

July 19, 2023

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

**Re: 3321 Highway 33, Neptune, LLC
3321 Highway 33
Block 3301, Lot 6 (ZB #23/06)
Use Variance
Our File: NTBA 23-05**

Dear Board Members:

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:**

- A. Survey of Property consisting of one (1) sheet, prepared by Robert H. Morris, PLS of Nelson Engineering Associates, Inc., dated December 7, 2022.
- B. Community Impact Statement prepared by Allison Coffin, PP, AICP of James W. Higgins Associates, dated May 25, 2023.
- C. Use Variance Plan & Site Plan consisting of one (1) sheet, prepared by David H. Boesch, LLA, of Nelson Engineering Associates, Inc., dated March 16, 2023.
- D. Preliminary/Final Minor Site Plan consisting of six (6) sheets, prepared by K.B. Cahill, PE of Bohler Engineering, dated May 10, 2011, last revised May 18, 2012.
- E. Neptune Zoning Denial dated January 10, 2023.

- F. Prior Resolution of the Zoning Board of Adjustment granting preliminary and final site plan approval with variances, Resolution Number ZBA#11/22, dated December 8, 2011.

2. **Site Analysis and Project Description**

The subject property consists of a 1.35-acre (58,890 sq. ft.) site located along Route 33 in the R-2 Low Density Single-Family Residential district. The site is currently developed with a one-story masonry building, associated parking, driveways, and fencing. The site was previously developed with a gasoline service station and vehicle repair station. The gasoline dispenser pumps have been removed, but the vacant garage structure remains. The Temple Bethel Cemetery is located to the west, residential uses are located to the north and east, and commercial and residential uses are located to the south across Route 33.

The Applicant is seeking use variance approval to develop the site with a three (3) bay vehicle repair facility. The applicant is also proposing a 35 sq. ft. freestanding sign, as well as landscaping along the east and west of the property. No improvements are proposed for the existing one-story masonry building.

The applicant indicates used oil and other products will be stored in an above ground approved storage tank (150-175 gallons), which will be kept indoors and out of public view and inside of a secondary containment structure. Oil will be emptied on an as needed basis by a solid waste hauler registered with NJDEP. The applicant also indicates there will be no body work or auto painting performed, no sale of propane/kerosene or gasoline, no outside storage of auto parts, and no used cars sold on the property.

3. **Consistency with the Zone Plan**

The subject property is located in the R-2 Low Density Single-Family Residential District. The purpose of the R-2 Zone District is to provide for single-family residential development at a density ranging between four (4) and five (5) dwelling units per acre. Permitted uses include cemeteries, community centers, community shelters, detached single family residences, marinas, parks, places of worship, recreational facilities, and public or private elementary, middle, or high schools.

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.

This application will require d(1) use variance relief to allow an automotive repair facility, a use which is not permitted in the R-2 Zone District or the Hospital Support Zone.

4. **Conditions for Automotive Service Stations**

While the proposed use is not a permitted conditional use in the zone district, and requires d(1) use variance relief, we have reviewed the conditional use standards established for Automotive service stations, where permitted as a conditional use as they relate to this application:

- A. Notwithstanding the applicable zone district requirements, the minimum lot size for service stations shall be 30,000 square feet and the minimum lot frontage shall be 150 feet. **The applicant meets this requirement.**
- B. Such use shall only be combined on the same site with another principal use provided the other use is a principal use permitted in the applicable zone district. **The applicant is proposing one (1) principal use.**
- C. Notwithstanding any other provision to the contrary, service stations shall be permitted two curb cuts – an entrance and an exit – on one street frontage but not to exceed three per lot. **The applicant meets this requirement.**
- D. No service station shall be located within 500 feet of any firehouse, school, playground, church, hospital or public building. **Testimony should be given as to compliance with this ordinance section.**
- E. All facilities including but not limited to repair appliances, pits, product and part storage areas, work areas, storage tanks for used automotive fluids, and trash facilities shall be within a building or under a roofed structure. **Testimony should be given as to compliance with this ordinance section.**

- F. All lubrication, repair, maintenance or similar activities shall be performed in a fully enclosed building. No dismantled parts or vehicle assemblies shall be displayed outside of an enclosed building. **Testimony should be given as to compliance with this ordinance section.**
- G. No junked motor vehicle or part thereof, or such vehicles incapable of normal operation upon the highway, shall be permitted on the premises of the repair garage. No motor vehicles awaiting repair or disposition at an automotive service station shall be permitted on the premises for a period exceeding seven (7) days of business operation, except that up to three (3) inoperable vehicles in an enclosed building may be permitted without a time restriction. **Testimony should be given as to compliance with this ordinance section.**
- H. A designated temporary outdoor storage area for vehicles awaiting repair and/or service during off-business hours shall be provided, unless all vehicle storage can be accommodated inside a building. Such temporary outdoor storage area shall be:
- a) Distinct and separate from visitor and employee parking and of sufficient size to accommodate the anticipated number of vehicles to be stored onsite;
 - b) Graded and paved to meet applicable Township design standards as approved by the Township Engineer;
 - c) Located outside of a front yard area or a front yard setback area;
 - d) Located a minimum distance of fifteen (15) feet from an adjacent property situated in a residential zone district;
 - e) Located in a minimum distance of five (5) feet from an adjacent property situated in a nonresidential zone district; and,
 - f) Enclosed by a continuous solid fence, which is at least eight (8) feet in height for screening purposes. The perimeter of said fence shall be generously landscaped with ornamental landscaping.

Testimony should be given as to compliance with this ordinance section.

- I. No more than thirty (30) percent of the lot area may be utilized for temporary outdoor vehicle storage. Regardless of lot area, a maximum of 15,000 square feet of outdoor area may be devoted to temporary outdoor vehicle storage. **Testimony should be given as to compliance with this ordinance section.**

- J. In addition to landscaping that is otherwise required pursuant to the provisions of this Ordinance, a minimum of twenty-five (25%) percent of the front yard shall consist of landscape screening of the building and front yard parking. **The applicant does not meet this ordinance section.**
- K. No exterior display of motor vehicles, recreational vehicles, boats, other forms of transportation, or equipment for sale shall be permitted. **Testimony should be given as to compliance with this ordinance section.**

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

6. **Bulk and Zoning Requirements**

If the Use Variance is granted by the Board, we require a condition that an application for “Site Plan” should be submitted for the Board’s review and approval. The site plan should address the following items including all Bulk Variances” which may be required.

- A. As per §424E(1)(a), wherever the property line of an occupied lot in the H-S Zone abuts a residential use or zone, a buffer of at least fifty (50) feet in width shall be provided. Residential uses are located to the north, east, and south. As such, a 50 ft. residential buffer is required, whereas no buffers are existing or proposed. **Due to the change in use to a vehicle repair facility, a variance is needed.**
- B. As per §412.17B, standard parking spaces shall measure nine (9) feet wide by eighteen (18) feet long. Handicapped parking spaces shall measure twelve (12) feet wide by eighteen (18) feet long. **The existing parking spaces do not meet this requirement. Due to the change in use to a vehicle repair facility, a variance is needed.**
- C. As per §412.17 Table 4.2, six (6) parking spaces are required for automotive body repair and painting uses (2 spaces per bay and work area), whereas 27 spaces are existing and proposed. Ordinance §412.17.F permits a maximum of 20% or two (2) spaces over the required spaces, whereas 21 extra spaces are proposed. **A variance is needed.**
- D. As per §503B(1), buffering shall consist of a minimum ten (10) foot wide area surrounding all sides of a parking lot exposed to view, whereas a buffer around the parking areas has not been provided. **A waiver is needed.**
- E. 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 is proposed around the proposed freestanding sign. **A variance is needed.**

- F. As per §505 Table 5.2, the maximum one way driveway width for nonresidential uses is 18 feet, whereas the existing driveway width exceeds 18 feet. **Due to the change in use to a vehicle repair facility, a waiver is needed.**
- G. As per §514B(2), a parking lot shall be located to the rear of a building and/or the interior of the site where its visual impact to adjacent properties and the public right-of-way can be minimized. No parking lot shall be located in a required front yard, whereas the existing parking area is located in the front yard along Route 33. **Due to the change in use to a vehicle repair facility, a variance is needed.**
- H. As per §519B(1), sidewalks shall be required on both sides of the street for all major arterials, minor arterial roads, collector roads and local roads in association with nonresidential development, whereas no sidewalks are existing or proposed. **A waiver is needed.**
- I. As per §519B(2), all lots shall have private walkway access to a public sidewalk in the right-of-way, whereas no walkways are existing or proposed. **A waiver is needed.**
- J. As per §523B, street trees are required to be planted at a minimum interval of 35 feet along all streets, whereas no street trees are existing or proposed along the Route 33 frontage. **A waiver is needed.**

7. **Site Plan & Use Review Comments**

- A. The Applicant should provide testimony on all required variances and clarify all points where additional information is needed.
- B. The Applicant should provide testimony regarding the proposed vehicle repair facility use, including the hours of operation, 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.
- C. The parking calculations for the proposed use are based on Automobile Sales (indoor), whereas the applicant is proposing a vehicle repair facility. The applicant should clarify why they used this calculation and clarify if any vehicles are being sold on site. Based on the proposed uses, the parking calculations should be based on Automotive body repair and painting uses (2 spaces per bay and work area), as this is the closest approximate use listed.

- D. The Applicant should provide testimony regarding any proposed lighting and ensure compliance will all requirements of §511.
- E. As per Ordinance §515, all uses must provide an area used for refuse and recyclable disposal collection, whereas no refuse area is existing or proposed. Testimony should also be provided as to how refuse will be managed on site, including the type of refuse to be generated and how it will be disposed of.
- F. The applicant should provide testimony as to the condition of the existing fencing and indicate if any additional fencing is proposed.
- G. The applicant should indicate if any additional improvements are proposed at this time.
- H. The applicant should indicate the area of the existing building on the Site Plans provided.

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
3321 Highway 33, Neptune, LLC, Applicant
Ronald J. Troppoli, Esq., Applicant's Attorney
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