

**NEPTUNE TOWNSHIP PLANNING BOARD  
RESOLUTION NO. 2022-01**

**RESOLUTION OF THE NEPTUNE TOWNSHIP PLANNING BOARD,  
TOWNSHIP OF NEPTUNE, COUNTY OF MONMOUTH, STATE OF NEW  
JERSEY APPROVING PRELIMINARY AND FINAL MAJOR SITE PLAN TO  
M&M AT NEPTUNE, LLC FOR PROPERTY LOCATED AT 704 HIGHWAY 35,  
ALSO KNOWN AS BLOCK 701 LOT 1 AS DESIGNATED ON THE MUNICIPAL  
TAX MAP FOR THE TOWNSHIP OF NEPTUNE.**

**WHEREAS**, the Applicant, M&M at Neptune, LLC, made an application to the Township of Neptune Planning Board (Application No. PB21-01) for a preliminary and final major site plan located within the C-1 Planned Commercial Development Zone District for property known as Block 701 Lot 1 as illustrated on the Tax Map of the Township of Neptune; and

**WHEREAS**, such proof of publication of public notice of hearing as may be required by the New Jersey statutes (N.J.S.A. 40:55D-12) and municipal ordinance requirements has been furnished; and

**WHEREAS**, public hearings were held concerning the application via ZOOM meeting on July 28, 2021, August 25, 2021, September 22, 2021, and October 27, 2021, and testimony and exhibits were presented on behalf of the Applicant, the Applicant being represented by Irina B. Elgart, Esquire, and Douglas K. Wolfson, Esquire, and all interested parties were afforded an opportunity to be heard; and

**WHEREAS**, the Township of Neptune Planning Board, represented by Mark Kitrick, Esq., having received information and heard testimony from its professional staff, Leon Avakian, P.E., as the Board's engineering expert, Jennifer Beahm, P.P., as the Board's professional planning expert, and Lou Luglio P.E., as the Board's traffic engineering expert.

**WHEREAS**, the Township of Neptune Planning Board having considered said application, testimony and exhibits submitted, and listened to the Applicant's testimony, and after having received information from its professional staff, the Township of Neptune Planning Board does hereby make the following findings of fact:

- A. The subject property is known as Block 701, Lot 1 consisting of approximately 13.60 acres with frontage on New Jersey State Highway Route 35, Monmouth County Route 16 (Asbury Avenue) and the Asbury Park Circle. The site was formerly used as the Coca Cola distribution center.
- B. The site is located in the C-1 Planned Commercial Development Zone. It is surrounded by mixed commercial land uses to the south and west, properties zoned R-4 with a mix of single-family residential uses to the east, and properties zoned for commercial uses directly to the north with single-family uses to the north of the commercial uses.
- C. The Applicant proposes an 8,133 SF retail building with one (1) drive-through lane, one (1) bypass lane, and a loading area along Asbury Avenue, a 20,442 s.f. supermarket, a 3,316 s.f. fast food restaurant with two (2) drive-through lanes, and a 4,500 s.f. convenience market with six (6) fueling stations (12 fueling positions). The applicant also proposes four (4) associated driveways, landscaping, lighting, and other related site improvements.
- D. The Applicant submitted the following in support of its application, which were reviewed by the Board and its professionals:
  - 1. Land Use Application from Stonefield dated December 29, 2020;
  - 2. Supplemental Submission from Stonefield dated March 10, 2021;
  - 3. Supplemental Submission from Stonefield dated April 23, 2021;
  - 4. Supplemental Submission from Stonefield dated May 12, 2021;

5. Supplemental Submission from Stonefield dated June 3, 2021;
6. Supplemental Submission from Stonefield dated August 13, 2021;
7. Letter from Weingarten Law Firm to Mark Kitrick, Esq. dated September 28, 2021, with Memorandum from M&M Realty Partners dated September 22, 2021.

E. The Planning Board’s professionals issued the following review letters:

1. Avakian Application Review Letter dated 2/18/2021;
2. Tax Assessors’ Review dated 4/14/2021;
3. Police Traffic Bureau Review dated 4/15/2021;
4. Fire Bureau Review dated 04/21/2021;
5. Environmental Shade Tree Review dated 04/22/2021;
6. Avakian Planning and Engineering Review dated 04/26/2021;
7. Traffic Review Letter dated 07/19/2021;
8. Avakian Supplemental Planning & Engineering Review dated 07/20/2021; and
9. Memo from Avakian to Stonefield dated September 17, 2021.

F. The proposed retail building, supermarket, fast food restaurant, and convenience store/gas station are all permitted uses in this zone.

G. The bulk, area and yard requirements of the C-1 Planned Commercial Development Zone are as follows:

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Minimum Lot Area	2.5 ac (108,900 sf)	13.5 ac (591,435.3 sf)	No change
Maximum Lot Density	N/A	N/A	N/A
Maximum Floor Area Ratio	0.6	±0.07	0.06
Minimum Lot Width	500 ft	527.7 ft	No Change
Minimum Lot Frontage	500 ft	2,244 ft	No Change
Minimum Lot Depth	600 ft	753.3 ft	No Change
Minimum Front Yard Setback			
Asbury Avenue (CR 16)	50 ft	84.6 ft	60.3 ft (V)
Highway Interchange	50 ft	±283.5 ft	50 ft (V)
NJ Route 35	50 ft	189.9 ft	50.5 ft
Minimum Side Yard Setback	30 ft	368.3 ft	199.1 ft
Minimum Combined Side Yard Setback	60 ft	368.3 ft	199.1 ft
Minimum Rear Yard Setback	40 ft	N/A	N/A
Maximum Percent Building Cover	30%	±7.1% (42,030 sf)	6.09% (30,042 sf)

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	
Maximum Percent Lot Cover	65%	±26% (155,300.4 sf)	34.6% (204,694 sf)	
Maximum Number of Stories	Two (2)	One (1)	One (1)	
Maximum Building Height	40 ft	±20 ft	Convenience store	18.5 ft
			Retail	29.5 ft
			Supermarket	29.8 ft
			Fast Food	TBD
Minimum Improvable Area	84,900 sf	205,196 sf	No Change	
MIA Diameter of Circle	189 ft	361.9 ft	No Change	

H. The following bulk variances are required or requested for this application:

a. Loading Requirements:

- i. Applicant originally proposed one (1) drive through and one (1) bypass lane by the retail store. While a loading zone is not required by ordinance for commercial buildings under 10,000 sq. ft, the Planning Board requested for Applicant to provide a loading zone by the retail store. Applicant agreed to provide the loading zone north of the retail store building along Asbury Avenue, which the Board considers to be a front yard. Pursuant to Ordinance Section 412.12(D), no loading area shall be located within the front yard. A variance is required.
- ii. Applicant proposed one (1) drive through and one (1) bypass lane by the retail store. In response to the Planning Board's request for a loading zone by the retail

store, Applicant proposes to provide the loading zone north of the retail store building along Asbury Avenue, a public right of way. Pursuant to Ordinance Section 412.12(E), no loading zone shall be located in a yard abutting a public right of way. A variance is required.

b. Parking and Circulation:

- i. The Applicant proposes 203 parking spaces, 6 of which are in the front yard setback along State Highway Route 35. The Township Zoning Ordinance requires a minimum/maximum of 195 to 234 parking spaces. Pursuant to Ordinance Section 412.18, amended under Ordinance No. 14-27, parking is prohibited within front yard setbacks for all properties fronting along State Highway 35 and Asbury Avenue. The Applicant proposed six parking spaces in the front yard setback along State Highway Route 35. A variance would have been required, but the Board recommends elimination of the six parking spaces, such that the Applicant will provide a total of 197 parking spaces.

c. Site Deviations:

- i. Pursuant to Ordinance Section 416.07.A.1, two (2) freestanding signs are permitted. The Applicant proposes three (3) freestanding signs. A variance is required.

ii. Pursuant to Ordinance 416.07.B, Sections 1, 2, and 3, a single tenant structure sign must be a maximum of 48 SF of 1.2 SF for each lineal foot of wall space, with a mounting height of 15 ft., a quantity of one (1), and 12 ft horizontal dimension. With respect to the supermarket, the applicant proposes a 75.7 SF sign, with a mounting height of 25.75 ft, a quantity of two (2), and a horizontal dimension of 12 ft. Three (3) variances are required for size, mounting height and quantity.

iii. Pursuant to Ordinance Section 416.07.B.3(a), a secondary wall-mounted sign shall not exceed 50% of the area of the primary building sign. The Applicant proposes 75.7 SF sign facing the parking lot, which is the same size as the primary building sign. A variance is required for the supermarket signs only.

I. The following waivers are required or requested for this application:

a. Landscaping and Lighting:

i. Pursuant to Ordinance Section 503.B, driveways and parking lots shall be buffered and screened to minimize impacts within the site and to adjacent properties. The Applicant proposes to reduce the height of plantings under three (3) feet to accommodate site triangles. A waiver is required.

- ii. Pursuant to Ordinance Section 503.C.1, loading areas shall be screened by maintaining a minimum ten (10) foot wide buffer. The Applicant proposes to reduce the width of the buffer to accommodate site triangles. A waiver is required.
- iii. Pursuant to Ordinance Section 503.C.2, screening shall consist of a minimum of ten (10) foot high visually impervious screen. While the Applicant has agreed to comply for the supermarket building, a design waiver is required for the loading zone by the retail store, where the applicant does not provide the full height of the plantings in a few areas in order to accommodate a sight triangle.
- iv. Pursuant to Ordinance Section 509.G, 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 (3) feet in center. All four buildings do not comply with the landscaping design standards. Four (4) design waivers are required.
- v. Pursuant to Ordinance Section 509.I.1(b), the front yard shall be landscaped with a min. of 3 ft. tall trees with 30 feet spacing from center. The Applicant complies with the number of trees, but proposes narrower spacing between trees and not to plant

the required hedges in several areas. A design waiver is required.

- vi. Pursuant to Ordinance Section 511.E, lighting fixtures shall be Old Town A850 luminaire with metal halide ballast per Sternberg Lighting Catalog, or functional and aesthetic equivalent. Applicant has requested a design waiver from this requirement for internal illumination, but will provide a total of 19 Old Town street lights around the perimeter of the site.
- vii. Pursuant to Ordinance Section 511.G.2, the ratio of average illumination, measured in footcandles, to minimum illumination shall not exceed 4 to 1. The maximum illumination provided on any site shall not exceed the minimum illumination by more than a ratio of 10 to 1. The Applicant proposes an average/minimum ratio of 4.3 to 1 and a maximum/minimum ratio of 11.6 to 1. A design waiver is required to exceed the maximum/minimum ratio.
- viii. Pursuant to Ordinance Section 523.A, trees shall be spaced evenly along the street in a location either between the curb and sidewalk or at a point fifteen (15) feet behind the curb line. The Applicant proposes street trees to be placed behind the curb line at a distance 37.44 ft. by the supermarket. A design waiver is required.

b. Parking Deviations



- i. Pursuant to Ordinance Section 505.B.4, the maximum driveway width for non-residential uses is 24 feet. The Applicant proposes 30-foot driveways for each entrance. Four (4) design waivers are required.
- ii. Pursuant to Ordinance Section 509.I.4(a), diamond-shaped tree islands shall be utilized between parking bays. The Applicant proposes non-diamond shaped islands. A design waiver is required.
- iii. Pursuant to Ordinance Section 509.I.4(c), no more than eight (8) parking spaces shall be placed in one (1) continuous row of parking without an intervening landscaped island strip placed on both sides of the spaces. The Applicant proposes multiple rows of parking that will exceed the eight (8) parking space limit rule. A design waiver is required.
- iv. Pursuant to Ordinance Section 514.B.2, parking lots are required to be located to the rear of a building or the interior of the site. Due to multiple frontages, not all of the parking spaces can be situated to the rear of the buildings. A design waiver is required.
- v. Pursuant to Ordinance Section 514.B.3, the minimum setbacks for buildings from driveways, parking spaces and private streets within the site shall be ten (10) feet for non-residential developments. The Applicant proposes eight (8) feet, and four

(4) feet for the convenience store, eight (8) feet for the supermarket, five (5) feet for the retail store, and six (6) feet for the fast food. Four (4) design waivers are required.

c. Architectural Deviations:

- i. Pursuant to Ordinance Section 502.B.1(a), no building shall be permitted to have a total measurement greater than one hundred-fifty (150) feet in length along any wall and roofline offsets shall be provided along any roof measuring longer than seventy-five (75) feet in length. The Applicant proposes a two-hundred and two, and seven tenths (202.7) foot continuous wall along the Asbury Avenue frontage. A design waiver is required. In addition, the roofline for the supermarket and convenience store do not comply with the seventy-five (75) foot offset rule. Two (2) design waivers are required.
- ii. Pursuant to Ordinance Section 502.B.2, all visibly exposed sides of building shall have an articulated base course. The Applicant does not propose an articulated base course for the proposed supermarket around the entire building. A design waiver is required.
- iii. Pursuant to Ordinance Section 502.D.1, retail stores oriented towards a street or parking lot shall have a minimum of fifty percent (50%) of the first-floor building façade that faces a street or parking lot consist of glass display windows. Design

waivers are required for the north, east and west elevations of the convenience store, for the north and west elevations of the retail store, for the north and south elevations of the supermarket, and for the west and south elevations for the fast food.

- iv. Pursuant to Ordinance Section 502.D.2, the primary building entrances should be oriented towards the street. The Applicant proposes to have the retail store, supermarket and fast food facing the interior parking lot. Three (3) design waivers are required.

d. Sidewalk Deviations

- i. Pursuant to Ordinance Section 519.B.7, sidewalk widths between a main building entrance and its closest parking is ten (10) feet. The Applicant proposes four (4) feet for the convenience store, eight (8) feet for the supermarket, and six (6) feet for the fast food, where ten (10) feet is required. Three (3) design waivers are required.

e. Site Plan Development Standards Deviations

- i. Pursuant to Ordinance Section 521.B.2, no building shall be oriented to front toward a parking lot. The Applicant proposes the supermarket, the fast food, and the retail entrances to front the parking lot. Three (3) design waivers are required.

ii. Pursuant to Ordinance Section 523.A, trees shall be spaced evenly along the street in a location either between the curb and sidewalk or at a point fifteen (15) feet behind the curb line. The Applicant proposes street trees to be placed behind the curb line at a distance of thirty-seven point forty-four (37.44) feet. A design waiver is required.

J. Jeffrey Martell, P.E., appeared and testified as an expert in the field of engineering in support of the Application. Mr. Martell testified concerning the historic uses of the property and the proposed site plan, which contains four commercial buildings. Mr. Martell also testified that the convenience store will have six fueling islands with 12 total fueling positions. The fuel components will all meet and exceed NJDEP and EPA requirements. A loading zone will be located on the east side of the convenience store area. Across the convenience store loading area, there will be an air and vac station, and trash enclosure. The fast-food restaurant is designed with two drive-through lanes and a bypass lane. There will be a trash enclosure on the west side of the fast-food restaurant. The retail store is designed to accommodate either single or multiple tenants with a trash enclosure to the northeast, and one drive-through lane and one bypass lane. The proposed supermarket has a loading zone that runs north / south adjacent along the east side of the building. Because there are wetlands and flood areas on the east side of the property, the Applicant is developing the west half so that lot coverage is proposed at 34.6% where 65% is allowed, and building overage is proposed at 6.1% where 30% is allowed in the zone. The

four commercial buildings will have common access and circulation with two 30-foot-wide driveways on Route 35 with drive aisles that traverse the site from the south to the north that lead to two 30 foot wide driveways on Asbury Avenue. Thirty-foot driveways will serve as the main truck routes that are typical for these types of commercial uses. The site is designed with a compliant number of parking spaces within proximity of each of the buildings. Mr. Martell testified that the Applicant is complying with the landscaping requirements and is providing a multi-functional landscaping plan with buffer restoration and a reduction in heat island effect. Mr. Martell also testified that the Applicant is not proposing any impact to any flood area. The DEP has approved any disturbance within the wetland buffer area, which has been limited to areas that were previously disturbed or developed. Mr. Martell testified that the Applicant's site plan will not create any steep or critical slope areas and otherwise satisfies the steep slope requirements. The Applicant significantly improved and enhanced the stormwater management design from the one originally submitted as a result of comments received from the Board's professionals concerning the Deal Lake Watershed Management Plan.

K. Matt Seckler, P.E., appeared and testified as a traffic engineering expert in support of the Application. Mr. Seckler addressed the site safety, site circulation, and parking. Mr. Seckler explained the complementary nature of the proposed uses with sufficient parking in connection with each of the four buildings. Mr. Seckler testified regarding a speed table traffic calming device to be placed along the eastern driveway by the supermarket. . Mr. Seckler

testified that the cue space will hold tractor trailers to the east of the convenience store. The Applicant will comply with traffic recommendations from County and State.

L. Lou Luglio P.E., appeared and testified as a traffic engineering expert retained by the Neptune Township Planning Board. He is with the office of Samuel Schwartz. Mr. Luglio testified that traffic queuing during the day may have difficulties making left hand turn out of the site from the southwest driveway. Right in and right out would limit the number of vehicles coming into the property. Mr. Luglio testified that the County of Monmouth may look into pedestrian access into the site.

M. Ronald Aulenbach, Director of Planning and Engineering of Edgewood Properties, a parent company of Applicant, appeared and testified as a representative for the Applicant in support of the Application. Mr. Aulenbach testified that the business operations would be from 7:00 AM through 10:00 PM, seven days per week, except for the convenience store and gas station, whose hours of operation will be seven days per week, twenty-four (24) hours a day. The site will include outdoor seating areas. The supermarket site will not provide for on-site dining. Mr. Aulenbach testified that deliveries will typically be in the morning. All recycling will be done in the supermarket building. Mr. Aulenbach stated that there will be a dumpster by the supermarket. Mr. Aulenbach stated that a sign variance is being sought. Mr. Aulenbach stated that it will be a low maintenance exterior facade with masonry accents with steel and glass. There will be no tractor trailer deliveries for the retail building.

N. Christine Cofone, P.P. appeared and testified in support of the application as a planning board expert. Ms. Cofone testified that the following approvals are needed: NJDEP, Monmouth County Conditional Approval, and currently awaiting NJDOT developer's agreement. Ms. Cofone testified that all uses are consistent within the zone and that there are one hundred-ninety (190) permitted uses within the zone. The parking is conforming. The Applicant is seeking variances for free standing signs and for the loading zone. Ms. Cofone testified that the bulk variances can be justified pursuant to N.J.S.A. 40:55D-70(c)(1), which talks about the unique features of the property, or pursuant to N.J.S.A. 40:55D-70(c)(2), where one or more purposes of the MLUL are advanced. Ms. Cofone testified with respect to the (c)(1) criteria, that the property's particularly unique features are created due to road frontage along the north, south and west of the property. Ms. Cofone opined that the proposed freestanding signs are necessary due to the property's multiple front yards along the highway, and the remainder of the proposed signs will enhance orientation to the site and will not impair the zone plan. Ms. Cofone further testified that with respect to the (c)(2) criteria, the application complies and furthers several purposes of the MLUL, including section (i) in that it will provide a desirable visual environment, section (g) in that there is sufficient space and location, and section (m) in that this is an efficient use of the land. Ms. Cofone stated that the minimum lot area of two point five (2.5) acres and this property exceeds thirteen (13) acres. Ms. Cofone discussed the negative criteria and testified that there is no substantial detriment to the zone plan.

Ms. Cofone further testified that two-hundred-three (203) parking spaces will be provided whereas between one-hundred-ninety-five (195) and two hundred thirty-four (234) spaces are required. The Applicant will work with the Board Professionals to preserve trees. Ms. Cofone further testified that the Applicant satisfied the waiver test for the waivers being sought since the exceptions are reasonable and within the general purpose of the intent of the provisions of the site plan ordinance.

- O. Peter Avakian, P.E. appeared and testified as an engineer retained by the Neptune Township Planning Board. He testified and explained in detail the key features of the Applicant's stormwater management plan for the Board. Green infrastructure BMP's (bio-retention systems, dry wells, porous pavement) were added to the drainage design. The plan utilizes BMP's to detain and infiltrate stormwater runoff to reduce the proposed volume and peak flow to below existing condition values and below discharge rates set by DEP best management standards. Mr. Avakian further testified that groundwater recharge will be provided via the proposed rain gardens and dry wells. The underground basins have been set at an elevation above the seasonal high-water table. The soil beneath these infiltration BMP's will be removed and replaced to ensure adequate permeability. In addition, porous pavement areas have been added to the site (approximately 28,000 sf). He further testified with regard to a manufactured treatment device to direct drainage off of Route 35. The Applicant proposes to remove invasive species (i.e., geese) and obstructions from the Hollow Brook and its associated riparian zone on the subject property.



All trash will be confined to on-site trash enclosure as well as trash containers spaced evenly throughout the site. This will help ensure no increase in wildlife on-site or pollution entering Hollow Brook. Mr. Avakian further testified that the Applicant proposes to reforest existing open space with woods, while the wooded area adjacent to the waterway will not be disturbed. The Board found his testimony credible and accepted his testimony as fact.

P. The Board's Planner, Jennifer Beahm, P.P., provided testimony during the hearings and advised the Board as to the planning standards that are required for approval. The Board found her testimony credible and accepted her testimony as fact.

Q. The Board's professionals issued engineering and planning reports dated April 26, 2021 and July 20, 2021. The Applicant agreed to make certain revisions to the site plans in accordance with the April 26, 2021 and July 20, 2021 reports, which resulted in the site plan revisions dated August 18, 2021, and as stipulated to by the Applicant during the hearing.

R. The following exhibits were submitted into evidence:

A-1: Aerial Exhibit, Dated 4/26/21;

A-2: Aerial Exhibit (Zoomed Sheet A2), Dated 4/26/2021;

A-3: Colored Site Plan (Sheet C5), Dated 6/21/2021;

A-4: Existing Conditions Plan (Sheet C3) within set enhanced with color,  
Dated 6/3/2021;

A-5: Grading Plan (Sheet C6) within set enhanced with color, Dated  
6/3/2021;

- A-6: Traffic Impact Study, Dated 5/28/2021;
- A-7: Asbury Avenue Driveway Exhibit, Dated 7/26/2021;
- A-8: Sheet E-1 Site Plan, Dated 8//18/2021;
- A-9: Sheet A-201 – Elevations “Aldi”, Dated 5/14/2021;
- A-10: Sheet A-202 – Rear Elevation and Side Dock “Aldi”, Dated 5/14/2021;
- A-11: Sheet A-001 – “Retail Building” Elevations, Dated 5/13/2021;
- A-12: Sheet A-002 – “Fast Food” Elevations, Dated 5/13/2021;
- A-13: Sheet A-003 – “Convenience Store” Elevations, Dated 5/13/2021;
- A-14: Sheet A-005 – Color Rendering of Proposed Perspective of Retail Site, Dated 5/13/2021;

A. During the public portion of the hearing, several individuals from the public appeared and asked questions regarding the application. In addition, the following individuals from Ocean Township appeared and testified in opposition to the Application, during the public portion of the hearing:

- a. Stephanie Castellana, of 317 Belmont Ave., Ocean, N.J., presented a video, stating that the video shows traffic back up and delays at the merge of the circle and that this application will make it difficult to leave Colonial Terrace.
- b. Virginia Pulverenti, of 210 Lakeview Terrace, Ocean, N.J., stated that the application will create dangerous conditions on the circle.

- c. Kathy Lyn, of 217 Lakeview Ave., Ocean, N.J., stated that the application will have a negative impact on the neighboring communities.
  - d. Cara Ciuffani, of 314 Parkview Ave., Ocean, N.J., stated that adding commercial stores will significantly impact traffic conditions and that Amazon fulfillment will add to it.
  - e. Lou Tomasello, of 217 Lincoln Ave., Ocean, N.J., objected to the development entirely and stated that it will add to traffic backups and that it will cause harming to the environment.
  - f. Mike Castellana, of 317 Belmont Ave, Ocean, N.J., stated that removing a building or two would minimize the number of variances and waivers requested.
  - g. Joann McFadden, of 204 Lincoln Dr., Ocean, N.J., stated that this developer is not local and does not experience what this circle is like.
  - h. Jim Baye, of 4 David St., Ocean, N.J., objected to the application and stated that it fails to provide adequate buffer and screening.
- S. Based upon the foregoing, the Board finds that the requested preliminary and final major site plan approval, the variances requested pursuant to both N.J.S.A. 40:55D-70(c)(1) and (c)(2), and the waivers requested satisfy the requirements of the Neptune Zoning Ordinance and can be granted without substantial impact to the intent or purpose of the Neptune Master Plan and Zoning Ordinance and without substantial detriment to the public good.

- T. A c(1) variance depends upon a showing of hardship resulting from the circumstances of “a specific piece of property” warranting a relaxation of the standard and is not one created by the Applicant. Here, the Applicant has not created the hardship, which arises from the unique shape of the property that is bordered by public rights of way on three sides.
- U. A c(2) variance is rooted in the purposes of zoning and planning itself and must advance the purposes of the MLUL. The grant of a C(2) variance benefits the community in that it represents a better zoning alternative for the property and does not merely advance the purposes of the owner. The focus in a c(2) case is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.
- V. Here, the variances requested by the Applicant can be granted “without substantial detriment to the public good” and without “substantially impair[ing] the intent and the purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D–70d.
- W. With regard to the variances identified above, based on the full record before the Planning Board, including the Application, the Applicant’s plans, the Applicant’s Exhibits, the testimony of the Applicant’s Witnesses, the Planning Review Letters, Engineering Review letters, the Traffic Review Letters, and the comments, testimony and recommendations of the Board’s Professionals, the Board concludes as a matter of law that Applicant is entitled to the requested variance relief for the following reasons:

- a. The Applicant established sufficient “special reasons” to satisfy the positive criteria for the grant of bulk variances pursuant to c(1) due to particularly unique location of the property with several front yards along a public right of way; and the grant of bulk variances pursuant to c(2) by demonstrating that the Applicant advances multiple purposes of the MLUL as set forth at N.J.S.A. 40:55D-2, including; (i) providing sufficient space in an appropriate location for an appropriate commercial use in accordance with applicable environmental requirements to meet the needs of the Township and New Jersey citizens and furthers the specific intent and purpose of the land development ordinance and Township Master Plan, N.J.S.A. 40:55D-2g; (ii) improving the overall visual appearance and aesthetics of the Property and the Township through creative design techniques and the construction of modern apartment buildings with associated site amenities and improvements, N.J.S.A. 40:55D-2i; and (iii) the efficient use of the land, N.J.S.A. 40:55D-2m.
- b. The Applicant has established the “negative criteria” necessary for the grant of a c(1) and c(2) bulk variances because granting the Application with the requested variances will not result in substantial detriment to the public good because the deviations do not adversely impact adjacent property owners; the Board further concludes that the Application will not substantially impair the Township Master Plan or land use ordinance because the application proposes a permitted use in the Township;

thereby specifically furthering rather than frustrating the goals and objectives of the Master Plan through conforming design and development.

- c. On balance, the Board finds and concludes that the various benefits of the Application detailed above substantially outweigh any detriment, of which there appears to be none, and the Applicant is therefore entitled to the variance relief detailed above.

X. With regard to the waivers identified above, based on the full record before the Planning Board, including the Application, the Applicant's plans, the Applicant's Exhibits, the testimony of the Applicant's Witnesses, the Planning Review Letters, Engineering Review letters, the Traffic Review Letters, and the comments, testimony and recommendations of the Board's Professionals, the Board concludes as a matter of law that Applicant is entitled to the requested waiver relief because the requested waivers are reasonable and justified under the circumstances. The Applicant's Plans substantially comply with the majority of the land development ordinances, and the site plan design requirements, the Applicant's Plans are adequate for the Board's review of the proposed development, and because the Property can safely and adequately accommodate the proposed commercial use notwithstanding the requested design waivers, subject to post-resolution review and acceptance of final compliance plans by the Board and the Board Professionals.

**NOW, THEREFORE,** based on the foregoing findings of facts, including all testimony and evidence that was presented at the hearing by the Applicant's witnesses and the Applicant's professionals, and the comments of the Planning Board professionals and the comments of the public, be it resolved by the Planning Board of the Township of Neptune, on the 27<sup>th</sup> day of October 2021, that the Applicant's request for preliminary and final major site plan approval for the construction of an eight-thousand (8,133) square foot retail building with one (1) drive-through lane, one (1) bypass lane, and a loading area along Asbury Avenue, a twenty-thousand-four-hundred-forty-two (20,442) square foot supermarket, a thirty-one hundred (3,316) square foot fast food restaurant with two (2) drive-through lanes, and a forty-five-hundred (4,500) square foot convenience market with six (6) fueling stations (12 fueling positions), subject to the conditions set forth below; and

**BE IT FURTHER RESOLVED,** that the Planning Board finds that the Applicant, through the testimony of the Applicant's professionals demonstrated both the positive and negative criteria necessary for granting the above referenced variances, and that the variances could be granted given existing site conditions and that said variances could be approved without substantial detriment to the public good and without substantial impairment to the zone plan and zoning ordinances of the Township given that the nature of the proposed use is permitted by the zoning ordinance.

**BE IT FURTHER RESOLEVED,** that the Planning Board finds that the requested waivers were reasonable given the site conditions and that compliance with the Township ordinances would create undue hardship on the Applicant.

**BE IT FURTHER RESOLVED**, that a copy of the Resolution be forwarded to the Planning Board Secretary, to the Applicant's attorney, the Township Clerk and the Building Department.

**BE IT FURTHER RESOLVED**, that notification of this favorable approval be published in an official newspaper of the Township of Neptune, by the Applicant.

**BE IT FURTHER RESOLVED**, that this approval is subject to the following conditions:

1. The Applicant shall review options to better control traffic by utilizing bypass lanes and cutting through the site from Route 35 to Asbury Avenue to avoid travelling around the traffic circle subject to review and approval by the Board Engineer.
2. The Applicant shall install Manufactured Treatment Device along Route 35 frontage to accommodate drainage area that is uncontrolled by stormwater management system on site subject to review and approval by the Board Engineer.
3. The Applicant will attempt to keep existing mature trees along the property's frontage from Route 35, along the circle, approaching Asbury Avenue to the east subject to review and approval by the Board Engineer.
4. Applicant will provide the Board's professionals with a description and construction details for any proposed 'hot box' intended to house domestic water and fire suppression service from NJ American Water Company to each use on site subject to review and approval by the Board Engineer.



5. The Applicant shall evaluate the sanitary sewer lateral crossing Route 35 along the southerly frontage, verify size, televise the line and reuse, where possible. In the alternative, the applicant will develop a plan that will result in a jack and bore of a new service line across the highway, requiring NJDOT utility permit subject to review and approval by the Board Engineer.
6. No tractor trailer deliveries will be made to the smaller retail space site pad.
7. The Applicant shall secure any and all NJDOT permits if required.
8. The Applicant shall comply with all representations made before the Planning Board, by its attorney and its experts.
9. If required, Applicant shall obtain certification by the Local Soil Conservation District of a plan for soil erosion and sediment control in accordance with N.J.S.A. 4:24-39 *et seq.*, commonly known as the “Soil Erosion and Sediment Control Act”.
10. All materials, methods of construction and detail shall be in conformance with the current engineering and building requirements of the Township of Neptune, which are on file in the office of the Township Engineer.
11. Applicant shall obtain all approvals required by any Federal, State, County or Municipal agency having regulatory jurisdiction of this development. Upon receipt of such approval(s), the Applicant shall supply a copy of the permit(s) to the Board. In the event that any other agency requires a change in the plans approved by this Board, the Applicant must reapply to the Township of Neptune Planning Board for approval of that change.

12. Applicant shall resubmit this entire package for re-approval should there be a substantial deviation, as determined by the Board's Engineer, from the terms and conditions of this resolution, or the documents submitted as part of this application, all of which are made a part hereof and shall be binding upon the Applicant.
13. Applicant shall provide a statement from the Township of Neptune Tax Collector that all taxes are paid in full as of the date of this Resolution and as of the date of the fulfillment of any condition(s) of this Resolution.
14. Prior to the issuance of a construction permit, the Applicant shall furnish the Township Clerk with a cash bond and performance guarantee in an amount to be determined by the Township Engineer.
15. Applicant shall post an inspection bond with the Township Clerk in an amount to be determined by the Board Engineer.
16. No soil shall be removed from the site without the written approval of the Director of Engineering and Planning.
17. If applicable, Applicant must comply with the new COAH ordinance for the building improvements in question.
18. The Applicant shall reimburse the Township of Neptune Planning Board for all professional fees expended or to be expended with regard to this application.
19. The Applicant shall comply with all provisions of the engineering and planning reports of Leon S. Avakian, Inc. dated April 26, 2021 and July 20, 2021 to the extent set forth on the record.

**MOTION TO APPROVE:**

Offered By: Richard Culp

Seconded By: Mayor Dr. Michael Brantley

**ROLL CALL ON VOTE:**

Brian Acciani **YES**    Richard Ambrosio **NO**    John Bonney **ABSTAINED**

Lisa Boyd **NO**    Mayor Dr. Michael Brantley **YES**

Keith P. Cafferty **YES**    Richard Culp **YES**    Dyese Davis **YES**

Bishop Paul Brown **Recused**    Deion Johnson (Alternate 1) **Absent**

**MOTION TO ADOPT & MEMORIALIZE:**

Offered By: Keith Cafferty

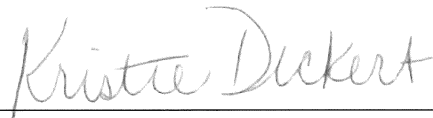
Seconded By: Dr. Michael Brantley

THOSE IN FAVOR: Dr. Michael Brantley, Keith Cafferty, Bryan Acciani

THOSE ABSENT: Richard Culp & Dyese Davis

**CERTIFICATION**

I hereby certify that this is a true copy of a resolution of the Township of Neptune Planning Board adopted on January 26, 2022



**Kristie Dickert, Administrative Officer  
Neptune Township Planning Board**