

**BRICK,
TOWNSHIP
OF**
(Planning/Zoning)

KUSHINSKY, LUDAN
B 1171 KOR 1
#725
38 AUG
87A.

STOCK NO. 753 1/3

Oxford



MADE IN U.S.A.

**APPLICATION FOR VARIANCE OR EXCEPTION
BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK**

Cal. No. 725 Filed 8/9/71 19__

Disposition _____ Hearing 9/15/71 19__

To the Board of Adjustment:

An appeal is hereby made for a variance from or an exception according to the terms of Sections _____ of the Zoning Ordinance so as to permit the construction of a gasoline service station as indicated on the plot plan filed with the Board

This appeal is based on the (decision rendered) ~~(order is made)~~ by the Building Official dated _____, 19__ and reading as follows: See Attached Rider for Variances required

Section of Revised Statutes Upon Which Appeal Is Based R.S.40:55-39 b., c., and d.

DESCRIPTION OF PROPOSED STRUCTURE OR USE

PREMISES AFFECTED known as Lot No. 1 Block No. 1171 on the Tax Map of Township of Brick.

Located at N.J. State Highway Route 88 & Burrsville (Squankum) Road

Applicant Lillian Kushinsky Address c/o James G. Henry, 2031 Hwy 88, Brick Town, N.

Owner Lillian Kushinsky Address c/o James G. Henry, 2031 Hwy 88, Brick Town, N.

Leasee --- Address ---

Zone R-A (Rural Agricultural)

Last previous occupancy Vacant

Size of lot 22,017 square feet
N.J. State Hwy 88- 390 ft.
Front Burrsville Rd. - 266 feet; Depth (Irr.) 90 feet; Width (Irr.) 230 feet

Size of Building: (at street level) 60 feet front; 30 feet deep

Percentage of lot occupied by buildings Approx. 8 %

Height of Building One stories 18'6" feet

Set back from rear property line 8 ft. to refuse enclosure; 15 ft. to building feet

Set back from front property line (Rte 88) 35 ft.; Burrsville Rd. 25 feet feet

Set back from side property line 8 ft. to refuse enclosure; 15 ft. to building feet

Prevailing set-back of adjoining buildings within block N/A feet

Has there been any previous appeal involving these premises? Not to applicant's knowledge

If so, state character of appeal and date of disposition _____

The reasons for the present application or appeal are as follows:

See Attached Rider

ATTACHED HERETO
AND MADE A PART OF THIS APPLICATION
I SUBMIT THE FOLLOWING:

(Note: All these papers must be submitted with application)

- (a) Copy of Building Application and/or a true copy of the Official Order issued by the Building Official, together with plans of proposed building and Form L—Denial by Zoning Officer.
- (b) FOUR (4) Copies of a certified survey of the property; if a present building exists, the survey shall be a certified "location survey," and clearly indicate such building thereon with all front, side and rear yard dimensions, together with "prevailing set-back" dimensions.
- (c) FOUR Copies of a Plot Plan (if a new building), and clearly indicate such building thereon with all front, side and rear yard dimensions, together with "prevailing set-back" dimensions.

AFFIDAVIT OF APPLICANT

STATE OF NEW JERSEY
COUNTY OF OCEAN
ss.

LILLIAN KUSHINSKY of full age, being duly sworn according to law, on oath deposes and says that all of the above statements and the statements contained in the papers submitted herewith are true.

Sworn and subscribed to
before me this 26th day

of July 1971

A Notary Public of the State of New Jersey

VIRGINIA R. SHELLMONT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 4, 1973

AFFIDAVIT OF OWNERSHIP

STATE OF NEW JERSEY
COUNTY OF OCEAN
ss.

LILLIAN KUSHINSKY of full age, being duly sworn according to law on oath deposes and says,

that deponent resides at Madison Avenue in the (City) (Town) (Township) (Borough) of

Toms River in the County of Ocean and State of New Jersey

that she is the owner in fee of all that certain lot, piece or parcel of

land situated, lying and being in the Township of Brick aforesaid and designated as/Number 1 Lot

Block 11-71 on Tax Map of Brick Township.

Sworn and subscribed to

before me this 26th day

of July 1971

A Notary Public of the State of New Jersey

VIRGINIA R. SHELLMONT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Sept. 4, 1973

AUTHORIZATION — FOR CONTRACT PURCHASER

(If Contract Purchaser is making this application, the following authorization must be executed).
To the Board of Adjustment:

is hereby authorized to make the within application.

Dated:

(Owner to sign here)

(Note: Contract Purchaser must produce a signed copy of the contract for the Board of Adjustment at the hearing.)

RIDER ATTACHED TO AND MADE A PART OF VARIANCE APPLICATION OF
LILLIAN KUSHINSKY - VARIANCES REQUIRED

Applicant's application to permit the construction of a gasoline service station with accessory fuel pump islands and sign requires the applicant to apply for the following variances from the provisions of the Brick Township Zoning Ordinance:

A. An application for a use variance from the provisions of Article VI, Section 1. in order to permit the construction of the gasoline service station with accessory fuel pump islands and sign as indicated on the plot plans filed with the Board in a R-A (Rural Agricultural) Zone; and

B. An application for a variance from the lot area, lot width, lot depth, front yard, rear yard, and side yard provisions of Article VI, Section 2. in order to permit the construction of the gasoline service station with accessory fuel pump islands and sign as indicated on the plot plan filed with the Board.

C. An application for a variance from the off-street parking provisions contained in Article VI, Section 3 in order to permit the construction of the gasoline service station with eight off-street parking spaces as said off-street parking spaces are indicated on the plot plan filed with the Board.

D. An application for a variance from the provisions of Article VI, Section 4. and Article XI, Section A. in order to permit applicant to construct a free standing sign having a height of approximately 20 feet and a square footage of approximately 90 square feet on each side, as said sign is indicated on the plot plan and sign plan filed with the Board;

E. An application for a variance from the minimum front yard requirements relating to corner lots specified in Article VI, Section 2. and Article V, Section 5. in order to permit applicant to construct said gasoline service station with accessory fuel pump islands and sign as said structures are indicated on the plot plan filed with the Board;

F. An application for a variance from the following special permit standards specified in Article XI, Section F. in order to permit the construction of a gasoline service station with accessory fuel pump islands and free-standing sign as same are indicated on the plot plans filed with the Board: 1) A variance from the setback restrictions contained in Article VI, Section F.3. in order to permit the fuel pumps to be located within 35 feet from the street lines; 2) A variance from the driveway width provisions contained in Article XI, Section F.5. to permit the driveways shown on the plot plan to have a width in excess of 20 feet; 3) A variance from the proximity requirements contained in Article XI, Section F.7.; and 4) A variance from the sign requirements specified in Article XI, Section F.9.

RIDER ATTACHED TO AND MADE A PART OF APPLICATION FOR VARIANCE
BY LILLIAN KUSHINSKY

The reasons for the present application or appeal are as follows:

Applicant owns a portion of property known as Lot 1, Block 1171 on the Brick Township Tax Map, which property is located at the intersection of New Jersey State Highway 88 and Burrsville (Squankum) Road. The property is located in a R-A Rural Agricultural Zone on an irregular triangle parcel completely surrounded by three roads, one being New Jersey State Highway 88, one being Burrsville (Squankum) Road and the other being a street known as Ocean Street. By virtue of its location, it is extremely improbable that said parcel can be used for a use permitted in a Rural Agricultural Zone, which uses are limited primarily to residential type uses. Therefore, applicant is applying for a use variance in order to permit construction of a gasoline service station, with accessory fuel pumps and sign on this isolated parcel.

Applicant has also applied for various bulk variances from the minimum lot and yard requirements specified in Article VI. Section 2 of the Zoning Ordinance as said requirements are applicable to an R-A Rural Agricultural Zone. Applicant asserts that since the proposed use is to be a gasoline service station, the lot size, depth, width and setback requirement for a n R-A Rural Agricultural Zone are not applicable to such a use. In additon, the lot is of such an irregular size and shape (i.e. triangular) and being surrounded by three roadways, it would be virtually impossible for applicant to construct any structure and comply with the minimum lot size, depth, width and setback requirements.

Applicant has also applied for a variance from the parking requirements specified in Article VI. Section A.3. of the Zoning Ordinance. Applicant has provided for eight off-street parking spaces which will be more than adequate for this type of use to service both its employees and customers. In addition, applicant has applied for a variance from the sign requirements contained in Article VI., Section 4, and Article XI, Section A.1. in order to permit the construction of one free standing sign having a height of approximately 20 feet and a square footage area of approximately 90 square feet on each side. Applicant asserts that this type of sign is the usual type of sign which it constructs in connection with the gasoline service station and that said sign is necessary in order to allow passing motorists to be aware of the gasoline station. To allow this use without this sign would present an undue hardship to applicant.

Although applicant requires a use variance, it has also applied for a variance from the special permit standards relating to gasoline service stations (Article XI, Section F). Applicant meets the majority of the special permit standards but may require a variance from some of them. The irregular shape of the lot presents an extreme practical difficulty for applicant to construct its pump at least 35 feet from the street lines. Applicant's pump will be located approximately 25 feet from the street lines, which applicant feels will provide the safest interior traffic design. Applicant has also applied for a variance from the driveway width standards of 20 feet. Applicant has received access permits in order to permit

said ingress and egress upon driveways located along New Jersey State Highway 88. With regard to those driveways and the driveways on Burrsville (Squankum) Road, applicant feels that said driveway widths provide the safest form of ingress and egress and are needed in order to provide for safe interior and exterior traffic design. Applicant has also applied for a variance from the proximity requirement specified in Article XI. Section 7 , since the proposed use will be located within a Residential Zone.

Applicant asserts that the construction of a gasoline service station will not have any adverse affect upon the property value in the neighborhood. Applicant further asserts that said construction will not be detrimental to the zone plan and zoning ordinance of the Township of Brick and that to deny same will cause applicant an undue hardship and extreme practical difficulty.

BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK

Addendum to application for Variance by Lillian Kushinsky

A. Ingress and egress of the property.

From Burrsville (Squankum) Road and New Jersey Highway Route 88.
See Plot Plan.

B. Parking areas

See Plot Plan.

C. Number of Parking Spaces

See Plot Plan. There are 8 parking spaces.

D. Abutting property lines

See Plot Plan

E. Buffer zones

See Plot Plan

F. Landscaping

See Plot Plan

G. Lighting, number of lights, where located and type of lights

See Plot Plan and in particular areas designated "colonial area light" on plot plan.

H. Signs, number of signs, type of signs, sizes and how lighted and where located on the property.

See Plot Plan and sign plan. There will be one free standing sign having a height of approximately 20 feet with a square footage of approximately 90 feet on each side. The sign will be internally lighted.

I. All exterior finishing and type of construction

Masonry block with brick veneer. The roof will be of asphalt shingle.

J. Type of architecture is to be described, e.g., colonial, modern, conventional, etc.

Colonial

Addendum to application for Variance by Lillian Kushinsky

K. Where applicable, recreational facilities will be shown in detail

Not applicable.

L. Where applicable, seating capacity will be shown in detail

Not applicable.

M. Number of employees to be employed by facility per shift, if applicable and parking facilities for same

Applicant estimates that there will be approximately three to four employees employed during any one shift. Parking for employees are indicated on the Plot Plan.

N. Hours of operation and days of the week will be spelled out in commercial uses.

Gasoline station will be open seven day a week. The hours of operation will be similar to the hours of operation of other gasoline stations in the same area.

O. Refuse storage will be shown on site plan, in detail as to construction and materials to be used as well as placement

See Plot Plan and area designated refuse enclosure.

P. Attached to application should be a statement of principal points showing need, etc., in order to help the Board make decision - See Rider

Q. On application, it must be stated who will operate the commercial use if the variance is granted

Chevron Oil Company will operate the gasoline service station.

R. Zone of property for which variance is sought and zone or zones of abutting properties

Zone in question is a R-A Rural Agricultural Zone and zone of abutting property is also R-A Rural Agricultural.

S. Photographs of four compass points directed away from property.

Photographs to be submitted.

**LIST OF PROPERTY OWNERS
BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK**

Cal. No.

Filed

List of Property Owners Within 200 Feet of Lot 1 Block 1171 Tax Map of Township of Brick.

Name	Address	Block No.	Lot No.
William E. and Elvera J. - Diller	1592 West Princeton Ave. Brick Town, New Jersey	818-25	1 - 5
Ernest & Elsie Rieser	-1593 Larson Street Brick Town, New Jersey	818-25	6 - 11
Laurelton Enterprises Inc-	12 Drum Point Road Brick Town, New Jersey	818-25	12 - 33
Lillian Kushinsky	- 208 Horner Street Toms River, New Jersey	1170	20
Ida Rothschild	- 1594 Route 88 Brick Town, New Jersey	1170	23 and 23A
J & I Rothschild and) E & E Rieser)	- 1594 Route 88 Brick Town, New Jersey	1170	24 - 1
Irving and Jean, and Jean & David Pina	- RD #1 Box 90 Brick Town, New Jersey	1170	24
Alfred & Olga Nikmanis	- 1644 W. Princeton Avenue Brick Town, New Jersey	1170	25
Lillian Kushinsky	- 208 Horner Street Toms River, New Jersey	1170	26
Sam Christ & Frances	- Box 384 RD 2 Jackson, New Jersey	1170	27
Leon & Sarah Rothkopf	- Box 52 B, Ocean Avenue RD1 Brick Town, New Jersey	1171	2
Dept. of Transportation	- Trenton, New Jersey		
Ocean County Planning Board	- Toms River, New Jersey		

Certified:

Assessor

BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK

LIST OF PROPERTY OWNERS

Col. No. _____
List of Property Owners Within 200 Feet of Lot _____
Block _____
Township of Brick _____
Address _____
Lot No. _____

RESOLUTION

BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK

DATED: ^{Feb 2} January 19, 1972

WHEREAS, LILLIAN KUSHINSKY has applied to the Board of Adjustment of the Township of Brick for permission to erect a service station at premises located at Route #88 and Burrsville (Squankum) Road, Township of Brick, and known as Block 1171, Lot 1, on the Tax Map of the Township of Brick, which premises are in a Rural/Agricultural zone; and

WHEREAS, the Board after carefully considering the evidence presented by applicant and of the adjoining property owners and general public, has made the following factual findings:

1. That premises in question are a triangle at the junction of Route #88 and Burrsville (Squankum) Road, Brick Township;
2. That said triangular premises and the use thereof for a service station serving both Route #88 and Burrsville (Squankum) Road would contribute to and have a dilatorious effect upon the already existing traffic on both roads and will create a definite traffic hazard at an already congested intersection;
3. That the area in question is amply served by existing service stations;
4. That the proposed use would reverse the upgrading trend of the area and would depreciate property values in the area;
5. That while it is recognized that service stations are a necessary function of the community, the location of this particular service station would be detrimental to the objectives of the Master Plan of the Township of Brick;
6. That there is no provision in the Brick Township Zoning Ordinance for a permitted use of a service station in the Rural/Agricultural Zone;
7. That the Planning Board has rendered a negative opinion as to the proposed use;
8. That the erection of said service station does not meet minimum standards set forth in Article XI, Section P (Special Use Permits), as said premises are within 200 feet of the Church recently erected on the South side of Route #88;
9. That the granting of the variance contrary to Article VI, Section 1 of the Ordinance No. 200 as to pump islands would contribute to the creation of a substantial traffic hazard;
10. Reference is made to and there is annexed hereto applicant's request for the various variances and bulk variances sought, which are a minimum of five in number, all of which will subject abutting property owners to a burden that they reasonably should not be required to bear; and
11. That the Rural/Agricultural Zone is a residential zone of one acre plots, so that the standards as set forth in Article XI of the Zoning Ordinance would be violated in at least two aspects of residential zoning and church proximity;

WHEREAS, the Board has determined that the relief requested by applicant cannot be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Brick.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Brick, on this 19th day of January, 1972, that the application of Lillian Kushinsky be denied. *without prejudice* !

ROLL CALL VOTE

Moved By: *Mr. Ellerbrook*

Seconded By: *Mr. Hegreide*

Those in Favor: *Messrs. Ellerbrook, Ventrello, Bissey, Hegreide*

Those Opposed: *None*

Those Absent: *Mr. Jafolice*

Those Not Voting: *None*

BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK

Dated: March 21, 19 73

WHEREAS LILLIAN KUSHINSKY has applied to the
(Appellant) (Applicant)

Board of Adjustment of the Township of Brick for permission to erect a service station

at premises located at Route #88 and Burrsville (Squankum) Road

Township of Brick and known as Block 1171 Lot(x) 1 on the Tax Map of the Township of Brick

Which premises are in a Rural/^{Agricultural} zone; and WHEREAS, the Board after carefully considering the evidence presented by applicant and of the adjoining property owners and general public, has made the following factual findings: 1. That premises in question are a triangle at the junction of Route #88 and Burrsville (Squankum) Road, Brick Township;

2. That said triangular premises and the use thereof for a service station serving both Route #88 and Burrsville (Squankum) Road would contribute to and have a dilatorious effect upon the already existing traffic on both roads and will create a definite traffic hazard at an already congested intersection;
3. That the application does not meet the standards set forth in the Ordinance as follows:
- a. Within 500 feet of a church, it being by actual measurement, 164 feet;
 - b. That the Zoning Ordinance makes no provision under Section F for service stations in the Rural/Agricultural Zone;

WHEREAS, the Board has determined that the relief requested by applicant (~~xxx~~) (cannot) be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Brick.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Brick, on this 21st.....

day of March , 1973 , that approval of the application of LILLIAN KUSHINSKY
be (denied) (XXXXXXXXXXXXXXXNXXXXXXXXXXKXXXXXXXXXJXXXXXXXXXXXXXXX)
XXXXXXXX

'DXNXKXKXNKXNKX NKX NKX

~~NXXKXKXJXXKXHXJHXLXKHGXKLXKXKXKXKXKX~~

ROLL CALL VOTE

Moved By. Mr. LeGrande

Mr. Lea

messrs. Logreide, Day, Hoar & Rock

Mr. Dong 6/4/49

Those Not Voting *None*

NOTICE TO ~~PROPERTY OWNERS~~ OF HEARINGS

To _____
(owner of premises)

Cal # 725

(address)

8/10 71

Please Take Notice:

BLOCK
1171 Lot 1

That the undersigned has appealed to the Board of Adjustment of the Township of Brick for a variance from the terms of Sections of the Zoning Ordinance so as to permit _____

Sept 1 71

on the premises _____ which is within 200 feet of property owned by you. This appeal is now No. _____ on the Clerk's Calendar and a public hearing has been ordered for _____, 19_____, at 8 P.M. in the Committee Chamber, Municipal Building, Brick Township, New Jersey, at which time you may appear either in person, or by attorney, and present any objection which you may have to the granting of this appeal.

This notice is sent to you by applicant, as required by law.

Respectfully,

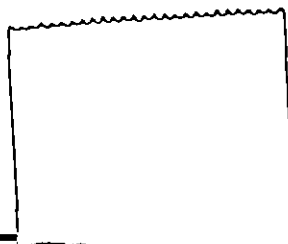
Date Served _____, 19_____

Person Served _____

Place Where Served _____

Method of Service (personal) (posting) (registered or certified mail—attach signed return receipt)

Applicant
Clerk



AFFIDAVIT OF PUBLICATION

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss:

Mary Townsend of

full age, being duly sworn according to law,
says that she is the clerk of the NEW JERSEY
COURIER-SUN, a newspaper published in
Toms River in the County of Ocean the State
of New Jersey, of which the annexed is a true
copy, was published in said paper on the day
of March 29 and once each week there-
after for consecutive weeks.

PUBLICATION OF DENIAL
TAKE NOTICE that on the 31 day of
March, 1973, the Board of Adjustment of the
Township of Brick, after a public hearing,
Denied the application of Lillian Kuchnitsky
for premises at Rt. 68 & Burrsville Rd. Lot 1
Block 1171 on Township of Brick Tax Map for
variance to erect a service station and
that determination of said Board of
Adjustment has been filed in the office of
said Board at the Municipal Building, Brick
Township, New Jersey, and is available for
inspection with the Secretary of the Board
of the Township Clerk

Lou B. Eskdale
Secretary
Board of Adjustment
March 29, 1973
Courier-Sun
\$6.75

Mary Townsend

Sworn and subscribed to before me

this 29th day of March 1973

Walter D. D'Amico
Notary Public of New Jersey

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 27, 1974

ELLSWORTH J. STERNER
COUNSELLOR-AT-LAW

MANTOLOKING, N. J. 08738
201-477-6000

September 15, 1971

Mr. Frederick C. Arnoul, Chairman
Brick Township Board of Adjustment
609 Brick Boulevard
Brick Town, New Jersey 08723

Re: Calendar No. 725
Applicant: Lillian Kushinsky
Location: Route #88 and Burrsville (Squankum) Road
Lot 1, Block 1171

Dear Mr. Arnoul:

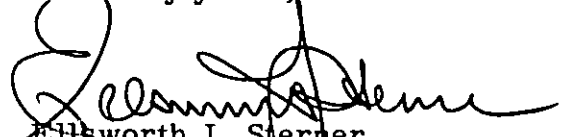
From information submitted to me by Mr. George, it would appear that service in the above matter is in order.

This is an application for permission to erect a gasoline service station on the above captioned premises, which said premises are in the Rural/Agricultural Zone, as well as for other variances and for a request for a Special Use Permit under Section F. or Article XI, as more particularly set forth in the photocopy of the rider attached to the application, which is also annexed hereto.

Testimony should be taken as to need, whether or not the proposed service station is within 200 feet of any residential zone, within 500 feet of a church, school, hospital, public library or convalescent home, or within 1,000 feet of a pre-existing service station, whether it will comply with the standards set forth in Section F, as well as testimony to establish the qualifications of the premises for a zoning variance and special use permit.

It is pointed out that there is no provision in the Brick Township Zoning Ordinance for the permitted use of a service station in a Rural/Agricultural Zone, so that any action of this Board, after reference to the Planning Board for its advisory opinion and return to this Board, should be on recommendation to the Township Council.

Sincerely yours,


Ellsworth J. Sterner

EJS/cac
Attachments

RIDER ATTACHED TO AND MADE A PART OF VARIANCE APPLICATION OF
LILLIAN KUSHINSKY - VARIANCES REQUIRED

Applicant's application to permit the construction of a gasoline service station with accessory fuel pump islands and sign requires the applicant to apply for the following variances from the provisions of the Brick Township Zoning Ordinance:

A. An application for a use variance from the provisions of Article VI, Section 1. in order to permit the construction of the gasoline service station with accessory fuel pump islands and sign as indicated on the plot plans filed with the Board in a R-A (Rural Agricultural) Zone; and

B. An application for a variance from the lot area, lot width, lot depth, front yard, rear yard, and side yard provisions of Article VI, Section 2. in order to permit the construction of the gasoline service station with accessory fuel pump islands and sign as indicated on the plot plan filed with the Board.

C. An application for a variance from the off-street parking provisions contained in Article VI, Section 3 in order to permit the construction of the gasoline service station with eight off-street parking spaces as said off-street parking spaces are indicated on the plot plan filed with the Board.

D. An application for a variance from the provisions of Article VI, Section 4. and Article XI, Section A. in order to permit applicant to construct a free standing sign having a height of approximately 20 feet and a square footage of approximately 90 square feet on each side, as said sign is indicated on the plot plan and sign plan filed with the Board;

E. An application for a variance from the minimum front yard requirements relating to corner lots specified in Article VI, Section 2. and Article V, Section 5. in order to permit applicant to construct said gasoline service station with accessory fuel pump islands and sign as said structures are indicated on the plot plan filed with the Board;

F. An application for a variance from the following special permit standards specified in Article XI, Section F. in order to permit the construction of a gasoline service station with accessory fuel pump islands and free-standing sign as same are indicated on the plot plans filed with the Board: 1) A variance from the setback restrictions contained in Article VI, Section F.3. in order to permit the fuel pumps to be located within 35 feet from the street lines; 2) A variance from the driveway width provisions contained in Article XI, Section F.5. to permit the driveways shown on the plot plan to have a width in excess of 20 feet; 3) A variance from the proximity requirements contained in Article XI, Section F.7.; and 4) A variance from the sign requirements specified in Article XI, Section F.9.

RIDER ATTACHED TO AND MADE A PART OF APPLICATION FOR VARIANCE
BY LILLIAN KUSHINSKY

The reasons for the present application or appeal are as follows:

Applicant owns a portion of property known as Lot 1, Block 1171 on the Brick Township Tax Map, which property is located at the intersection of New Jersey State Highway 88 and Burrsville (Squankum) Road. The property is located in a R-A Rural Agricultural Zone on an irregular triangle parcel completely surrounded by three roads, one being New Jersey State Highway 88, one being Burrsville (Squankum) Road and the other being a street known as Ocean Street. By virtue of its location, it is extremely improbable that said parcel can be used for a use permitted in a Rural Agricultural Zone, which uses are limited primarily to residential type uses. Therefore, applicant is applying for a use variance in order to permit construction of a gasoline service station, with accessory fuel pumps and sign on this isolated parcel.

Applicant has also applied for various bulk variances from the minimum lot and yard requirements specified in Article VI. Section 2 of the Zoning Ordinance as said requirements are applicable to an R-A Rural Agricultural Zone. Applicant asserts that since the proposed use is to be a gasoline service station, the lot size, depth, width and setback requirement for a n R-A Rural Agricultural Zone are not applicable to such a use. In additon, the lot is of such an irregular size and shape (i.e. triangular) and being surrounded by three roadways, it would be virtually impossible for applicant to construct any structure and comply with the minimum lot size, depth, width and setback requirements.

Applicant has also applied for a variance from the parking requirements specified in Article VI. Section A.3. of the Zoning Ordinance. Applicant has provided for eight off-street parking spaces which will be more than adequate for this type of use to service both its employees and customers. In addition, applicant has applied for a variance from the sign requirements contained in Article VI., Section 4, and Article XI, Section A.1. in order to permit the construction of one free standing sign having a height of approximately 20 feet and a square footage area of approximately 90 square feet on each side. Applicant asserts that this type of sign is the usual type of sign which it constructs in connection with the gasoline service station and that said sign is necessary in order to allow passing motorists to be aware of the gasoline station. To allow this use without this sign would present an undue hardship to applicant.

Although applicant requires a use variance, it has also applied for a variance from the special permit standards relating to gasoline service stations (Article XI, Section F). Applicant meets the majority of the special permit standards but may require a variance from some of them. The irregular shape of the lot presents an extreme practical difficulty for applicant to construct its pump at least 35 feet from the street lines. Applicant's pump will be located approximately 25 feet from the street lines, which applicant feels will provide the safest interior traffic design. Applicant has also applied for a variance from the driveway width standards of 20 feet. Applicant has received access permits in order to permit

said ingress and egress upon driveways located along New Jersey State Highway 88. With regard to those driveways and the driveways on Burrsville (Squankum) Road, applicant feels that said driveway widths provide the safest form of ingress and egress and are needed in order to provide for safe interior and exterior traffic design. Applicant has also applied for a variance from the proximity requirement specified in Article XI. Section 7 , since the proposed use will be located within a Residential Zone.

Applicant asserts that the construction of a gasoline service station will not have any adverse affect upon the property value in the neighborhood. Applicant further asserts that said construction will not be detrimental to the zone plan and zoning ordinance of the Township of Brick and that to deny same will cause applicant an undue hardship and extreme practical difficulty.

BOARD OF ADJUSTMENT, TOWNSHIP OF BRICK

Addendum to application for Variance by Lillian Kushinsky

A. Ingress and egress of the property.

From Burrsville (Squankum) Road and New Jersey Highway Route 88.
See Plot Plan.

B. Parking areas

See Plot Plan.

C. Number of Parking Spaces

See Plot Plan. There are 8 parking spaces.

D. Abutting property lines

See Plot Plan

E. Buffer zones

See Plot Plan

F. Landscaping

See Plot Plan

G. Lighting, number of lights, where located and type of lights

See Plot Plan and in particular areas designated "colonial area light" on plot plan.

H. Signs, number of signs, type of signs, sizes and how lighted and where located on the property.

See Plot Plan and sign plan. There will be one free standing sign having a height of approximately 20 feet with a square footage of approximately 90 feet on each side. The sign will be internally lighted.

I. All exterior finishing and type of construction

Masonry block with brick veneer. The roof will be of asphalt shingle.

J. Type of architecture is to be described, e.g., colonial, modern, conventional, etc.

Colonial

James G. Henry
Counsellor at Law

2031 Highway 88
Brick Town, N. J. 08723

File #884 Kushinsky
- Board of Adjustment

July 27th, 1971

Secretary - Board of Adjustment
of Township of Brick
Municipal Building
Brick Town, N. J. 08753

RE: Lot 1, Block No. 1171 Tax Map of Brick Township
Owner: Lillian Kushinsky

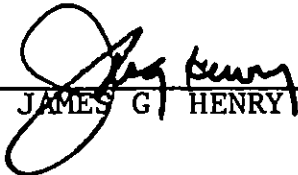
Dear Madam:

Enclosed please find original and
copy of Form A - Application For Variance or Exception
Board of Adjustment, Township of Brick, in the above
matter, together with check in the sum of \$140.00 to
cover filing fee, payable to the Township Clerk of
Brick Township, of \$100.00, and \$40.00 for (secretary) Court Reporter

Also enclosed are 4 copies of survey
and plot plan.

Very truly yours,

JGH:ar
Encls.


JAMES G. HENRY

James G. Henry
Counsellor at Law

2031 Highway 88.
Brick Town, N. J. 08723

File #884 Kushinsky
-Board of Adjustment

August 9th, 1971

Mr. Al George
Zoning Officer - Brick Township
Municipal Building
Brick Town, N. J. 08723

RE: Lot 1, Block No. 1171 Tax Map of Brick Township
Owner: Lillian Kushinsky
Board of Adjustment

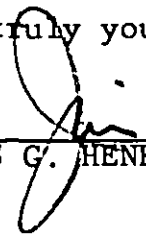
Dear Mr. George:

Enclosed please find original and copy of
List of Property Owners and their addresses, within
200 feet of the abovementioned premises.

Will you kindly check same and advise before
I send out the Notices.

Very truly yours,

JGH:ar
Encls.



JAMES G. HENRY

James G. Henry
Counsellor at Law

2031 Highway 88
Brick Town, N. J. 08723

File #884 Kushinsky
Board of Adjustment
Matter

September 8th, 1971

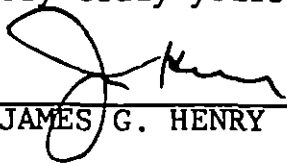
Secretary - Board of Adjustment of Brick Township
Municipal Building
Brick Boulevard
Brick Town, New Jersey 08723

RE: Calendar No. 725
Hearing - September 15, 1971 @ 8:00 P.M.
Lillian Kushinsky
Tax Lot 1 Block 1171

Gentlemen:

Enclosed please find copy of notice
sent to adjourning property owners, and the receipts
for each, showing receipt of a copy of said notice by
each property owner.

Very truly yours,



JAMES G. HENRY

JGH:ar
Encls.

ELLSWORTH J. STERNER
COUNSELLOR-AT-LAW

MANTOLOKING, N. J. 08738
201-477-6000

September 19, 1972

Re #14241

Mr. Kenneth Ellerbrook, Chairman
Brick Township Board of Adjustment
525 Drum Point Road
Brick Town, New Jersey 08723

Re: Kushinsky vs. Brick Twp. Bd of Adjustment
Docket No. L 16685-71 P.W.

Dear Mr. Ellerbrook:

I appeared before Judge Martino in the above matter, and he has decided to remand it, principally based upon the deficiency in Plaintiff's testimony, as well as the deficiency in the Board's failure to disclose knowledge upon which certain portions of the Resolution were drafted and because of the problem of the Master Plan of the Township not being implemented by an Ordinance.

It is apparently Judge Martino's recent thinking that where a Planning Board makes a recommendation, the expert for the Planning Board should appear before the Board of Adjustment to give the applicant an opportunity to cross-examine him, and also that a Board should exercise its right to produce experts on its own behalf so that the Court will be in a position to evaluate the decision of the Board of Adjustment.

I will render a more complete report prior to the hearing after Mr. George sets the hearing date, which will probably not come up until December or January.

You will recall that we discussed some time in the past the problem that the Board finds itself in when there is no opposition to the request for a variance, because in that case, the opposing people supply testimony and experts in an adverse position to the applicant. The problem only arises when there is no opposition, and it is up to the Board to make a determination.

ELLSWORTH J. STERNER
COUNSELLOR-AT-LAW

MANTOLOKING, N. J. 08738
201-477-6000

Mr. Kenneth Ellerbrook

-2-

September 19, 1972

For example, any member of the Board has the right to state for the public record the reason for his vote either for or against the granting or recommendation of a variance, and he must disclose the source of his knowledge. It might be that his living in the area for a long period of time would establish in his mind a definite traffic hazard, such as in the subject case.

Sincerely yours,

Ellsworth J. Sterner

EJS/cac

cc: Members

Board of Adjustment

cc: Mr. Alexander George, Jr.

TOWNSHIP OF BRICK

609 BRICK BOULEVARD, BRICK TOWN, N. J.

BOARD OF ADJUSTMENT:

FREDERICK C. ARNOUL, Chairman
LOUIS VENTRELLO, Vice Chairman
PAULINE CAMELIA, Secretary
ALEXANDER GEORGE, Clerk
JOHN P. KINNEVY
KENNETH ELLERBROOK
DANIEL F. NEWMAN

ALTERNATE MEMBERS:

VINCENT IAFALICE (Alternate)
ANGELO DE MARCO

ATTORNEY:

ELLSWORTH J. STERNER



MEETINGS:

First and Third Wednesdays
at 8:00 P.M.
(201) 477-3000

October 13, 1972

Mr. Kenneth Ellerbrook, Chairman
Brick Township Board of Adjustment
609 Brick Boulevard
Brick Town, New Jersey 08723

Re: Case #725, L. Kushinsky
Bk. 1171, Lot 1

Dear Mr. Ellerbrook:

In relation to the Kushinsky appeal (Board of Adjustment Case #725), Mr. Sterner has appeared before Judge Martino, and Judge Martino has decided to remand said case to the Board of Adjustment for various reasons.

To begin with, Brick Township has a Master Plan, but there is no ordinance implementing it. Consequently, it cannot be considered as a Master Plan. Although it is not necessary to have a Master Plan, if you propose one you have to pass an ordinance implementing it.

Judge Martino further indicated that if the Township Planner says that this is not within the confines of the Master Plan and if there is no opposition to the application, the court has nothing to act upon to decide whether or not the Planner has made a satisfactory argument for or against the application. He suggests that if there is an opinion by the Planner, the Planner should be subpoenaed before the Board of Adjustment so that he can be cross examined by the applicant and the objectors. In a situation where there is no opposition, the Board is obligated to call its own witnesses to sustain any position the Board might take. Where there is opposition, the opposing parties supply that need. If the opinion of the Board is unsupported by testimony, the opinion will no longer be accepted. In a situation where a Board member has local knowledge of a traffic hazard, he has the right to state his opinion, but he must state the basis of that opinion so that the court can then evaluate it.

The remand was based on the insufficiency of the appellant's case. It was also remanded because the Planner was not available for cross examination. The conclusions that the Board made were not stated as based on their personal knowledge, nor was it stated how they arrived at these conclusions.

Judge Martino indicated to Mr. Sterner that in cases where an applicant has submitted an application to the Board of Adjustment that may be within

TOWNSHIP OF BRICK

609 BRICK BOULEVARD, BRICK TOWN, N. J.

BOARD OF ADJUSTMENT:

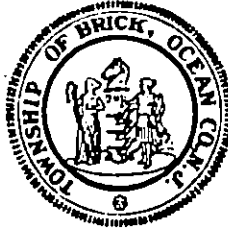
FREDERICK C. ARNOUL, Chairman
LOUIS VENTRELLO, Vice Chairman
PAULINE CAMELIA, Secretary
ALEXANDER GEORGE, Clerk
JOHN P. KINNEY
KENNETH ELLERBROOK
DANIEL F. NEWMAN

ALTERNATE MEMBERS:

VINCENT IAFALICE (Alternate)
ANGELO DE MARCO

ATTORNEY:

ELLSWORTH J. STERNER



MEETINGS:

First and Third Wednesdays
at 8:00 P.M.
(201) 477-3000

- 2 -

the confines of the Planning Board to render an advisory opinion as to whether or not said application is compatible with the Comprehensive Master Plan, such cases should be sent to the Planning Board before being heard by the Board of Adjustment. The Board of Adjustment has proceeded in the reverse of this because they have been so directed. However, Judge Martino has ruled informally that it should be the other way around.

Very truly yours,

Lois B. Eskdale
Secretary

cc: Mayor Wolf
Mr. Reis
Township Council

ELLSWORTH J. STERNER
COUNSELLOR-AT-LAW

MANTOLOKING, N. J. 08738
201 477 6000

April 26, 1973

Re #14241

Mr. Kenneth Ellerbrook, Chairman
Brick Township Board of ADjustment
525 Drum Point Road
Brick Town, New Jersey 08723

Re: Kushinsky vs. Board of Adjustment

Dear Mr. Ellerbrook:

Please be advised that the above matter is scheduled
for Pretrial Conference before the Honorable Edward
V. Martino on May 17, 1973, at 11:00 a.m.

Sincerely yours,

Ellsworth J. Sterner

EJS/cac

cc: Members
Board of Adjustment
cc: Mr. Alexander George, Jr.