

LEON S. AVAKIAN, INC. *Consulting Engineers*

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February 7, 2022

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

**Re: Lipschitz (ZB#21/20)  
3525 Highway 33  
Block 3101, Lot 3  
Use Variance  
Our File: NTBA 21-19**

Dear Mrs. Dickert:

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:

**1. Documents Reviewed:**

- Neptune Township Application for Use and/or Bulk Variances and Completeness Checklist, dated September 13, 2021.
- Traffic Impact Analysis prepared by McDonough & Rea Associates, Inc., dated October 6, 2021.
- Community Impact Statement prepared by InSite Engineering, LLC, dated August 25, 2021.
- Stormwater Management Report prepared by InSite Engineering, LLC, dated August 25, 2021.
- Environmental Impact Statement prepared by InSite Engineering, LLC, dated August 25, 2021.
- Architectural Plans consisting of three (3) sheets, prepared by Frank J. Minervini, AIA of MVMK Architecture and Design, dated September 8, 2021.
- Copy of Deed prepared by Sean D. Gretner of Gretner, Mandel & Peslak, LLC, recorded on August 4, 2015.

- Use Variance Plan consisting of ten (10) sheets, prepared by Jason L. Fichter, PE, PP, CFM, CME, of InSite Engineering, LLC, dated August 25, 2021.

## 2. **Site Analysis and Project Description**

The subject property consists of Block 3101, Lot 3, a 4.54-acre property located along Route 33 and East of Jumping Brook Road in the C-5 Route 33W Commercial Zone District. The site is currently wooded and undeveloped. Commercial uses are located south of the site across Route 33, church uses are located west and northeast of the site, and vacant land is located northwest of the site.

The applicant is seeking use variance approval to construct a flex space with a two-story office use and a warehouse use. The proposed office space area is a total of 7,751 sq. ft., and the proposed warehouse use is a total of 27,411 sq. ft. Two ingress/egress areas are proposed along Route 33. Additional improvements include parking, landscaping, and grading.

## 3. **Consistency with the Zone Plan**

The subject property is located in the C-5 Route 33W Commercial Zone District. The C-5 Zone District is intended to provide for business uses appropriate to the Route 33 highway corridor situated west of Route 18. Permitted uses within the C-5 Zone District include furniture, food covering, and home furnishing stores, radio, television, and other electronics stores, computer & software stores, music stores, hardware stores, retail bakeries, garden centers/nurseries, commercial banking, savings institutions, bank, credit unions, consumer lending, real estate credit, all other nondepository credit intermediation, financial clearinghouse & reserve activities, investment banking & securities dealing, securities brokerage, direct life insurance carriers, direct health & medical insurance carriers, insurance agencies & brokerages, claims adjusting, all other insurance related activities, offices of real estate agents and real estate appraisers, other activities related to real estate, computer training and apprenticeship training, other technical & trade schools, sports & recreation instruction, art, music, dance & martial-arts instruction, offices of physicians, dentists, chiropractors, optometrists, audiologists, and podiatrists, offices of physical, occupational and speech therapists, and, all other outpatient care centers, diagnostic image centers, home health care services, child care center, agents, managers for artists & other public entertainers, independent artists, writers & performers, health and fitness club, indoor recreational facility, public parks and recreational facilities, places of worship, civic & social organizations, professional organizations, labor unions & similar labor organizations, restaurants, other computer related services, administration & general management consulting services, other scientific & technical consulting services, advertising services, other services related to advertising, veterinary services/animal hospital, photography studios & videography services, corporate, subsidiary & regional managing office, office administrative services, private mail centers, municipal, fire department, public safety, first aid, and board of education facilities, newspaper, book, and

software publishers, and film & sound recording studios. Warehouses are not a permitted use in the C-5 Zone District.

The property is also located in the Hospital Support Overlay Zone District. Permitted uses in the Hospital Support Overlay Zone District include hospitals; physicians and other professional offices; clinics and other therapeutic and rehabilitation facilities; medical and Dental diagnostic offices and laboratories; sale of surgical and hospital supplies, orthopedic braces, appliances and shoes; emergency medical service facilities; pharmacies and other retail establishments for the sale of medical surgical supplies, equipment and clothes or goods and prescription eyeglasses; nursing homes, life-care facilities and extended-care facilities; restaurants; adult Care Centers; assisted Living Residences; public or quasi-public facilities; light industrial and manufacturing uses related to medical and dental uses including: sports & recreation instruction, health and Fitness Club, testing laboratories, computer programming services, computer systems design services, computer facilities management services, other computer related services, frozen specialty food manufacturing, commercial wholesale bakeries, commercial Lithographic Printing, Other Commercial Printing, Prepress Services, Medicinal and Botanical Manufacturing, Research Laboratory, Preparation Manufacturing, All other miscellaneous chemical product and prep manufacturing, Radio, TV Broadcast & Wireless Communications Equipment Manufacturing, Other Electronic Component Manufacturing, Automatic Environmental Control Manufacturing, surgical and Medical Instrument Manufacturing, Dental Laboratories, Film and Sound Recording Studios and Data Centers. Warehouses are not a permitted use in the Hospital Support Overlay Zone District.

- A. This Applicant is requesting a **d(1) use variance** relief to allow a warehouse use, a use which is not permitted in the C-5 Zone District or the Hospital Support Zone.
- B. The Applicant is also requesting a waiver from “Tree Removal” application with this “Use Variance” application.

4. **Other Variances and Waivers Required with Future Site Plan Application:**

- A. The maximum building height permitted is 30 feet, whereas the proposed building height of the office/flex space is 35.25 feet. **A d(6) use variance is required.**

- B. ***Signs***

As per §416.03B, the base of a freestanding sign shall be liberally landscaped with a combination of shrubs, ground cover, flowers, or other plant material, whereas no landscaping has been provided for the existing freestanding sign located south of the property along Route 33. **A waiver is needed.**

C. *Fences and Walls*

- 1) As per §421G.1, the maximum height of any structural retaining wall, section of structural retaining wall, or tier of a structural retaining wall, shall be no greater than eight (8) feet, whereas the proposed retaining wall is 14 feet in height. **A variance is needed.**
- 2) As per §421H.1, a structural retaining wall (top or bottom) shall be located no closer to a property line than the height of the wall or wall segment closest to the property line, whereas the proposed retaining wall along the eastern portion of the site is 13 feet tall and 6 feet away from the property line; and the proposed retaining wall along the western portion of the site is 7 feet tall and 6.5 feet from the property line. **A variance is needed.**
- 3) As per §421G.4, any combination of a structural retaining wall(s) and a safety fence shall not exceed 12 feet, whereas the combined height of the wall and fence is 18 feet. **A variance is needed.**
- 4) **The applicant should provide details of the proposed retaining walls along the eastern and western property lines. The proposed retaining walls shall comply with all requirements of §527.**

D. *Circulation*

- 1) As per §505B.4, the maximum width permitted of a two-way driveway for nonresidential uses is 24 feet, whereas the proposed driveway north of the warehouse area is 31.3 feet. **A waiver is needed.**
- 2) As per §412.12B, the loading space dimensions required shall be a minimum of 15 feet wide by 60 feet long, with a height clearance of no less than 20 feet, whereas the proposed loading spaces are 15 feet wide by 40 feet long with a height clearance of 15 feet. **A variance is needed.**
- 3) As per §519B.1, sidewalks shall be required on both sides of the street for all major arterials, minor arterials, collector roads and local roads in association with non-residential development, whereas no sidewalks are proposed along Route 33. **A waiver is needed.**

E. *Refuse and Recycling*

- 1) As per §515A.1, all non-residential refuse and recyclable disposal collection areas shall be suitably buffered and screened to minimize the impacts of noise, odors, disposal and collection activities and views of collection bins and dumpsters; whereas the applicant has not provided any

screening around the proposed dumpster enclosure along the western property line. **A waiver is needed.**

- 2) As per §515A.2, no refuse and recycling area may be located within a required principal building setback area, whereas the proposed trash enclosure is located within the side yard setback along the western property line. **A waiver is needed.**

F. *Architectural Design Standards*

- 1) As per §502B.1(a), no building shall be permitted to have a total measurement greater than 150 feet in length along any wall, roof or footprint plane. Building wall offsets, including both projections and recesses, shall be provided along any building wall measuring greater than fifty (50) feet in length in order to provide architectural interest and variety to the massing of a building and relieve the negative visual effect of a single, long wall. The total measurement of such offsets shall equal a minimum of ten (10) percent of the building wall length. The maximum spacing between such offsets shall be forty (40) feet. The minimum projection or depth of any individual offset shall not be less than two feet. Roofline offsets shall be provided along any roof measuring longer than seventy-five (75) feet in length in order to provide architectural interest and variety to the massing of a building and relieve the negative visual effect of a single, long roof. **The applicant shall comply with this ordinance section to the best of their ability.**
- 2) As per §502B.2, all visibly exposed sides of a building shall have an articulated base course and cornice the base course shall be traditionally proportionate to the overall horizontal and vertical dimensions of a facade and shall align with either the kickplate or sill level of the first story. The cornice shall terminate the top of a building wall, may project out horizontally from the vertical building wall plane and shall be ornamented with moldings, brackets and other details that shall be appropriate to the architectural style of a building. The middle section of a building may be horizontally divided at floor, lintel or sill levels with belt courses. Building courses shall be considered an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors and details of the building. **The applicant shall comply with this ordinance section to the best of their ability.**

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. The Applicant should provide testimony on all variances and waivers that will be required with the Site Plan Application including the d(6) Use Variance for the building height.

C. The Applicant should provide testimony regarding flex space office use and a warehouse use, including the hours of operation, the type of tenants that will occupy the flex space, the anticipated traffic mix, maximum number of employees and visitors to the site, any overnight storage of vehicles, any outdoor storage, and the frequency, time and types of deliveries to be made to the site.

**6. Additional Comments**

- A. The existing condition of the site is 10-14 % slope from Route 33 to the stream, with up to 38' drop and heavily wooded. The Applicant is proposing retaining walls as high as 14' to increase the buildable area.
- B. Neither the plans nor EIS report indicate the quantity of soil required to be imported to the site.
- C. The NJDEP approved wetlands line shown on the plans is expired and it does not indicate any buffer areas.
- D. The Environmental Impact Statement does not contain the qualification of the person preparing the statement.
- E. The sheet numbers of the site plan should be revised to indicate 1 of 10, 2 of 10, 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:ir:clb/mcs

cc: All Board Members

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