



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

Perryville Corporate Park
53 Frontage Road, Suite 110
Hampton, NJ, 08827
T: 908.238.0900
F: 908.238.0901
www.maserconsulting.com

MEMORANDUM

To: Hackettstown Land Use Board

From: Daniel Bloch, PP, AICP, EADA

Date: November 19, 2020

Re: Planning Review
Livestock Co-Op Auction c/o Michael Toretta
Use Variance and Site Plan Application
Block 41, Lot 24
224 West Stiger Street, Hackettstown
MC Project No. HKB-183

A. OVERVIEW

The subject property, known as Lot 24 in Block 41, is 2.66-acre parcel located on the west side of West Stiger Street between Charles Street and Beatty Street. The site is currently developed with two office buildings and a poultry building. In addition, paved and gravel parking areas and driveways exist within the site. The westerly portion of the property abuts the Trout Brook and is wooded.

The applicant is seeking use variance and preliminary/final major site plan approvals to convert an existing one-story office building on the property to an animal processing facility, which will include a fenced animal holding pen. Parking, access, and lighting improvements are also proposed as part of the project. The proposed animal processing facility will operate in connection with the livestock auction on Lot 27 in Block 41.02, which is located on the east side of Stiger Street.

B. DOCUMENTS REVIEWED

- Completed Town of Hackettstown Land Development Application.
- Survey Plan entitled “Boundary Survey – 224 West Stiger Street, Block 41, Lot 24 – Town of Hackettstown, Warren County, New Jersey” consisting of one (1) sheet, prepared by Wayne Ingram, P.L.S. of E&LP, dated December 3, 2019, unrevised.
- Transmittal Letter to Board Secretary, Shannon Drylie from Michael S. Selvaggi, Esq, of Lavery, Selvaggi, Abromitis & Cohen, P.C., dated October 8, 2020, summarizing the submission of documents addressing outstanding completeness items.
- Letter to the Hackettstown Planning Board from the Livestock Cooperative Auction Market Association of North Jersey, Inc., providing statements in support of the construction of the proposed livestock harvesting and processing facility, dated October 26, 2020.
- Application addendum – Livestock Auction Statement of Operations, undated.

- Architectural Plan entitled “Proposed Alterations – Slaughter House – Existing One Story Building – 224 Stiger Street, Town of Hackettstown, County of Warren, New Jersey, Lot 24, Block 41” consisting of two (2) sheets, prepared by Nassir Almukhtar, RA, of Heritage Madison Architecture, LLC, dated September 24, 2020, unrevised.
- Site Plan entitled “Site Plan - Hackettstown Farm Auction - 224 West Stiger Street, Block 41 Lot 24 - Town of Hackettstown, Warren County, New Jersey” consisting of two (2) sheets, prepared by John E. Hansen, P.E., of E & LP, dated April 13, 2020, last revised October 28, 2020.



Figure 1 – Aerial Photo from NJ Highlands Council Interactive Map

C. ZONING

The property is situated within the LM Limited Manufacturing District. Permitted principal uses include offices, limited manufacturing, laboratories, limited manufacturing park, distribution centers, warehouses, contractor storage yards, public utility storage yards, commercial indoor recreation, places of assembly, auction houses, livestock auctions, playgrounds. Livestock auctions are permitted, provided that no slaughterhouse operations are included, and animals are not kept on-site in excess of seven (7) days.

D. VARIANCE RELIEF REQUESTED

“D” Variances

1. §408: D(1) Use Variance

The Applicant is seeking D(1) use variance approval to permit an animal processing facility, which is not a permitted use in the LM District.

Criteria for D Variance Relief

Pursuant to the Municipal Land Use Law, a “D” use variance requires the Applicant to demonstrate to the Board that the variance can be granted without substantial detriment to the public good and without substantial impairment of the intent of the zone plan and zoning ordinance. The Applicant also needs to demonstrate to the Board, by a showing of “special reasons”, that the site is peculiarly suited for the particular use being proposed.

1. Positive Criteria (Special Reasons):

The Applicant must demonstrate that the particular use is peculiarly fitted or particularly suitable to the site and its setting and that special reasons exist to support the grant of the variance application. These special reasons exist when one or more purposes of zoning are promoted (N.J.S.A. 40:55D-2).

The court also found in Saddle Brook Realty v. Board of adjustment, 388 N.J. Super. at 76, that there are three categories of circumstances where the “special reasons” may be found where: (1) the proposed use inherently serves the public good; (2) the property owner would suffer “undue hardship” if compelled to use the property in conformance with the permitted uses of the zone; or (3) the use would serve the general welfare because the “proposed site is particularly suitable for the proposed use”. As the proposed use is not inherently beneficial and no undue hardship exists, the applicant will need to show that the site is particularly suitable for the proposed use.

2. Negative Criteria:

The Applicant must demonstrate that the grant of the variances would not be substantially detrimental to the public good or substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

Regarding the “substantial detriment to the public good” prong of the negative criteria, the court affirmed in Medici v. BPR Co., 107 N.J. 1, that the focus is on the impact of the proposed use variance upon the adjacent properties and whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good”.

The Applicant must present an “enhanced” quality of proof that the use variance sought is not inconsistent with the intended purpose of the Master Plan and the zoning scheme for the zone. The Applicant must reconcile the Governing Body’s continued omission from the zone of

the particular proposed use for which the Applicant seeks a variance. In this case, the enhanced quality of proof must overcome the specific prohibition of slaughterhouse operation, pursuant to Section 408.A.13 of the LDO.

The court also stated, with regards to the “substantial detriment to the zone plan and zoning ordinance” prong of the negative criteria, that “the added requirement that boards of adjustment must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance will reinforce the conviction expressed in *Ward v. Scott* [11 N.J. 117 (1952)], the negative criteria constitute an essential ‘safeguard’ to prevent the improper exercise of the variance power” (107 N.J. 22).

“C” Bulk Variances

1. §408E.1: More Than One Use

Any principal building may contain more than one use and/or organization provided that the total building coverage of the combined activities does not exceed the maximum coverage specified for the district. Any lot may contain more than one (1) principal building provided that the minimum lot size is at least three (3) acres and that all bulk, yard and coverage requirements are met. Additional, Section 510 of the LDO prohibits more than one principal use per lot.

While the maximum coverage is not exceeded, the property is less than 3 acres and does not comply with the required front and side setback requirements. Therefore, variance relief is required for more than one use on the property.

2. §408E.5: Landscape Buffer

At least the first twenty (20) feet adjacent to any street and/or property line shall not be used for parking and shall be planted and maintained in lawn area or ground cover and appropriately landscaped. The proposed parking lot in front of the animal processing building extends up to the right-of-way. Variance relief is required.

3. §408H.1: Off-Street Loading

Each principal use shall provide for off-street loading and unloading with adequate ingress and egress from streets and with adequate space for maneuvering and shall provide such area at the side or rear of the building. Each space shall be at least fifteen feet by forty feet (15’ x 40’) and a minimum of one (1) space shall be provided for each building. No loading space is provided on the site plan. Variance relief is required.

4. §408H.1: Off-Street Loading

There shall be at least one (1) trash and garbage pick-up location provided by each building which shall be separated from the parking spaces by either a location within the building or in a pick-up location outside the building which shall be a steel-like, totally enclosed container located in a manner to be obscured from view from parking areas, streets and adjacent residential uses or zoning districts by a fence, wall, planting or combination of all three. No trash enclosure is shown on the site plan or architectural plans. The Applicant shall demonstrate conformance or seek variance relief.

Existing Non-Conforming Bulk Conditions

5. §408D: Minimum Lot Area

Property contains 2.66 acres, whereas 3 acres minimum required in the LM District.

6. §406D: Front Yard Setback

The existing one-story stucco building has an existing front yard setback of 18.68 feet provided, whereas 50 feet minimum required in the LM District.

7. §406D: Side Yard Setback

The existing one-story stucco building has a side yard setback of 22.04 feet, whereas 50 feet minimum is required in the LM District.

8. §406D: Side Yard Setback

The existing one-story stucco building has a side yard setback of 27.47 feet, whereas 50 feet minimum is required in the LM District.

Criteria for “C” Bulk Variance Relief

Pursuant to the Municipal Land Use Law, deviation from a bulk standard can be granted under either a “C(1)” hardship variance or a “C(2)” flexible variance.

A “C(1)” hardship can be granted to relieve peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of a specific piece of property that is uniquely affected by (a) exceptional narrowness, shallowness or shape, (b) exceptional topographic conditions or physical features, or (c) other extraordinary and exceptional situation affecting the property or the lawfully existing structures. For a “C(1)” variance, the Applicant must demonstrate that there is some specific physical feature of the property that prevents compliance with the ordinance.

A “C(2)” flexible variance requires the Applicant to demonstrate that the benefits of allowing the proposed deviation will substantially outweigh any detriments associated with the deviation. The Applicant must show that the requested “C(2)” variance will result in a better plan for the property.

For both “C(1)” and “C(2)” variances, the Applicant must also demonstrate to the Board that:

1. The purposes of zoning (see N.J.S.A. 40:55d-2) would be advanced by the proposed deviation. Furthering one or more purposes of zoning would indicate that there is a benefit to granting the proposed variance.
2. The variance can be granted without substantial detriment to the public good. The focus is on the impact of the proposed variance upon the adjacent properties and whether or not it will cause such damage to the character of the neighborhood as to constitute "substantial detriment to the public good".
3. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Applicant must demonstrate that the variance is not inconsistent with the intent and purpose of the ordinance requirements from which relief is sought.

Waiver/Exceptions

1. §508A1: Screening of Parking

A screen planting, berm, fence, wall or combination thereof, no less than five feet (5') in height, shall be provided between off-street parking areas for more than ten (10) vehicles and any lot line or street line except where a building intervenes or where the distance between such areas and the lot line or street line is greater than one hundred fifty feet (150'). Fencing must be maintained in good condition and without advertising. No such screening is proposed for the front parking lot. Waiver required.

2. §508A.3.a: Parking Landscaping

In parking lots, at least five percent (5%) of the interior parking area shall be landscaped with plantings, and one (1) tree for each ten (10) spaces shall be installed. No parking area landscaping exists and none is proposed. The Applicant shall provide landscaping or request a waiver.

3. §508B: Lighting

Lighting used to illuminate off-street parking areas shall be arranged to reflect the light away from residential premises and public streets and shall be in accordance with Section 504. All parking facilities providing five (5) or more parking spaces shall be lighted. The Applicant shall demonstrate compliance with this section or request a waiver.

4. §508C: Paving

All parking and loading areas and access drives shall be paved unless said requirement is otherwise waived by the appropriate municipal agency and approved as part of the development application approval. The Applicant shall pave the parking lots or request a waiver.

Criteria for Granting of a Waiver

Pursuant to Section 1006 of the LDO, the Board shall have the power to grant exceptions from the requirements specified in Sections 500 and 800 of the LDO if an applicant can clearly demonstrate that, because of peculiar conditions pertaining to his or her land, the literal enforcement of one or more of said requirements is impracticable or will exact undue hardship; however, any exception granted by the Board must be reasonable and within the general purpose and intent of the rules, regulations and standards established the LDO.

E. ADDITIONAL COMMENTS

1. Pursuant to §408E.3, unless otherwise specifically approved by the Board, no merchandise, products, equipment or similar material or objects shall be displayed or stored outside, and all solid waste not stored within a building shall be stored within an enclosed container. The Applicant is proposing an outdoor animal holding pen. The Board has the authority to approve the outdoor use without requiring a variance. If the Board does not approve, then the outdoor use is prohibited.



We reserve the right to make additional comments based upon further review or testimony presented before the Board. Should you have any questions on this correspondence please do not hesitate to contact me.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in black ink, appearing to read 'Daniel N. Bloch'.

Daniel N. Bloch, P.P., AICP
Hackettstown Land Use Board Planner

cc: Shannon Drylie, Board Clerk
William Mennen, Esq., Board Attorney
Paul Sterbenz, P.E., P.P., Town Engineer
Michael Selvaggi, Esq., Applicant's Attorney

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