

October 28, 2020

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

Re: 1111 Warehouse, LLC (ZB#20/16)
1111 11th Avenue
Block 302, Lot 29
Use Variance & Prelim/ Final Major Site Plan
Our File: NTBA 20-16

Dear Board Members:

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

- Neptune Township Completeness Checklist and Application for Use and/or Bulk Variance, dated July 9, 2020.
- Neptune Township Zoning Permit Denial dated August 19, 2019.
- Site Plan/ Landscape Plan, consisting of one (1) sheet, prepared by David H. Boesch, LLA, of Nelson Engineering Associates, Inc., dated January 30, 2020.
- Resolution 99-22 Approving Minor Subdivision with Variance for Eleventh Avenue Holdings, LLC, memorialized December 15, 1999.

1. Site Analysis and Project Description

The subject property, Block 302, Lot 29, consists of approximately 109,425 sq. ft. located on 11th Avenue in the L-I Light Industrial Zone District. The site is currently developed with a 22,250 sq. ft. commercial building containing two (2) uses.

The applicant is seeking use variance and site plan approval to continue using the site as a business and warehouse operation, approval for existing security fencing that was installed without the appropriate approvals, alterations of the previously approved site plan without approval, and the addition of trailer storage to the property.

2. Consistency with the Zone Plan

The subject property is located in the L-I Light Industrial Zone District. The LI Zone District provides for light industrial uses, as well as office uses. As per §412.21.D, no trailer may be temporarily or permanently used for storage of materials in any zone district.

This application will require **d(1) use variance** relief to permit the storage of trailers on site, whereas the storage of trailers is not a permitted use in any zone district.

3. Bulk Requirements

A. The applicant is proposing a building coverage of 88%, whereas the maximum permitted in the zone is 70%. **A variance is required.**

4. Other Ordinance Requirements

A. Fences and Walls As per §412.07.B.1(b)(ii), when such fences and walls are located more than fifteen (15) feet from a street line they shall not exceed six (6) feet in height, as measured from the ground level. Fence posts, corners, gateways, and wall piers and entryways shall not exceed seven (7) feet in height. **The proposed chain link fence is 8 ft. in height. A variance is required.**

2) As per §412.07.B.1(c), chain link fences shall be prohibited in front yards in all zone districts, whereas the applicant is proposing a chain link fence within the front yard setback. **A variance is needed.**

3) As per §412.07.B.2.(b), For non-residential uses, both decorative walls and solid or non-solid fences shall be permitted to be located in side or rear yards, provided such shall not exceed six (6) feet in height, as measured from the ground level. Fence posts, corners, gateways, and wall piers and entryways may not exceed seven (7) feet in height; whereas the applicant is proposing a chain link fence of 8 ft. in height. **A variance is needed.**

B. Signage

The applicant requires approval for constructing signage within first acquiring zone approval. The applicant should provide a detailed sign plan to indicate conformance with the requirements of section 416 of the ordinance and/or any additional variances that 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. 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. Testimony should be given as to all improvement on site for which approvals have not been granted.
- C. The Applicant is proposing to remove some pavement on the west side of the property adjacent to existing Residential Lots 5-7 with no landscaping/buffer. We recommend additional pavement to be removed adjacent to Residential Lots 30, 3 & 4 and landscape buffer. (Ordinance requires 20' wide buffer.)
- D. We have attached pictures of the existing parking lot. The Applicant should address:
 - 1) Material storage on paved areas
 - 2) Chain link fence condition 8' high

- 3) EX. collapsed chain link fence enclosure with canopy
 - 4) Parking for oversized trailers
 - 5) Dumpsters without enclosure behind residential lots
- E. Additional landscaping in the “proposed no parking striping” areas are recommended.
- F. The zoning information table on cover sheet shall be revised to indicate “proposed” instead of “existing” on last column.

7. Conditions of Approval

- A. Monmouth County Planning Board of Approval or Exemption Letter
- B. Developer’s Agreement
- C. Posting of the Performance Guarantees and Inspection Fees
- D. Submission of the “Boundary and Topography” Survey referred to on General Note No. 2

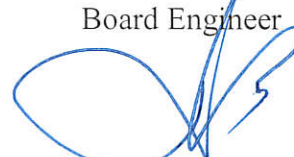
Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant. Should you have any questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS:clb/mcs

cc: Leanne Hoffmann, P.E., Director of Engineering & Planning
Monica Kowalski, Esq., Board Attorney
Jennifer Beahm, P.P., Board Planner
1111 Warehouse, LLC, Applicant (info@1111warehouse.com)
Mark Steinberg, Applicant’s Attorney
NTBA/20/20-16



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