

ARCHER & GREINER, P.C.
MEMORANDUM
New Jersey American Water Company - Jumping Brook Water Treatment Plant
RESPONSE TO AVAKIAN REVIEW
Proposed Clearwell and High Service Pump Station Addition and Chlorine Conversion
625 Old Corlies Avenue / Block 3001, Lot 12, Township of Neptune

Dear Kristie:

On behalf of our client, New Jersey American Water Company, Inc. (the “Applicant”), please accept this Memorandum as the Applicant’s coordinated Response to the Review Letter prepared by Leon S. Avakian, Inc., in connection with the above-referenced Application. Our responses to the numbered Comments within that Review Letter are set forth below in **bold**.

Leon S. Avakian, Inc., Review Letter, dated April 11, 2023:

Our office received and reviewed materials that were submitted in support of an application for preliminary and final major site plan and conditional 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 20 sheets, prepared by Joseph N. Bongiovanni, PE of Jacobs Engineering Group Inc., dated October 22, 2022.
- B. Partial Topographic & Utility Survey consisting of one (1) sheet, prepared by Jeffrey D. Bunce, PLS of Colliers Engineering & Design, dated last revised February 16, 2022.
- C. Wall Mounted Lighting Cut Sheets
- D. Architectural Plans consisting of three (3) sheets, prepared by Joseph N. Bongiovanni, PE, of Jacobs Engineering Group Inc., dated March 4, 2022.
- E. Neptune Zoning Denial dated September 16, 2022.
- F. Prior Zoning Board Resolution of Memorialization granting conditional use variance and minor site plan approval for the subject property, Resolution Number ZBA#15/27, memorialized December 2, 2015.
- G. “Stormwater Management Report” prepared by Joseph N. Bongiovanni, P.E., of Jacobs Engineering Group, Inc., dated December 2022.

- H. “Geotechnical Report” prepared by Jacobs Engineering Group, Inc., dated December 2, 2022.
- I. “Application Addendum” describing the nature of application and reliefs required.
- J. “Application Addendum II” explaining waivers on Environmental Impact Statement, Circulation Impact Study and Community Impact Statement.

2. **Site Analysis and Project Description**

The subject property consists of Block 3001, Lot 12, a 17.2-acre site located west of Route 18 between Route 33 and Old Corlies Ave in the LI Light Industrial Zoning District. The site is currently developed with a New Jersey American Water Company — Jumping Brook Water Treatment Plant with associated buildings, structures, and holding/treatment tanks. The site is accessible via an asphalt driveway to Old Corlies Ave. The remainder of the site is wooded and undeveloped, and the northwestern portion of the property contains areas of wetlands, as the Jumping Brook runs along the western portion of the site. Residential uses are located to the east in the R-2 Zoning District, and public land is located to the north, west, and south in the LI Zoning District.

The Applicant was previously before the Zoning Board in 2015 (Application No. ZB#15/12) and was granted conditional use variance and minor site plan approval to install a new backup or emergency power generation system, including associated switchgear and other equipment, to serve an existing Public Utility Facility known as the Jumping Brook Water Treatment Plant.

The Applicant is now seeking preliminary and final major site plan and conditional use variance approval to construct a new 14,000 sq. ft. (11,000 sq. ft. building footprint) Water Treatment Building and Clearwell south of the existing filter building and clearwell and control building, a 125 sq. ft. addition to the existing Residuals Building located along the northern property line, five (5) additional parking spaces, and a grass paver access drive. Associated site improvements include sidewalks, curbing, stormwater management, fencing, and improvements to the existing asphalt pavement and grass areas.

RESPONSE: **Acknowledged. No further comment required.**

3. **Consistency with the Zone Plan**

The subject property is located in the LI Light Industrial Zone District. The purpose of the LI Zone District is to provide for light industrial uses, as well as office uses.

The existing Public Utility Facility is a conditionally permitted use in the LI Zone District, upon which all of the conditions associated with the use have not been met. The Applicant previously received d(3) conditional use variance approval in 2015

(ZB#15/12) to continue to permit the existing conditional use upon which all conditions have not been met.

The proposed 14,000 sq. ft. Water Treatment Building and Clearwell, and the 125 sq. ft. addition to the existing Residuals Building constitute an expansion of a conditionally **permitted use upon which all of the conditions associated with the use have not been met, requiring d(3) variance relief.**

RESPONSE: Acknowledged. The Applicant is requesting the necessary Variances.

4. **Public Utility Facilities Conditional Use Requirements**

- A. Site plans, specifications and a statement setting forth the need and purpose of the installation are filed with the board of jurisdiction. **The Applicant meets this requirement.**

RESPONSE: Acknowledged. The upgrades to the Jumping Brook Public Utility Potable Water Treatment Plant (WTP) are necessary for the continued maintenance of the quality and quantity of the Applicant's public water supply.

- B. Proof is furnished that the proposed installation in a specific location is necessary and convenient for the efficiency of the public or private utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is located. **Testimony should be provided regarding compliance with this condition.**

RESPONSE: The Jumping Brook WTP is, and has historically been necessary for the provision of potable water service by NJAW to the region. Both the neighborhood and broader area benefit from the quality and quantity of water supply.

- C. The design of any building utilized in connection with such facility conforms to the general character of the area and shall in no way adversely affect the adjacent properties. No building may exceed twenty (20) feet in height. **The existing and proposed buildings exceed 20 feet in height. The proposed building is 24 ft. in height, which is greater than 10% of the maximum permitted height, requiring a d(6) variance.**

RESPONSE: We have requested a Variance because the facility can not conform to the character of the area. No additional impacts to adjacent properties should be created by the proposed development. This Variance was previously granted by the Zoning Board. With respect to Building Height, the Neptune Township Ordinance defines the building height as "The vertical distance from finished grade to the top of the highest roof beam on a flat or shed roof." This building has a parapet wall which acts as fall protection at the roof level. The distance from grade to the highest roof beam is 19'-2". To the extent necessary, the Height Variance is also requested.

- D. A continuous six (6') foot high board-on-board fence shall be provided to screen the public utility facility from public view and to ensure security. Other fence types which provide 50% visibility may be used, provided adequate, continuous landscaping is provided at the fence perimeter. Said plantings shall be evergreen, and shall be six (6) feet high at the time of planting. **A continuous 6-foot high board-on-board fence is not provided around the existing or proposed buildings, requiring a d(3) variance. Additionally, no landscaping plan has been provided to determine if landscaping around the fence perimeter is existing or proposed.**

RESPONSE: We have requested a Variance because the WTP is surrounded by a chain link fence rather than a board-on-board fence. The WTP currently has a security fence and access gate around the perimeter rather than the board-on-board fence required by Ordinance. No additional fencing is proposed. The existing landscape along the property line consists of native mature trees and brush. This area will not be disturbed during construction. The proposed building is located among existing buildings and is not visible from the road. As such no additional landscaping is proposed. All disturbed soil areas will be restored with topsoil, fertilizer, and seed. This Variance was also previously approved by the Zoning Board.

- E. A structure associated with a public utility facility in a non-residential zone district may not be located closer than fifty (50) feet to residential property line. **The existing water treatment tanks along the eastern property line are located closer than 50 feet to the residential property line. This is an existing non-conformity.**

RESPONSE: Acknowledged. The Water Storage Tanks associated with the WTP are located within 10 feet of the residential properties along Sycamore Street. The tanks are existing and cannot be relocated. We have requested a Variance which was previously granted

- F. Building or mounted lighting fixtures may be utilized, provided shielding is provided to reduce glare to adjacent properties. Motion-sensitive lighting is encouraged. **The Applicant meets this requirement.**

RESPONSE: Acknowledged. No further Response required.

- G. Appropriate safety devices shall be provided at the public utility facility to ensure public safety. **Testimony should be provided regarding compliance with this condition.**

RESPONSE: Controlled Access/Egress are provided through a secured entrance. Public access is not permitted. The existing chain link security fence is also preferred for security reasons.

5. **Bulk and Zoning Requirements**

- A. The minimum required side yard setback is 25 feet, whereas the existing side yard setback is 11.81 feet. **This is an existing non-conformity.**

RESPONSE: Acknowledged. This nonconforming condition was also previously acknowledged by the Zoning Board.

- B. As per §510B, conservation easements for wetlands, wetlands transition buffer, flood plain or flood plain buffer shall remain in their natural, undisturbed state within which no regrading or clearing shall be permitted, excepting the removal of minor underbrush or dead trees that are hazardous to people or buildings, whereas the Applicant is proposing development within the existing conservation easement area along the southwestern portion of the site. **A waiver is needed.**

RESPONSE: The Applicant has submitted an Application to the NJDEP for partial release of the Conservation Restriction Easement and respectfully requests a Waiver from the Ordinance provision.

- C. As per §514B(5), surface painted aisle, stall and directional striping and directional and traffic safety signs shall be provided throughout the parking, loading and circulation areas, whereas no directional striping is proposed along the drive aisle between the new building and existing building. **A waiver is needed.**

RESPONSE: There is currently no directional striping throughout the WTP facility which is not accessible to the public. The roadway is being reconstructed to the same dimensions and location and circulation through the WTP facility is restricted to employees and deliveries only. A Waiver is requested to the extent necessary.

- D. As per §502B(1)(a), except for buildings in planned commercial development, 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 has not provided floor plans for the proposed buildings to indicate the total length of each roof. The Applicant should revise the plans to better meet these requirements.**

RESPONSE: This building is not readily visible from the road on non-public property. The building has been designed in similar fashion to adjacent buildings. No wall is greater than 150 feet and breaks have been provided to minimize continuous walls to approximately fifty feet with the exception of the north wall. The project does make use of design elements including large windows to reduce the visual scale of the building. A waiver is requested.

- E. As per §502B(4), a flat roof may be permitted on a building of a minimum of two stories in height, provided that all visibly exposed walls shall have an articulated cornice that projects out horizontally from the vertical building wall plane. A mansard roof may be permitted, but only if such is located on the third story of a building, completely and integrally enclosing such story. Flat or mansard roofs shall be prohibited on all one-story buildings. **The Applicant is proposing a flat roof for a one-story building. The Applicant should revise the plans to better meet these requirements.**

RESPONSE: Although the building is only one story in height, the Ordinance defines *Story* as “That portion of a building consisting of at least seven (7) feet of vertical height, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it.” Given that 7' is attributed to one story, 15-20' would be the average height of a two story structure. With the public utility use and design of the building and its 19' ceiling height, it is similar in appearance to two stories. A Waiver is requested.

- F. As per §509H, the base of all sides of a building shall be planted with foundation plantings consisting of evergreen and/or semi-evergreen shrubs and trees, whereas no landscaping is proposed around the proposed water treatment building. A waiver is needed.

RESPONSE: The existing landscape along the property line consists of native mature trees and brush. This area will not be disturbed during construction. The proposed building is located among existing buildings and is not visible from the road. As such no additional landscaping is proposed. All disturbed soil areas will be restored with topsoil, fertilizer, and seed. A Waiver is requested.

6. **Required Proofs for Variance Relief**

- A. ***D(3) Conditional Use Variance.*** The application requires a d(3) use variance for the approval of a use where the conditions upon which the permitted use is predicated have not been met. To meet the positive criteria for a d(3) variance, the Applicant should prove the particular suitability of the site in accommodating the use, despite its failure to meet the conditions set forth in the ordinance. The negative criteria should focus on the impact of the deviation, not the impact of the use. The Applicant must present evidence that the negative impacts of non-compliance with the conditions can be mitigated to the extent that the use will not cause a substantial

detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

RESPONSE: As noted within our Application submission, Site Plan Approval, Conditional Use Approval, and Variances from Conditional Use Standards are requested for the existing and proposed nonconforming conditions at the Jumping Brook WTP. Many of the existing nonconforming conditions were in place prior to the adoption by Neptune Township Committee of Ordinance 03-035, which imposed the Conditional Use Standards upon the facility. The rationale and justification for the Variances is set forth in the Application Addendum submitted in connection with this Application and the necessary Testimony for the requested D(3) Variances will be provided in support of the Variance requests.

- B. ***D(6) Height Variance.*** The application requires a d(6) use variance to permit a height of a principal structure which exceeds by 10 ft. or 10% the maximum height permitted in the district for a principal structure.
- 1) To meet the positive criteria for a d(6) variance, the Applicant should prove the particular suitability of the site in accommodating the use, despite the increase in height by over 10% of what is permitted in the zone district.
 - 2) The negative criteria should focus on the impact of the deviation. The Applicant must present evidence that the negative impacts of non-compliance with the permitted height can be mitigated to the extent that the use will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

RESPONSE: As set forth above, it is our understanding that a d(6) Variance may not be necessary for the proposed Building Height. However, if deemed to be required, the necessary Testimony for the requested D(6) Variance will be provided in support of the Variance request.

C. ***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.

RESPONSE: **The necessary Testimony will be provided for any bulk or "c" Variances that are determined to be necessary.**

- D. *A number of design waivers are required.* The Board has the power to grant design waivers as "exceptions" from the requirements of the Borough's Land Use Ordinance as part of site plan review under N.J.S.A. 40:55D-51(b), so long as the exceptions are reasonable and within the general purpose and intent of the provisions for site plan review and approval, if the literal enforcement of one or more provisions is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

RESPONSE: **The necessary Testimony will be provided for the Design Waivers being requested.**

7. **Site Plan Review Comments**

- A. Plans show a delineation of a "Wetlands" and "50' buffer" lines. The LOI number and approval dates should be on the plans. New approvals may be required.

RESPONSE: **The Applicant has received LOI No. 1334-22-0002.1 dated September 27, 2022 confirming the mapped wetland locations and will provide a copy for review.**

- B. The Applicant should address encroachments into Wetlands buffer areas and/or Conservation Easement.

RESPONSE: **The Applicant has requested partial release of the Conservation Restrictions and appropriate Land Resource Protection Program for the encroachments in question and will be prepared to identify those encroachments in testimony at the Zoning Board Public Hearing.**

- C. The Applicant should indicate the total area of the existing buildings on the site plans.

RESPONSE: **The footprint area for each building is taken from the current site survey.**

Residuals Building: Footprint: 1,643+/- SF

Maintenance Building (West of Residuals Building): Footprint: 136+/- SF

Primary Water Treatment Building

Footprint: 19,912+/- SF

First Floor (Site Survey): 19,912+/- SF

First Floor (Joanna Email): 17,500+/- SF)

Second Floor: 8,863+/- SF

Basement Pipe Gallery: 2,714+/- SF

Valve House (Northeast of Primary Water Treatment Building): Footprint: 490+/- SF

Valve House (Southeast of Primary Water Treatment Building): Footprint: 490+/- SF

Butler Building: Footprint: 1,515+/- SF

Total Building Coverage (Footprint): 24,186 SF (2.98% building coverage)

- D. The Applicant should provide testimony regarding compliance with all prior conditions of approval contained within any previous resolutions associated with the site and use.

RESPONSE: There are no known conditions of any prior Approval that remain to be satisfied.

- E. The Applicant should provide testimony regarding the existing and proposed uses on the site, including the hours of operation, the total number of employees and the number per shift, the anticipated traffic mix, on-site pedestrian and vehicular circulation, 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.

RESPONSE: The property has been the location of a Water Treatment Plant since approximately 1908 which significantly predates the adoption of an Amendment to the Zoning Ordinance in 2003, which made Public Utility Facilities a Conditional Use. The WTP is in operation 24 hours a day and is not accessible to the public. Therefore, traffic is limited to Public Utility and employee vehicles and there is no mix of commercial and pedestrian traffic. 10 total full time employees report to the Jumping Brook WTP as their primary work location, including 8 shift operators, 1 Superintendent, and 1 Supervisor. One part time Operations Specialist also reports to the Jumping Brook WTP. 2 employees are on site at night. During a typical weekday, 2 Operators, 1 Superintendent, 1 Supervisor and, as needed, 6 Maintenance Mechanics. All deliveries are during the day between 7am-3pm, including chemical deliveries twice per week and dumpster removal/exchange twice a week.

- F. The Applicant should clarify the total area of the proposed addition to the existing Residuals Building. The application description indicates the addition will be 125 sq. ft., whereas keynote #25 on the site plans indicates the addition will be 280 sq. ft. (14' x 20').

RESPONSE: Please allow this Response to confirm that the total area of the existing buildings is 280 square feet

- G. The Applicant indicates five (5) new parking spaces are proposed, whereas only four (4) new spaces are depicted in the plan. The Applicant should clarify the total number of parking spaces proposed.

RESPONSE: Please allow this Response Letter to confirm that four (4) new parking spaces are shown on Sheet CD101. Currently there are fourteen existing spaces. The new plan accounts for eighteen spaces an increase of four (4) new spaces.

- H. The Applicant should indicate if any new monument or wall signage is proposed and provide details of such.

RESPONSE: No new signage is proposed.

- I. The Zoning Table in the Site Plan should be updated to include any bulk requirements particular to the conditional use.

RESPONSE: Acknowledged. The Zoning Table will be updated as requested.

8. **Grading and Drainage**

- A. The project disturbance is over one (1) acre of land disturbance and increases the amount of impervious coverage by more than 0.25 acres, therefore, the project must comply with NJDEP Best Management Practices with regard to green infrastructure, TSS Removal, groundwater recharge and stormwater quantity reduction.

RESPONSE: It is our understanding that the project proposes to disturb less than one acre of land (0.988 acres) and there will be an increase in impervious area less than one quarter acres (0.246 acres). The proposed site improvements will not be considered a major development and, therefore, this requirement should not be applicable.

- B. The Applicant is proposing grass paver and underground detention basin to address the increase in impervious coverage as follows.

- 1) "Green Infrastructure" has been addressed.
- 2) "Groundwater Recharge" requires calculation as per Ordinance 21-07 Section IV.P.2.i.
- 3) "TSS Removal" has been addressed.

- 4) "Stormwater Runoff Quantity Standards" design requires a "Waiver" for 2-year storm event, where maximum of 0.56 CFS is permitted, and 0.98 is proposed.

We recommend expanding the detention system to eliminate this waiver.

RESPONSE: The project proposes to disturb less than one acre of land (0.988 acres) and there will be an increase in impervious area less than one quarter acres (0.246 acres). The proposed site improvements will not be considered a major development; therefore, this requirement should not be deemed applicable. The UG basin is bound by the proposed building, underground water mains, and a sanitary force main. Expanding the pipes laterally is not an option. Larger pipes will require a deeper basin which would locate the basin into the groundwater table. Due to zero net fill in a flood area, the site cannot be raised to accommodate larger pipe. Also, the 2-year storm outflow from the basin is 0.27 cfs. If the basin were expanded somehow and detained the 0.27 cfs, the total flow would be 0.71 cfs of overland un-detained runoff for DA-P1. It should be noted that an application for Soil Erosion and Sediment Control Plan Certification has been submitted to Freehold Soil Conservation District, and a preliminary review has been completed with no concerns with basin discharge for the 2-year storm event

- C. Ordinance 21-07, Section IX, Part A, (1) requires whenever an Applicant seeks Municipal approval of a development subject to this ordinance, the Applicant shall submit all of the required components of the checklist for Site Development Stormwater Plan at Section IX.C below as part of the submission of the application for approval. The Applicant shall submit a compliance checklist as required.

RESPONSE: As set forth above, because the project proposes to disturb less than one acre of land (0.988 acres) and there will be an increase in impervious area less than one quarter acres (0.246 acres), the proposed site improvements will not be considered a major development and it is our understanding that this requirement is not applicable.

- D. The Applicant shall provide a stormwater maintenance manual in accordance with the NJDEP BMP standards. Within the manual, the following maps (11" x 17") shall be provided:
 - 1) Grading Plan
 - 2) Drainage and Utility Plan
 - 3) Landscape Plan and Details
 - 4) Soil Erosion Seeding Notes

RESPONSE: A Stormwater Maintenance Manual will be finalized and submitted for review, and all notes will be added to the drawing for final submission.

- E. The following notes shall be added to the Grading and Drainage Plan:
- 1) Stormwater management facilities shall be regularly maintained to ensure they function at design capacity and to prevent health hazards associated with debris buildup and stagnant water.
 - 2) Responsibility for operation and maintenance of the stormwater facilities, including periodic removal and disposal of accumulated particulate material and debris, shall remain with the owners or owners of the property. Maintenance shall follow the operations maintenance manual approved by the Neptune Township Planning Board.
 - 3) In the event that the facility becomes a danger to public safety or public health, or if it is in need of maintenance. The owner shall affect such maintenance and repair of the facility in a manner that is approved by the Township Engineer.

RESPONSE: **The requested Notes will be added to the Grading Plan.**

- F. As outlined under Ordinance 21-07, Section IV, Part M — Any stormwater Management Measure authorized under the Municipal Stormwater Management Plan or Ordinance shall be reflected in a deed notice recorded in the Office of the Clerk of the County of Monmouth. The Township will require quarterly reports of drainage maintenance as compliance of this approval and Maintenance Manual.

RESPONSE: **As set forth above, because the project proposes to disturb less than one acre of land (0.988 acres) and there will be an increase in impervious area less than one quarter acres (0.246 acres), and the proposed site improvements will not be considered a major development, this requirement should not be deemed applicable.**

9. **Conditions of Approvals**

- A. NJDEP Wetlands and Permits
- B. Freehold Soil Conservation District
- C. Monmouth County Planning Board
- D. Posting of the Performance Bonds and Inspection Fees
- E. Developer's Agreement
- F. Tree Removal Permit

RESPONSE: **Acknowledged. All outside agency approvals and compliance requirements will be addressed by the Applicant.**

Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant.

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