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Planning Report #2

DATE: July 10, 2020
TO: Zoning Board, Township of Cranford
FROM: Greer Patras, AICP, PP
APPLICANT: NATC Donuts, Inc.
ATTORNEY: Joseph Paparo, Esq.
Porzio, Bromberg & Newman P.C.
SUBJECT: **APPLICATION ZBA-19-020
49 SOUTH AVENUE WEST
BLOCK 473, LOT 1
USE VARIANCE + PRELIMINARY AND FINAL SITE PLAN**

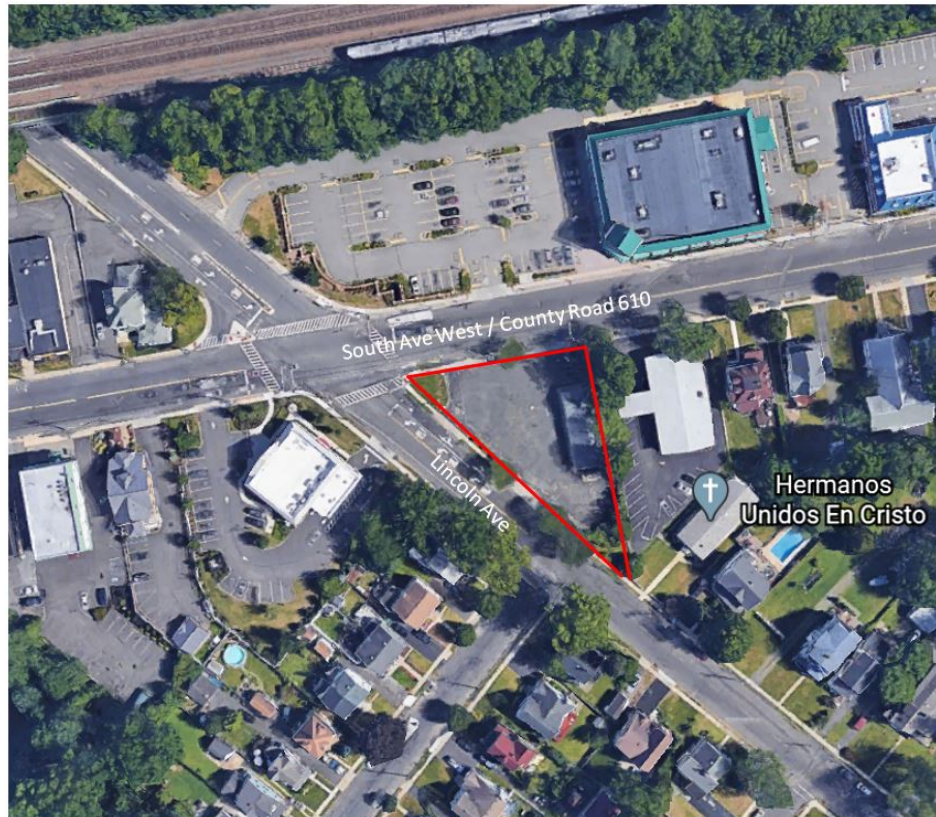
The purpose of this report is to provide the Zoning Board with guidance in its evaluation of Application ZBA-19-020, submitted by NATC Donuts, Inc. The Applicant proposes to demolish a vacant auto service station and construct a Dunkin' establishment with a drive-thru.

Our office issued Planning Report #1 on May 29, 2020. We received the Applicant's revised submission on Wednesday July 8, 2020. The revised plans included changes to building architecture, site layout, drive-thru circulation, and signage, which are discussed in this Planning Report #2. The following items have been reviewed:

- A. **Application Form**, filed on November 20, 2019.
- B. **Preliminary and Final Site Plan**, consisting of sixteen (16) pages, signed and sealed by John A. Palus, P.E. of Dynamic Engineering on November 14, 2019.
- C. **Architectural Floor Plan and Elevations**, consisting of three (3) pages, signed and sealed by Frank Truilo, AIA of Frank Truilo Architect LLC on November 20, 2019 and last revised on June 29, 2020.
- D. **Boundary Survey with Topography**, consisting of one (1) page, prepared by James J. Heiser, P.L.S. on November 28, 2018.
- E. **Traffic Impact Study**, consisting of nine (9) pages signed by Nick Verderese, P.E. and Justin P. Taylor, P.E., P.T.O.E of Dynamic Traffic on November 13, 2019 and last revised on June 29, 2020.
- F. **Drainage Statement**, consisting of three (3) pages signed by John A. Palus, P.E., P.P. of Dynamic Engineering on November 20, 2019 and last revised in June 2020.
- G. **Revised Preliminary and Final Site Plan**, consisting of sixteen (17) pages signed by John A. Palus, P.E. of Dynamic Engineering on February 27, 2020 and last revised on June 29, 2020.
- H. **Response Letter**, prepared by Dynamic Engineering, dated June 29, 2020.
- I. **County Approval Letter**, issued from the County of Union Planning Board, dated March 10, 2020.

I. EXISTING CONDITIONS

- A. **The Site:** The Site is a 17,692 SF (0.41-acre) property comprised of one lot. There is a one-story under-improved building and excessive impervious coverage on the property. The Site is a triangular shape on a corner lot with dual street frontage along both South Avenue West and Lincoln Avenue West. It was previously operated as an auto service and gas station, which appears to have been out of use since at least 2015 according to Google Street View.





B. **Zoning:** ORC (Office Residential Character)

C. **Neighborhood Context:** The Site is located at the intersection of South Avenue West (County Road 610) and Lincoln Avenue West, within walking distance of downtown Cranford. South Avenue West is a commercial corridor; however, the Site borders a one-and-two-family residential zone (R5) to the south. It is less than a quarter-mile walk from Lincoln Park. Surrounding businesses include Walgreens, Bank of America, and Cranford Professional and Medical Arts, as well as two places of worship.

D. **Traffic + Parking:** The Site is primarily accessible by South Avenue West (County Road 610), but there are also curb cuts allowing access from Lincoln Avenue West. This intersection has four crosswalks, and a bus stop for NJ Transit Route 59 is in front of the Site along South Avenue West.

II. PROJECT PROPOSAL

A. **Proposed Project:** The Applicant proposes to demolish the existing building and construct a new one-story, 1,423 SF Dunkin' with a drive-thru. The proposed project will have ten parking spaces, landscaping and lighting improvements, reconstruction of parking lot circulation, and close two existing curb cuts – one on South Avenue West and one on Lincoln Avenue West.

III. USE VARIANCE DISCUSSION

A. **The Applicant requires the following "D" Use Variance Relief:**

1. Section 255-36.D(1): Drive-Through

Proposed: Coffee Shop with a drive-through, which is not permitted in the ORC zone.

Applicant indicated "Restaurant" on their application to the Zoning Board. However, in review of definitions for "Restaurant" and "Coffee Shop", we offer the following:

"Restaurant: An establishment in which food or drink is prepared, served and consumed within the principal building or taken out for off-premises consumption, but excluding drive-through service."

"Coffee Shops: establishments primarily engaged in serving nonalcoholic beverages, such as coffee, juices, or sodas, for consumption on or near the premises. These establishments may carry and sell a combination of snacks, nonalcoholic beverages, and other related products (e.g. coffee beans, mugs, and

coffee makers) but generally promote and sell a unique snack or nonalcoholic beverage.”

As such, the “Coffee Shop” designation is more appropriate.

Coffee shops and drive-throughs are not permitted in the ORC zone, therefore d(1) use variance relief is required.

2. The standard for D(1) variance relief under N.J.S.A. 40:55(d)-70(d)(1):

For a d(1) use variance, the Applicant must prove and the Board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. Testimony should be provided regarding the unique attributes of the site that makes it “particularly suitable” for the proposed use, and how locating the proposed use on this particular site in this zone specifically promotes the purposes of planning.

The Applicant must prove and the Board must also find that the proposed use will not cause a substantial detriment to the public good. Any perceived detriments must be shown to be mitigated to the greatest extent possible.

The Applicant should provide testimony regarding whether the use will substantially impair the intent and purpose of the Master Plan or Zoning Ordinance. Such findings must satisfactorily reconcile the grant of a use variance with the Township’s continued omission of the use from the zone.

(Additional information regarding the positive and negative proofs are included in the Appendix for reference.)

M. BULK VARIANCE DISCUSSION

A. The Applicant requires the following new “C” Bulk Variance Relief:

1. **Section 255-38.A(1) Accessory Structure Location**
 - Required: Not permitted in front yard
 - Proposed: In front yard along Lincoln Avenue West
2. **Section 255-37.J(2)(a): Parking Location**
 - Required: No parking in the front yard or between the building façade and street right-of-way line
 - Proposed: Parking in the South Avenue West front yard
3. **Section 255-37.J(2)(b): Parking Screening**
 - Required: Parking areas shall be screened from view of adjacent residential zones, existing residential uses, and public roads by landscaping, fencing or a combination of these to create a buffer of at least 5’ in height. Landscaping shall contain a mix of deciduous and evergreen plantings sufficient to screen the view of vehicles in all seasons.
 - Proposed: 2’ tall buffer
4. **Section 255-37.J(3)(f): Trash Location**
 - Required: Not permitted in front yard
 - Proposed: In front yard along Lincoln Avenue West

B. The Applicant requires the following Design Waiver Relief:

1. **Section 255-37.J(3)(c) : Building Height (Stories)**
 - Required: 2 stories min.
 - Proposed: 1 story
2. **Section 255-26.G(1)(D): Driveway Setback**
 - Required: 50' min. from right-of-way of intersecting street
 - Proposed: 27.8' from intersection of South Avenue West and Lincoln Avenue West
3. **Section 255-26.G(11)(A): Loading Spaces**
 - Required: 1 min.
 - Proposed: 0
4. **Section 255-37.J(1): Landscaped Buffer**
 - Required: 5' min. landscaped buffer along side yard
 - Proposed: 3' buffer along side yard
5. **Section 255-26.K(2): Fence Height and Setback**
 - Required: 4' min. tall / 30' setback
 - Proposed: 6' tall / 0' setback rear property line
6. **Section 255-37.J(3)(G): Lighting Height**
 - Required: 8' max. tall light poles
 - Proposed: 17' tall light poles
7. **Section 255-26.G(9): Lighting Level**
 - Required: 1.5 max. foot candles at property line
 - Proposed: 18.9 foot candles

C. **Bulk Chart:**

Requirements	Required	Existing	Proposed
Min. Lot Area	15,000 SF	17,692 SF (0.41 ac)	17,692 SF (0.41 ac)
Min. Lot Width*	100'	165'	165'
Max. Building Height	35'	Not Provided	24'-8"
Min. Building Height (ST)	2-2.5 ST	1 ST	1 ST (W)
Min. Roof Pitch	4:12	Not Provided	10:12 and flat
Min. Front Yard Setback – South	30'	36.7'	52.7'
Min. Front Yard Setback – Lincoln	30'	41.6'	34.2'
Min. Rear Yard Setback* (Lot 52)	25'	92.3'	80.5'
Min. Side Yard Setback (Lot 2)	10' or 10% of lot width	4.8' (E)	11.5'
Max. Building Coverage	30%	11.2%	8%
Max. Lot Impervious Coverage	75%	85.8% (E)	71.3%
Min. Distance from 1- or 2-Family Residence	20'	76.7'	64.6'
Accessory Structure Location	Not in front yard	Not Provided	In front yard (V)
Accessory Structure Front Yard Setback – South	30'	155.4'	52.5'
Accessory Structure Front Yard Setback – Lincoln	30'	9.8' (E)	37.9'
Accessory Structure Rear Setback	25'	24.7' (E)	132.2'
Min. Parking Spaces	In accordance with industry standards	Not Provided	10 spaces

Requirements	Required	Existing	Proposed
Min. Parking Setback	5' from rear property line, 10' from residential zone boundary	Not Provided	5' from property line >10' from residential zone boundary
Parking Location	Not in front yard	Not Provided	In front yard (V)
Min. Parking Screening	5' tall	Not Provided	2' (V)
Min. Parking Width	10'	Not Provided	10'
Min. Driveway Setback	50'	Not Provided	27.8' (W)
Min. Loading Spaces	1 space	Not Provided	0 spaces (W)
Min. Rear Yard Landscape Buffer	7'	Not Provided	>15'
Min. Side Yard Landscape Buffer	5'	Not Provided	3' (W)
Min. Trash Setback to Residential Zone	7'	Not Provided	>7'
Trash Location	Not in front yard	Not Provided	In front yard (V)
Min. Fence Setback	30'	Not Provided	4' (South Ave W), 0' (Lincoln Ave) (W)
Min. Fence Height (corner)	4'	Not Provided	4'
Min. Fence Height (rear)	6'	Not Provided	6'
Max. Light Pole Height	8'	Not Provided	17' (W)
Max. Lighting Level	1.5 FC	Not Provided	18.9 FC (W)
(E) Existing Condition (V) Variance (W) Waiver			
*We note that the site is uniquely shaped, with two front yards and one rear yard. Definitions are included in the Appendix for reference. The Applicant's chart reported a non-conforming lot width of 10.1'.			

D. The Applicant requires the following relief related to the proposed sign package:

1. Section 255-26.J(4)(f)[1]: Freestanding Sign Quantity

- Required: 1 sign maximum
- Proposed: 4 signs

2. Section 255-26.J(4)(f): Freestanding Sign Area

- Required: 12 SF max.
- Proposed: 73.08 SF total
 - "Dunkin" freestanding ID sign = 21.25 SF
 - Drive-thru menu boards w/ canopy = 28.18 SF
 - Drive-thru menu board = 22.95 SF
 - Drive thru "gateway" signs = 4.7 SF
 - Note: this includes "order lane" and "mobile order pickup" signs. No dimensions were provided for the pole-mounted "Wayfinding sign", this should be added.

3. Section 255-26.J: Freestanding Sign Height

- Required: 4' tall max.
- Proposed:
 - "Dunkin" freestanding ID sign = 12'
 - Drive thru "gateway" signs = 12'
 - Drive-thru menu boards w/ canopy = 6.75'
 - Drive-thru menu board = 6.83'

4. **Section 255-26.J(4)(f)(6): Freestanding Signs Interior Illumination**
 - Required: Interior illumination of signs prohibited
 - Proposed: Interior illumination of freestanding sign
5. **Section 255-26.J(4)(b)(3): Building-mounted signs on west façade**
 - Required: One sign per wall
 - Proposed: Two signs per wall
 - “Dunkin” at 8.73 SF
 - “Dunkin’ plus logo at 11 SF
6. **Section 255-26.J(4)(b)(3): Building-Mounted Sign Setback to Residential Zone**
 - Required: 150’ min.
 - Proposed: 70’

Signage	Required	Proposed
Proposed Freestanding Signs		
Max. Sign Area	12 SF	73.08 SF (W)
Max. Sign Height	4’	12’ (W)
Interior Illumination	Prohibited	Interior Illuminated Sign (W)
Max. Directional Sign Area	2 SF max.	Two signs at 1.18 SF each
Proposed Building Mounted Signs		
North façade	1 sign at 50.6 SF	1 sign at 12.53 SF
East façade	1 sign at 92.57 SF	1 sign at 15.84 SF
West façade	1 sign at 97.9 SF	2 signs (W) at 19.73 SF total
South façade	1 at 40 SF	0 signs at 0 SF
Min. Building-Mounted Sign Setback to Residential Zone	150’	70’ (W)
(E) Existing Condition (V) Variance (W) Waiver		

E. The Standard for “C” variance relief under N.J.S.A 40:55D-70:

The Applicant must prove and the Board must find that the necessary criteria for “c(1)” and/or “c(2)” variances, identified by the Municipal Land Use Law have been satisfied. The criteria is as follows:

For a c(1) variance, the Applicant must prove hardship:

- By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
- By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
- By reason of an extraordinary situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act (40:55D-62 et seq.) would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such a property, grant, upon an application or an appeal relating to such

a property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship

- AND that such relief from the zoning ordinance will not be substantially detrimental to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

For a c(2) variance, the Applicant must prove:

- that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirement and
- that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance (negative criteria).

V. PLANNING COMMENTS

We offer the following comments for the Board's review and consideration:

A. Use + Operation

1. Testimony should be provided regarding all existing and proposed conditions. The Applicant should discuss the contents of the site related to adjacent uses and character.
2. An overview should be given specific to proposed hours of operation on this site, anticipated number of customers and employees, and drive-thru use.
3. Testimony should be provided regarding the overall intensity of the site as it relates to the non-permitted use, quantity of variances, and consistency with the intent of local zoning goals.
4. The Board and the Applicant should discuss the suitability of outdoor seating or open space within the site. We note that this may increase the number of parking spaces required and affect the site layout. Due to the COVID-19 pandemic, outdoor seating has been more encouraged to help mitigate the spread of viral diseases, and we recommend this to be considered.

B. Architecture + Signage

1. The Applicant shall specify and provide testimony to all building façade materials, colors, and overall details of design, relative to the site and surrounding character.
2. Testimony should be provided regarding compliance with Section 255-37.J(C), which states that all uses in the ORC zone shall meet the design standards set forth in Section 255-26.
3. We recommend that the Applicant change the design of the "garage door" style accent panels on the east façade and west façade to match the brick on the building.
4. The Applicant should clarify if there will be a use for the rooftop where the bordering fence is located or if it is for architectural intent only.
5. The rear employee only door should be the same or complementary color of the adjacent walls, to minimize visual impacts.

6. The Applicant should provide an overview of all freestanding and building-mounted signage, relative to compliance with the Ordinance. We note that relief is requested for freestanding sign area and height, interior illumination of the signs, quantity of wall signs, and the setback of the building mounted sign to the residential zones.
 - a. Particular attention should be given to the freestanding sign at the intersection, which requires relief for sign area (21.25 SF), sign height (12'), and interior illumination. We recommend the Applicant discuss relationship to other signage along the South Avenue West commercial corridor, particularly nearby businesses, including Walgreens and Bank of America.
 - b. The Applicant proposes two directional signs, each of which are 1.18 SF. Per Section 255-26.J(1)(E), directional signs approved by the Board that are less than 2 SF and are setback a minimum of 5' are exempt from area and location requirements.
 - c. The Applicant proposes four building mounted signs located in the north façade, west façade, and east facade of the building, totaling 48.1 SF of sign area which complies with the maximum façade sign area. Testimony should be provided regarding the waiver request for sign setback from residential zone and having more than one sign per building façade.
 - d. The Applicant also proposes an extensive sign package related to the drive-thru which includes multiple clearance bars, canopies, and menu boards requiring significant height variance relief.
 - e. We recommend that the number of signs and/or logos be reduced, considering that this site has two frontages which allows high visibility, thus reducing the need for signage above and beyond the required amount.
 - f. We recommend all signs be externally illuminated to comply with the Ordinance. In response to our previous report, a note was added to confirm that any illuminated signs will be turned off within one hour of business closing.
 - g. The site plan still shows the freestanding sign as 6' wide, where the proposed freestanding ID sign is 2.5' wide. This must be corrected on the plans.
 - h. We note that there is a proposed brick wall at the corner of Lincoln Avenue West and South Avenue West. If this brick wall is approved, we see an opportunity to use the brick wall as a monument sign in lieu of the proposed non-conforming freestanding sign located behind this wall.

C. Utilities + Drainage

1. Testimony should be provided regarding the enclosure containing trash and the generator, relative to visibility from the right-of-way and any impact on surrounding properties. If the enclosure is approved in this prominent location, we recommend that this be treated architecturally as part of the principal structure.
2. The Applicant should confirm the location of all utilities, including meters, and HVAC systems. Any outdoor equipment should be screened by landscaping, as required by Section by 255-37J(3)(h).

We note that a generator is shown within the trash enclosure area; we defer to the Board Engineer regarding the permissibility of this item.

3. We defer to the Board Engineer regarding the drainage and utility plan, as well as the soil erosion and sediment control plan.

D. Parking + Circulation Comments

1. The Applicant shall provide an overview of anticipated vehicle circulation including regular patrons, drive-through users, and employees.
2. We strongly recommend that a bypass lane be provided along the drive thru lane to allow customers to exit the line for emergencies or to remove themselves from excessive wait times. This would also allow access to and from the employee only parking spaces.
3. The ordinance does not provide a parking calculation specific to coffee shops, but states that the requirement shall be determined by the Board based on industry standards. The Applicant should provide testimony regarding the use and industry standard for customers and employee parking.

Using the "restaurant with seats" calculation, approximately two spaces would be required for the 6 seats proposed, based on a rate of 1 space per 2.5 seats. The proposal satisfies this metric, providing eight customer parking spaces and two spaces for employees, for a total of ten spaces. The Applicant indicated on the plans that the customer service area is 296 SF which would require 4 parking spaces under the restaurant parking calculation.

4. Applicant should provide an overview of all deliveries and pickups on site. Specific attention should be given to the frequency of deliveries and parking of oversized vehicles, as one loading space is required, but none is provided. A truck turning plan was provided for a "single-unit" truck, and the Applicant's response letter states that no larger vehicles will be making deliveries to the site. This should be discussed as on-street loading will be unsafe in this area.
5. The Applicant should discuss the removal of the existing curb cuts on each frontage, and coordination with Union County since South Avenue West is a county road. We defer to the Board Engineer regarding the placement of curb cuts near the intersection, where 50' is required but 27.8' is proposed.
6. The Applicant shall provide testimony regarding waste management, waste removal and waste removal truck circulation, as well as the frequency and method of waste removal.
7. The Applicant should continue the existing sidewalk on Lincoln Avenue West and install a depressed curb at the new driveway opening.
8. The Applicant should confirm ADA compliance for parking and building access.
9. The bike rack is currently proposed to be along the street on South Avenue West.
10. The Applicant proposes to shift the existing bus stop along South West Avenue approximately 30' west and add a new bench, subject to NJ Transit approval. Any opportunities to incorporate a bus shelter or another amenities should be evaluated.

11. We note that any improvements within the county or municipal right-of-way remain outside of the Zoning Board jurisdiction must receive appropriate approvals.

E. Landscaping + Lighting Comments


1. Per Section 255-26.A(3)(g), street trees are required every 40'. These should be provided.
2. The Applicant shall provide additional details for the proposed brick wall at the corner of South Avenue West and Lincoln Avenue West including width dimensions.
3. The Applicant shall show the location of the proposed landscape bedlines.
4. The Applicant shall provide testimony to the proposed use and function of the extensive impervious coverage surrounding the western and southern portions of the proposed building. Replacing this coverage with groundcover plantings is encouraged to comply with Section 255-26.A(3)(i). Alternatively, consideration should be given to whether this area could accommodate outdoor seating as discussed above.
5. The Applicant should clarify the use of the brick wall proposed at the corner of Lincoln Avenue West and South Avenue West. Sheet 12 of the site plans note that it is a decorative brick wall, but we note that it may be used to prevent light spillage or headlight glare. If the Applicant proposes this wall to shield headlights, an increased height to 3' may be more effective. We defer to the Board Engineer regarding sight distances and any obstructions caused by the wall or landscaping at this corner.
6. The Applicant should provide landscaping around the wall and corner area to prevent pedestrians from cutting through this area.
7. Shrubs should be setback 3' where parallel with parking stall length to avoid conflict with car doors.
8. The Applicant shall testify to the level of illumination generated by all site and building lighting, particularly focusing on compliance with Section 255-25 of the Township Ordinance.
9. We recommend a color temperature at or less than 3,500°K, and that all lights be turned off within 1 hour of business closing to reduce off-site impacts. We recommend that any lights that are required for security purposes overnight use a motion-sensor and that additional provisions be made for lighting against the residential zone.
10. The Applicant has requested relief to provide 17' tall poles, where 8' tall maximum is permitted. The Applicant should select lighting fixtures that would comply or, if relief is granted for special reasons, we recommend maximum height be limited to 10'.

The detail states that the light poles will be flush mount when not in parking areas; since the proposal locates all fixtures behind curbs, the footing details should be removed, or a note added to state that all fixtures will be flush mount.
11. Our prior report contained comments regarding excessive light spillage, but these comments have been removed, as the plans have been revised to reduce this concern.
12. Testimony should be provided regarding compliance with the design requirements contained within Section 255-26, such as streetlights at intersections and granite block curbs.

If the Board approves this application, revised plans should be submitted to address the comments of the Board Professional reports and contain a list of all conditions of approval. This must be submitted for review and approval prior to submission for building permit.

If you have any further questions regarding this application, please feel free to contact our office.

Sincerely,



Greer Patras, AICP, PP
Board Planner

Appendix

A. Relevant Ordinance definitions:

- **Corner lot:** A parcel of land either at the junction of and abutting on two or more intersecting streets or abutting a single street at the point where the road tangents deflect by more than 45°. On corner lots, there shall only be one rear lot line.
 - *LDO note - All portions of a corner lot that adjoin streets shall be considered to be front yards and shall be subject to the front yard setback requirements of this article, except as permitted in Subsection B(1)(b) of this section. On a corner lot, the owner or developer shall designate the yard which is to be the rear yard. All yards not designated as a front or rear yard shall be considered to be side yards and shall meet the side yard requirements of this article.*
- **Front yard:** A space extending the full width of the lot between any building and the front lot line, measured perpendicular to the building at its closest point to the front lot line. Said front yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter.
- **Rear yard:** A space extending across the full width of the lot between the principal building and the rear lot line, measured perpendicular to the building at its closest point to the rear lot line. Said rear yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter.
- **Rear lot line:** The lot line opposite and most distant from the front lot line or the point at which the two side lot lines meet in the case of a triangular lot. If a lot has two or more front lot lines, the line opposite the street used as the property address shall be considered the rear lot line.
- **Side yard:** A space extending from the front yard to the rear yard between the principal building and the side lot line, measured perpendicular to the side lot line at its closest point to the principal building. Said side yard shall be unoccupied and unobstructed from the ground upward except as may be permitted elsewhere in this chapter
- **Street side yard:** On a corner lot, the front yard which the face of a principal building does not front upon.

B. More information regarding “d” use variances:

Prior to the 1948 land use law amendments, a use variance could only be granted if an undue hardship was proven. The prerequisite of proving “unnecessary hardship” was substituted with the authority to grant a variance “in particular cases and for special reasons.” This meant that the board of adjustment had the authority to grant a variance with the proof of special reasons, and including but not limited to undue hardship.

In 1952, Ward v. Scott N.J. 11Z, clarified that “special reasons” was circumscribed by the general purposes of zoning. The 1975 Municipal Land Use Law lists the purposes of zoning in N.J.S.A. 40:55D-2. A-O. “Special reasons” is more generally referred to as the positive criteria for a use variance.

The accepted standard for reviewing a use variance is set forth in Medici v. BPR Co., 107 N.J. 1 (1987). The Applicant must provide testimony in support of the D(1) use variance and demonstrate both the “positive criteria” and the “negative criteria.”

Under the “positive criteria,” the Applicant must show that there are “special reasons” for a use variance:

- That the purposes of zoning are advanced;
- That the use is particularly suited to the property; and
- Must also meet the enhanced burden of proof.

The “enhanced quality of proof” standard as per Medici is as follows: *“In the use variance context, we believe this can best be achieved by requiring, in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance;”* OR

The Applicant must demonstrate and prove that there is an extreme or undue hardship that exists, still meeting the enhanced burden of proof. An undue hardship may be:

- By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
- By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
- By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon...

There are two prongs to the “negative criteria”:

- Prong 1 – Negative impact on the general welfare: The focus of this prong of the negative criteria is negative impacts imposed on adjacent properties by the granting of a variance.
- Prong 2 – Substantial impairment of the intent and purpose of the zone plan and zoning ordinance: The focus of this test is whether or not the granting of a variance would undermine the deliberate planning process or the zoning powers of the governing body.
- Here, testimony should focus on the impact of the proposed use to the immediate neighbors (the public good) and to the impact upon the Town’s zoning ordinance with respect to the ORC zone district and to the Master Plan if such variance is granted.