

RESOLUTION
OF THE
LAND USE BOARD OF THE BOROUGH OF NEPTUNE CITY
GRANTING USE VARIANCE AND PRELIMINARY AND FINAL
SITE PLAN APPROVAL WITH VARIANCES AND WAIVERS

APPLICANT: T.F.H. PUBLICATION, INC.
BLOCK 26, LOT 2
APPLICATION: NCPB # 17-02

WHEREAS, T.F.H. Publication, Inc. (hereinafter referred to as "applicant") is the owner of Block 26, Lot 2 on the Tax Map of the Borough of Neptune City, in the State of New Jersey, County of Monmouth (hereinafter referred to as "premises"); and

WHEREAS, the premises is located in both the Residential Commercial Zone (RC Zone); and

WHEREAS, the applicant has applied to the Land Use Board of the Borough of Neptune City to demolish the existing building and renovate the property and use the property as a parking lot. As a result of the application, the applicant requires the following relief:

Variances:

1. Use Variance (D-1): Use Variance. A Parking Facility is a non permitted use in the Residential Commercial Zone.
2. Variance from Lot Coverage Requirement, which permits a maximum lot coverage of 70%, where 84.3% is proposed (Existing 74.3%)

3. Variance from Lot Area requirement, which requires a minimum lot area of 10,000 square feet, the lot is only 8,052 square feet. (Existing Condition 8,052 square feet)
4. Variance from Lot Depth requirement, which requires a lot depth of 75 feet, the lot is only 67.54 feet deep. (Existing 67.54 feet)
5. Waiver from Minimum Aisle Width, which requires a minimum aisle width of 25 feet, 24 feet is proposed.
6. Waiver from parking setback, requires parking 5 feet from right of way, 2.6 feet is proposed.
7. Waiver from driveway setback, which requires 1 25 foot setback from crosswalks, applicant proposes 10.1 feet. (4.8 feet existing)
8. Waiver from buffering requirement, buffer is required to be 5 feet, applicant is proposing a 2 foot buffer.
9. Waiver from Lighting Requirement, which requires 1.5 foot candles in the parking area, applicant deviates from this requirement.

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

WHEREAS, the public hearing was held on June 13, 2017; and

WHEREAS, the applicant has produced the sworn testimony of Glenn S. Axelrod, President and CFO of TFH Inc. and Michael Geller, P.E. and P.P and the following exhibits were submitted with the application, reviewed by the Board, and shall be considered marked as in evidence as follows:

A-1	Plans entitled "Preliminary and Final Site Plans" consisting of 8 sheets prepared by Robert Sive P.E. dated May 22, 2017.
A-2	Survey of property Lot 2, Block 26 consisting of 1 sheet prepared by Ronald W. Post, PLS dated January 27, 2017.
A-3	Picture of Subject Property.

WHEREAS, the Board has reviewed testimony of its professionals and marked as LUB-1 the Report of Leon S. Avakian, Inc. dated June 2, 2017; and

WHEREAS, members of the public appeared on this application and testified as to the impact of the proposed use on their property; and

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

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

Variances and Design Waivers:

- a. Use Variance (D-1): Use Variance. A Parking Facility is a non permitted use in the Residential Commercial Zone.
- b. Variance from Lot Coverage Requirement, which permits a maximum lot coverage of 70%, where 84.3% is proposed (Existing 74.3%)

- c. Variance from Lot Area requirement, which requires a minimum lot area of 10,000 square feet, the lot is only 8,052 square feet. (Existing Condition 8,052 square feet)
- d. Variance from Lot Depth requirement, which requires a lot depth of 75 feet, the lot is only 67.54 feet deep. (Existing 67.54 feet)
- e. Waiver from Minimum Aisle Width, which requires a minimum aisle width of 25 feet, 24 feet is proposed.
- f. Waiver from parking setback, requires parking 5 feet from right of way, 2.6 feet is proposed.
- g. Waiver from driveway setback, which requires 1 25 foot setback from crosswalks, applicant proposes 10.1 feet. (4.8 feet existing)
- h. Waiver from buffering requirement, buffer is required to be 5 feet, applicant is proposing a 2 foot buffer.
- i. Waiver from Lighting Requirement, which requires 1.5 foot candles in the parking area, applicant deviates from this requirement.

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

- a. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private,

according to their respective environmental requirements in order to meet the needs of all New Jersey Citizens.

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

The subject property is 8,052 square feet and contains an existing one story dilapidated building. The property is undersized for the zone, which requires a minimum lot area of 10,000 square feet and the lot is only 8,052 square feet. The lot also has deficient lot depth. The property is located at the corner of Route 35 and Green Avenue. The prior use of the lot was an auto mechanic shop.

The applicant is the owner of the nearby TFH factory, which is located on Route 35 and Myron Avenue. The applicant desires to tear down the dilapidated building and convert the property to a parking lot for additional parking for the facility. The applicant proposed the lot only to be used between the hours of 7am and 7pm.

Since a parking area is not a permitted use in the zone, the applicant requires a Use Variance. Under the M.L.U.L., the applicant is required to prove that the proposed use promotes the general welfare, because the proposed site is particularly suited for the proposed use. Additionally, the applicant is required to prove the “negative criteria”, which requires the applicant to prove that the use variance can be granted without substantial detriment to the public good and that the granting of the use variance will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinances. Since this application is for a “use” variance the applicant is also required to provide enhanced quality of proofs, so the Land Use Board can

make clear and specific findings that the granting of the requested variance will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan or Zoning Ordinance.

The applicants planner testified that the site is in need of redevelopment and due to its undersized nature and due the proximity to the TFH facility, the site is particular suited to be a parking lot, which is permitted in the zone as an accessory use, but not as a primary use. The site is particular suited for this use due to the undersized nature of the lot, which limits the commercial use of the lot. With the required setbacks, a conforming commercial building could not be developed on the lot. However, with the parking lot use, the small site accommodates this use.

The applicant is also proposing to develop the property with only access to Green Street, which will eliminate the access onto Route 35, which would be a benefit to the traffic flow in the area. Additionally, the Planner testified that the proposal advances the purposes of the Master Plan, because there would be a substantial improvement to the vacant lot and that the use is consistent with the Master Plan, since parking lots are a permitted accessory use in the Zone.

With respect to the negative criteria, the Planner testified that the property is being enhanced and the applicant, after discussions with the Board, will be providing a new 8 foot solid fence abutting to the residence, which will provide substantially greater buffer than the existing condition. Additionally the use, which is limited to 7am to 7pm will have substantially less impact on the adjoining lots, as compared to any permitted use in the zone. Based on this testimony, the Planner opined that the applicant satisfied the criteria for a use variance approval.

The Board has heard the testimony of the witnesses and have reviewed the subject property and finds that based on the facts set forth in this resolution and the testimony of the

applicant's engineer and planner, the applicant has satisfied the positive and negative criteria for a Use Variance to permit a parking lot on the property, subject to the conditions contained in this resolution.

With respect to the lot area and lot depth variances, these are existing conditions that the applicant cannot remove. As a result, the variance for lot area and lot depth variance are granted.

With respect to the lot coverage variance, the applicant is proposing only an increase of 805 square feet from the existing condition. The minor increase in lot coverage is consistent with the surrounding development and based on the engineering, there is no negative drainage effects associated with the increased lot coverage. As a result, the Board hereby grants the lot coverage variance.

With respect to the aisle width, buffer, parking setback and driveway setback design waivers, they are all created by the unique size of the lot. As a result of the lot being undersized, it would be a hardship for the applicant to design the project with these design criteria, As a result of the hardship due to the lot size, the applicant is granted these design waiver.

With respect to the lighting design waiver, the applicant has agreed to comply with the requirement that there will be no light spillage on Route 35 and onto the adjoining residential home. The only deviation will be in the lot. As a result of the condition regarding spillage onto Rt 35 and the adjoining residential lot, the Board hereby grants the light waiver.

With respect to all of the requested variances, the Board finds that the applicant has met his burden with respect to the variances requested because they relate to this specific property, the purposes of the Municipal Land Use Law would be advanced by the deviation from the zone requirements, the deviations can be granted without substantial detriment to the public good, the

benefits of the deviations substantially outweigh any detriment; and the granting of the variances will not substantially impair the intent and purpose of the planning and zoning ordinances.

The Board finds that all the requested waivers are reasonable considering the size and location of the proposed development, that the literal enforcement of the provisions of the Land Use Ordinance will result in undue hardship, that the waivers will not affect the overall conformity of the proposed project to the Master Plan, and that alternate designs would be less desirable from a planning perspective, and therefore the Board grants the requested waivers. Based on these findings, the Board grants the design waivers and completeness waivers.

Based on the above, the Board hereby grants Use Variance Approval and Preliminary Final Site Plan approval subject to the conditions contained in this resolution.

NOW, THEREFORE, BE IT RESOLVED that this resolution serves as a memorialization of the Board's decision to grant Use Variance, Preliminary and Final Site Plan Approval with Variances and Design Waivers on June 13, 2016, subject to the conditions as follows:

1. The Applicant shall obtain all state, county and local government approvals as required by law.
2. The Applicant shall pay all professional fees, including attorney, engineering and planning fees, incurred by the Land Use Board of the Borough of Neptune City in connection with the applicant and no further improvements shall be granted by the Zoning Board and no permits, including building permits and certificates of occupancy shall be issued to the applicant until such payment is made.
3. This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in

connection with this application, all of which are incorporated by reference and specifically relied upon the Board in granting this approval. The condition which shall be deemed satisfied unless and until the Board determines (on Notice to the applicant) that a breach hereof has occurred.

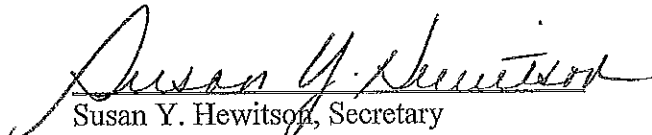
4. No taxes or assessments for local improvements shall be due or delinquent on the subject property.
5. Subject to Monmouth County Planning Board Approval or letter of Exemption.
6. Subject to Freehold Soil Approval.
7. Subject to DOT approval or Letter of no interest, if required by the Board Engineer.
8. Applicant shall post all necessary bonds and inspection fees.
9. Applicant shall have the 2 lights on the site off at 7pm and is only permitted to keep the proposed light on the corner of Rt 35 and Green Avenue. If there are complaints about the light, the night lighting plan shall be reviewed by the Township Engineer to limit the night lighting on the property.
10. Applicant shall revise the plans to add a No Right Turn sign at exit onto Green Street, subject to approval by the Board's Engineer.
11. Applicant shall execute the necessary documentation to have Title 39 enforced on the lot.
12. Applicant is prohibited from parking trucks on the lot and prohibited from overnight parking of truck or any other vehicle.
13. Applicant shall revise the lighting plan to eliminate any light spillage (no more than 1 foot candle) onto Route 35 or the adjoining residential use, subject to review and approval by the Board's Engineer.

14. Applicant shall have the gate on a timer and opened at 7am and closed at 7pm.
15. No handicap spaces are required on the site, unless required by the construction official.
16. Applicant shall revise the plans to provide a 8 foot solid white vinyl fence along the property line of Lot 4, except for the 20 feet from Green Avenue. Applicant is granted the fence height variance, since this was by the request of the Board.
17. Applicant shall revise the plans to provide driveway exit to angle to Route 35, subject to review and approval by the Board Engineer.

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

CERTIFICATION

I hereby certify that the foregoing is a true copy of the resolution adopted by the Borough of Neptune City Land Use Board at a meeting held on July 11, 2017.


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

The vote on the Motion
To approve this application:

YES: P. Gerand, Randy Reynolds,
Robert Reynolds, R. Shafer, J. Amoscato
M.McGuigan, L. Cross, R. Biggs

NO: None

ABSTAIN: None

The Vote on the Resolution of
memorialization was as follows:

YES: Randy Reynolds, R. Shafer,
R. Biggs

NO: None

ABSTAIN: Erin Maciorowski