

November 23, 2020

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

Re: Jemal's Rollo, LLC (ZB#20/11)
11 South Main Street
Block 308, Lot 5
Prelim & Final Major Site Plan with Variances
Our File: NTBA 20-11

Dear Board Members:

Our office has received and reviewed materials for an application for preliminary and final major site plan approval with variances in conjunction with the above referenced project.

Submitted Documents:

- A. Boundary and Location Survey, consisting of one (1) sheet, prepared by James D. Sens, PLS, of Control Point Associates, Inc., dated February 27, 2020.
- B. Neptune Township Zoning Permit dated March 31, 2020.
- C. Submission Letter from Steven P. Gouin, of Giordano, Halleran, & Ciesla, PC, dated September 3, 2020.
- D. Community Impact Statement prepared for Jemal's Rollo, LLC, by James T. Kyle, PP, AICP, of Kyle + McManus Associates, dated September 1, 2020.
- E. Submission Letter from Steven P. Gouin, of Giordano, Halleran, & Ciesla, PC, dated June 3, 2020.
- F. Neptune Township Planning Board Resolution No. 97-22, dated July 23, 1997.
- G. Neptune Township Application and Completeness Checklist for Use and/or Bulk Variances and Site Plan and/or Subdivision.
- H. South Main Street Douglas Development Corporation Architectural Plans, consisting of nine (9) sheets, prepared by Daniel M. Condatore, RA, of Monmouth Ocean Design Experts, dated last revised May 20, 2020.

Our comments are as follows:

1. Site Analysis and Project Description

- A. The subject application consists of 20,707.98 sq. ft. located on the west side of S. Main Street/ State Highway 71, just south of the intersection with State Highway 33. The property is currently developed with a 2-story building containing a food service contractors/ catering use. The NJ Transit North Jersey Coast Line is located to the west of the subject property. A mixture of commercial and industrial uses surrounds the property to the north, south, and east.
- B. The applicant is proposing to repair the partially demolished structure, and to extend the second story portion of the building and to utilize the space for warehousing and office/ flex space. The proposed second floor addition will consist of 2,228 sq. ft. The applicant is also proposing upgrades to the building exterior.

2. Zoning and Land Use Planning

The property is situated in the C-6 Route 33 East Commercial zone. The purpose of the C-6 Zone District is to provide for business uses appropriate to the Route 33 highway corridor of Neptune Township situated east of Route 18. The proposed warehousing and office/flex space is not a permitted use in the zone district. **As such, a d(1) use variance will be required to permit a use which is not allowed in the zone district.**

3. Bulk Requirements

- A. The bulk requirements of the C-6 Zone as they relate to the proposed development are as follows:

	Required	Proposed
Minimum Lot Area	15,000 sq. ft.	20,707.98 sq. ft.
Maximum Floor Area Ratio	0.6	0.86*
Minimum Lot Width	100 ft.	92.91 ft. +
Minimum Lot Frontage	100 ft.	55.2 ft. +
Minimum Lot Depth	100 ft.	249.5 ft.
Minimum Front Yard Setback	15 ft.	44.3 ft.
Minimum Side Yard Setback	0/10 ft.	0 ft.
Min. Combined Side Yard Setback	25 ft.	0 ft. +
Minimum Rear Yard Setback	20 ft.	0 ft. +
Maximum Percent Building Cover	35%	70.8 +
Maximum Percent Total Lot Cover	80%	100% +
Max. Number of Stories	3	2
Max. Building Height	48 ft.	28 ft.
Min. Improvable Area	7,200 sq. ft.	11,565 sq. ft.
MIA Diameter of Circle	55 ft.	58 ft.

*variance

+existing non-conformity

- B. The applicant is proposing an F.A.R. of 0.86, whereas the maximum permitted in the C-6 Zone District is 0.6. **A d(4) variance is required for a FAR greater than what is permitted in the zone.**
- C. The existing lot width is 92.21 ft., whereas the minimum permitted in the zone is 100 ft. **This is an existing non-conformity.**
- D. The lot frontage of the subject property is 55.2 ft., whereas the minimum permitted in 100 ft. **This is an existing non-conformity.**
- E. The combined side yard setback is 0 ft., whereas the minimum permitted in the zone district is 25 ft. **This is an existing non-conformity.**
- F. The minimum permitted in rear yard setback in the C-6 zone district is 20 ft., whereas the existing rear yard setback is 0 ft. **This is an existing non-conformity.**
- G. The maximum permitted building coverage in the C-6 Zone District is 35%, whereas the applicant is proposing a building coverage of 70.8%. **This is an existing non-conformity.**
- H. The maximum permitted lot coverage in the C-6 Zone District is 80%, whereas the applicant is proposing a lot coverage of 100%. **This is an existing non-conformity.**

4. **Other Zoning Requirements**

- A. The applicant is providing 8 parking spaces, whereas 14 spaces are required. **A variance is needed.**
- B. **The applicant should indicate if any lighting, signage, landscaping, or additional site improvements are proposed. All proposed improvements should comply with all relevant sections of the Township's ordinance. Additional variances may be needed.**

5. **Required Proofs for Variance Relief**

A. ***D(1) Use Variance***

This application requires a use variance pursuant to N.J.S.A. 40:55D-70.d(1). Testimony is required to demonstrate that the application satisfies the positive and negative criteria of the Municipal Land Use Law for the granting of the use variance relief. To obtain a d(1) use variance, the Applicant must show that the proposal meets four separate criteria:

1) Positive Criteria

- (a) *That the site is particularly suited to the use.* The Applicant must prove that the site is particularly suited for the proposed use. This requirement sets a high bar, requiring findings that the general welfare is served because the use is particularly fitted to the proposed location of the use. It requires the Applicant to show why the location of the site within the Township is particularly suited for the proposed use despite the underlying zoning, or the unique characteristics of the site that make it particularly appropriate for the proposed use rather than a permitted use.
- (b) *Special Reasons.* The Applicant must prove that special reasons exist for granting the use variance by demonstrating either that there is an unreasonable hardship in not granting the variance, or that the proposed project furthers one or more of the purposes of the Municipal Land Use Law.

2) Negative Criteria

- (a) *The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.* The Applicant must prove that the proposal does not substantially impair the intent of the zoning ordinance or master plan. This criterion comes out of the basic principal that municipalities should make zoning decisions by ordinance rather than by variance, and that the grant of a variance should not represent a complete departure from the enacted policy of the governing body.
- (b) *The variance can be granted without a substantial detriment to the public good.* This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.

B. ***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.

- 1) 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.

- 2) 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. *C Variances*

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

- 1) 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.
- 2) 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.”
- 3) 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. The applicant should provide testimony as to the proposed use of the site, including maximum number of employees, anticipated number of visitors to the site, and hours of operation. The applicant should indicate whether the building is intended to be used by one or multiple tenants.
- C. Testimony should be provided as to the proposed site circulation (including trucks) and parking including the ability of vehicles to safely navigate the site and whether the proposed number of parking spaces meets the anticipated parking demands of the site.
- D. The applicant should indicate how trash and recycling will be handled.

E. A copy of the site frontage is attached for the Board's review.

7. Conditions of Approval

The following conditions of approval are required:

- A. Monmouth County Planning Board approval or letter of exemption
- B. NJDOT Access Permit, if required
- C. Posting of a Performance Bond and inspection fees, if required
- D. Developer's Agreement, if required.

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.



Jennifer C. Beahm, P.P.
Board Planner



Matt Shafai, P.E.
Board Engineer

MS:clb/mcs
Enclosure

cc: Leanne Hoffmann, P.E., Director of Engineering & Planning
Monica Kowalski, Esq., Board Attorney
Jennifer Beahm, P.P., Board Planner
Jemal's Rollo LLC, Applicant (pmillstein@douglasdev.com)
Steven P. Gouin, Esq., Applicant's Attorney (sgouin@ghclaw.com)

