

RESOLUTION
OF THE
LAND USE BOARD OF THE BOROUGH OF NEPTUNE CITY
PRELIMINARY AND FINAL
MINOR SITE PLAN APPROVAL WITH USE AND BULK VARIANCES

APPLICANT: 158 W. SYLVANIA, LLC
BLOCK 76, LOT 20
APPLICATION: NCPB # 20-04

WHEREAS, 138 W. Sylvania Avenue LLC (hereinafter referred to as “applicant”) is the owner of the property known Block 76, Lot 20 on the Tax Map of the Borough of Neptune City, in the State of New Jersey, County of Monmouth (hereinafter referred to as “premises”); and

WHEREAS, the premises is located in the RLC Residential Limited Commercial Zone District ; and

WHEREAS, the applicant has applied to the Land Use Board of the Borough of Neptune City to install 24 foot by 32 foot canopy, that will be 17.5 feet high with signage over the existing 4 pump gas filling . As a result of the application, the applicant requires the following relief:

Variances:

1. Use Variance “D2” – Expansion of non-conforming use.
2. Front Yard Setback Variance, which requires a minimum setback based on adjacent structures set back, in this case, a minimum of 25 feet, where 9.1 feet is proposed

WHEREAS, after review and notice of publication indicates that the Board has jurisdiction in reviewing this application; and

WHEREAS, public hearings were held on January 8, 2021 and February 9, 2021; and

WHEREAS, the applicant has produced the sworn testimony of Sal Dellemo, Jason Fichter, P.E. , P.P.. . and the following exhibits were submitted with the application, reviewed by the Board, and shall be considered marked as in evidence as follows:

A-1 Preliminary and Final Major Site Plan, consisting of two (2) sheets, prepared by Jason L. Fichter, PE, PP, CFM, CME, of Insite Engineering, Surveying, and Planning, dated August 13, 2020.

A-2 Borough of Neptune City Land Use Board Development Application dated December 7, 2020.

A-3 Framing and Foundation Plans, consisting of three (3) sheets, prepared by VFS Canopy, dated November 30, 2020.

A-4 Picture of Site

A-5 Survey of Property, consisting of one (1) sheet, prepared by Michael J. Williams, PLS, dated February 6, 2017.

A-6 Preliminary and Final Major Site Plan, prepared by Jason L. Fichter, PE, PP, CFM, CME, of Insite Engineering, Surveying, and Planning, dated August 13, 2020, last revised January 29, 2021.

WHEREAS, the Land Use Board has also marked the following Board Exhibits and they shall be considered marked as in evidence as follows:

LUB-1 Report prepared by Leon S. Avakian Inc. dated January 8, 2021

WHEREAS, the Board has reviewed testimony of its professionals; and

WHEREAS, no members of the public appeared on this application and testified as to the impact of existing use and the application; and

WHEREAS, the Land Use Board of the Borough of Neptune City, have considered all the evidence, exhibits and testimony presented and make the following findings of fact and conclusions of law:

1. The Board has jurisdiction to hear and decide this application.
2. The taxes on said premises are paid and current.
3. The said premise is located in the in the RLC Residential Limited Commercial Zone District as established by the Land Use Ordinance of the Borough of Neptune City.
4. The Board finds that the applicant has satisfied its burden of proof pursuant to N.J.S.A. 40:55D-1 et seq., upon the meeting of certain conditions.

Variances:

- A. Use Variance “D2” – Expansion of non-conforming use.
- B. Front Yard Setback Variance, which requires a minimum setback based on adjacent structures set back, in this case, a minimum of 25 feet, where 9.1 feet is proposed

The Land Use Board finds that the proposed site plan enhances the site, environmentally, commercially, and aesthetically. As a result of the proposed plan, the following purposes of the Municipal Land Use Law are promoted:

- a. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey Citizens.

- b. To ensure that the development of individual municipalities do not conflict with development and general welfare of neighboring municipalities, the county and state.

The subject property is approximately .61 acres and located in the RLC Residential Limited Commercial Zone District. The site presently contains a service station, 4 gas pumps and a propane tank for the sales of propane. The RLC does not permit gas filling stations or repair shops. The applicants present use is a pre-existing non-conforming use that is being expanded by the installation of the canopy.

With respect to use variances and bulk variance, the applicant's planner and engineer, testified that the site is particular suited for the canopy and the application does not substantially negatively impact the zone plane or adjoining properties. Further, due to the location of the existing pump stations, the applicant cannot install the canopy in another location, thus the need for the front yard setback variance.

The Planner testified that the property already contains the 4 gas pumps, and all the applicant is proposing is a canopy to protect the employees from the elements. The canopy will not increase traffic or the use of the site, but simply protect the employees from the elements. The applicant also submitted a lighting plan, that provides little or no impact on the adjoining property owners. The Planner testified that the new canopy will not have a negative impact on the site or how it functions today. Further, the expansion of the non-confirming use can be granted without substantial detriment to the public good, as the use is not changing, just the employees will be protected from the elements.

With respect to the front yard setback variance, the planner testified that the gas pumps are not being moved and this is the only possible location for the canopy, as the purpose of the canopy is to protect the employees from the elements when pumping gas. While the setback is closer to the road, it is only the canopy and not a solid structure. As a result, there is no negative impact to the surrounding property owners or Master Plan, as a result of the deviation. Further, the applicant submitted a lighting plan that shows no negative impact or light spillage on to the adjoining properties.

The Board, after hearing all the testimony, questioning the witnesses, hearing from the Board's professionals and hearing from the public, the Board agrees with the testimony of the applicant's professionals and finds that applicant has satisfied their burden of proof for granting the use variance (expansion of non-conforming use) and front yard setback variance, subject to the conditions contained herein.

With respect to all of the requested variances, the Board finds that the applicant has met his burden with respect to the variances requested because they relate to this specific property, the purposes of the Municipal Land Use Law would be advanced by the deviation from the zone requirements, the deviations can be granted without substantial detriment to the public good, the benefits of the deviations substantially outweigh any detriment; and the granting of the variances will not substantially impair the intent and purpose of the planning and zoning ordinances or the Master Plan.

Therefore, the Board hereby grants approval subject to the conditions contained in this resolution.

NOW, THEREFORE, BE IT RESOLVED that this resolution serves as a memorialization of the Board's decision to grant Preliminary and Final Minor Site Plan Approval with Use and Bulk Variances on February 9, 2021, subject to the conditions as follows:

1. The Applicant shall obtain all state, county and local government approvals as required by law.
2. The Applicant shall pay all professional fees, including attorney, engineering, and planning fees, incurred by the Land Use Board of the Borough of Neptune City in connection with the applicant and no further improvements shall be granted by the Zoning Board and no permits, including building permits and certificates of occupancy shall be issued to the applicant until such payment is made.
3. This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated by reference and specifically relied upon by the Board in granting this approval. The condition which shall be deemed satisfied unless and until the Board determines (on Notice to the applicant) that a breach hereof has occurred.
4. No taxes or assessments for local improvements shall be due or delinquent on the subject property.
5. Applicant shall submit an as-built survey to the Board Engineer and Land Use Board to confirm the construction is consistent with this approval. The Board Engineer shall review and approve the survey prior to closing all permits.
6. The existing concrete curb, sidewalk & driveways along Neptune and West Sylvania Avenues are all old, broken and, in some areas, missing pieces. New concrete curb,

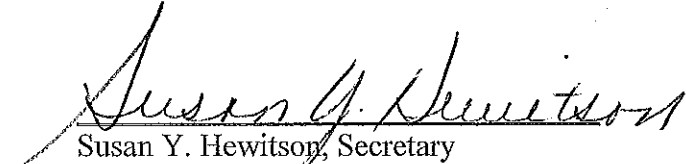
sidewalk, driveways and ramps is required and shall be reviewed and approved by the Board Engineer.

7. Applicant shall obtain approval from Monmouth County Planning Board.
8. Applicant shall post all required guarantees, bonds and inspection fees, subject to review and approval by the Board Engineer.
9. Applicant shall submit final signage plans to the Board Engineer for approval. The applicant is limited to 100 square feet of signage for all canopy signs. Colors does not count toward square feet of the signage limitation.
10. All canopy lights shall be off by 11 PM. Applicant is granted a waiver for average lighting level for the entire site, based on the revised submitted lighting plan.
11. Applicant shall revise the plans to remove the existing lights over the gas pumps.

BE IT FURTHER RESOLVED, that the Board Secretary is hereby authorized and directed to send a certified copy of this Resolution to the applicant, the Borough Clerk, Engineer and Assessor and shall make same available to all other interested parties; and that the Board Secretary and/or the Applicant is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the applicant's expense.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the resolution adopted by the Borough of Neptune City Land Use Board at a meeting held on March 9, 2021.


Susan Y. Hewitson, Secretary
Land Use Board of the Borough of Neptune City

The vote on the Motion
To approve this application:

YES: Patricia Gerand, Robert Reynolds, Jr.
Randy Reynolds, Larry Cross, Craig Morcom
Larry Cross, Erin Maciorowski

NEY: None

The Vote on the Resolution of
memorialization was as follows:

YES: Patricia Gerand, Randy Reynolds,
Craig Morcom, Erin Maciorowski

NEY: None

ABSTAIN: Michele McGuigan