site is welcome since the current use is not permitted in the zone and the site has been vacant for an extended period of time.

21. There was some confusion over the proposed store being used for wine tasting and there was a stipulation by Applicant that wine tastings are not by invitation but may be

available on certain occasions to customers who want to taste a wine that is being offered in the store when they come in. There is no additional traffic for that and is not advertised as such.

22. In addition, the Applicant made a stipulation that they would not engage in distribution of products from the site. Distribution is not permitted in the zone in any event. However, that is not to say that the Applicant cannot make or cause deliveries of its goods as other retail establishments in Tenaflly do.

23. Overall this application represents a significant improvement in zoning and upgrade in aesthetics from the current development on the property which results in a benefit to the community. Some of the improvements include:

- A. It would remove a use from the property that is not permitted in the zone district and replace it with a permitted retail use. That alone is a substantial improvement to the property.
- B. The existing Kia dealership use has two curb-cuts on Piermont Road. Applicant proposes only one curb-cut on Piermont Road.
- C. The property currently has a full movement driveway on County Road. The plan proposes the driveway on County Road will be a right turn out only movement and a condition of this approval is that the Applicant will have to come back to this Board if left-turn movements into the site from County Road are determined to be dangerous in the future. This is a condition the Board has imposed on other site plans along County Road.
- D. A freestanding sign is currently located in the Right-of-Way along County Road. The new proposed freestanding sign along County Road will be smaller and located on the property.

- E. Drive aisles currently do not conform with the LDR. The new drive aisles will conform with the LDR and are actually a bit wider than required.
- F. Impervious coverage on the property is currently 91%. The new impervious coverage will be reduced to 84%.
- G. The plan improves the stormwater drainage from the existing conditions.
- H. The plan provides a generous landscape plan with over 300 plants along County Road alone.

24. There are several variances associated with this application and other than parking they all relate to the proposed signage and the proposed American flag. The variances are largely driven by the fact that the building is set back so far from County Road and in order to see the signs and read them, particularly as motorists are passing by, they need to be larger than what is permitted under the ordinance. Safety requires that a passing driver be able to look quickly and not have to turn one's neck or crane in order to see the signs.

25. The Applicant seeks the following variances:

- (a) Number of parking space: 67 spaces required; 55 spaces provided.
- (b) Parking in the front yard: not permitted; 5 parking spaces proposed.
- (c) Flagpole height: 25 feet maximum; 50 feet proposed.
- (d) Flag size: 30 square feet maximum; 216 square feet proposed.
- (e) Freestanding sign: not permitted; 2 freestanding signs proposed.
- (f) Building mounted sign size: 32 square feet maximum; 150 square feet proposed.
- (g) Building mounted sign height: 3 foot maximum; 4 feet proposed.
- (h) Building mounted sign letter height: 15 inches; 48 inches proposed.

26. There was testimony from the Applicant's traffic expert that the number of proposed parking spaces, 55, is sufficient where 67 is required by the LDR. The Board takes note that the second-floor area which is only used for dead storage of product and office area, is not actual retail space, requires an additional 12 parking spaces alone. The ITE manual which the Board finds to be reliable publication and one that traffic/parking experts customarily rely upon demonstrates that an average peak parking demand would be 29 parking spaces. The plan easily accommodates that. Further the ITE manual indicates that the 85th percentile peak parking demand equates to 47 parking spaces. Again, the plan adequately accommodates that demand. Therefore, the Board is satisfied that 55 parking spaces will be adequate for this proposal.

27. Having sufficient parking and not creating more parking spaces than are needed avoids over-paving the site and creating more impervious coverage than is necessary, it allows more planting areas and a reduction in impervious coverage. The design promotes efficient land use, advancing one of the purposes of the Municipal Land Use Law. The variance therefore finds support under c(2) as the benefits outweigh any detriments. This is particularly so where there the Board finds that there are no detriments.

28. Applicant proposes five parking spaces within the front yard. Preliminarily, the Board finds that the variance needed here is only for five spaces between the street line and the minimum required front yard setback. Objector argued that all the spaces between the building and the street line are within the front yard and therefore require variance relief. The Board has had a long and consistent interpretation of 'front yard' being consistent with the sketches referred to in the definition of 'Yard, front' and attached to the LDR setting forth both graphically and verbally the front yard is to be measured to the required setback line. The Board's engineer

testified that has been how the Board has construed that provision for at least the past 25 years and gave examples of how that was applied elsewhere in the Borough.

29. The Board finds that the five parking spaces within the front yard is not an unusual condition and the variance can be granted for the following reasons. Early on in the application, the Board's engineer recommended that the County Road driveway should be moved further into the site to provide larger separation between the driveway entrance and the drive aisle. Then he recommended that perpendicular parking spaces should be provided along the easterly curblin and accessed from the relocated drive aisle knowing that such spaces require variance relief. He also noted that the spaces will be located at about the same setback as the existing parking.

30. Under c(2) analysis, the accommodation of the public with safe, convenient and efficient parking is a clear benefit over strict compliance which would cause the number of parking spaces to be reduced without a commensurate benefit. The revised parking and circulation plan increases the safety of the site and optimizes the efficiency of the site. Thus, this presents a better zoning alternative and this is also a long standing condition at this site.

31. The Board also notes that there are no negative consequences associated with this variance. The layout is compatible with the Chase Bank next door and similar to the existing configuration. The zone intent for a vibrant business area is met with viability, efficiency and the aesthetics. There is no member of the Objector group who lives within 200 feet and there were no members of the public who commented on this application. So, the Board finds that there is no substantial detrimental effect on the zone plan or the community.

32. Under the LDR, the area of a flag is limited to 30 square feet where 216 feet are proposed and the flagpole height is limited to 25 feet where 50 feet are proposed. The Board

finds that the flagpole is an accessory structure and is clearly not a principal structure. However, the Board finds that the requested flagpole height at two times what is permitted and the flag area at approximately seven times what is permitted are too large. Neither is necessary to the Applicant's business use and lack the import of clear and visible signage while driving. The Board finds that the flag and flagpole would be nice and enhance patriotism, but this proposal is of a magnitude that the Board finds does not meet the requirements of c(2) as the height of the flagpole and the size of the flag do not result in an overall benefit for the community. Accordingly, the variance requests related to the height of the flagpole and the size of the flag itself are denied.

33. The Applicant originally proposed a freestanding sign on County Road only. It then added a freestanding on Piermont Road at the recommendation of the Board engineer to identify the site from Piermont Road. The freestanding signs on County Road and Piermont Road were each proposed with an area of approximately 80 square feet. There are existing freestanding signs on the property one which is 50 square feet on County Road and the other is 40 square feet on Piermont Road. The height of the freestanding signs originally proposed was 12 feet which complies with sign ordinance. After comments from the Board, the Applicant reduced the height of the freestanding signs to 7 feet with a total area of approximately 47 square feet. Applicant also added low landscaping on the bottom 2 feet of the signs effectively making them 5 feet with an effective area of about 31 square feet where the ordinance has no maximum area for a freestanding sign. The existing sign on County Road has a height of 15 feet and the proposed is only 7 feet. Further the proposed freestanding signs would be setback 5.7 on County Road and 5 feet on Piermont Road where the current freestanding signs have no setback on either road.

34. The Board finds that freestanding signs are permitted and no variance is required. This has been the Board's longtime interpretation regarding freestanding signs. When an application has come before the Board with a freestanding sign the Board has not considered it to trigger a variance and thus has not required it in the past. Section 14-1.7 of the Sign Regulations of Tenafly which deals with prohibited signs does not prohibit freestanding signs. Moreover, section 14-1.11 of the Sign Regulations only provides what signage a use *shall* provide. It does not limit what other signage may otherwise be utilized. The neighboring properties of the subject each of which has a freestanding sign demonstrate that.

35. Even if the Board's interpretation is flawed, the Board would grant a variance for a freestanding sign since the need to identify the address of the property and business use is important for safety and convenience purposes. A variance for freestanding signs clearly finds support under c(2) as that presents a better planning alternative especially with a building set back so far from either road. It is smaller than similar free-standing signs as Exhibit PB-6 demonstrates. The signage is comparable to the Chase Bank sign adjacent to the north of the property. As a retail property, there could be multiple users at the site and the need for multiple signs. This avoids that situation. The proposed signs are nicer than what currently exists there. The signs do not point or face toward a residential neighbor. The free-standing signs seek to continue signage use used by the Kia dealership but in response to the Board's concerns, Applicant has reduced the area of the sign to 7 x 7 which represents an improvement to an existing condition and complies with the sign ordinance.

36. The sign regulations only regulate the height of freestanding signs. It permits heights of up 12 feet and Applicant proposes compliant heights of 7 feet for both freestanding signs.

37. The existing building has 3 building mounted signs. While Applicant originally proposed two building mounted signs it removed one and only proposes one with a proposed area of 150 square feet in the front facing County Road. The ordinance only permits one building mounted sign so that complies.

38. The ordinance permits building mounted signs up to 32 square feet. The existing building mounted signs aggregate about 50 square feet. The building sign height limit is 3 feet where 4 feet is proposed and the existing is 3.5 feet. The maximum letter height for building mounted sign is 15 inches where a letter height of 48 inches is proposed and the existing signs all exceed the 15 inch maximum. The projection of the sign was proposed at 8 inches where the existing signs and the ordinance permits 6 inches. During the course the hearings, Applicant revised the plan so that the sign projection is 6 inches and complies.

39. The Board finds that the variance relief for the building mounted sign is warranted due to the very large distance the building is setback from County Road and the need primarily for motorists to see the signs, read them quickly and easily without straining. The signs promote clear and safe visibility and identification of the building. Good signage helps avoid sudden stops and turning movements. Since the minimum building setback is only 15 feet the sign ordinance is written with that in mind. Here the building is set back approximately 200 feet from County Road. Much larger signs than otherwise permitted are needed to see and read the signs while driving along County Road which has a posted speed limit of 35 mph. This is needed to identify the site to the traveling public and let people know where the site is. This promotes public safety and the sign size is not overwhelming given its distance from County Road. The benefits of the larger building mounted sign area, sign height and letter height as a whole substantially outweigh any detriments. The benefits are that the overall sign package

provide identification and safety for motorists and the Board finds the signs are tasteful and provide harmony to the area by virtue of the large site.

40. The Board finds that the building mounted sign variances do not cause a substantial adverse impact on the zone plan and community. The sign faces a county road and does not impact any residential properties. Further the building signage is not obtrusive or unattractive. The sign is proportional and creates a desirable visual impact. It blends with the building's mass and distance from the view points in the public right-of-way.

41. The Board finds that overall there is no substantial detriment to the zone plan or community with the granting of any of the variances. In addition to the reasons expressed above, under c(2) jurisprudence, the benefits of the deviation do not have to relate directly to the variance itself but can also be derived from the compliance with the upgrade to a permitted use in the zone, the improvements made to the property as well as the better planning aspects of the development in general some of which are outlined at paragraph 23. See Pullen v. Tp. of South Plainfield, 291 N.J.Super. 1, 8 (App. Div. 1996) (“a variance cannot be considered in isolation, but must be considered in light of its effect on the development proposal, the neighborhood, and the zoning plan”).

42. The Applicant seeks the following design exceptions:

- (a) Minimum parking space size: 10' x 18' required; 9.5' x 18' provided.
- (b) Dumpster location: not permitted on side of building facing a street; dumpster proposed on side of the building facing street (Piermont Road which effectively acts as the rear of the property).

43. Exceptions require a lesser standard of proof than a variance and the Board finds that the stall width proposed at 9.5 feet x 18 feet is reasonable. That size parking space is

consistent or larger than most retail parking throughout New Jersey and in Tenafly except for those retail places with shopping carts. Applicant's engineer testified that widths of 8.5 - 9 feet are adequate based upon the Urban Land Institute guidance. The Board's engineer felt comfortable that the proposed width was adequate especially with the hairpin striping that is provided which enables vehicles to center within each space appropriately. The increase in stall widths would create a practical difficulty in providing the maximum number of parking spaces and Board finds that it is better to keep the number of parking spaces rather than reduce any since the parking space width is safe and adequate.

44. The Board also finds that an exception for the trash enclosure location is appropriate. The hardship arises because the property has frontage on two streets. In this case, the trash enclosure is sited at the actual rear of the building but is still facing Piermont Road. This location is not only reasonable but preferred in light of the through lot condition and is necessary to maintain adequate on-site circulation. Further the dumpster is enclosed within a masonry enclosure and that is screened from the road with a tree and vegetation. This minimizes any aesthetic impact.

45. All of the foregoing variances and exceptions do not substantially impair the intent and purpose of the Master Plan or the LDR. None of them, either individually or in the aggregate, cause substantial harm or detriment to the surrounding neighborhood or the public good in general. The requested variances and exceptions are largely related to conditions on the site that being a through lot with two frontages and the building being set back so far from the road. With one exception, the adjoining properties are not residential. The Planning Board finds that the Applicant has submitted sufficient and substantial proof for the granting of the site plan, soil moving permit, variances and exceptions set forth above.

46. This approval is consistent with the purposes of the LDR and Master Plan. This project is substantially in conformity with the Borough's zoning objectives.

NOW, THEREFORE, be it resolved on this 20th day of April, 2021, that the application of 95 County, LLC for preliminary and final site plan approval, major soil moving permit, variances and exceptions as set forth below be and the same are hereby granted upon the following conditions:

- A. That the Applicant file with the Borough Engineer and the Building Department revised plans in accordance with the Applicant's testimony before the Planning Board and as set forth in the Borough Engineer's letter reports;
- B. The Applicant shall comply with all applicable laws and regulations regarding the development of the subject premises;
- C. The Applicant shall comply with the recommendations and comments set forth in the Board Engineer's letters of September 25, 2019, October 25, 2019, December 10, 2019, January 20, 2020, February 25, 2020 and June 8, 2020;
- D. A Road Restoration Bond in the amount determined by the Board engineer, however, in no event less than \$3,000.00, shall be posted by the Applicant for the major soil moving permit. The purpose of this bond is to cover the cost of municipal road repairs damaged during the soil moving operations.
- E. This approval is specifically conditioned upon the following:
 - 1. If in the future the Tenafly Police Department finds traffic and safety problems arising from left-hand turns into the site from northbound County Road then the Applicant shall be required to come back before the Planning Board and

either amend its plan or otherwise seek to resolve such turning movements with the Board's approval.

2. Applicant shall not invite large gatherings for wine tastings however there shall be no prohibition on sampling wine within the store without invitation.

3. Applicant shall not engage in distribution of wine and spirits from the store as same is not permitted in the zone district. This however does not impede or prevent Applicant from making deliveries to customers.

4. Applicant shall install uplighting for both monument signs.

F. All stipulations and/or agreements made either in writing or on the record by Applicant shall be complied with to the satisfaction of the Board Engineer.

G. Submission of traffic signage detail shall be delivered to the Board Engineer for approval.

F. The Applicant shall enter into an appropriate developer's agreement with the Borough of Tenafly to ensure compliance with the terms of this Resolution.

G. All construction shall be in compliance with the New Jersey Uniform Construction Code, applicable ordinances of the Borough of Tenafly, regulations of administrative agencies and the laws of the State of New Jersey.

H. The Applicant shall construct this development project in accordance with the plans presented to the Planning Board, which plans were marked into evidence. The final design, details and construction of this project shall be subject to and in accordance with the approval municipal engineer, if necessary, as to various construction matters.

- I. The Applicant shall comply with all the requirements of the Soil Erosion and Sediment Control Act. The Applicant shall further submit a record of compliance to the Borough of Tenafly before a certificate of occupancy will be issued.
- J. During the construction of this project, the Applicant shall maintain the construction site in a safe condition and shall take appropriate measures to ensure the safety, health and welfare of the public. Furthermore, the Applicant shall provide, if necessary, for the proper maintenance of the adjacent municipal streets on a daily basis to ensure that they are clean from dirt and debris which may accumulate from any excavation and/or construction on the site.
- K. The Applicant shall post a performance bond, cash or an irrevocable letter of credit in an amount established by the Board Engineer at its own cost and expense. The performance bond, cash or irrevocable letter of credit is to ensure that all site work shall be completed in accordance with the plans submitted, details of which are to be set forth in the Developer Agreement, the proper restoration of the property, to cover the cost of permanent soil erosion control measures if the work is not satisfactorily completed by the Applicant and to cover the cost of Borough review and inspection. Additional amounts may be included in the performance bond and/or irrevocable letter of credit for retaining walls, planting, drainage, erosion, control damages to hauling route, etc. as the Borough Engineer reasonably estimates. An escrow for inspection and legal fees shall be deposited with the Borough, as established by the Board Engineer, subject to increase to the maximum amounts permissible by ordinance, if required, to meet project demands.

- L. The Applicant shall maintain appropriate liability insurance, during the construction of this project, for personal injury in an amount of \$2,000,000.00 and property damage in the amount of \$500,000.00, together with necessary workman's compensation insurance. The Borough of Tenafly and its officials shall be named as insureds under the policy. The foregoing shall be more fully set forth in the Developer Agreement.
- M. The Applicant shall comply with the Borough's Development Fee ordinance at the time seeks a construction permit.
- N. This approval is conditioned on Applicant obtaining all other necessary governmental permits and approvals including but not limited to Bergen County Planning Board, Bergen County Soil Conservation District and Bergen County Utilities Authority approvals.
- O. The Applicant shall file for zoning and building permits, as applicable, with the Zoning Official and Construction Officer and shall submit revised plans to the building department and Board Engineer for review of those plans for conformity with this approval and the Applicant shall comply with all comments made in conformity with this Resolution of Approval; and it is

FURTHER RESOLVED, that a variance for the number of parking spaces is approved where 67 are required and 55 are provided in contravention of LDR Schedule C; and it is

FURTHER RESOLVED, that a variance for parking in the front yard in contravention of LDR section 35-804.4.a.2 is approved where 5 are proposed and none are permitted; and it is

FURTHER RESOLVED, that a variance for a flagpole height of 50 feet in contravention of LDR section 35-802.20 where 25 feet are permitted is denied; and it is

FURTHER RESOLVED, that a variance for a flag area of 216 square feet in contravention of section 14-1.9.a of the Sign Regulations where 30 square feet is permitted is denied; and it is

FURHTER RESOLVED, that a variance for 2 freestanding signs as proposed is approved; and it is

FURTHER RESOLVED, that a variance for a building mounted sign area of 150 square feet where 32 square feet is the maximum is approved; and it is

FURTHER RESOLVED, that a variance for a building mounted sign height of 4 feet where 3 feet is the maximum is approved; and it is

FURTHER RESOLVED, that a variance for building mounted sign letter height of 48 inches where 15 inches is the maximum is approved; and it is

FURTHER RESOLVED, that an exception for the location of the dumpster facing a street in contravention of LDR section 35-723.3.a is approved; and it is

FURTHER RESOLVED, that an exception for minimum parking space size of 9.5 feet by 18 feet is approved where LDR section 35-723.2.g requires 10 feet by 18 feet; and it is

FURTHER RESOLVED, that a copy of this Resolution, certified by the Secretary to be a true copy, be forwarded to the Construction Official, Board Engineer, Borough Engineer, Zoning Officer, Tax Assessor, Administrative Officer of the Municipal Land Use Law, the attorney for the Applicant and any other official or governmental agency as applicable.

SECONDED BY: Mr. Oelsner

FOR: Mrs. Wilmit, Mr. Warms, Mr. Kagy, Mr. Oelsner, Mrs. Park, Mrs. Osborne and Councilman Grossman

AGAINST: None

Dated: April 20, 2021

I hereby certify that the foregoing Resolution is a true copy of the Resolution which was adopted by the Planning Board of the Borough of Tenafly at a regular meeting held on April 20, 2021.

Valerie B. Nicolosi

Valerie B. Nicolosi, Planning Board Secretary

Concerned Citizens of Tenafly, Inc.

List of Members

1. Eugene Cho – 27 Brook Road, Tenafly, NJ 07670
2. Gene Han – 24 Briarcliff Road, Tenafly, NJ 07670
3. Joo Eun Han – 24 Briarcliff Road, Tenafly, NJ 07670
4. John Kim – 46 Leroy Street, Tenafly, NJ 07670
5. Laura Kim – 46 Leroy Street, Tenafly, NJ 07670
6. Neil Labay – 44 Oak Street, Tenafly, NJ 07670
7. Andreia Lee – 21 Mission Way, Tenafly, NJ 07670
8. Kristian Lee – 21 Mission Way, Tenafly, NJ 07670
9. Dr. Melissa Lee – 94 Park Street, Tenafly, NJ 07670
10. Soyoung Lee – 27 Brook Road, Tenafly, NJ 07670
11. John Yi – 94 Park Street, Tenafly, NJ 07670