

LEON S. AVAKIAN, INC. *Consulting Engineers*

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July 29, 2020

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

Re: Rishi Realty, LLC (ZB#20/07)
1729 Asbury Avenue
Block 705, Lot 7
Use Variance
Our File: NTBA 20-07

Dear Board Members:

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

- Submittal Letter prepared by Donna M. Jennings, Esq. of Wilentz Attorneys at Law, dated March 19, 2020.
- Neptune Township Completeness Checklist and Application for Use and/or Bulk Variances.
- Survey of Property, consisting of one (1) sheet, prepared by Charles Surmonte, PE, PLS, dated October 4, 2011.
- Community Impact Assessment, Automobile Service Station, prepared by Andrew W. Janiew, PP, AICP, and Barbara J. Ehlen, PP, AICP, dated June 2020.

1. Site Analysis and Project Description

The subject property, Block 705, Lot 7, consists of approximately 0.3444 acres, located on the north side of Asbury Avenue, in the C-4 Route 66 East Commercial Zone District. The site is currently developed with a gasoline fueling station and automobile repair use; and includes three (3) fuel pumps with canopy and a 1,290 sq. ft. structure for automobile service and repair. The property received a notice of violation with respect to the automobile repair use in January 2020 and is now seeking a use variance to permit the automobile repair use. Residential uses are located to the west and south, across Asbury Avenue, of the subject property. A commercial car sales use is located to the east of the subject property. A tributary of Deal Lake is located to the north of the subject property.

The applicant is seeking approval to include automobile repair and services uses in addition to the existing existing non-permitted fueling service station use. No improvements are proposed for the site.

2. Consistency with the Zone Plan

The subject property is located in the C-4 Route 66 East Commercial Zone District. The purpose of the C-4 Zone District is to provide for business uses appropriate to the Route 66 highway corridor situated east of Route 18. Permitted uses in the C-4 Zone District include offices of physicians, including mental health; offices of dentists; offices of chiropractors; offices of optometrists; offices of physical, occupational and speech therapists, and audiologists; offices of podiatrists; all other outpatient care centers; diagnostic imaging centers; home health care services; child care centers; community shelters; bowling centers; public parks and recreational facilities; places of worship; full-service restaurants; cemeteries; municipal facilities; public safety facilities; first aid facilities; and Board of Education facilities. The existing gasoline fueling station is not a permitted use in the zone district, nor is the proposed automobile repair and service use. This application will require a **d(1) use variance** to permit the proposed automobile repair and service use, which is not a permitted use in the zone district.

3. 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.

4. **Additional Comments**

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.

- B. The applicant shall provide testimony regarding the proposed vehicle repair use, including hours of operation, number of employees, length of time a vehicle will remain on site, waste removal, and the maximum number of vehicles to be stored on site at any time.
- C. The Applicant shall address proposed improvement, if any, existing proposed parking spaces, ADA compliance , etc.

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

cc: Leanne Hoffmann, P.E., Director of Engineering & Planning
Monica Kowalski, Esq., Board Attorney
Jennifer Beahm, P.P., Board Planner
Donna M. Jennings, Esq., Applicant's Attorney (djennings@wilentz.com)