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May 23, 2022

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

**Re: Syed Brothers Management, LLC (Gulf Station)
(ZB#21/17)
3655 Highway 33
Block 4104, Lot 15
Preliminary & Final Site Plan and Use Variance
Our File: NTBA 21-16**

Dear Board Members:

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

1. Documents Reviewed:

- Neptune Township Application for Use and/or Bulk Variances and Completeness Checklist, dated August 26, 2021.
- Zoning Permit Application prepared by Syed Brothers Management, LLC, dated April 7, 2021.
- Copy of Bargain & Sale Deed with Covenants Against Grantor's Acts, prepared by Maureen Dickson of Cumberland Farms, Inc., recorded on November 10, 2014.
- Environmental Circulation and Community Impact Statement prepared by Douglass Klee, PE, PP, CME, of Owen, Little & Associates, Inc., undated.
- Aerial Map of the site.
- Drainage System Design Report prepared by Matthew R. DuBois, PE of Nelson Engineering Associates, Inc., dated April 27, 2020, last revised May 13, 2022.

- Prior Zoning Board Resolution of Memorialization granting use variance approval for the subject property, Resolution Number ZBA#16/30, memorialized November 2, 2016.
- Survey of Property consisting of one (1) sheet, prepared by Robert H. Morris, PLS, of Nelson Engineering Associates, Inc., dated June 26, 2019.
- Architectural Plans for the Service Bay Addition consisting of two (2) sheets, prepared by Daniel M. Condatore, R.A., dated August 16, 2021, last revised May 13, 2022.
- Use Variance and Major Site Plan consisting of three (3) sheets, prepared by Douglas W.F. Klee, PE, PP, CME, of Owen, Little & Associates, Inc., dated March 14, 2016, last revised May 12, 2022. last revised February 15, 2017.
- Preliminary and Final Site Plan consisting of eleven (11) sheets, prepared by David H. Boesch, L.L.A. of Nelson Engineering Associates, Inc., dated October 1, 2019, last revised May 12, 2022.

2. Site Analysis and Project Description

The subject property consists of Block 4104, Lot 15, a 0.92-acre property along Route 33 and West Jumping Brook Road in the B-1 Town Commercial Zoning District. The site is currently developed with a Gulf service station. Commercial uses are located to the west across West Jumping Brook Road, and residential uses are located north, east, and south of the property.

The Applicant is seeking preliminary and final site plan and use variance approval to provide three (3) additional service bays and a second-floor office addition to the existing service station. The Applicant is also proposing to add electric vehicle charging stations. Additional site improvements include landscaping, lighting, sidewalks, parking in the rear of the building and a subsurface stormwater management system to control runoff from the new improvements.

3. 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. **Gasoline fueling stations and vehicle rental services are not permitted uses in the B-1 Zone District. The new proposed, non-permitted vehicle rental service use requires a d(1) variance. The expansion of the existing non-conforming gasoline fueling station constitutes a d(2) variance.**

4. **Bulk Requirements**

A. The minimum required front yard setback is 15 feet, whereas the existing front yard setback along Route 33 is 13.6 feet. **Existing variance condition.**

5. **Other Zoning Requirements**

A. *Buffers*

As per §503A, non-residential uses abutting a residential use shall contain a 10 ft. buffer with 6 ft high screening at the time of planting. Block 4104, Lot 9, contains residential uses. **Waiver is required.**

B. *Fences and Walls*

As per §412.07B.1(b)(i), when fences and walls are located within 15 feet of a street line, they shall not exceed four (4) feet in height, whereas a 6 ft. high solid vinyl fence is located within a front yard along West Jumping Brook Road. **A variance is needed.**

C. *Parking and Loading*

As per §412.18, individual parking spaces shall be prohibited in any front yard setback area, whereas the Applicant is proposing five (5) parking spaces in a front yard along West Jumping Brook Road. **A waiver is needed.**

D. *Sight Triangles*

As per §520A, on all corner lots in all zones except Historic Zone Districts, there shall be an unobstructed sight triangle formed by measuring twenty-five (25) feet along each curb line from the point of intersecting curb lines at such corner and connecting such points to form a triangular area, whereas no sight triangle is depicted on the plans. **The Applicant should address the sight triangle required at the intersection and all proposed driveways along Jumping Brook Road.**

6. 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 principle 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. **A d(2) use variance for the expansion of a non-conforming use is required.** To obtain a d(2) use variance, the Applicant must show that the proposal meets three separate criteria.

- 1) **Special Reasons.** Proving the positive criteria for d(2) variances is set at a lower bar than for a new non-conforming use. Proof should still be proffered that demonstrates the furtherance of a goal of zoning.
- 2) **Intent of the Zone Plan (negative criterion #1).** The Applicant must prove that the proposed expansion does not substantially impair the intent of the zoning ordinance or master plan.
- 3) **Detriment to the Public Good (negative criterion #2).** The Applicant must prove that the expansion of the proposed use would not have a substantial detriment on nearby properties.

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.

7. **Drainage and Stormwater Management**

- A. The project site is 0.85 acres, with a proposed disturbance of 0.45 acres. The project will create 0.16 acres (7,137 sq. ft.) of new impervious surfaces. The project is exempt from ordinance No. 21-07.
- B. The Applicant is proposing to construct an underground detention system consisting of four (4) rows of 120 linear feet of 36-inch diameter pipe to address and comply with the NJDEP BMP manual and Township Ordinance.
- C. Given the nature of the improvements and the use of the property our office recommended a manufacture treatment device to address oils and solvents typically used in these types of businesses and the new plan is now proposing one.
- D. The Applicant shall provide a stormwater maintenance manual in accordance with NJDEP BMP standards. Within the manual, the following maps (11" x 17") shall be provided:
 - 1) Grading Plan
 - 2) Drainage and Utility Plan
 - 3) Landscape Plan and Details
 - 4) Soil Erosion Seeding Notes
 - 5) Manufacturer Treatment Device Manual for Maintenance
- E. The following notes shall be added to the Grading and Drainage Plan:
 - 1) 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.
 - 2) 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.

- 3) 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.
- F. The Applicant shall provide elevation inverts at the existing drainage inlet at Rt 33 and W. Jumping Brook Rd. intersection and existing sanitary sewer main and service crossings.

8. Site Plan Review Comments

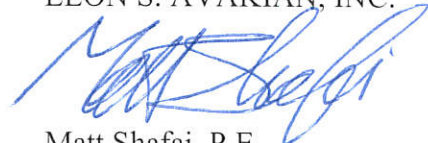
- A. The Applicant should provide the hours of operation for the proposed parking lot lighting.
- B. Sight triangle safety at proposed driveways on W. Jumping Brook Rd. should be addressed.
- C. The proposed sidewalk detail should indicate “4,500 psi” concrete.
- D. The proposed pavement detail should indicate “3” HMA Base course.”
- E. There are a number of errors in the zoning tables contained in the site plan. The zoning table should be revised to include the proper requirements.
- F. The Applicant should provide testimony regarding the service station use and office use, including the hours of operation, the total number of employees and employees per shift, anticipated site traffic mix, general circulation on site, anticipated deliveries and types of vehicles making deliveries, any overnight storage of vehicles, any outdoor storage, and the type of refuse to be generated on site and how it will be disposed of.
- G. The Applicant should indicate if any additional signage is proposed.
- H. The Applicant should provide testimony as to the anticipated parking demand of the site and how the parking requirements were calculated.
- I. The Applicant should indicate if the electric vehicle charging stations are intended to be used only for the vehicles stored on site or if they will be available for public use. If they will be available for public use, will a fee be charged?

9. Conditions of Approvals

- A. Freehold Soil Conservation District
- B. Monmouth County Planning Board
- C. NJDOT Drainage Connections and Road Opening Permits
- D. Posting of the Performance Bonds and Inspection Fees
- E. Developer's Agreement

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS/mcs

cc: Monica Kowalski, Esq., Board Attorney
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NTBA 21/21-16a