

LEON S. AVAKIAN, INC. *Consulting Engineers*

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August 14, 2019

*January 31, 2020*

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

**Re: Use Variance  
Collard Realty, LLC  
1906 Rutherford Avenue  
Block 1002, Lot 16  
Second Review  
Our File No. NTBA 19-06**

Dear Ms. Dickert:

Our office has received and reviewed additional application materials for Use Variance approval in conjunction with the above referenced project. Based on the submission materials, we find the application to be **complete** at this time subject to payment of all required application and escrow fees, and verification of taxes paid. Please schedule this application for the next available meeting. We have provided new comments in *bold and italicized text* and ~~struck-out~~ comments that are no longer relevant. Our report is as follows:

**Submitted Documents:**

- Neptune Township Zoning Permit Denial dated February 22, 2019.
- Neptune Township Application for Use and/or Bulk Variances dated April 18, 2019.
- Survey of Property Lot 16 Block 1002, consisting of one (1) sheet prepared by David J. Von Steenburg, P.L.S. of Morgan Engineering and Surveying, dated February 22, 2018.

- Various Google Map images of property dated February 27, 2017.
- Nation Flood Hazard Layer FIRMette, dated exported on April 22, 2019.
- Community Impact Statement for Collard Realty, LLC, prepared by Marianne Wilensky, PP, dated June 26, 2019.
- *Submittal Letter prepared by Marianne Wilensky, PP, of Ansell Grimm & Aaron, PC, dated January 15, 2020.*
- *Architectural Plans for 1906 Rutherford Avenue, consisting of one (1) sheet, prepared by Michel Savarese, of Michael Savarese Associates, undated.*

1. **Site Analysis and Project Descriptions**

- A. The subject property, known as Lot 16, Block 1002, consisting of approximately 0.215 acres (9,375 sq. ft.), is located on the southern side of Rutherford Avenue, just west of State Highway 35. The application incorrectly states that the property is 6,436 sq. ft. ***It appears that the square footage of the building located on the subject property is approximately 6,436 sq. ft.***
- B. The subject property consists of a one-story frame commercial building currently approved for art, music, dance & martial-arts instruction.
- C. The Applicant is proposing to continue the sports and recreation instruction use and to use the remainder of building for warehousing/ self-storage.
- D. The applicant does not appear to be proposing any improvements to the site.
- E. Uses surrounding the subject property consist primarily of single-family residential dwellings to the west and south, and commercial uses fronting Route 35 to the east. The R-3 Residential Zone District borders the property to the west and the south and the B-1 Town Commercial Zone District borders the property to the north.

2. **Zoning and Existing Land Uses**

- A. The subject application is located in C-7 Route 35 Commercial District.
- B. The purpose of the C-7 Zone District is to provide for business uses appropriate to the Route 35 highway corridor of Neptune Township situated south of the West Lake Avenue Town Commercial Zone.
- C. Permitted uses in the C-7 Zone District include a variety of commercial uses, including art, music, dance & martial-arts instruction.
- D. Warehousing/ Self storage is not a permitted use in the C-7 Zone District. **A d(1) use variance is required.**

### 3. Variations and Design Waivers

#### A. Use Variance

**The application requires a d(1) use variance to permit a use which is not permitted in the zone district.** To obtain a d(1) use variance, the Applicant must show that the proposal meets four separate criteria.

- (1) **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 of the MLUL's stated goals of zoning.
- (2) **Site suitability.** 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.
- (3) **Intent of the Zone Plan (negative criterion #1).** 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.
- (4) **Detriment to the Public Good (negative criterion #2).** The Applicant must prove that the proposed use would not have a substantial detriment on nearby properties.

#### B. Bulk Conditions

**The applicant has indicated they are not proposing any improvements to the site. However, the property has a number of existing non-conformities. They are as follows:**

- (1) The existing lot area is 9,375 sq. ft., whereas 15,000 sq. ft. is permitted in the zone district.
- (2) The permitted maximum lot coverage is 80%, whereas over 80% exists on the subject parcel.

- (3) The permitted maximum building coverage is 35%, whereas over 35% exists on the subject parcel.
- (4) The existing front yard setback is 15.2 feet, whereas the permitted minimum front yard setback is 15 feet in the zone district.
- (5) The permitted minimum rear yard setback is 20 feet in the zone district, whereas 0.6 feet exist.
- (6) The permitted minimum combined side yard setback 25 feet, whereas the existing combined side yard setback is 12 feet.

4. **Additional Comments**

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The applicant should indicate if parking or loading spaces are required for the proposed warehouse/ self-storage space. ***Based provided square footage allocated for each tenant use the applicant would require a total of 42 parking spaces, as follows:***

*Martial arts: 1 space per 75 sq. ft. x 2,960 sq. ft. = 40 spaces*

*Warehouse: 1 space per 2,500 sq. ft. x 3,452 sq. ft. = 2 spaces*

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*Total = 42 spaces*

***The applicant does not appear to be providing any parking spaces on site. Testimony should be given detailing the anticipated parking demands of the site and how they will be met.***

- C. The applicant should provide testimony regarding the parking demands of the existing use. How are they met on site?
- D. ~~The applicant should provide a floor plan, indicating the locations and sizes of all existing and proposed uses.~~ ***The applicant has provided a floor plan illustrating the existing conditions of the site. The applicant should indicate if this floor plan is the intended layout for the proposed uses as well.***
- E. The applicant should provide testimony regarding site improvements such as building façade, asphalt surface driveway, possible landscaping, etc. ***We recommend that improvements to the building façade as well as to the pavement in front of the building be required.***

- F. *The applicant should provide testimony on the door located on the east side of the building. It appears to open on to the neighboring property. Testimony should be provided indicating if there is an access easement or some time of agreement to allow for entrance and egress across the neighboring lot.*
- G. **The applicant should provide testimony as to how the two uses will function within one building. Will deliveries or truck traffic to the warehouse portion of the building be impacted by classes on the person training/ martial arts portion and vice versa?**

Please do not hesitate to contact our office with any questions regarding this matter,

Very truly yours,

LEON S. AVAKIAN, INC.



Jennifer C. Beahm, P.P.  
Board Planner



Matt Shafai, P.E.  
Board Engineer

MS:CLB

cc: Leanne Hoffmann, P.E., Director of Engineering & Planning  
Monica C. Kowalski, Esq., Board Attorney  
Collard Realty, LLC, Applicant ([tom@collardrealty.com](mailto:tom@collardrealty.com))  
Peter S. Falvo, Jr., Esq, Applicant's Attorney ([psf@ansellgrimm.com](mailto:psf@ansellgrimm.com))