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Planner Report #1

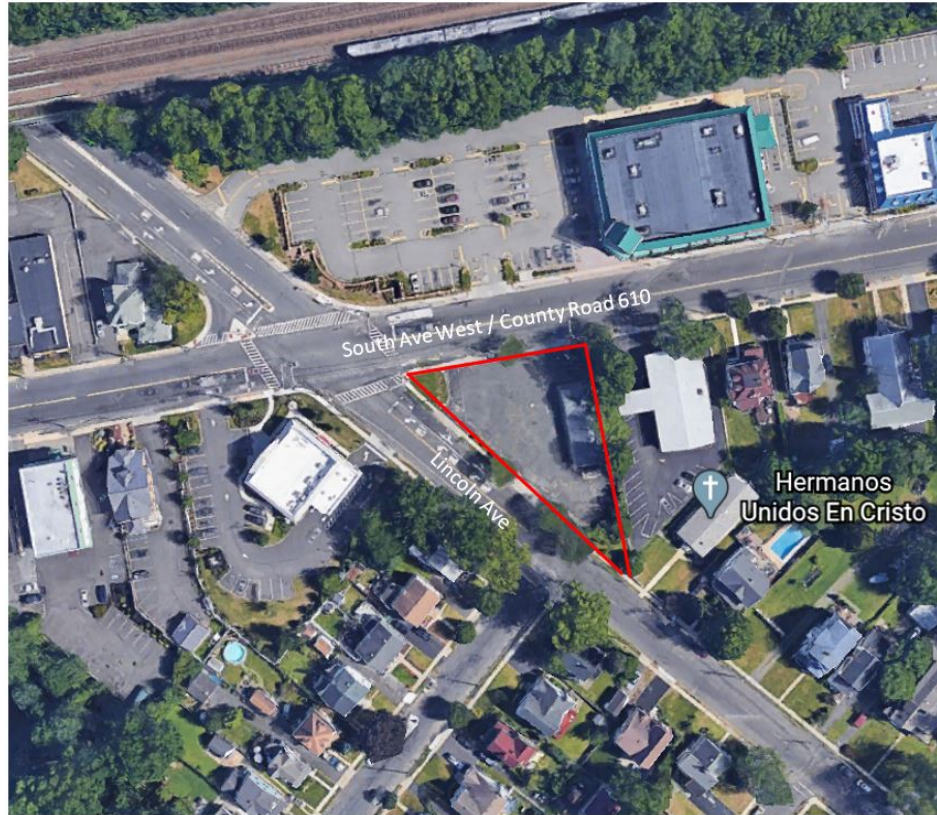
DATE: May 29, 2020
TO: Zoning Board, Township of Cranford
FROM: Greer Patras, AICP, PP
APPLICANT: NATC Donuts, Inc.
ATTORNEY: Joseph Paparo, Esq.
Porzio, Bromberg & Newman P.C.
SUBJECT: **APPLICATION ZBA-19-020
49 SOUTH AVENUE WEST
BLOCK 473, LOT 1
USE VARIANCE + PRELIMINARY AND FINAL SITE PLAN**

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. 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.
- 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.
- F. **Drainage Statement**, consisting of three (3) pages signed by John A. Palus, P.E., P.P. of Dynamic Engineering on November 20, 2019.
- G. **Revised Preliminary and Final Site Plan**, consisting of sixteen (16) pages signed by John A. Palus, P.E. of Dynamic Engineering on February 27, 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. 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, 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. 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, 2,189 SF Dunkin' with a drive-thru. The proposed project will have twelve parking spaces, landscaping and lighting improvements, reconstruction of parking lot circulation, and close two existing curb cuts – one on South Avenue and one on Lincoln Avenue.

B. **Bulk Chart:** Below is a table detailing bulk compliance within the ORC zone:

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'	10.1' (E)	10.1' (E)
Max. Building Height	35'	Not Provided	31'-3 ¾" to top
Min. Front Yard Setback – South	30'	Not Provided	52.5'
Min. Front Yard Setback – Lincoln	30'	Not Provided	25' (V)
Min. Rear Yard Setback*	25'	4.8' (E)	19.6' (V)
Max. Building Coverage	30%	11.1%	12.4%
Max. Lot Impervious Coverage	75%	85.8% (E)	81.1% (V)
Max. Distance from 1- or 2-Family Residence	20'	Not Provided	Applicant Must Provide
Accessory Structure Placement	Not in front yard	Not Provided	In front yard (V)
Accessory Structure Front Setback	30'	Not Provided	4.5' (V)
Accessory Structure Rear Setback	25'	Not Provided	0' (V)
Min. Parking Spaces	In accordance with industry standards	Not Provided	12 spaces
Min. Parking Setback	5' from rear property line, 10' from residential zone boundary	Not Provided	2' (W)
Parking Location	Not in front yard	Not Provided	In front yard (V)
Min. Parking Screening	5' tall	Not Provided	Applicant Must Provide
Min. Parking Width	10'	Not Provided	9' (W)
Min. Driveway Setback	50'	Not Provided	<50' (W)
Min. Loading Spaces	1 space	Not Provided	0 spaces (W)
Min. Landscape Buffer	7' along rear property line	Not Provided	3' (V)
Min. Trash Setback to Residential Zone	7'	Not Provided	0' (W)

Requirements	Required	Existing	Proposed
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	Applicant Must Provide
Min. Fence Height (rear)	6'	Not Provided	6'
Max. Light Pole Height	8'	Not Provided	14' (W)
Max. Lighting Level	1.5 FC	Not Provided	8.5 FC (W)
Max. Freestanding Sign Area	12 SF	Not Provided	21.25 SF (W)
Max. Freestanding Sign Height	4'	Not Provided	12' (W)
Freestanding Signs Interior Illumination	Prohibited	Not Provided	Interior Illuminated Sign (W)
Min. Building-Mounted Sign Setback to Residential Zone	150'	Not Provided	75' (W)
Min. Building Height	2-2.5 ST	1 ST	1 ST (W)
Min. Roof Pitch	4:12	Not Provided	>4:12

(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.

III. 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.)

B. The site has one existing non-confirming “C” bulk condition which will not be changed as a part of this application:

1. Section 255 Attachment 1: Lot Width

- Required: 100’ min.
- Existing/Proposed: 10.1’

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

1. Section 255 Attachment 1: Front Yard Setback to Lincoln Avenue

- Required: 30’ min.
- Proposed: 25’

2. Section 255 Attachment 1: Rear Yard Building Setback

- Required: 25’ min.
- Proposed: 19.6’ (existing non-conformance of 4.8’)

3. Section 255 Attachment 1: Impervious Coverage

- Required: 75% max.
- Proposed: 81.1% (existing non-conformance of 85.8%)

4. 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 both front yards (South Ave West and Lincoln Ave)

5. 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: Landscaping is shown around the perimeter of the parking area, however the species proposed may not reach 5’ in height as required.

6. Section 255-37.J(1): Landscaped Buffer

- Required: 7’ min. landscaped buffer along rear property line
- Proposed: 3’ buffer along rear property line

7. **Section 255-38.A(1) Accessory Structure Location**
 - Required: Not permitted in front yard
 - Proposed: In front yard along Lincoln Ave.
8. **Section 255-38.A(1) Accessory Structure Front Setback**
 - Required: 30' min. (defers to required principal building front yard setback)
 - Proposed: 4.5'
9. **Section 255-38.A(1) Accessory Structure Rear Setback**
 - Required: 25' min. (defers to required principal building rear yard setback)
 - Proposed: 0'

D. The Applicant requires the following Design Waiver Relief:

1. **Section 255-26.G(3)(A): Parking Setback**
 - Required: 5' min. from rear property line, 5' min. from accessory/principal building, 10' min. from residential zone boundary
 - Proposed: 2' from rear property line and zone boundary
2. **Section 255-26.G(3)(A)(1): Parking Space Dimensions**
 - Required: 10' x 18' min.
 - Proposed: 9' x 18'
3. **Section 255-26.G(1)(D): Driveway Setback**
 - Required: 50' min. from right-of-way of intersecting street
 - Proposed: Less than 50' from intersection of South Ave West and Lincoln Ave; exact dimension must be provided by Applicant and indicated on plans
4. **Section 255-26.G(11)(A): Loading Spaces**
 - Required: 1 min.
 - Proposed: 0
5. **Section 255-37.J(3)(F): Trash Setback**
 - Required: Trash disposal areas shall be located as far from residential zone boundaries or uses as possible, but in no case shall they be located within 7' min. of any adjacent residential zone or use. Trash disposal areas are prohibited between the front facade and the street right-of-way and shall be screened from view from the street right-of-way.
 - Proposed: 0' to residential zone; 4.5' to front yard property line on Lincoln, and across street from residential zone
6. **Section 255-26.K(2): Fence Height and Setback**
 - Required: 4' min. tall / setback distance of principal building on lot
 - Proposed: 6' tall / 0' setback rear property line
7. **Section 255-37.J(3)(G): Lighting Height**
 - Required: 8' max. tall light poles
 - Proposed: 14' tall light poles
8. **Section 255-26.G(9): Lighting Level**
 - Required: 1.5 max. foot candles at property line
 - Proposed: Up to 8.5 foot candles
9. **Section 255-26.J: Freestanding Sign Area**

- Required: 12 SF max.
 - Proposed: 21.25 SF
10. **Section 255-26.J: Freestanding Sign Height**
 - Required: 4' max.
 - Proposed: 12'
 11. **Section 255-26.J(4)(f)(6): Freestanding Signs Interior Illumination**
 - Required: Interior illumination of signs prohibited
 - Proposed: Interior illumination of freestanding sign
 12. **Section 255-26.J(4)(b)(3): Building-Mounted Sign Setback to Residential Zone**
 - Required: 150' min.
 - Proposed: 75'
 13. **Section 255-37.J(3)(c) : Building Height (Stories)**
 - Required: 2 stories min.
 - Proposed: 1 story

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).

IV. 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.

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. We recommend that the employee-only door that is located on the front façade be relocated to the side of the building if possible, to eliminate any confusion for customers.

Colors and materials of the doors should be added to the plans. Employee only or emergency doors should be the same or complementary color of the adjacent walls, to minimize visual impacts.

3. 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.
4. 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, 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 and west façade of the building which total 53.44 SF of sign area. Testimony should be provided regarding the waiver request for sign setback from residential zone.
 - d. The Applicant shall provide testimony to the building mounted sign setback from a residential zone, as the proposed distance is half of that specified in the ordinance.

- e. The Applicant also proposes signs related to the drive-through:
 - In addition to the 12' tall clearance bar, a 4 SF "DD" logo projecting sign elevated approximately 9' above ground and an orange 0.7 SF "Drive Thru" sign elevated approximately 11' above ground are attached to this traffic fixture.
 - At the ordering station which contains a 4' x 6.3' orange canopy elevated approximately 10' above ground, there are two menu boards, each 12.5 SF and elevated approximately 7' above ground.

It is our opinion that these constitute additional freestanding signs and should be considered as such in the bulk chart and relief requested as necessary.

- f. We recommend all signs be externally illuminated to comply with the Ordinance. If the Board approves any illuminated signs, we recommend that they be turned off within 1 hour of business closing.
- g. 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.

C. Utilities + Drainage

1. Testimony should be provided regarding the enclosure containing trash and the generator, relative to non-compliant setbacks, visibility from the right-of-way, and any impact on surrounding properties.

While full compliance may not be practical on this uniquely shaped site, all efforts should be made to minimize impacts to adjacent residential properties and the streetscape. The Applicant should consider relocating the trash enclosure further to the interior of the site. At a minimum, the enclosure should be fully buffered with evergreen trees that are at least 6' planting height.

2. We recommend that the trash enclosure gate be visually solid, such as hardi-blank boards affixed to the metal structure. Notes on the plan states that colors and materials will complement the architecture, but details should be confirmed on the plans.
3. 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.

4. 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 over of anticipated vehicle circulation including regular patrons, drive-through users, and employees.

2. 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, seven spaces would be required for the 17 seats proposed, based on a rate of 1 space per 2.5 seats. The proposal satisfies this metric, providing nine (9) customer parking spaces and three (3) spaces for employees, for a total of twelve (12) spaces.

In a restaurant without seats, one space is required for every 75 feet of customer service area. The Applicant should provide the square footage for the customer service area for the Board's consideration.

3. 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, but the Applicant should provide testimony whether any larger vehicles make deliveries to such sites, as any stopping/loading from either street would be unsafe.

Additionally, the Applicant shall provide testimony regarding the potential conflict between the drive through, employee spaces, and truck parking, as shown on sheet 15. We defer further comment to the Board/Traffic Engineer.

4. The Applicant is seeking variance and waiver relief for parking setbacks in an undersized lot. We recommend that the Applicant adjust the placement of its employee parking to increase the proposed 2' rear yard to allow some landscape buffering be installed to offset impacts on neighboring properties.
5. The Applicant requires relief for undersized parking stall width. If the Board approves this request, we recommend that hairpin striping be employed in lieu of a single stripe.
6. 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 less is proposed. Dimensions should be added to the plans.
7. 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.
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. Applicant should confirm on the plans that bikes attached the rack will not overhang into the adjacent parking space or public sidewalk.
10. The crosswalk across the parking lot is positioned to direct customers close to the proposed kitchen door. We recommend repositioning the crosswalk or door so there is a more direct route to the main customer entrance.

11. 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.
12. 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. We recommend that the Applicant alter the planting detail to remove burlap from B+B trees and shrubs during the planting process. The current planting detail describes folding the burlap back without removal, which can negatively affect plant's root systems and impact their growth.
2. The Applicant should testify to the degree of parking screening provided by the landscaped buffer. In the revised site plan, it is unclear if any changes have been made to the landscaped buffer's proposed width.
3. The Applicant shall provide colors for the vinyl fencing along the property line and details for the proposed brick wall at the corner of South Avenue West and Lincoln Avenue.
4. The Applicant should discuss the groundcover, as it related specifically to impervious coverage and run-off. Plant species with a greater capacity for stormwater management, such as Virginia sweetspire (*Itea virginica*) or New Jersey tea (*Ceanothus americanus*) should be considered in place of proposed shrubs where there is sufficient planting space.
5. We recommend greater utilization of shrubs in place of proposed ground cover in front of the proposed customer parking spaces along South Avenue West in order to screen street traffic from light produced by vehicle headlights.
6. All efforts to incorporate on-site stormwater management should be discussed to mitigate effects of the high percentage of impervious cover on the site, such as utilizing the rain barrels with the steeply sloping roof.
7. 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.
8. 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.
9. Significant light spillage from the proposed poles along South Avenue West. Ordinance prohibits light spillage over property line greater than 1.5 fc., however light levels over 3.0 fc are proposed. We recommend these light pole heights be reduced and a "forward-throw" fixture be used to reduce impacts. We defer further comment to the Board Engineer.
10. The Applicant has requested relief to provide 14' 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'.

11. 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. 117, 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.