

November 9, 2022

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

**Re: COTR Inc.
1400 Jumping Brook Road
Block 3903, Lot 3.02 (ZB #22/13)
Preliminary & Final Major Site Plan
Use Variance
Our File: NTBA 22-16**

Dear Board Members:

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

1. **Documents Reviewed:**

- A. Preliminary and Final Major Site Plan consisting of six (6) sheets, prepared by James A. Kennedy, PE of Kennedy Consulting Engineers, LLC, dated June 1, 2022.
- B. Community Impact Assessment prepared for United Shipping Alliance, prepared by Christine A. Nazzaro-Cofone, AICP, PP of Cofone Consulting Group, LLC, dated August 2022.
- C. Architectural Plans consisting of two (2) sheets, prepared by Michael V. Testa, II, AIA, dated June 1, 2022.
- D. Stormwater Management Narrative for United Shipping Alliance, prepared by James A. Kennedy, PE of Kennedy Consulting Engineers, LLC, dated June 14, 2022, last revised September 14, 2022.
- E. Topographical Survey Map of Property consisting of one (1) sheet, prepared by John T. Luts, PLS, of Yorkanis & White, Inc., dated April 20, 2022.

- F. Prior Planning Board Resolution granting minor site plan and minor subdivision approval to Fifth Venture, LLC, Resolution Number 16-25, memorialized November 9, 2016.

2. **Site Analysis and Project Description**

The subject property consists of Block 3903, Lot 3.02, a 2.495-acre (108,712 sq. ft.) site located between Jumping Brook Road and Route 66 in the C-1 Planned Commercial Development Zoning District. The site is currently developed with a one-story, 30,537 sq. ft. office building and associated parking, driveways, sidewalks, and landscaped islands. Commercial uses are located to the west and north, and industrial uses are located to the east and south of the property.

The applicant is seeking preliminary and final major site plan and use variance approval to convert the existing office building to a warehouse use with a 2,200 sq. ft. office portion to remain. The applicant is also proposing a 778 sq. ft. building addition with loading doors, located along the northern portion of the existing building. Additional site improvements include lighting, landscaping, and circulation and parking area changes to accommodate the use of delivery trucks. The applicant is proposing to remove a total of 28 parking spaces, leaving 124 spaces.

3. **Consistency with the Zone Plan**

The subject property is located in the C-1 Planned Commercial Development Zone District. The purpose of the C-1 Zone District is to provide for business uses appropriate to the Route 66 highway corridor. Permitted uses in the zone district include new car dealers, other motor vehicle dealers, automotive parts, accessories and tire stores, furniture and home furnishing stores, electronics and appliance stores, building material and garden equipment and supplies dealers, grocery stores, specialty food stores, beer, wine, and liquor stores, health and personal care stores, gasoline stations with convenience stores, clothing and clothing accessory stores, sporting goods, hobby, musical instrument, and book stores, department stores, other general merchandise stores, miscellaneous store retailers, publishing industries, depository credit intermediation (banks), real estate, automotive equipment rental and leasing, consumer goods rental, professional, scientific, and technical services, management of companies and enterprises, administrative and support services, technical and trade schools, other schools and instruction, ambulatory health care services, community food and housing, emergency and other relief services, performing arts, spectator sports, and related industries, museums, fitness and recreational sports centers, bowling centers, all other amusement and recreation industries, hotels and motels, restaurants and other eating places, personal and household goods repair and maintenance, personal care services, other personal services, religious, grantmaking, civic, professional, and similar organizations, and public administration. **Warehouse uses are not**

permitted uses in the C-1 Planned Commercial Development Zone District, a d(1) Use variance is required.

4. **Bulk and Zoning Requirements**

- A. The Ordinance requires 20 parking spaces, the Applicant is proposing 124 spaces. The Ordinance 412.17.F permits a maximum of 20% or 4 spaces over required spaces where 104 extra spaces are proposed. **A variance is needed.**
- B. The minimum required front yard setback is 50 feet, whereas the existing property has no frontage on a public road. **This is an existing non-conformity.**
- C. The maximum permitted lot coverage is 65%, whereas the existing lot coverage is 85% and the proposed lot coverage is 84.7%. **A variance is needed.**
- D. As per §514B(3), the minimum setbacks for buildings from driveways, parking spaces and private streets within the site shall be ten (10) feet for nonresidential developments, whereas the existing building setback from the western parking lot is 3 feet. **This is an existing non-conformity.**
- E. The Ordinance 412.12.A requires a minimum of four (4) loading spaces for this size warehouse building. The Applicant is proposing three (3). **A variance is needed.**
- F. Ordinance 503B(1) and 503C(1) requires buffering of a minimum ten (10) foot wide area surrounding all sides of a parking lot and loading areas exposed to view. The plans do not address this Ordinance, **waivers may be required.**
- G. The Ordinance 509H requires the base of all sides of a building to be planted with foundation plantings consisting of evergreen and/or semi-evergreen shrubs and trees, whereas the proposed landscaping does not address this Ordinance. **A waiver may be required.**

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

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. **Site Plan Review Comments**

- A. The Applicant should indicate the total area of the existing building on the site plans.
- B. The Applicant should provide plans, report, and testimony regarding the number of trucks accessing the site and their turning movements from the streets and driveways.
- C. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- D. The applicant should provide testimony regarding any proposed lighting and ensure compliance with all requirements of §511.
- E. The applicant should provide testimony regarding office use and warehouse use, including the hours of operation, the type of tenants that will occupy the office space, the anticipated traffic mix, maximum number of employees and visitors to the site, any overnight storage of vehicles, any outdoor storage, the frequency, time and types of deliveries to be made to the site, and the type of refuse to be generated on site and how it will be disposed of.
- F. The applicant has indicated the existing sign will be removed. The applicant should indicate if any new signage is proposed and provide details of such.
- G. The Applicant should provide testimony regarding compliance with "Architectural Design Standards" Ordinance 502.

7. **Conditions of Approvals**

- A. Freehold Soil Conservation District
- B. Monmouth County Planning Board
- C. Posting of the Performance Bonds and Inspection Fees
- D. Developer's Agreement

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer C. Beahm, P.P.
Board Planner

MS:clb:icr:mcs

cc: Monica Kowalski, Esq., Board Attorney
COTR, Inc., Applicant
Rick Brodsky, Esq., Applicant's Attorney
James A. Kennedy, PE, Applicant's Engineer
NTBA/22/22-16c