

Use Variance Relief, Preliminary and
Final Site Plan Approval
Legacy Property Associates, LLC
1697 NJ State Highway 88
Block 842, Lot 16
Zone: R-7.5 (Residential) Zone
Application No. BA-3135-PSP-FSP-D-C-11/18
Resolution No.: R-27-19

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3135-PSP-FSP-D-C-11/18
JUNE 5, 2019**

WHEREAS, Legacy Property Associates, LLC (the "Applicant") has applied to the Brick Township Zoning Board of Adjustment (the "Board") for use variance relief pursuant to N.J.S.A. 40:55D-70d(1), preliminary and final site plan approval, pursuant to N.J.S.A. 40:55D-46 and 50, as well as bulk variance relief, pursuant to N.J.S.A. 40:55D-70c, for lands known and designated as Block 842, Lot 16 on the official Tax Map of the Township of Brick and more specifically known as 1697 NJ State Highway 88, Brick, NJ (the "subject Property"); and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was held on April 17, 2019, in the municipal building at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties having been heard; and

File
App'l.
Jackson
CBA.
CME
Went
6/7/19
Zoning, Assessor, Eng.

NOW, THEREFORE, the Board makes the following findings of fact based on evidence presented at its public hearing at which a record was made:

1. The Applicant is seeking use variance relief, preliminary and final site plan approval along with ancillary bulk variance relief to permit the demolition and removal of an existing +/-1,120 square foot masonry building and gravel parking area from the subject site. The Applicant proposes to construct a new 5,160 square foot "L"-shaped automotive repair and office building. The new building is proposed to have a footprint of approximately 4,090 square feet with a total of six (6) service bays within a single-story garage. A two-story office and storage area with a service counter and waiting areas is also proposed. A paved and curbed access and parking area containing a total of twenty (20) delineated parking spaces and a fenced +/-1,300 square foot vehicle storage area is also proposed. Access to the parking and vehicle storage area is proposed via a paved full-movement ingress / egress driveway extending from/to the westerly side of NJ State Highway Route 88 approximately 250 feet south of Laurelton Street. An underground "Stormtech" stormwater management basin is also proposed beneath the new parking area in order to mitigate the increase in stormwater runoff generated by the proposed development. Water and sanitary sewer service will be provided via connection to the existing utility mains near the site frontage. A new sidewalk is also proposed along the site frontage. New landscaping and lighting, and a 6-foot high white vinyl fence in the rear portion of the property are further proposed.

2. The subject Property contains +/-22,500 square feet (0.517-acres) with 150 feet of frontage along the westerly side of NJ State Highway Route 88 approximately 125 feet south of Laurelton Street and directly opposite Allaire Avenue. The subject Property is located within the B-1 (Neighborhood Business) Zone, as are the adjacent properties to the north and south, which contain a medical office building under construction and vacant, wooded open space. The adjacent properties to the west contain residential uses within the R-7.5 (Single Family Residential) Zone. The properties across Route 88 to the east are improved with a medical office and an auto body/towing business, both in the B-3 (Highway Development) Zone. The subject Property is currently improved with an existing auto repair business consisting of a +/-1,120 square foot masonry shop and office building as well as partially fenced outdoor vehicle storage areas comprised primarily of compacted gravel and dirt. The entire frontage of the subject Property is encumbered by a 20-foot wide easement dedicated to the Brick Township Municipal Utility Authority (BTMUA). The NJDEP GeoWeb program does not identify any wetlands, wetlands transition areas or open water features on or in the immediate proximity of the subject Property. The subject Property is also not located within a regulated flood hazard area delineated on the FEMA Preliminary Flood Insurance Rate Map, but it is located within the CAFRA Zone.

3. The Applicant is seeking use variance relief pursuant to N.J.S.A. 40:55D-70d(1) as well as preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50 permitting the demolition of the existing auto repair facility which is not a permitted use in the R-7.5 Zone and the construction of a new and larger auto repair facility.

4. The Applicant has requested the following ancillary bulk variance relief from the following R-7.5 Zone requirements, however, as discussed infra., such relief is subsumed within the grant of use variance relief.

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Maximum Impervious Coverage	60%	9%	76.5%
Minimum Required Number of Parking Spaces ⁽¹⁾	78 spaces	N/A	18 spaces
Minimum Parking Setback to R.O.W.	20 feet	N/A	10 feet
Minimum 3' High Berm Where Parking Stall is Adjacent to ROW	Required	No	No
Minimum Buffer Width	30 feet	Unknown	20 feet
Minimum Parking Area Setback to Residential Zone	25 feet	Unknown	20 feet
Minimum Site Setback – Accessory Structures (Refuse Enclosure)	10 feet	N/A	+/-9 feet
Refuse Enclosure: 8' by 8' for refuse and 8' by 8' for recyclables (8' by 16' total)	Required	No	(10' by 10' only)
Minimum Landscaping Area Width Around 3 Sides of Refuse Enclosure	5 feet	N/A	0 feet

(1) Three (3) spaces per 200 square feet of floor area in an automobile service station

5. The Applicant was represented by John J. Jackson, III, Esq. Mr. Jackson stated that the Applicant owns and operates an auto repair and towing facility on the subject Property. He explained that the Applicant was now seeking use variance relief along with preliminary and final site plan approval permitting the demolition and removal of the existing masonry building and gravel parking area on the subject Property and construction of a new automotive repair and office building. He stipulated that the Applicant would cease its towing operations on the site in the event of an approval.

6. The Applicant's Architect, David Hartdorn, AIA, testified that the new proposed building would have two (2) stories and contain six (6) bays for automotive repair as well as office space on the bottom level. He stated that the proposed structure would also have a high vaulted ceiling creating an "old industrial" look with a brick façade and metal roof canopy. Mr. Hartdorn further testified that the Applicant proposed to install a compliant monument sign and façade sign.

7. The Applicant's Engineer and Planner, Jeffrey J. Carr, P.E., P.P., testified that the Applicant proposed to remove two (2) parking spaces and add a loading zone to the subject Property. He stated that the Applicant would also plant a single row of trees in the rear of the subject Property to act as a buffer. Mr. Carr explained that neither windows nor doors would be installed in the rear façade of the proposed building. He further stipulated that the Applicant's towing operation would be moved off-site and that towing operations would therefore be prohibited on the subject Property.

8. Mr. Carr then testified that the Applicant was seeking d(1) use variance relief to permit the construction of a new building containing a larger auto repair facility which is a use that is not permitted in the B-1 Zone. He explained that the existing structure and use had previously received use variance relief. Mr. Carr further stated that the Applicant would also seek bulk variance relief for the maximum impervious coverage on the site where 76.5% is proposed and 60% maximum is permitted. He opined that adequate drainage would exist on the subject Property because the Applicant was proposing to add landscaping in the rear of the lot, as well as shrubs along the front. Mr. Carr then stated that the Applicant was also requesting bulk

variance relief for parking where 18 spaces were proposed and the Ordinance requires 78 parking spaces. He testified that the new structure would contain 6 bays and that the majority of cars that may be parked overnight would be parked in those bays. He believed that this would be an improvement from the current situation where the Applicant only has two bays which exacerbates the need for parking of cars outdoors. Mr. Carr explained that the subject Property has been used as a motor vehicle repair use for a number of years.

9. He further testified that an auto body shop exists nearby which is located in the B-3 Zone. Mr. Carr stated that a motor vehicle repair use is permitted across the street (Route 88). He then testified that the new proposed structure would enhance the light, air and open space on the subject Property, improve the traffic configuration and promote a desirable visual environment. He, therefore, concluded that the Applicant satisfied the positive criteria for use variance relief. He further testified that the negative criteria had been satisfied because relief would not result in a substantial detriment to the neighborhood as the motor vehicle repair use has existed for years. Mr. Carr further testified that the Applicant would comply with all Brick Police Department and Bureau of Fire Safety recommendations and that all signs and striping on the subject Property would comply with the Ordinance.

10. The Applicant's representative, Gilbert DaSilva, testified that the Applicant would have seven (7) employees on the site. He stated that the hours of operation for the business would be 8:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturdays. Mr. DaSilva explained that it was possible that the business would remain open until 5:30 or 6:00 p.m. one night a week. He then testified that the Applicant did have the ability to

rent parking spaces at a business across the street (the Board notes that this parking arrangement is not part of this application). Mr. DaSilva further testified that the employees would park in the area designated on the plans as a vehicle storage area. He stated that the largest truck permitted to be worked on on-site would be a pickup truck. Mr. DaSilva further testified that a driveway access application is currently pending before NJDOT. He added that the size of the proposed parking spaces would be 9 feet by 18 feet.

11. The Applicant's other representative, Mike DaSilva, testified that it was more likely that five (5) to six (6) employees would be on-site. He stated that any cars that would require overnight storage would be located in the six (6) bays. Mr. DaSilva further testified that the Applicant would restripe all parking spaces and revise the plans accordingly. He next stated that the Applicant proposed one (1) identification sign to be located on the new structure and that the proposed lighting plan would comply with Ordinance requirements. Mr. DaSilva explained that the pending NJDOT application proposed that vehicles would be permitted to make a left from the subject Property onto Route 88. He added that the Applicant would work with the Township staff and professionals on the landscaping to be installed on the site.

12. Mr. DaSilva further testified that the Applicant was proposing one (1) monument sign and one (1) façade sign, both of which would be compliant with Ordinance requirements. He stated that the proposed signage would be shown on the revised plans. Mr. DaSilva added that the plans would also be revised to show solid waste storage which would include a rolling dumpster. He further testified that the Applicant would break down cardboard for recycling and store the cardboard in the dumpster area.

13. The Applicant's Architect, David Hartdorn, AIA, testified that the height of the proposed structure would be 29 feet where a 35 foot maximum height is permitted for permitted uses in the zone.

14. There were no members of the public present who expressed any interest in or objection to the application.

NOW, THEREFORE, the Board makes the following conclusions of law based on the foregoing findings of fact:

1. The Applicant is seeking use variance relief, preliminary and final site plan approval as well as ancillary bulk variance relief to permit the demolition and removal of the existing +/-1,120 square foot masonry building and gravel parking area from the subject Property and to allow the construction of a new 5,160 square foot L-shaped automotive repair and office building on site, which is located in the R-7.5 (Residential) Zone.

2. Under the Municipal Land Use Law, a Board of Adjustment, when considering a "d" variance, relief cannot be granted unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

3. The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no

precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

4. The Board first recognizes that the subject Property had previously been granted use variance relief for the same use and has been successfully used as an automobile repair facility for years and that the proposed new structure on the subject Property does not in any way alter the Board's prior conclusions regarding the positive criteria. The Board also finds that

there will be a minimal number of employees on-site and that the hours of operation are essentially Monday through Friday with the earliest employees generally arriving at 8:00 a.m. and leaving at 5:00 p.m. In addition, there are limited work hours on Saturday which reduces the intensity of use of the subject Property. The Board finds that pursuant to N.J.S.A. 40:55D-2a, the general welfare will be promoted by approval of this application; 2g is also promoted by providing sufficient space in appropriate locations for a variety of commercial uses; and 2m is promoted because the approval of this application will result in more efficient use of land.

5. The Board finds that the continued promotion and improvement of these goals of planning makes the subject Property particularly suited for the proposed use. The Board once again finds that the subject Property has been successfully used as an automobile repair facility for years. The Board is also mindful of the fact that the subject Property is located in a residential zone, but that adjoining commercial businesses exist in the vicinity. The Board therefore finds that the ability to upgrade the automobile repair facility (along with the elimination of the Applicant's towing service) use fits in well with the neighborhood and constitutes an improvement of the existing automobile repair use. The Board therefore concludes that the positive criteria has been satisfied.

6. Turning next to the negative criteria, the Board finds that, variance relief can be granted without substantial detriment to the public good and that the variance can be granted without substantial impairment of the zone plan and zoning ordinance. As previously stated, the Applicant was previously granted use variance relief for the same use. The Board specifically finds that the modernization, improvement and enlargement of the facility to six (6) bays will

reduce the outdoor storage of vehicles and improve traffic circulation on the subject Property. The Board further finds that the proposed landscaping will provide a buffer from the adjacent residential properties and enhance the aesthetics of the subject Property. The architecture of the new building is also an aesthetic upgrade. The Board therefore concludes that the proposed use will not result in substantial detriment to the zone plan or zoning ordinance or to the public good. The negative criteria has therefore been satisfied.

7. The Board further finds that the Applicant has satisfied the enhanced burden of proof. As stated above, the Applicant has proposed to upgrade the existing automobile repair facility which would improve the existing automobile repair use. Providing enhancements to a commercial use that has existed for years on the same site is consistent with the Township Master Plan. The Board finds that the subject site is suitable for the proposed improvements as other properties in the neighborhood contain commercial uses. Thus, the Board finds the upgraded automobile repair facility use fits well with the neighborhood. The Board therefore finds the Applicant has satisfied the enhanced criteria.

8. Generally, an application for a “c” and “d” variance cannot co-exist. If the application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use. A Zoning Board in considering a use variance must then consider the overall site design. In essence, the “c” variances are subsumed in the “d” variance. Puleio v. North Brunswick Zoning Board, 375 N.J. Super. 413 (App. Div.). certif. den. 184 N.J. 212 (2005). The Board, therefore, concludes that the grant of use variance relief has subsumed all “c” variances.

9. The Applicant does not require any further relief beyond that which has been previously discussed. Preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50 may therefore be granted. The Applicant must, however, adhere to the specific conditions contained below.

NOW, THEREFORE, BE IT RESOLVED, by the Brick Township Zoning Board of Adjustment on this 5th day of June, 2019, that the action of the Board taken on April 17, 2019 granting Application No. BA-3135-PSP-FSP-D-C-11/18 of Legacy Property Associates, LLC for use variance relief, pursuant to N.J.S.A. 40:55D-70d(1) and preliminary and final site plan approval, pursuant to N.J.S.A. 40:55D-46 and 50 is hereby memorialized, subject to the following conditions:

1. Applicant shall comply with standard Zoning Board of Adjustment conditions as set forth in attached Schedule "A".
2. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application, as revised by the terms hereof.
3. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with the recommendations contained in the reports of the Board's professionals.
4. The Applicant shall revise the sign plan to depict a compliant monument-style sign and façade sign subject to the review and approval of the Board Engineer and Board Planner.

5. The Applicant shall install in-ground landscaping at the front and rear of the building, subject to the review and approval of the Board Engineer and Board Planner.
6. Towing services are prohibited on the subject Property.
7. The Applicant shall secure all required permits and approvals from the NJDOT.
8. The Applicant shall utilize a rolling dumpster on-site, which shall also be depicted on the plans.
9. The parking area shall be re-striped.

BA-3135-PSP-FSP-D-C 11/18
LEGACY PROPERTY ASSOCIATES, LLC

June 5, 2019

VOTE ON MEMORIALIZATION

MOVED BY: Mr. Mizer

SECONDED BY: Ms. White

VOTING IN THE AFFIRMATIVE: Mr. Chadwick, Mr. Mizer, Mr. Jamnik, Ms. White,
Mr. Sorrentino, Ms. Strassheim, Mr. Langer

VOTING IN THE NEGATIVE:

INELIGIBLE:

IN-CONFLICT:

ABSTAINING:

ABSENT: Mr. Anderson

PRESENT BUT NOT VOTING:

CERTIFICATION

I, PAMELA O'NEILL, Clerk/Secretary to the Board of Adjustment of the Township of Brick, County of Ocean, State of New Jersey, do hereby certify that I am duly authorized to certify Resolutions. I certify that the foregoing Resolution was adopted by the Board of Adjustment of the Township of Brick at a regular meeting held on the 6st of June.



PAMELA O'NEILL, Clerk/Secretary
Planning Board/Zoning Board

BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT

SCHEDULE "A"

1. Applicant shall provide the Board with documentation that all real property taxes have been paid through the calendar quarter of the date of the resolution of approval.
2. Applicant shall obtain signed documentation from the Code Enforcement Officer, Construction Official and Township Engineer certifying compliance with all terms and conditions of this resolution.
3. Applicant shall apply for and obtain all necessary permits and approvals from the Township Building Department prior to commencing and construction or renovation work.
4. No construction permit shall be issued by the Township until all application, escrow and Professional fees (required fees) have been paid to the Board, and confirmation has been obtained from the Board Secretary that the required fees have been paid. In the event a construction permit is issued when any fees remain due to the Board, the permit shall be automatically suspended, and all work shall cease and terminate until the required fees have been paid.
5. Applicant shall post, file or pay all required performance bonds, maintenance guaranties, engineering fees and inspection fees.
6. Applicant shall apply for and obtain approvals from all other municipal, county, state and federal agencies having regulatory jurisdiction over this application.
7. If applicant has asserted that the improvements referred to in this resolution are the subject of a Permit by Rule or waiver of the Department of Environmental Protection of the State of New Jersey (NJDEP), then applicant shall provide the Board with documentation demonstrating compliance with NJDEP rules and regulations.
8. In the event there is an existing violation of any municipal rule, regulation or ordinance, applicant shall have 30 days from the date of the resolution of approval to correct the violation. Failure to correct the violation within this time period shall constitute reasonable cause for the issuance of a summons and complaint to the applicant or other responsible parties.

9. All testimony, stipulations of the applicant, stipulations of the applicant's representatives, exhibits marked into evidence and deliberations of the Board are incorporated in this resolution by reference, and to the extent that the foregoing impose additional or more detailed conditions of approval than those contained elsewhere in this resolution, such conditions of approval are adopted as if set forth at length herein and are incorporated in this resolution by reference.
10. This development approval shall be null and void unless applicant's obtain a construction permit from the municipality and commence work under the permit within two years from the date of this resolution.
11. Applicant shall comply with all ordinances, rules, regulations, statutes and other provisions concerning the provision of Affordable Housing Units in the Municipality and/or the payment of fees imposed by the Township or the state of New Jersey.
12. Applicant shall provide proof of application for Title NJSA 39:5 A-1 to the Zoning Board of Adjustment.