

LEON S. AVAKIAN, INC. *Consulting Engineers*

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January 24, 2023

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

Re: Pimco, LLC (dba Hot Tub Pirate)(ZB#22/17)
615 Highway 35
Block 806, Lot 6
Use Variance
Our File: NTBA 22-17

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:

- Survey of Property consisting of one (1) sheet, prepared by Michael J. Williams, PLS, of Michael J. Williams Land Surveying, LLC, dated June 25, 2022.
- Community Impact Statement prepared by James W. Higgins, PP, of James W. Higgins Associates, dated December 14, 2022.
- Preliminary and Final Site Plan consisting of nine (9) sheets prepared by Charles Surmonte, PE, PLS, dated last revised December 2, 2010.

2. Site Analysis and Project Description

The subject property consists of Block 806, Lot 6, a 0.5-acre (23,653 sq. ft.) lot with frontage on Olden Ave, Route 35, and Bradford Ave located in the B-1 Town Commercial Zone District. The site is currently developed with a 4,750 sq. ft. building and associated site improvements including a driveway, nine (9) parking spaces and sidewalks. The existing building is now vacant. Residential uses are located to the east, west, and south, and vacant land located to the east and north.

The Applicant was previously before the board in May 2010 (Resolution #ZB10/14) and was granted bulk variance and use variance approval to permit a retail business, (Phase II) and a lawn mower repair shop, (Phase I). In September

2010, the Applicant returned before the board (Resolution #ZB10/18) and was granted preliminary and final site plan approval to renovate the lawn mower repair shop associated buildings and construct a 3,093 sq. ft. retail sales building, (Phase I).

The Applicant is now seeking use variance approval to utilize convert the existing building and site from a lawn mower sales and service facility to a hot tub sales and service facility. No site improvements are proposed at this time.

3. Consistency with the Zone Plan

The subject property is located in the B-1 Town Commercial Zone District. The B-1 Zone District is intended to serve the needs of specific surrounding residential neighborhoods by providing for retail sale and service uses. The need to complement and preserve the character of the surrounding residential neighborhoods is paramount. Permitted uses within the B-1 Zone District include furniture and home furnishing stores, electronics and appliance stores, musical instrument stores, sporting goods, hobby and book stores, food and beverage stores, health and personal care stores, clothing and clothing accessories stores, general merchandise stores, miscellaneous store retailers, credit intermediation and related activities, securities, commodity contracts, and other financial investments and related activities, insurance carriers and related activities, real estate, rental and leasing services, educational services, ambulatory health care services, social assistance, performing arts and related industries, food services and drinking places, personal laundry services, repair and maintenance, administrative and support services, professional, scientific and technical services, and funeral homes. **The proposed hot tub sales and service facility uses are not a permitted use in the zone district, requiring a d(1) use variance.**

4. 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 principle 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.

5. **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 status of Phase II improvements or any improvements proposed with this application.
- C. The Applicant should provide testimony regarding the proposed hot tub sales and service 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, 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.

- D. The Applicant should provide testimony as to whether the existing number of parking spaces meets the anticipated parking demands of the site.
- E. The Applicant should also address the following:
- Existing and/or proposed signages
 - Existing lawnmower display area
 - H/C parking space
- F. The Applicant should confirm the total area of the existing one-story masonry building, as this is not indicated in the survey provided.
- G. Any major site improvements will require approval of the required site plan.

Very truly yours,

LEON S. AVAKIAN, INC.



Matt Shafai, P.E.
Board Engineer



Jennifer Beahm, P.P.
Board Planner

MS:clb/mcs
cc: Monica Kowalski, Esq., Board Attorney
Ronald J. Troppoli, Esq., Applicant's Attorney
NTBA/22/22-17b