

LEON S. AVAKIAN, INC. *Consulting Engineers*

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January 25, 2022

Mrs. Kristie Dickert, Administrative Officer
Zoning Board of Adjustment
Neptune Township
P.O. Box 1125
Neptune, NJ 07754-1125

**Re: GSZ Realty, LLC (ZB#21/08)
505, 513, and 515 Highway 35; 1702 Monroe Ave
Block 808, Lots 5, 6, 7, and 8
D(3) Variance, Prelim/ Final Major Site Pan
Our File: NTBA 21-08**

Dear Mrs. Dickert:

Our office received and reviewed materials that were submitted in support of an application for a conditional use variance and preliminary and final major site plan approval for the above referenced project. The following documents were reviewed:

- Neptune Township Site Plan Application and Checklist dated April 13, 2021.
- Preliminary and Final Major Site Plan, consisting of 17 sheets, prepared by Paul D. Mutch Jr., PE, of Stonefield Engineering and Design, dated March 24, 2021, last revised January 12, 2022.
- Boundary and Topographic Survey, consisting of two (2) sheets, prepared by Thomas F. Miller, PLS, of Stonefield Engineering & Design, dated last revised December 15, 2020.
- Checklist Justification Memorandum, prepared by Paul Mutch, PE, of Stonefield Engineering and Design, LLC, dated March 24th, 2021.
- Tree Removal Permit Application dated April 9, 2021.
- Traffic & Parking Assessment Report, prepared by Matthew J. Seckler, PE, PP, PTOE, and John R. Corak, PE, of Stonefield Engineering and Design, LLC, dated March 24, 2021.
- Environmental Impact Statement, prepared by Paul D. Mutch, Jr., PE, of Stonefield Engineering & Design, LLC, dated March 24, 2021.

- Stormwater Operations and Maintenance Manual, prepared by Paul D. Mutch, Jr., PE, of Stonefield Engineering & Design, LLC, dated March 24, 2021.
- Stormwater Management Report, prepared by Paul D. Mutch, Jr., PE, of Stonefield Engineering & Design, dated March 24, 2021.
- Architectural Plans, consisting of eight (8) sheets, prepared by Nastasi Architects, dated March 1, 2021, last revised January 7, 2022.
- Community Impact Statement prepared by Christine A. Nazzaro-Cofone, AICP, PP, of Cofone Consulting Group, LLC, dated May 2021.

1. Site Analysis and Project Description

The subject property, Block 808, Lots 5, 6, 7, and 8, consists of approximately 58,667 sq. ft. located on the west side of State Highway 35 between Monroe Avenue and West Bangs Avenue in the B-1 Town Commercial Zone District. The site is currently vacant with remnants of an old parking lot, and grassy areas. Commercial uses border the property to the east, across Route 35. Residential uses border the property to the north, south, and west, along Monroe and West Bangs Avenues.

The applicant is seeking conditional use variance and preliminary and final major site plan approval to construct a 4-story, 55,775 sq. ft. mixed use development on the site, consisting of 40 residential units and 4,100 sq. ft. of commercial space. The residential units will consist of 18 one-bedroom units and 22 two-bedroom units. Ancillary improvements will include 92 parking spaces, lighting, landscaping, a dog park, stacked bike storage, and stormwater management. Access to the site is proposed via one (1) full movement driveway along West Bangs Avenue and one (1) full movement driveway along Monroe Avenue.

2. Consistency with the Zone Plan

The subject property is located in the B-1 Town Commercial Zone District. The B-1 Zone District is intended to serve the needs of specific surrounding residential neighborhoods by providing for retail sale and service uses. The need to complement and preserve the character of the surrounding residential neighborhoods is paramount. Permitted uses within the B-1 Zone District include furniture and home furnishing stores, electronics and appliance stores, musical instrument stores, sporting goods, hobby and book stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, general merchandise stores, miscellaneous store retailers, credit intermediation and related activities, securities, commodity contracts, and other financial investments and related activities, insurance carriers and related activities, real estate, rental and leasing services, educational services, ambulatory health care services, social assistance, performing arts and related industries, food services and drinking places, personal laundry services, repair and maintenance, administrative and support services, professional, scientific and technical services, and funeral homes.

Mixed use (residential over retail) is permitted as a conditional use within the zone district. **The subject application will require d(3) variance relief to allow for a conditional use in which all the conditions on which the use is predicated have not been met.**

3. Conditions for Mixed Use

The proposed application must meet the following conditions as required for a mixed-use development in the B-1 Zone District:

- A. A vegetative buffer and fencing shall be provided along the western boundary of the site no less than 15 feet. **The proposed development does not meet this requirement, requiring a D(3) variance.**
- B. Maximum Floor Area Ratio (FAR), is 0.60. The applicant is proposing a FAR of 0.95. **A d(4) variance is required.**
- C. Parking shall not be in Route 35 front yard area. The proposed development complies.
- D. Maximum front yard setback from Route 35: 20 feet. The proposed development is setback 20 ft. from Route 35.
- E. Minimum front yard setback from Bangs Avenue: 20 feet. The proposed development is setback 25 ft. from Bangs Avenue.
- F. Minimum front yard setback from Monroe Avenue: 20 feet. The proposed development is setback is 25 feet from Monroe Avenue.
- G. Minimum building setback from residential lot line: 40 feet. The building is setback 84.6 ft. from a residential zone
- H. Maximum percent building coverage: 35%. The applicant is proposing a building coverage of 28.1%.
- I. Maximum impervious coverage: 80%. The applicant is proposing an impervious coverage of 78.3 %.
- J. Maximum Building Height: 42 feet. The applicant is proposing a building height of 42 ft.

4. Other Ordinance Requirements

- A. Parking
 - 1) The Applicant meets the parking requirements for the Residential Site Improvement Standard (RSIS), the Townships Parking Regulations as per Table 4.2 and the required number of accessible spaces as per the Americans with Disabilities (ADA).
 - 2) Parking is prohibited within the front yard setback area. Parking is prohibited in all districts on lawn areas within front yard setbacks. **The applicant is proposing parking areas on West Bangs Avenue and Monroe Avenue, a waiver is needed.**

- 3) As per the Redevelopment Plan (RDV35-WB) #3, No parking shall be located less than 10 feet to any property line. **The applicant proposes a minimum of 4.5 feet to the property lines, a waiver is needed.**

B. Landscaping and Lighting

- 1) As per §509H, the base of all sides of a building shall be planted with foundation plantings consisting of evergreen and/or semi-evergreen shrubs and trees. Such plantings shall be a minimum of two (2) feet high at time of planting and spaced an average of three feet on center. This foundation planting requirement shall not apply to the sides of buildings that are directly abutting a public right-of-way. **The applicant is not proposing any foundation plantings. A waiver is needed.**
- 2) As per §509I.3, for parking lots containing sixteen (16) to ninety-nine (99) spaces, a minimum of five percent (5%) of the interior area of the parking lot shall be provided with planting islands containing a minimum of one (1) deciduous tree planted for every five (5) parking spaces abutting such island. **The applicant is proposing landscaping areas within the parking lot. Testimony should be provided as to compliance with this Ordinance section.**
- 3) As per §509I.3 (b), no more than eight (8) parking spaces shall be placed in one row of parking without an intervening landscape island. **The applicant does not meet this requirement. A waiver is needed.**
- 4) The applicant shall provide testimony on what the proposed lawn area at the rear of the property is going to be used for.

C. Drainage and Stormwater Management

- 1) The project site is 1.35 acres, the extent of land disturbance for construction is 1.53 acres. The project will create 1.07 acres of new impervious surfaces. The project must comply with NJDEP Best Management Practices and Neptune Township Stormwater Ordinance in regard to meeting the goal of maintaining natural hydrology to reduce stormwater runoff volume, reduce erosion, encourage infiltration and groundwater recharge and reduce pollution.
- 2) The project is within the Deal Lake watershed, which is approximately 4,130 acres. The limit of disturbance for this project as outlined above is 1.53 acres and accounts for 0.04 percent of the total drainage area to Deal Lake. As outlined in the Deal Lake Watershed Protection Plan, over the past 63 years, Deal Lake's

water quality has been impacted by a variety of non-point source pollutants. The overall goals of the management and restoration measures presented in the Watershed Protection Plan is to temper the lake's rate of eutrophication, restore its ability to consistently support contact recreation and prohibit the excessive buildup of sediments and associated loss of aquatic habitat both within the lake proper and its tributaries.

- 3) The Applicant has designed the Stormwater Management System to address the NJDEP BMP Manual and Neptune Township Stormwater Management Ordinance, Section 528. (amended under Ordinance No. 21-07), adopted on March 8, 2021. The Applicant meets the standards for peak stormwater discharge.
- 4) The Deal Lake Watershed Plan outlines four (4) key design performance standards under Section 6.1 (Page 46-47)
 - a) **90% TSS Removal** – The transport of sediment from Hollow Brook, the Seaview Tributary and Harvey Brook to the western fingers of Deal Lake is a long-standing concern. The Deal Lake Commission with funds and services from the NJDEP and US Army Corp of Engineers has removed approximately 100,000yds² of sediment from the lake. However, the lake continues to be impacted by sediment loading. The Applicant shall address additional compliance along Route 35 inlets to help increase TSS Removal.
 - b) **110% Recharge** – It is recommended as a means of reducing the stormwater flows that cause property flooding and stream bank erosion. Soils along the site are poor and have a “D” hydraulic rating. Groundwater recharge, given a high seasonal highwater table for the site is not practical. It would be recommended to the Applicant to reduce proposed stormwater flows within the proposed system or within Drainage Sub Area No. 2. The site proposes approximately five feet of fill, and the drainage system will be set four feet above the estimated seasonal highwater table.
 - c) **Nutrient Removal** – To address the phosphorus TMDL for Deal Lake and nutrient loading in the watershed, adopt a performance standard requiring the removal of 60% of the phosphorus load and 30% of the nitrogen load in a site's stormwater runoff. The Applicant shall further expand on the use of fertilizer outlined in the report and address if compliance is attainable.

- d) **Pathogen Removal** – Pathogen reductions and impairments will be addressed by constantly inspecting the watershed’s stormwater collection and conveyance system for potential illicit connections. This goal does not apply to this application.
- 5) The Deal Lake Watershed Protection Plan recommends corrections for developments within the watershed. (Section 8 – Summary of the Findings and Recommendations of the Deal Lake Watershed Protection Plan, page 68). Four (4) of the key recommendations would apply to this project.
- a) **Recommendation No. 4** – Better Stormwater Management Planning and Design, with the focus placed on stormwater recharge to help moderate base flows, decrease storm surges and flooding, and lessen the opportunity for streambed and bank scouring.
 - b) **Recommendation No. 5** - Upgrade and retrofit of the existing stormwater management infrastructure and use of these opportunities to address and correct localized stormwater and pollutant loading problems.
 - c) **Recommendation No. 7** – Decrease in the occurrence of the invasive species within the lake and within the riparian areas of the lake and its tributaries.
 - d) **Recommendation No. 10** – Decrease in fecal coliform loading.

The Applicant shall provide testimony on how the project addresses these recommendation and approves the overall quality of the watershed.

- 6) In accordance with Ordinance 21-07, Section IV, Part 0, the Stormwater Management System shall be revised to address green infrastructure BMPs in regard to the maintenance on the pervious asphalt.
- 7) The following notes shall be added to the Grading and Drainage Plan:
 - a) Stormwater management facilities shall be regularly maintained to ensure they function at design capacity and to prevent health hazards associated with debris buildup and stagnant water.
 - b) Responsibility for operation and maintenance of the stormwater facilities, including periodic removal and disposal of accumulated particulate material and debris, shall remain with the owners or owners of the property. Maintenance shall follow the operations

maintenance manual approved by the Neptune Township Planning Board.

- c) In the event that the facility becomes a danger to public safety or public health, or if it is in need of maintenance. The owner shall affect such maintenance and repair of the facility in a manner that is approved by the Township Engineer.
- d) Construction of the pervious pavement should not take place during rain or snow, when the subsoil is frozen, or when there is significant accumulation of sediment or debris. These conditions can permanently clog the pervious pavement.

5) **Required Proofs for Variance Relief**

D(3) Conditional Use Variance.

- A. The application requires a d(3) use variance for the approval of a use where the conditions upon which the permitted use is predicated have not been met. To meet the positive criteria for a d(3) variance, the applicant should prove the particular suitability of the site in accommodating the use, despite its failure to meet the conditions set forth in the ordinance.
- B. The negative criteria should focus on the impact of the deviation, not the impact of the use. The applicant must present evidence that the negative impacts of non-compliance with the conditions can be mitigated to the extent that the use will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

D(4) Floor Area Ratio (FAR) Variance.

The application requires a d(4) use variance to permit an increase in the permitted floor area ratio.

- A. To meet the positive criteria for a d(4) variance, the applicant should prove the particular suitability of the site in accommodating the use, despite the increase in floor area ratio over what is permitted in the zone district.
- B. The negative criteria should focus on the impact of the deviation. The applicant must present evidence that the negative impacts of non-compliance with the permitted floor area ratio can be mitigated to the extent that the use will not cause a substantial detriment to the public good and will not substantially **impair** the intent and purpose of the zone plan and zoning ordinance.

C Variances

A number of “c” variances are required. There are two types of c variances with different required proofs.

- A. Boards may grant a c(1) variance upon proof that a particular property faces hardship due to the shape, topography, or extraordinary and exceptional situation uniquely affecting the specific property.
- B. Boards may grant a c(2) variance based upon findings that the purposes of zoning enumerated in the MLUL are advanced by the deviation from the ordinance, with the benefits of departing from the standards in the ordinance substantially outweighing any detriment to the public good. The Supreme Court’s ruling in Kaufmann v. Planning Board for Warren Township provides additional guidance on c(2) variances, stating that “the grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of the c(2) case, then, will be...the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”
- C. C variances must also show consistency with the negative criteria as well.

6. Additional Comments

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. Testimony should be given as to any proposed signage and a detail of such should be provided.
- C. The applicant shall provide testimony on the location of the heating, air conditioning and other utilities being utilized.

7. Conditions of Approval

- A. Freehold Soil Conservation District (approved on July 20, 2021)
- B. Monmouth County Planning Board
- C. NJDOT
- D. TNSA
- E. Neptune Township Fire Official
- F. Neptune Township Sewer Department
- G. Neptune Township Tree removal fees
- H. The Applicant shall secure all county permits for road opening, water, sanitary sewer, gas and electric.

- I. Posting the performance guarantees and inspection fees
- J. Developer's Agreement
- K. Lot Consolidation
- L. Tax Assessor's approval of new lot number
- M. Tax Map revision fee

Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant. Should you have any questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS:clb/sja/mcs

cc: Mark Kitrick, Esq., Board Attorney

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