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October 15, 2021

Via Electronic Mail

Thomas Molica, Esq.
Vogel, Chait, Collins and Schneider
25 Lindsley Drive, Suite 200
Morristown, NJ 07960

RE: BHT Application, October 19, 2021

Dear Mr. Molica:

As you know, this matter is listed before the Land Use Board on October 19, 2021 at 7:30 p.m. We have available to testify Ms. Sainz, who is a representative from the company. We will also have available Mr. Nusser who is the engineer involved in the site plan. We will also have Mr. Cory Chase who is the traffic engineer, and finally Mr. Paul Ricci. I do not expect that we will complete our application at that time, but we have those individuals available.

As we discussed at the prior meeting, I am expecting that there will be a decision made by the Land Use Board prior to the commencement of testimony with regard to a determination that the Outdoor Ordinance is in fact, if anything, a “c” variance or potentially a design standard waiver rather than a “d” variance. I have submitted a prior letter to you in regard to our position and we rely upon that letter for purposes of the hearing on the 19th. It was agreed at the last meeting in discussions between myself and yourself that this would occur at this meeting and we would have a determination made so that we would clearly understand that the outdoor storage ordinance is a “c” variance and not a “d” variance so that we can then have a full complement of Board members available to listen to the testimony at this meeting. By copy of this letter I am asking Ms. Pizzulo to make the Class I and Class III members aware that they are likely to participate in the upcoming hearing.

I have also looked into the issue of stormwater management. I have determined that the old stormwater management regulations apply to this application. As you know, the Township has introduced a Stormwater Management Ordinance and passed it on February 18, 2021. However, it was not submitted to the County Planning Board until the March 29, 2021. Subsequently, the County approved the Stormwater Management Regulations on July 12, 2021.

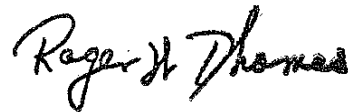
As you know and as is indicated in your own Stormwater Management Ordinance, this Ordinance is not effective until the County has approved same or within 60 days of the date of the submission to the County. If we rely upon the actual action by the County, it does not become effective until July 12, 2021. If we rely upon the 60 days requirement, it does not become May 27, 2021.

As you know, the new application that has been submitted by BHT was submitted on March 1, 2021 and was deemed complete on May 18, 2021. Therefore, it is our position pursuant to case law that we have a complete application prior to the effective date of the Stormwater Management Regulations and therefore the old stormwater regulations remain in force and effect for this application. This position is bolstered by the case of Dunbar Homes, Inc. vs. Zoning Board of Adjustment of Township of Franklin 233 N.J. 546 (2018). I am sending a copy of this position letter to Mr. Nusser, Mr. Stoner and Ms. Durkin so that they are aware of BHT's position.

Should you have questions, feel free to contact me.

Very truly yours,

DOLAN AND DOLAN, P.A.



Roger W. Thomas, Esq.

RWT:mcw

cc: Liz Durkin, Esq.
Lula Elharar, BHT Properties
Stephanie Pizzulo, Land Use Administrator
Christopher Nusser, P.E., P.P.
Cory L. Stoner, P.E., C.M.E.