

**RESOLUTION OF THE
NEPTUNE TOWNSHIP
ZONING BOARD OF ADJUSTMENT**



RESOLUTION # ZBA10/18

**RESOLUTION OF THE ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF NEPTUNE,
COUNTY OF MONMOUTH, STATE OF NEW
JERSEY GRANTING PRELIMINARY AND FINAL
SITE PLAN APPROVAL TO ROBERT MILDNER
FOR PROPERTY LOCATED AT 615 HIGHWAY 35,
ALSO KNOWN AS BLOCK 245, LOTS 33, 34, 63 AND
64 AS SHOWN ON THE TAX MAP OF THE
TOWNSHIP OF NEPTUNE**

WHEREAS, Robert Mildner (the “applicant”) has made application to the Neptune Township Zoning Board of Adjustment (the “Board”) seeking preliminary and final site plan approval to renovate a lawn mower repair shop associated buildings and construct a 3,093 square foot retail sales building on the subject site; and

WHEREAS, the Board conducted a public hearing on said application on July 7, 2010; and

WHEREAS, the applicant has satisfied the notice requirements of the New Jersey Municipal Land Use Law and has provided proof of same to the Board; and

WHEREAS, the Board, having reviewed the application, documents, plans and exhibits as submitted and having listened to the applicant and its professionals and after having received information from its professional staff, the Board does hereby make the following findings of fact and law:

A. The subject property is a corner lot located on the west side of Route 35 between Bradford Avenue and Olden Avenue at 615 Highway 35, in the C-4 zone. The subject of the application is Block 245, Lots 33, 34, 63 and 64. The site contains an existing mower repair shop and associated buildings. The site is surrounded by a variety of land uses, including commercial uses along the Route 35 corridor and residential uses along Olden Avenue and Bradford Avenue.

B. The applicant is seeking preliminary and final site plan approval to renovate an existing 3,800 square foot mower shop and construct a 3,093 square foot retail sales building on the subject site.

C. The applicant received use variance approval from the Neptune Zoning Board of Adjustment for the mower shop and attached retail uses by resolution memorialized on May 5, 2010 (attached hereto as Exhibit A). Variance and design waivers were granted with the use variance. The following waivers are still applicable:

1. Ordinance Section 412.18 requires that individual parking spaces shall be prohibited in any front yard setback area. The applicant proposes parking within front setback along Bradford and Olden Avenues.
2. Ordinance Section 502B(1)a(Massing) prohibits buildings to have a total measurement greater than 150 feet in length along any wall and requires a building wall offsets along walls measuring greater than 50 feet. The applicant proposes 157.33 feet of building façade with one offset in the front only.
3. Ordinance Section 509(I)3 requires a minimum of 5% of the interior area of a parking lot shall be provided with planting islands containing a minimum of one (1) deciduous tree planted every five (5) parking spaces abutting such island.
4. Ordinance Section 509(I)3b requires a more than eight (8) parking spaces shall be place in one row of parking without an intervening landscape island.
5. Ordinance Section 512(B)e requires all buildings be setback from internal access driveways by 10 feet. Previously, the applicant proposed 7 feet; now 0 feet are proposed for the workshop area and 5.6 feet for the retail area. A supplemental design waiver is necessary
6. Ordinance Section 519(B)7 requires sidewalk to provide a 5 foot separation between the sidewalk and curb. Additionally, the ordinance requires a 6 foot wide sidewalk.

D. In support of the application, the applicant submitted the following documents:

1. Streetscape plan, prepared by Mark Pavliv, AIA marked as A-1;
2. Architectural revision to existing building and new commercial additions, marked as A-2;
3. Proposed Attic Plan, marked as A-3.
4. Schematic building section, marked as A-4;
5. Preliminary and final site plan dated June 7, 2010, marked as A-5;
6. Landscaping plan, marked as A-6;

E. At the March 31, 2010 use variance application hearing, Robert N. Mildner testified that he is the sole owner of an existing nonconforming home and garden equipment repair and maintenance business. The applicant proposes to construct a commercial addition to his existing structure as well as provide renovations. He also seeks to construct a 3,093 square foot retail sales building on the subject site. Mr. Mildner testified his existing building is 3,800 square feet. He has one full time employee and receives approximately ten (10) customers per day. He estimated 2/3 of his business is lawn equipment repair and the balance is sales of lawn mowers and snow blowers.

F. Appearing and testifying at the July 7, 2010 hearing, Mr. Mildner agreed to install final fencing at the rear of the property. There will be no entry at the corner of his building and he will provide a plan approved by Board Professionals for decorative paving to be utilized on the property where currently lawn mowers are displayed for sale.

G. At the July 7, 2010 preliminary and final site plan application hearing, Charles Surmonte, P.E., provided expert testimony on behalf of the applicant. Mr. Surmonte testified that the proposed application includes proposed rectangular shaped buildings for economy of construction. The sidewalk ordinance will be complied with. The applicant requires a variance for parking since eighteen (18) parking spaces are proposed and nineteen (19) parking spaces are required.

H. Mr. Surmonte further testified that the applicant will replace the sidewalk on Route 35 and will provide sidewalk in the right-of-way for Bradford and Olden

Avenue. Landscaping shall be provided along the walkway and in front of sidewalk in the front of the building and connecting sidewalk from Route 35 and to the new retail space.

I. Mr. James Lusardi, AIA, a licensed architect provided expert testimony in the field of architecture on behalf of the applicant. He testified that the plans now reflect a smaller footprint in the building size and the Route 35 front yard setback will be adjusted. Additionally, the existing 3 x 7 current signage (15 feet high) will remain as is.

J. The bulk variances and waivers being sought are as follows:

1. The ordinance requires a minimum front setback of 15 feet. The applicant proposes an existing 11.6 foot along NJ State Highway 35 and 6.0 feet along Olden Avenue. Variances are required.

2. The ordinance requires a minimum front setback of 15 feet. The applicant proposes 15.1 feet along Route 35. A variance is required.

3. The Ordinance Section 412.18 requires that individual parking spaces shall be prohibited in any front yard setback area. The applicant proposes parking within front setback along Bradford and Olden Avenues. A variance is required.

4. The Ordinance Section 502B(1)a(Massing) prohibits buildings to have a total measurement greater than 150 feet in length along any wall and requires a building wall offsets along walls measuring greater than 50 feet. The applicant proposes 157.33 feet of building facade with one offset in the front only. A waiver is required.

5. The Ordinance Section 509(I)3 requires a minimum of 5% of the interior area of the parking lot shall be provided with planting islands containing a minimum of one (1) deciduous tree planted every five (5) parking spaces abutting such island. The applicant does not comply with this requirement. A waiver is required.

6. The Ordinance Section 509(I)3b requires no more than eight (8) parking spaces shall be placed in one row of parking without an intervening landscape island. The applicant does not comply with this requirement. A waiver is required.

8. The Ordinance Section 512(B)3 requires all buildings be setback from internal access driveways by 10 feet. The applicant proposes 0 feet at the workshop area and 5.6 feet at the retail area. A waiver is required.

9. The Ordinance Section 515(A)2 prohibits refuse and recycling areas to be located within a required principal setback area. The applicant proposes a refuse area within the rear yard setback area. A waiver is required.

9. The Ordinance Section 519(B)7 requires sidewalk to provide a 5 foot separation between the sidewalk and curb. Additionally, the ordinance requires a 6 foot wide sidewalk. The applicant does not comply with this requirement. A waiver is required.

J. No one from the public appeared and testified during the public portion of the hearing.

K. The Board in reviewing this application reached the conclusion that this application can be granted as the proposed application would advance the purposes of zoning pursuant to the Neptune Township Zoning Code and would promote the general welfare as the site is particularly suitable for the proposed use. Further, the proposed use of this site will not result in excessive noise, odor, vibration, glare or other deleterious condition. Adequate pedestrian and vehicular access has been provided.

L. The Board assessed the negative criteria and finds that the use will not be a detriment to the public good and is consistent with the intent and purpose of the master plan and zoning ordinance. In this regard, the proposed use is very similar to uses that are expressly permitted. The Board finds that clear and convincing evidence has been presented establishing that the benefits of granting the variance are not outweighed by any detriments.

M. For these reasons, it is the determination of the Board that this application for preliminary and final site plan approval, bulk variances and associated waivers can be granted as being consistent with the existing and Master Plan of the Township of Neptune.

NOW, THEREFORE, BE IT RESOLVED by the Township of Neptune Zoning Board of Adjustment that the application described above is hereby approved; and

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded by the Secretary of the Zoning Board of Adjustment to the applicant, the Township Clerk and the Building Department;

BE IT FURTHER RESOLVED that notification of this approval be published in an official newspaper of the Township of Neptune Zoning Board of Adjustment by the Board Secretary within 10 days of its passage.

BE IT FURTHER RESOLVED that the applicant's request is approved subject, however, to the following conditions:

A. The applicant shall comply with all of the representations, both oral and written, made before the Board of Adjustment.

B. The applicant shall comply with all of the federal, state, county and local regulations concerning the development of the subject property.

C. The applicant shall comply with all of the requirements of the Board Engineer's report dated June 25, 2010 and the Board Planner's report dated June 30, 2010. (Attached hereto as Exhibits B & C respectively)

D. Applicant agrees that there will be no storage of outside equipment on site.

E. Applicant agrees that there will be no residential use on site.

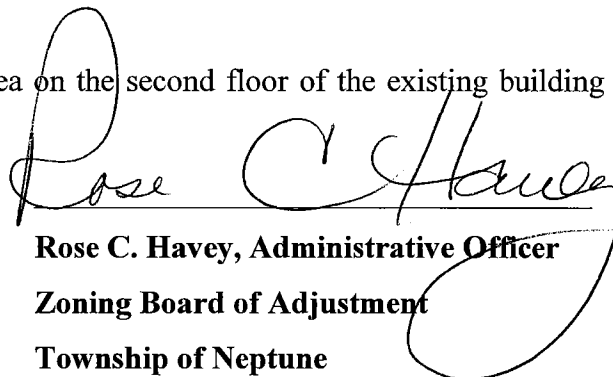
F. The façade of the building shall comply with Neptune Township Land Development Ordinance Section 502B(1)(a).

G. The applicant will comply with Section 412.11 of the Neptune Township Land Development Ordinance relating to its lighting plan as to the mounting height of the fixtures and shall provide decorative lighting along the Highway frontage consistent with applicable land development ordinances.

H. The applicant shall provide a phasing plan for development of this project.

I. The applicant shall provide plans for the infiltration system, final fencing and decorative pavers, area not to exceed 100 square feet, to be approved by Board Professionals.

J. The attic area on the second floor of the existing building to be used for storage area only.


Rose C. Havey, Administrative Officer
Zoning Board of Adjustment
Township of Neptune

Motion to adopt was offered by - Roger Eichenour

Moved and second by – Joe Sears

Those who voted yes - Barbara Bascom, Roger Eichenour, James Gilligan, Thomas Healy
Joe Sears, Cynthia Suarez, Chair Robin Price

Those who voted no - none

Those who abstained – none Those who were absent – Paul Dunlap alt 1.

Motion for memorialization offered by – James Gilligan

Moved and second by – Joe Sears

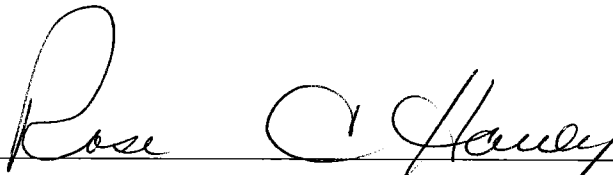
Those who voted yes – Barbara Bascom, Roger Eichenour, James Gilligan, Joe Sears
Cynthia Suarez,

Absent from vote/meeting – Chair Robin Price, Thomas Healy

CERTIFICATION

I hereby certify that I, the undersigned, am the Administrative Officer of the Board of Adjustment of the Township of Neptune, and I hereby certify that the foregoing Resolution was adopted by the Board of Adjustment at a regular meeting held on the 1st day of September 2010.

Date: September 3, 2010



Rose C. Havey, Administrative Officer
Zoning Board of Adjustment
Township of Neptune