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February 26, 2024

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

**Re: Sperry Tents New Jersey, LLC  
1208 5<sup>th</sup> Avenue  
Block 420, Lot 18 (ZB #23/04)  
Use Variance  
Preliminary & Final Major Site Plan  
Our File: NTBA 23-03**

Dear Board Members:

Our office received and reviewed materials that were submitted in support of an application for use variance and preliminary and final major site plan approval for the above referenced project. The following documents were reviewed:

1. **Documents Reviewed:**

- A. Application for Site Plan and/or Subdivision.
- B. Neptune Township Application for Use and/or Bulk Variances and Completeness Checklist.
- C. Neptune Zoning Denial dated January 3, 2024.
- D. Property Deed dated May 20, 2022.
- E. Copy of Prior Resolution of the Zoning Board of Adjustment granting use and bulk variance approval to Sperry Tents New Jersey, LLC, Application No. ZB 11/07.
- F. Community Impact Statement prepared by Andrew J. Grover, PE of InSite Engineering, LLC, dated October 16, 2023.

- G. Abbreviated Stormwater Management Report prepared by Andrew J. Grover, PE of InSite Engineering, LLC, dated October 16, 2023.
- H. Traffic Impact Analysis prepared by John H. Rea, PE and Scott T. Kennel of McDonough & Rea Associates, Inc., dated July 31, 2023.
- I. Boundary & Topographic Survey consisting of one (1) sheet, prepared by Justin J. Hedges, PLS, CFS, of InSite Surveying, LLC, dated last revised June 12, 2023.
- J. Environmental Impact Statement prepared by Andrew J. Grover, PE, LEED AP, and Maeve E. Desmond, PP, AICP of InSite Engineering, LLC, dated October 16, 2023.
- K. Details of Outdoor Movable Storage Units consisting of one (1) sheet, prepared by Flex Storage Systems, undated.
- L. Preliminary and Final Site Plan consisting of six (6) sheets, prepared by Andrew J. Grover, PE of InSite Engineering, LLC, dated October 12, 2023.

2. **Site Analysis and Project Description**

The subject property consists of Block 420, Lot 18, a 0.533-acre (23,227 sq. ft.) site located east of Route 35 at the northwest corner of 5<sup>th</sup> Avenue and Atkins Avenue in the R-4 Medium Density Single-Family Residential Zoning District. The site is currently developed with a 1-story warehouse building, a 1-story masonry garage, a tent, and outdoor gravel storage areas. Access to the site is provided from 5<sup>th</sup> Avenue and Atkins Avenue via two (2) full-movement driveways. Commercial uses are located to the south, commercial and residential uses are located to the east, industrial uses are located to the north, and residential uses are located to the west.

The applicant was previously before the Board in January 2012 (#ZB11/07) and was granted use and bulk variance approval to construct a 5,615 sq. ft. building as flex space/warehousing with 660 sq. ft. to be used as office space.

The applicant is now seeking use variance and preliminary and final major site plan approval to demolish the existing 1-story garage and tent, remove the existing concrete driveway, and convert the existing 1-story warehouse building into a self-storage facility along with outdoor storage units on the existing gravel yard. The applicant is proposing eight (8) 8' x 10' exterior units, twenty-seven (27) 10' x 12' interior units, twenty-five (25) 8' x 20' exterior units, and one (1) 10' x 20' interior unit, for a total of 61 storage units. A total of three (3) parking spaces are proposed south of the existing building, including one (1) ADA space. Access to the site will be provided via one (1) full-movement asphalt driveway to 5<sup>th</sup> Avenue. Additional site improvements include one (1) freestanding sign at the southeast corner of the

site, an 8' x 15' trash enclosure at the northeast corner, as well as sidewalks, fencing, lighting, and landscaping.

3. **Consistency with the Zone Plan**

The subject property is located in the R-4 Medium Density Residential Zone District. The purpose of the R-4 Zone District is to provide for single-family residential development at a density not to exceed 8.7 dwelling units per acre. Permitted uses in the R-4 Zone District include community shelters, detached single family residences, parks, places of worship, recreational facilities, and private or public elementary, middle or high schools. Conditional uses include assisted living facilities and community centers.

**This application will require d(1) use variance relief to allow a self-storage facility, a use which is not permitted in the R-4 Zone District.**

4. **Conditions for Self-Storage Facilities**

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 self-storage facilities, where permitted as a conditional use, as they relate to this application:

- A. Such facility shall be limited to a maximum F.A.R. of 0.90. **An F.A.R. of 0.44 is proposed, including the exterior storage units.**
- B. No storage of hazardous or combustible materials shall be permitted. **Testimony should be given as to compliance with this ordinance section.**
- C. No sale of material shall be permitted from the premises, except for the purpose of satisfying unpaid rent pursuant to law. **Testimony should be given as to compliance with this ordinance section.**
- D. No animals or livestock shall be permitted on the premises. **Testimony should be given as to compliance with this ordinance section.**
- E. No outside storage shall be permitted except that boats and recreational vehicles may be stored in the rear yard provided that they are properly screened from the traveling public in accordance with Section 503. **Testimony should be given as to compliance with this ordinance section.**
- F. Buildings shall be separated a minimum of thirty-five (35) feet except that the distance may be reduced to twenty-five (25) feet in instances where no access to individual storage facilities is proposed. The reduction only applies where no access is allowed on both sides of the drive aisle. **Only one (1) building is proposed.**

- G. The facility will be completely surrounded by architectural fencing or walls a minimum of six (6) feet in height. The applicant meets this requirement.
- H. The facility shall be landscaped in accordance with Article V. **Testimony should be given as to compliance with this ordinance section.**
- I. A single residential unit for the use of a caretaker and immediate family shall be permitted. **No single residential unit is proposed.**
- J. Any other provisions not herein modified shall apply.

5. **Bulk Requirements**

- A. The minimum side yard setback required in the R-4 Zone District is 5 feet, whereas a side yard setback of 2 feet is existing and proposed. **A variance is needed.**
- B. The minimum combined side yard setback required in the R-4 Zone District is 15 feet, whereas a combined side yard setback of 2 feet is existing and proposed. **A variance is needed.**
- C. The minimum rear yard setback required in the R-4 Zone District is 30 feet, whereas a rear yard setback of 2.1 feet is existing and proposed. **A variance is needed.**
- D. The maximum lot coverage permitted in the R-4 Zone District is 65%, whereas a lot coverage of 89% is existing and 86% is proposed. **A variance is needed.**

6. **Other Zoning Requirements**

- A. As per §412.12A, one (1) loading space is required, whereas none are provided. **A variance is needed.**
- B. As per §412.07B(1)(b)(i), fences and decorative walls within 15 feet of the street line may be erected in the front yard extending to the rear or side lot lines, provided they do not exceed four (4) feet in height, as measured from the ground level, whereas an eight (8) foot chain link fence is existing, and a six (6) foot fence is existing and proposed within 15 feet of the street line. **A variance is needed.**

- C. As per §412.07B(1)(c), chain link fences shall be prohibited in front yards in all zone districts, whereas a chain link fence along the front yard is existing. **Due to the change in use, a variance is needed.**
- D. As per §505, Table 5.2, the minimum two way driveway width for nonresidential uses is 20 feet, whereas the proposed driveway is 19.3 feet wide. **A variance is needed.**
- E. As per §515A(2), no refuse and recycling area may be located within a required principal building setback area, whereas the proposed refuse area is proposed within the rear yard setback. **A variance is needed.**
- F. As per §416.03B, the base of any 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 project sign. **A variance is needed.**
- G. 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. The applicant does not meet this requirement. **A waiver is needed.**
- H. 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 proposed parking spaces are located in the front yard along 5<sup>th</sup> Avenue. **A variance is needed.**
- I. 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 existing or proposed throughout the site. **A waiver is needed.**

7. **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 substantial detriment to the public good.

B. *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.
- C. *A number of design waivers are required.* The Board has the power to grant design waivers as "exceptions" from the requirements of the Township'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 the peculiar conditions pertaining to the land in question.

8. **Site Plan 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 previous Resolution of Approval (Resolution 11/07) and provide testimony regarding compliance with all prior conditions.
- C. The applicant should provide testimony regarding the anticipated maximum total of employees and the number per shift, anticipated number of daily visitors to the site, the hours of operation, the anticipated traffic mix, on-site vehicular and pedestrian circulation, frequency and types of deliveries, refuse generation, proposed vehicle storage, and general storage, including any proposed overnight storage of vehicles on the site.

- D. The applicant should provide testimony regarding the type of storage uses proposed, the types of vehicles to be utilized for site operations and by visitors, and proposed access to the storage units. Testimony should also be provided regarding any potential traffic conflicts between garbage pickup, deliveries, and visitors and other vehicles entering/exiting the site to access the storage units.
- E. The applicant should indicate if any office use will be provided within the storage building and revise the parking requirements accordingly.
- F. Construction details of all storage unit types should be provided for review.
- G. **Site Layout Note #6 references Architectural Plans for building elevations and floor plans. The applicant should provide a copy of such plans for review.**
- H. The applicant indicates one (1) wall mounted sign is proposed. Details of such should be provided to ensure compliance with all requirements of §416.
- I. The applicant should indicate if any ground or roof mounted mechanical equipment is proposed.
- J. The applicant is proposing a chain link fence trash enclosure. We recommend the trash enclosure be constructed of masonry block.
- K. The applicant should provide testimony regarding the existing and proposed lighting on site and ensure compliance with all requirements of §511.
- L. The proposed site disturbance and impervious are both below DEP Regulation. No stormwater management compliance is required.
- M. The plans show new curb and sidewalk replacing two (2) existing driveway aprons. We recommend the remaining curb and sidewalk on Atkins Avenue and the remaining driveway apron on Fifth Avenue to be also replaced.



9. **Conditions of Approval**

- A. Freehold Soil Conservation District
- B. Monmouth County Planning Board
- C. Neptune Township Fire Official
- D. Posting of the performance guarantees and inspection fees
- E. Developer's Agreement

Please be advised that additional comments may follow upon completion of testimony and/or submission of further revisions by the Applicant. Should you have any questions regarding this matter, please do not hesitate to contact our office.

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  
Sperry Tents New Jersey, LLC, Applicant  
Andrew J. Grover, PE, Applicant's Engineer  
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