

**RESOLUTION
ANDOVER TOWNSHIP LAND USE BOARD
IN THE MATTER OF NATIONAL LAND DEVELOPERS, LLC
APPLICATION NO. A24-8
DECIDED ON OCTOBER 29, 2024
MEMORIALIZED ON DECEMBER 3, 2024
PRELIMINARY & FINAL SITE PLAN APPROVAL, “c” VARIANCE
RELIEF AND EXCEPTIONS FROM DESIGN STANDARDS
TO PERMIT THE CONSTRUCTION OF A WAREHOUSE BUILDING**

WIIEREAS, National Land Developers, LLC (hereinafter the “Applicant”) has made an application to the Township of Andover Land Use Board hereinafter (“Board”) for preliminary and final site plan approval, “c” variance relief and exceptions from design standards for property known and designated as Block 151, Lot 21, as shown on the Tax Map of the Township of Andover and located at 248 Stickles Pond Road, Andover, New Jersey (“the Property”). The Property is also located within the Route 206 Economic Development Zone; and

WHEREAS, a public hearing was held on October 29, 2024 after the Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Michael Selvaggi, Esq.; and

NOW, THEREFORE, the Land Use Board makes the following findings of fact, based upon evidence presented at its public hearing, at which time a record was made.

The application before the Board seeks preliminary and final site plan approval, “c” variance relief and exceptions from design standards for property

known and designated as Block 151, Lot 21 on the Tax Assessment Map of Andover Township, which Property is located at 248 Stickles Pond Road, Andover, New Jersey. The Property is located within the Route 206 Economic Development Zone.

Operations Testimony

Testifying on behalf of the Applicant was Joseph Marley. Mr. Marley represented that he is a principal of National Land Developers, LLC. He testified that the Property is under contract to be sold to the end user. The end user was identified as Lecangs Group, LLC. Mr. Marley stated Lecangs Group, LLC (hereinafter “Lecangs”) is a furniture company located in California. He confirmed that there would be no hazardous materials stored on site. Mr. Marley provided an overview of the operations. He stated Lecangs anticipates having approximately 100 employees on-site when the warehouse is fully operational. It is further anticipated that there would be 80 truck trips per day with a breakdown of 40 truck trips into the site and 40 truck trips out of the site. Mr. Marley also stated that the hours of operation are generally 8:30 a.m. to 5:30 p.m. Monday through Friday. Mr. Marley stated that typically there would be no work on the weekends. However, during times when Lecangs is very busy, there could be Saturday hours which are anticipated to be 8:30 a.m. to 12:00 p.m.

Mr. Marley represented that all of the inventory to be stored in the warehouse will be stored in boxes. He also represented that no customers would come to the site. Mr. Marley also stated that this facility would not ship directly

to consumers.

Mr. Marley represented that Lecangs business model with 100 employees means that the proposed 150 parking spaces is more than sufficient to accommodate the proposed warehouse use of the Property. He also stated that there will be no refrigerated trucks on-site as there are no perishable items to be stored in the warehouse.

Mr. Marley stated that the majority of truck trips will involve tractor trailers. He also stated that the truck traffic is pretty consistent throughout the year because Lecangs sells furniture. Mr. Marley also stipulated that the trailers will not be used for outdoor storage and that the facility will not function as a truck terminal for mass distribution of products. Mr. Marley also confirmed that Lecangs will own the building and the property once all approvals are obtained. He also represented that Lecangs operates in 16 locations in multiple states throughout the United States. Mr. Marley stated that Lecangs has approximately 4.5 million square feet of warehouse space. Mr. Marley testified that the two (2) closest facilities to Andover Township that Lecangs operates are located in Allentown, Pennsylvania and Middlesex, New Jersey. Mr. Marley also stipulated that the Applicant would utilize the bays in the rear of the building to the extent possible before utilizing the loading bays in front of the building.

Mr. Marley also confirmed that there would be no repairs of trucks on site nor will there be any washing of trucks or trailers on the premises. Mr. Marley further confirmed that in addition to the tractor trailers accessing the site, it is anticipated that UPS and Fed Ex deliveries will come to the site for the office use.

Mr. Marley addressed the existence of residential structures on the Property. Mr. Marley stated that if possible, they would like to keep one (1) of the residential structures and renovate it for use potentially by a manager of the Property. The other residential structures and accessory structures would be removed if permitted by the State Historic Preservation Office (“SHPO”) which entity is currently reviewing this matter.

Architectural Testimony

Testifying on behalf of the Applicant was Raymond E. O’Brien, a licensed architect in the State of New Jersey. Mr. O’Brien was qualified as an expert witness in the field of architecture. Mr. O’Brien testified that the Applicant is proposing to construct a 651,545 square foot warehouse inclusive of approximately 4,400 square feet of office space. The Applicant also proposes 130 loading bays with a breakdown of 53 loading bays in the front of the building and 77 loading bays in the rear of the building.

Mr. O’Brien testified in regard to the proposed fire suppression system. He confirmed there would be a fire suppression room on the left side of the building and another fire suppression room on the right side of the building. He further testified that there will be multiple smoke detectors and heat detectors installed as part of the fire suppression system. He stated the fire suppression system is a Group 2 Suppression Design which he characterized as being a high-grade system.

Mr. O’Brien testified that the water suppression system will act in areas

that will wash up to an estimated 40,000 square feet at a time. Each head will have separate activation triggers that will be heat and smoke activated. Mr. O'Brien represented that the water containment will be in the approximate 20,000-gallon range and will require several holding tanks which he estimated to be 12 in number which will be located under the slab.

Mr. O'Brien testified in regard to the racking system to be implemented within the warehouse. He also stated that the contents to be stored within the warehouse are comprised of furniture and cardboard boxes.

Mr. O'Brien testified that the building height conforms to the Ordinance requirements. Mr. O'Brien testified that the height of the building is 47 feet above the finished floor and from the average grade, the building is 49 feet, 6 inches to the coping line of the roof. He also confirmed that the building has been designed to handle the weight of solar panels on the roof should the end user desire to install solar panels on the roof.

Mr. O'Brien testified as to the need for 130 loading bays. He stated the number of bays facilitates internal movement of the inventory and allows for a more expeditious conveyance of inventory from inside the building to loading bays where the products would be shipped on tractor trailers.

Mr. O'Brien also confirmed that no signage is proposed on the building at this time. However, the loading bays will be numbered for ease of access.

Mr. O'Brien introduced into evidence Exhibit A-1, which was identified as an artist rendering of the front and left corner of the building. Mr. O'Brien also confirmed that the Applicant will work with the color palette as set forth in

the Redevelopment Plan.

Mr. O'Brien addressed the issue of the location of the mechanical equipment and stated that if mechanical equipment is located on the roof it would be located in the middle of the roof and the Applicant could put a screen around it for both visual and sound attenuation purposes.

Mr. O'Brien testified in regard to the trash enclosure area. He stated the trash enclosure will be located in the rear of the building. He stated the Applicant would propose an opaque-type surface and the trash enclosure will similarly comply with the color palette as set forth in the Redevelopment Plan.

The Applicant is also proposing a generator which he anticipated to be a diesel generator. Mr. O'Brien stated the generator would be needed to provide power in areas of the warehouse including, but not limited to, providing lighting, heating, the trash compactor and the office area. Mr. O'Brien estimated that the generator would provide approximately 25 to 35 kilowatts of power. Mr. O'Brien represented that specifications for the generator would be provided to the Land Use Board Engineer.

Mr. O'Brien stated that there would be no showers on site.

Mr. O'Brien testified that the interior aisles range from 12 feet to 14 feet in width. The width of the aisles is necessary for interior storage and to enable forklifts to operate safely and efficiently.

Mr. O'Brien next reviewed Exhibit A-2 which was identified as the

proposed trash compactor.

Engineering Testimony

Testifying on behalf of the Applicant was Daniel Davies, P.E., a licensed professional engineer in the State of New Jersey. Mr. Davies was qualified as an expert witness in the field of civil engineering. Mr. Davies testified that the Property has a total area of approximately 97.3 acres and is located with frontage on Stickles Pond Road with residential properties to the south, the Pequest River and farmland to the north, Stickles Pond to the east, and a shipping container storage yard to the west. There are also three (3) residential structures located on the site fronting onto Stickles Pond Road at the eastern end of the Property. Mr. Davies stated that the Applicant has submitted an application to SHPO because the Applicant wants to demolish the buildings but retain one (1) structure for residential use. Mr. Davies stated that the onus is on the Applicant to prove either an historical or non-historical context of the structures. If permitted by SHPO, the only residential structure to remain would be renovated and rehabilitated for use as a residential structure to be occupied by a manager of the warehouse.

Mr. Davies testified that the nearest well is located a distance of approximately 1,250 feet from the site. Furthermore, the nearest septic system is located approximately 950 feet from the site. Mr. Davies testified that the proposed septic system is sized for 1,900 gallons per day and the well is located in the rear corner and would serve only for potable water and not for fire suppression.

Mr. Davies stated that at the present time there is no formal stormwater management system in place on the site.

Mr. Davies testified that the property is encumbered by steep slopes and there is an existing asphalt runway as well as a grass runway from when the site was formerly occupied as an airport. Mr. Davies stated that the property has five (5) driveway access locations onto Stickles Pond Road. Two (2) of the driveways are related to the former airport use and three (3) of the driveways are related to the single-family dwellings. All of the five (5) driveways are not in active use.

Mr. Davies reviewed Exhibit A-3, which was identified as Sheet P-1 Presentation Exhibit. Mr. Davies testified that the Applicant has moved the driveway away from the residential properties with frontage on Stickles Pond Road so there would be no lights or truck movements in front of a residential house. The driveway is now across from the property designated as Block 134, Lot 9.

The Applicant agreed to attempt to move the main entrance farther away from the residential properties as long as there is proper sight distance, which shall be subject to the review and approval of the Board Engineer.

Mr. Davies also represented that the Applicant is waiting to receive a Letter of Interpretation (“LOI”) from the New Jersey Department of Environmental Protection (“NJDEP”).

Mr. Davies also reviewed the bulk standards in the Route 206 Economic Development Zone and stated that the Applicant meets the requirements of the

Zone. Furthermore, he highlighted the fact that the maximum building coverage permitted is 50 percent (50%) and the Applicant is proposing 15.6 percent (15.6%). Further, the maximum impervious coverage permitted is 75 percent (75%) and the Applicant is proposing 27.8 percent (27.8%).

Mr. Davies addressed stormwater management and stated the Applicant would be able to capture 100 percent (100%) of all proposed impervious stormwater runoff for the proposed site improvements. Mr. Davies also reviewed with the Land Use Board Exhibit A-2 which depicts the proposed trash compactor. Mr. Davies also reviewed with the Board Exhibit A-3 which is identified as a presentation exhibit for the proposed industrial building. He further reviewed with the Board Exhibit A-4 which depicts a slide gate for security purposes in regard to the emergency accessway; Exhibit A-5 which depicts heavy duty asphalt pavement detail and Exhibit A-6 which depicts a concrete loading pad & typical contraction/expansion joint layout detail. Next Exhibit A-7 consisting of two (2) sheets was reviewed with the Land Use Board which Exhibit depicts a stationary trash compactor by Seabright Products, Inc. Mr. Davies reviewed Exhibit A-8 with the Land Use Board. Exhibit A-8 consists of three (3) sheets, Sheets 1 of 11 is titled "8 Inch Single-Unit Details," Sheet 2 is Drawing No. 2 of 11 titled "Cap Unit Details" and Sheet 3 is Drawing 4 of 11 titled "Reinforced Wall Details," all of which depict the construction materials for the retaining walls. Mr. Davies also reviewed Exhibit A-9 which is a colored rendering of a retaining wall with the highest point of the wall being 6 feet. Mr. Davies next reviewed Exhibit A-10 which consists of three (3) sheets

as follows: Sheet 1 titled 9.8 Small-Scale Infiltration basins; Sheet 2 titled “Small-Scale Infiltration-Extended Detention Basin: Plan View”; and Sheet 3 titled “Small-Scale Surface Infiltration Basin Plan View and Profile View.”

Mr. Davies addressed Item 7.h. under the lighting and landscaping section of the Board Engineer’s Review Report dated October 25, 2024. Mr. Davies represented that the Applicant would comply with the Board Engineer’s recommendation that the access driveway lighting be reduced by increasing the spaces between lights and reducing the overall lighting on the site. Mr. Davies stated that the Applicant will remove some of the lighting along the access driveway and he would work with the Board Engineer to satisfactorily address his concerns. Mr. Davies also stated that by providing taller light poles than permitted by Ordinance, light would be able to cover more land and would result in fewer light poles being added to the site. Mr. Davies also represented that there would be shields on the lights. Next, Mr. Davies addressed Item 7.c. in the Board Engineer’s Review Report and stated that the Applicant would provide additional landscape islands and plant more trees in the parking lot but would still not achieve the Ordinance requirement of one (1) shade tree per every ten (10) parking spaces.

Mr. Davies next addressed Exhibit A-11 which consists of three (3) sheets identified as A-11 Sheet 1 which is titled “Sight Line Exhibit”; Sheet 2 is titled “Sight Line Profile-Sheet 1” and Sheet 3 is titled “Sight Line Profile-Sheet 2”. Mr. Davies reviewed Exhibit A-11 with the Board which represents Sight Lines

from various areas inclusive of 269 Stickles Pond Road, 259 Stickles Pond Road, 3 Bernard Drive, 4 Mt. Nebo Road and 207 Stickles Pond Road. Mr. Davies testified that in each case the sightlines would be for the most part be blocked by the existing vegetation and proposed vegetation as supplemented and the sightlines would basically permit the view of only the top of the building.

The Applicant stipulated that the trucks would have their back-up beepers off while on the site.

Mr. Davies stated that the utilities would be located underground to provide service to the warehouse building.

Mr. Davies represented that although the Applicant is not complying with the 25-foot drive aisle requirement and instead is providing a 24-foot drive aisle, the benefit is there would be a reduction in impervious coverage with the 24-foot drive aisle.

The Board Engineer commented that the Applicant requires a design waiver because the Applicant is not providing an evergreen hedge around the perimeter edge of the parking lot as set forth in Item 7.a. of the Board Engineer's Review Report. Next, as to paragraph 7.b. of the Board Engineer's Review Report, the Applicant is not planting street trees with a minimum size of 2.5-inch caliper along the street frontage, but the Applicant has agreed to supplement landscaping to the satisfaction of the Board Engineer.

Next, in regard to 7.c. of the Board Engineer's Review Report, the Applicant agreed to provide additional shade trees in the parking lot, but still requires an exception from design standards because the Applicant is not

proposing one (1) shade tree per every ten (10) spaces.

The Applicant stipulated that it would comply with the Andover Township Ordinance regarding sound levels at the Property line.

The Applicant stipulated that it would maintain a log of tractor trailers exiting the site and making a left turn and would have such information available to the Township should it be requested by Andover Township.

Mr. Davies reviewed with the Land Use Board the steep slope calculations for which the Applicant requires variance relief. In the slope category 15 percent (15%) to 24.99 percent (24.99%), the Applicant is allowed a maximum disturbance of 15 percent (15%). The Applicant is proposing disturbance of 29.1 percent (29.1%) measuring 115,701 square feet. In the slope category 25 percent (25%) to 34.99 (34.99%), where the maximum allowable disturbance is 3 percent (3%), the Applicant is proposing 22.6 percent (22.6%) resulting in a disturbance of 34,117 square feet. In the slope category greater than 35 percent (35%) where the maximum allowable disturbance is 0 percent (0%), the Applicant is proposing disturbance of 15.2 percent (15.2%) resulting in disturbance of 25,247 square feet. Mr. Davies represented that the Applicant has located the proposed warehouse building on the site in order to minimize steep slope disturbance as much as practicable.

Traffic Engineering Testimony

Testifying on behalf of the Applicant was Corey Chase, P.E., a licensed professional engineer in the State of New Jersey. Mr. Chase was qualified as an expert witness in the field of traffic engineering. Mr. Chase testified that the

Applicant has prepared a traffic impact study which addresses site access, on-site circulation as well as pre- and post-development analysis. Mr. Chase stated that the Applicant already has an end user which was factored into the analysis and results of the Traffic Impact Study dated July 25, 2024 (Traffic Impact Study) with revisions through October 16, 2024.

Mr. Chase testified that existing traffic data was collected during the weekday a.m. and weekday p.m. peak periods at Route 206 and Greendale Road and Stickles Pond Road as well as Route 206 and Fredon Springdale Road.

Mr. Chase reviewed Table 4 Trip Generation on page 6 of the Traffic Impact Study. Mr. Chase represented that the Applicant estimated on the high side by indicating that there would be 80 truck trips into the site and 80 truck trips out of the site for a total of 160 truck trips when based upon the information of the end user, there would only be 40 truck trips into the site and 40 truck trips out of the site. Mr. Chase stated that the traffic counts were conducted on one (1) day during July 2024 when schools were not in session. He stated he also considered the hours of operation of the facility as being 8:30 a.m. to 5:30 p.m. Mr. Chase also testified that there is sufficient area on-site for stacking of trucks if trucks arrive before 8:30 a.m.

Mr. Chase stated that access to the site is proposed to be provided via two (2) driveways along Stickles Pond Road. The western driveway will serve as access for employees and deliveries, while the eastern driveway will be gated and will serve as emergency access only. He further represented that only

passenger cars will be permitted to make a left hand turn out of the site driveway. All trucks exiting the site will be directed to turn right towards Route 206.

Mr. Chase also represented that with the addition of the site generated traffic, the intersection of Route 206 and Greendale Road/Stickles Pond Road is anticipated to operate at overall intersection levels of service “D” or better during the analyzed peak hours. Further, the westbound left turn/through/right turn movement is anticipated to degrade from the no build level of service “D” to build level of service “E” during the weekday evening peak hour. Further, Mr. Chase represented with the proposed reallocation of 4 seconds of green time from the Route 206 phase to the Greendale Road/Stickles Pond Road phase during the weekday evening peak hour, the no build level of service can be maintained. Mr. Chase represented that the project site driveways and internal circulation have been designed to provide for safe and efficient movement of automobiles and tractor trailers. He further confirmed that the proposed parking supply of 150 parking spaces as well as the design of the parking area is sufficient to support the proposed demand. Mr. Chase represented that the intersection of Stickles Pond Road and the site driveway would operate at a level of service “B” or better during the peak hour study.

Planning Testimony

Testifying on behalf of the Applicant was John McDonough, P.P., a licensed professional planner in the State of New Jersey. Mr. McDonough was qualified as an expert witness in the field of land use planning. Mr.

McDonough testified that the Applicant has designed a project that respects the land and is consistent with the standards in the Redevelopment Plan. He stated that the Redevelopment Plan was designed to spark redevelopment along the Route 206 corridor. The Applicant is proposing a permitted use within the Route 206 Economic Development Zone. Further, the Applicant is complying with all bulk controls including, but not limited to, building height, front, rear, and side yard setbacks and the proposed development is significantly below the permitted maximum building coverage and maximum impervious coverage.

In regard to steep slope disturbance, Mr. McDonough testified that the Applicant is able to stabilize the slopes that are being disturbed and there will be no negative impact on adjoining property owners.

In regard to parking supply, Mr. McDonough stated the Applicant is providing 150 parking spaces which is consistent with industry standards for the proposed warehouse use and is sufficient for the proposed operation which is anticipated to have 100 employees on-site at full operation with 150 parking spaces available.

With respect to parking stall size, where 10 feet by 20 feet is required and 9 feet by 18 feet is proposed, Mr. McDonough stated that the proposed parking stall size is standard and adequate for the proposed use. He further supported the request for design waiver relief for not providing curbing along all parking lots which will continue to permit sheet flow of stormwater which will now be captured by the proposed stormwater management system.

Mr. McDonough also addressed the request for design waivers for not

proposing an evergreen hedge along the perimeter edge of the parking lot, failing to provide street trees with a minimum size of 2.5-inch caliper along street frontages and failing to provide one (1) shade tree per every ten (10) parking spaces within the parking lot. Mr. McDonough represented that the Applicant is providing additional landscaping and supplementing the existing landscaping on the site as well as the fact that there is significant vegetation around the perimeter of the site. These factors lead Mr. McDonough to conclude that it is appropriate to grant relief from the design standards.

In regard to site lighting where the maximum permitted height of a pole light is 25 feet and 32 feet is proposed, the Applicant is agreeable to providing fewer lights which will be downward directed and dark sky compliant.

Mr. McDonough reviewed with the Planning Board Exhibit A-12 which is titled "Planning Exhibits for National Land Developers, LLC, 248 Stickles Pond Road, Township of Andover, NJ" consisting of four (4) sheets of aerial drone photographs of the site.

Mr. McDonough reviewed the purposes of the Municipal Land Use Law that would be advanced in regard to the request for variance relief. He stated that under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2a) the general welfare would be promoted because the proposed warehouse represents a critical link in the supply chain and improves logistics and shipping of products. Further, 2g) would be advanced which is to provide sufficient space in appropriate locations for a variety of commercial and industrial uses. He stated the location of the warehouse facility provides connectivity to the roadway

network and facilitates transportation of goods. Furthermore, 2m) would be advanced which is efficient use of land which in this case is taking an underutilized piece of property that was formerly an airport which has not been used in many years and readapting it to a productive use as a warehouse. Also, 2i) would be advanced which is to promote a desirable visual environment through creative development techniques and good civic design and arrangement. He stated the Applicant is proposing a very attractive building based upon the artist rendering, Exhibit A-1.

Mr. McDonough next addressed the negative criteria. He stated variance relief can be granted without substantial detriment to the public good. He stated the visual impact, traffic safety, as well as fire safety all have been satisfactorily addressed. He further stated that in regard to the second prong of the negative criteria, variance relief can be granted without substantial impairment of the zone plan and zoning ordinance. He characterized the relief sought as being not a substantial departure from the Route 206 Economic Zone/ Redevelopment Plan. Thus, he concluded that both the positive and negative criteria for granting variance relief has been satisfied and that the benefits of granting the deviation from the Zoning Ordinance requirements would substantially outweigh any detriment thus enabling the Board to grant variance relief.

Public Portion

The meeting was opened up to members of the public and the Board was addressed by Neil Hubbard, Linda Hubbard and Elan Alexander. The members of the public had general questions in regard to the location of vernal pools on the

subject Property and the depth of the water table in this area. The public also had questions in regard to the location of the western most access driveway. Further, the members of the public had questions in regard to the reallocation of traffic signal timing and general concerns about the volume of traffic in the area if the application were to be approved.

Mr. Davies indicated that the Applicant would attempt to move the main entrance farther west from the residential property known as Block 134, Lot 8.

The meeting was closed to the public and there were no further members of the public present who expressed an interest in this application.

NOW, THEREFORE, the Land Use Board hereby makes the following conclusions of law, based upon the foregoing findings of fact. The application before the Board is a request for preliminary and final site plan approval, “c” variance relief and exceptions from design standards for property known and designated as Block 151, Lot 21, as shown on the Tax Map of the Township of Andover and located at 248 Stickles Pond Road, Andover, New Jersey. The Property is located within the Route 206 Economic Development Zone.

The Applicant seeks approval in order to construct a 651,545 square foot warehouse with office space along with a total of 130 loading bays. The site improvements will include, but are not limited to, an access drive and loop road, a parking lot with a total of 150 parking spaces and associated lighting and landscaping.

The Property measures 97.3 acres in area. The site has frontage along Stickles Pond Road. The Property was formerly known and operated as Newton

Airport. Newton Airport is presently not operational. Wetlands and wetlands buffers impact the property. A pocket of wetlands, approximately 1.4 acres in size is located on the Property approximately 500 feet north of the western driveway access to the Property. Wetlands are also located along the banks of Stickles Pond to the east and along the Pequest River located to the north. Steep slopes which measure greater than 15 percent (15%) occupy approximately 16 acres of the 97.3 acre site.

Ancillary “c” Variance Relief

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance

requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Applicant requires ancillary “c” variance relief for steep slope disturbance under the Andover Township Code Section 190-32.3F(1)(2).

The Applicant also requires ancillary “c” variance relief in regard to the number of on-site parking spaces where 1,869 parking spaces are required and 150 parking spaces are provided.

The Board has examined the request for variance relief under the Municipal Land Use Law under the c(2) analysis. In Kaufman v. Planning Board for Warren Township, 110 N.J. 551, 563 (1988), the New Jersey Supreme Court held:

“By definition then no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning

requirements, create a hardship on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

The Board finds that the site measures 97.3 acres in area. The Applicant complies with substantially all of the bulk requirements in the Route 206 Economic Development Zone. However, the Board finds that the Applicant requires variance relief for steep slope disturbance. The Board finds that in the steep slope category of 15 percent (15%) to 24.99 percent (24.99%), the Applicant is permitted a maximum allowable disturbance of 15 percent (15%) and the Applicant is proposing disturbance of 29.1 percent (29.1%). In the steep slope category 25 percent (25%) to 34.99 percent (34.99%), the Applicant is permitted a maximum allowable disturbance of 3 percent (3%) and the Applicant is proposing a disturbance of 22.6 percent (22.6%). In the steep slope category greater than 35 percent (35%), the maximum allowable disturbance is 0 percent (0%) and the Applicant is proposing disturbance of 15.2 percent (15.2%).

The Board finds that the site measures 97.3 acres and steep slopes greater than 15% occupy approximately 16 acres of the site. The Board further finds that the Property is encumbered by wetlands and buffer areas. The Board finds that the Applicant has acted responsibly in attempting to locate the building on the site in an area that respects as much as possible the existing steep slopes on the Property. The Board further finds that the Applicant is permitted to provide building coverage at 50 percent (50%) and the Applicant is proposing only 15.6 percent (15.6%) building coverage and the Applicant is permitted maximum impervious coverage of 75 percent (75%) and the maximum impervious coverage

the Applicant is proposing is 27.8 percent (27.8%). The Board finds that the proposed building coverage and maximum impervious coverage are substantially below what is permitted in the Route 206 Economic Development Zone.

The Board further finds that in reviewing Section 190-32.3 which governs the regulation for development within steep slopes, that the purpose of the Steep Slope Ordinance is to provide for reasonable control of development within steep slope areas of the Township in order to minimize the adverse impact caused by the development of such areas, including, but not limited to, erosion, siltation, flooding, surface water runoff, alteration of natural drainage patterns, pollution of potable water supplies, and destruction of unique land forms and scenic vistas. The Board finds that the Applicant is able to stabilize the slopes that are being disturbed and there will be no negative impact on adjoining property owners. The Board finds that the purposes and integrity of the Steep Slope Ordinance is being maintained by the proposed development based upon the amount of disturbance of steep slopes and thus it is appropriate to grant “c” variance relief for steep slope disturbance.

Next, in regard to the request for variance relief for the number of on-site parking spaces where 1,869 parking spaces are required, and 150 parking spaces are proposed. The Board finds that the Applicant is providing sufficient on-site parking to accommodate the use and occupancy of the warehouse building. The Board accepts the representations of the Applicant that at full buildout it is anticipated that there will be 100 employees on site. The Board further accepts the representations of the Applicant that consumers or customers will not come to

the site. As a result, on-site parking is strictly for employees of the business. The Board finds that there is sufficient on-site parking to accommodate the needs of the end user of the Property as represented on the record by the Applicant. The Board also notes that the site will operate with a maximum of 100 employees and the trip generation will consist of truck deliveries and pick-ups. Therefore, the Board finds that 150 parking spaces will be more than sufficient to support the demand of the project.

Based upon the proofs presented, the Board determined that the Applicant satisfied the positive criteria such that the granting of the application will promote the purposes of the Municipal Land Use Law. More specifically, the Board finds that the purposes of the Act would be advanced under the MLUL pursuant to N.J.S.A. 40:55D-2. More specifically, 2a) is satisfied because the approval of this application would promote the general welfare by approving a permitted warehouse use, which will enable the Property to be developed significantly below the permitted maximum building coverage and maximum impervious coverage. Also, 2g) is satisfied because the approval of this application results in providing sufficient space in appropriate locations for a variety of commercial and industrial uses. The location of the warehouse facility provides connectivity to the roadway network and facilitates transportation of goods. Additionally, 2i) is satisfied by promoting a desirable visual environment through creative development techniques and good civic design and arrangement which is demonstrated by compliance with the color palette and design standards in the Route 206 Economic Development Zone. Finally, 2m) is satisfied because

the approval of this application results in more efficient use of land.

In addition, the Board finds that the goals of the Andover Township Master Plan were met, and the approval of this application will result in the adaptive reuse of the former Newton Airport and repurposing it and improving it to create a viable warehouse development which is a permitted use under the Route 206 Economic Development Zone. Thus, the Board finds that the Applicant has satisfied the positive criteria in regard to the granting of ancillary “c” variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2).

Next, as to the negative criteria, the Board finds that variance relief can be granted without substantial detriment to the public good. The Applicant has addressed the visual impact of the proposed development, fire safety and traffic safety as well as noise and steep slope disturbance such that there will not be a substantial detriment to the public good nor to the surrounding properties. Furthermore, ancillary “c” or bulk variance relief can be granted without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. The Board finds that the application is substantially in conformance with the Zoning Ordinance and is proposing a permitted use. The Board also finds that the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-70c(2) would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. The Board therefore finds that the negative criteria has also been satisfied and that it is appropriate to grant ancillary “c” or bulk variance relief under the Municipal Land

Use Law pursuant to N.J.S.A. 40:55D-70c(2).

**Exception from Design Standards Under the
Municipal Land Use Law Pursuant to N.J.S.A. 40:55D-51**

Under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-51, the Board has the power to grant exceptions from the requirements of site plan approval if the literal enforcement of one or more provisions of the Ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

The Board finds that the Applicant is proposing a parking stall size 9 feet by 18 feet where the Ordinance requires a parking stall size 10 feet by 20 feet. The Board finds that it is appropriate to grant an exception from design standards for parking stall size because of the nature of the proposed use of the Property which is essentially long-term parking for warehouse employees and the fact that customers and members of the public will not be accessing the site with the exception of UPS, Fed-Ex deliveries as well as tractor trailers. Also, the reduction in parking stall size results in less impervious surface on the site.

The Board finds that it is appropriate to grant an exception from design standards for not providing curbing along the parking lot. The Board finds that the Applicant is proposing a stormwater management plan that would adequately capture and discharge stormwater from the site without providing parking lot curbing.

The Applicant also requests an exception for design standards to have a 24-foot aisle width where 25 feet is required. The Board finds the deficiency to be de minimis and one that will not propose any significant or meaningful safety hazards and will also reduce impervious surface on the site.

The Applicant is not proposing to provide an evergreen hedge around the perimeter edge of the parking lot. The Board finds that the Applicant is, however, providing additional landscaping to supplement the existing natural vegetation on the property.

The Applicant also requires an exception from design standards because parking lots shall be landscaped with one (1) shade tree per every ten (10) spaces. The Board notes that the Applicant while not complying fully with this requirement is adding additional shade trees and enhancing landscaping on the site, but is still non-compliant with the Ordinance requirements.

The Applicant is providing light poles at a height of 32 feet where the maximum height of a light pole is 25 feet. The Board accepts the representations of the Applicant that even with the increased height to 32 feet, the Applicant is able to provide fewer light poles which light poles will have shields that are downward directed and will be dark sky compliant. Thus, the Board accepts the representations of the Applicant that having fewer light poles at a greater height makes better planning sense than having more light poles at a reduced height. The Board also finds that having fewer light poles at a greater height continues to permit the Applicant to cover the area as necessary with additional light which is sufficient for providing lighting that enhances safety.

The Board, therefore, finds that in regard to the request for exceptions for design standards for all of the reasons set forth herein, the Board finds that the literal enforcement of one or more provisions of the Ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question and, therefore, the Board finds that it is appropriate to grant exceptions

for design standards pursuant to N.J.S.A. 40:55D-51.

Preliminary and Final Site Plan Approval

The Board's authority in reviewing an application for site plan approval is limited to determining whether the development plan conforms with the zoning and the applicable provisions of the Site Plan Ordinance. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 228, 229 (1994); Sartoga v. Borough of W. Paterson, 346 N.J. Super. 569, 581-582 (App. Div. 2002), certif. denied, 172 N.J. 357 (2002). Thus, ordinarily a denial of a site plan application would be a drastic action when the pertinent ordinance standards are met. Shim v. Wash. Tp. Planning Bd., 298 N.J. Super. 395, 411 (App. Div. 1997).

Conclusion

Upon consideration of the plans, testimony and application the Land Use Board determines that the request for preliminary and final site plan approval, ancillary "c" variance relief and exceptions from design standards meet the minimum requirements of the Municipal Land Use Law, Case Law and Township Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Andover, that the application of National Land Developers, LLC, for premises commonly known and designated as Block 151, Lot 21, as shown on the Tax Map of the Township of Andover and located at 248 Stickles Pond Road, Andover, New Jersey in the Route 206 Economic Development Zone, is determined as follows:

1. Preliminary site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-46.
2. Final site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-50.
3. Ancillary “c” variance relief is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2) for steep slope disturbance and the number of on-site parking spaces.
4. Exceptions from design standards pursuant to N.J.S.A. 40:55D-51 regarding parking stall size, curbing not provided along all parking lots, 24 foot aisle width, no evergreen hedge proposed around the perimeter edge of a parking lot, parking lot not landscaped with one (1) shade tree per every ten (10) parking spaces and light pole height of 32 feet.

IT IS FURTHER RESOLVED that the above land use relief is granted subject to the following terms and conditions:

1. The development of the site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this Application.

2. The Applicant represents that all representations and stipulations made either by or on behalf of the Applicant to the Andover Township Land Use Board are true and accurate, and acknowledges that the Land Use Board specifically relied upon the Applicant’s stipulations in the Board’s granting of approval. If any representation or stipulation is false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Land Use Board at the time of the public hearing on October 29, 2024.

4. The Applicant shall comply with all terms and conditions set forth in the Board Engineer’s Review Report prepared by Cory L. Stoner, P.E., C.M.E. of

Harold E. Pellow & Associates, Inc. dated October 25, 2024 and as testified to during the hearing process.

5. The trailers will not be used for outdoor storage of products.
6. The warehouse building shall not operate as a trucking terminal for mass distribution of products.
7. Drivers of the tractor trailers are not permitted to sleep in their cab overnight on the site.
8. There shall be no repairs of trucks on-site nor shall there be any washing of trucks on-site.
9. The Applicant shall utilize the loading bays in the rear of the building to the extent possible before utilizing the loading bays in the front of the building.
10. The Applicant shall submit specifications for the generator regarding the proposed manufacturer, inclusive of the size and type of the generator to be installed on-site, for inclusion in the Board's file.
11. The Applicant shall be permitted to keep one (1) residential structure on the Property and renovate the structure for residential use and the other residential structures shall be removed but only if permitted and approved by the State Historic Preservation Office ("SHPO").
12. The trucks and tractor trailers accessing the site shall turn off their back-up beepers while on the site.
13. The Applicant shall add four (4) make-ready EV parking spaces to the site plan and shall submit revised plans to the Land Use Board which delineate the location of the four (4) make-ready EV parking spaces which shall be subject to

the review and approval of the Board Engineer.

14. The granting of this application is subject to Andover Township Construction Department approval.

15. The granting of this application is subject to Andover Township Fire Subcode Official approval.

16. The granting of this application is subject to Andover Township Soil Erosion and Sediment Control approval.

17. This approval is subject to the New Jersey Department of Environmental Protection (“NJDEP”) approval for all required land use approvals involving this application including, but not limited to, a permit or letter from the NJDEP that no permit is required for disturbance within the transition area of the wetlands labeled “Wetland E” on the plans.

18. The granting of this application is subject to and conditioned upon tractor trailer traffic not being permitted to make a left hand turn out of the site, but non-commercial automobiles are permitted to make a left hand turn out of the site.

19. The Applicant shall obtain a Freshwater Wetlands LOI from the NJDEP and submit a copy of the LOI to the Land Use Board secretary.

20. The granting of this application is subject to the Sussex County Health Department approval regarding the approval of any septic system that is constructed for this facility.

21. The granting of this application is subject to Sussex County Planning Board approval.

22. The Applicant shall submit a stormwater maintenance manual in

conformance with Stormwater Chapter 8 NJDEP Best Management Practices which shall be subject to the review and approval of the Board Engineer. Upon approval of the Board Engineer, the stormwater maintenance manual shall be recorded in the Office of the Sussex County Clerk and a copy of the recorded manual shall be provided to the Land Use Board Secretary for inclusion in the Board's file.

23. The Applicant shall maintain a log tracking trucks making a left turn out of the site and the logs shall be submitted to the appropriate Andover Township authorities upon request.

24. The Applicant shall make a good faith effort to obtain approval from the New Jersey Department of Transportation relative to signal timing changes and proposed reallocation of 4 seconds of green time from the Route 206 Phase to the Greendale Road/Stickles Pond Road phase during the weekday evening peak hour in order to maintain the no build level of service.

25. The Applicant shall work with the Board Engineer in order to provide pavement cores on Stickles Pond Road to ensure that Stickles Pond Road can handle the weight of tractor trailer traffic as proposed for this development.

26. The Applicant shall provide amended plans that delineate the areas where retaining walls will be constructed on the site and provide details of the wall design which shall be subject to the review and approval of the Board Engineer. The Applicant shall obtain construction permits before constructing any retaining walls.

27. The Applicant shall contact the NJDEP and confirm whether or not any threatened or endangered species are located on the Property including, but not

limited to, the Indiana Bat, confirm compliance with NJDEP Endangered Species Requirements and provide a copy of any correspondence or report from the NJDEP to the Board Secretary.

28. The Applicant shall make a good faith effort to attempt to move the main entrance farther away from the residential properties as long as there is proper sight distance, which shall be subject to the review and approval of the Board Engineer.

29. The Applicant shall provide revised plans which delineate areas of enhanced landscaping including adding landscaping in areas where the driveways are removed which shall be subject to the review and approval of the Board Engineer.

30. The Applicant shall submit a final stormwater report due to the additional soil logs which shall be subject to the review and approval of the Board Engineer.

31. The Applicant shall reduce the access driveway lighting by increasing the space between the lights and reducing the overall lighting on the site, the nature and sufficiency of which shall be subject to the review and approval of the Board Engineer. The proposed lighting shall be dark sky compliant.

32. The Applicant shall comply with the Noise Control Ordinance of Andover Township.

33. The Applicant shall adhere to the plans as approved by the Andover Township Land Use Board and no material field modifications shall be permitted unless prior approval is obtained from the Township Engineer or the Land Use

Board.

34. Prior to the signature of the plans by the Board Chair, Secretary and Engineer, any revisions to the plans shall be in conformance with any recommendations by the Andover Township Land Use Board and Board Professionals and as represented during the public hearing.

35. The granting of this application is subject to and conditioned upon the Applicant agreeing to open and to maintain an escrow account with Andover Township and to keep the account current with sufficient funds for inspection and review fees. Engineering review of revised plans and shop drawings is required. Engineering inspections will be necessary during all site work including the installation of storm drainage. Final engineering site inspection and review of the final as-built survey will be required prior to issuing a final certificate of occupancy.

36. The granting of this application is subject to and conditioned upon the Applicant submitting four (4) copies of an as-built survey prepared by a licensed professional land surveyor. As-built surveys are required to show the locations, dimensions, material types and setbacks of all aboveground and underground improvements, including septic system components, utilities, stormwater management facilities, etc. No certificate of occupancy will be recommended unless such documentation is submitted for review and approval by the Board Engineer.

37. The granting of this application is subject to and conditioned upon the Applicant complying with the October 22, 2024 report of Virgil R. Rome, Jr., Sussex County Fire Marshall and as represented on the record during the public hearing.

38. Certification that taxes are paid to date of approval.

39. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid by the Applicant within twenty (20) days of said request by the Board Secretary.

40. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Andover, County of Sussex, State of New Jersey, or any other agency or entity having jurisdiction hereunder.

VOTE ON APPLICATION

Motion Introduced By: Eric Karr.

Seconded By: Suzanne Howell.

In Favor: Paul Messerschmidt, Suzanne Howell, John Carafello, Joseph Ordile, Krista Gilchrist,
Eric Karr.

Opposed: Richard Skewes.

VOTE TO APPROVE RESOLUTION

Motion Introduced By: Suzanne Howell.

Motion Seconded By: Krista Gilchrist.

In Favor: Suzanne Howell, Krista Gilchrist, Eric Karr, Paul Messerschmidt.

Opposed: None.

Andover Township Land Use Board

/s/ Stephanie Pizzulo
Stephanie Pizzulo, Board Secretary

/s/ Paul Messerschmidt
Paul Messerschmidt, Chairman

The undersigned Secretary certifies that the within Resolution was adopted

by the Land Use Board of the Township of Andover on October 29, 2024, and memorialized herein pursuant to N.J.S.A. 40:55D-10g on December 3, 2024.

/s/ Stephanie Pizzulo

Stephanie Pizzulo
Land Use Administrator and
Board Secretary

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