

TOWNSHIP OF MIDDLETOWN

Zoning Board of Adjustment and Appeals

1 Kings Highway
Middletown, NJ 07748-2594

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TECHNICAL MEMORANDUM

DATE: January 12, 2023
APPLICATION: JLV Holdings, LLC (#2022-022)
550 Highway 36, and 147 and 151 Morris Avenue
Block 488, Lots 1, 4.01 and 4.02
Preliminary and Final Major Site Plan; Use “d” Variance; and
Bulk “c” Variances

PROPOSAL

The applicant requires Preliminary and Final Major Site Plan, Use “d” and Bulk “c” variance approval to adjust the shared rear lot lines between Block 488, Lots 1, 4.01 and 4.02 to make Lot 1 larger and Lots 4.01 and 4.02 slightly smaller in lot area; and construct a gravel storage area, retaining wall, fencing and site grading on Block 488, Lot 1. The subject property is in the Business (B-3) Zone, and contains an existing permitted non-residential use on Lot 1; and non-permitted single-family residential uses on Lots 4.01 and 4.02.

Preliminary and Final Major site plan approval is required for Lot 1 due to proposed off-tract improvements including 34 evergreens to be planted along the rear of Lots 4.01 and 4.02. Lots 4.01 and 4.02 contain existing non-conforming residential uses in the B-3 Zone. Use “d2” Variance approval is required due to the reduction of lot area of each residential lot which is interpreted as an expansion of a non-conforming use. The existing and proposed lot area for Lots 4.01 and 4.02 is noted in the table below:

		Lot 4.01		Lot 4.02	
	<i>Required</i>	<i>Existing</i>	<i>Proposed</i>	<i>Existing</i>	<i>Proposed</i>
Min. Gross Lot Area	3 acres	0.502 ac	0.368 ac	0.371 ac	0.325 ac
Min. Buildable Lot area	2.5 acres	0.502 ac	0.368 ac	0.371 ac	0.325 ac

Bulk “c” variance approval is required for the following:

- Lot 1
 - Gross Lot area, 3 acres required, 1.257 acres exists, and 1.437 acres is proposed
 - Buildable Lot area, 2.5 acres required, 1.257 acres exists, and 1.437 acres is proposed
 - Lot coverage (2 stories) 60% maximum permitted, 96.1% exists, and 98.4% is proposed

The subject property contains the following existing non-conforming conditions:

- Lot 1
 - Front yard setback, 75' required, 24.2' exists
 - Gross floor area, 5,000 sf required, 4,072 sf exists
 - First floor area, 5,000 sf required, 4,072 sf exists
- Lot 4.01
 - Lot frontage, 200' required, 75.75' exists
 - Front yard setback, 75' required, 46.9' exists
 - Side yard setback, 25' required, 18.3' and 19.7' exists
 - Gross floor area, 5,000 sf required, less than 5,000 sf exists
 - First floor area, 5,000 sf required, less than 5,000 sf exists
- Lot 4.02
 - Lot frontage, 200' required, 75.68' exists
 - Front yard setback, 75' required, 46.9' exists
 - Side yard setback, 25' required, 18.2' and 20' exists
 - Gross floor area, 5,000 sf required, less than 5,000 sf exists
 - First floor area, 5,000 sf required, less than 5,000 sf exists

PROPERTY DESCRIPTION AND HISTORY, ZONING AND SURROUNDING LAND USES

The subject property contains three (3) lots including Block 488, Lots 1, 4.01 and 4.02. Lot 1 is 1.257 acres, maintains 302 ft. of frontage on Highway 36, and contains Middletown Traylor Supply. Lots 4.01 and 4.02 each contain a single-family dwelling and front on Morris Avenue.

The subject property is located in the Business (B-3) Zone. A used car dealership is to the east of Lot 1 on Highway 36. The on-ramp for Highway 36 (to Highlands) is to the west of Lot 1. Residential uses, including Lots 4.01 and 4.02, are located to the rear of Lot 1.

In 2004, Lots 4.01 and 4.02 were the subject of a Minor Subdivision and Use Variance application and obtained approval from the Zoning Board to subdivide Lot 4 into two (2) lots, now known as Lots 4.01 and 4.02, each to contain a new single family dwelling (Case #4591, Resolution dated 3/22/04), in the Business (B-3) Zone.

USE VARIANCE TESTIMONY

“d2” Use Variance – Part of the application is a proposed lot line adjustment between the shared rear lot lines of Block 488, Lots 1, 4.01 and 4.02. Lot 1 is proposed to increase in lot area while Lots 4.01 and 4.02 will slightly decrease in lot area. Lots 4.01 and 4.02 contain single family dwellings in the B-3 Zone. Single-family dwellings are not permitted in the B-3 Zone, and therefore a variance pursuant to N.J.S.A 40:55D-70(d)(2) or expansion of an existing non-conforming use “d2” variance is required due to the reduction of lot area of each residential lot. The applicant shall address in testimony the following items:

1. How Lots 4.01 and 4.02 are particularly suited to the proposed decreased lot area for each lot containing single family dwellings?
2. How will the proposed decreased lot area of each lot further the purposes of the Municipal Land Use Law?
3. Whether the proposed decreased lot area of each lot will have substantial negative impacts on the purpose and intent of the Township’s Master Plan or Zoning Ordinance.

BULK VARIANCE TESTIMONY

The applicant requires bulk variance relief for gross lot area, buildable lot area and lot coverage for Lot 1.

- Gross Lot area, 3 acres required, 1.257 acres exists, and 1.437 acres is proposed
- Buildable Lot area, 2.5 acres required, 1.257 acres exists, and 1.437 acres is proposed
- Lot coverage (2 stories) 60% maximum permitted, 96.1% exists, and 98.4% is proposed

Based on the Municipal Land Use Law standard for granting bulk relief (see below), the applicant shall indicate to the Board whether a “hardship” variance or “flexible C” variance will be sought for the bulk “c” variances cited above, and provide testimony supporting the chosen approach.

1. Physical Characteristics - N.J.S.A. 40:55D-70.C(1) (a/k/a Hardship Variance) – Testimony should indicate if strict application of the Zoning Ordinance requirements would result in peculiar and exceptional difficulties, or exceptional and undue hardship, to the applicant.
 - By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
 - By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property;
 - By reason of an extraordinary or exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.
2. Benefits Outweighing Detriments - N.J.S.A. 40:55D-70.C(2) (a/k/a Flexible C Variance) - The applicant may also establish, in the absence of proving “hardship,” whether the granting of a variance will further the purposes of the Municipal Land Use Law, and if the benefits of granting the variance will substantially outweigh any detriment.

Negative Criteria - Additionally, with any type of C variance, testimony should confirm that bulk relief needed will not create a substantial detriment to the public good or substantial impairment of the intent and purpose of the Master Plan and the Zoning Ordinance.

Additional landscaping of Lot 1, at least a minimum of 15% of Lot 1, may mitigate any negative impacts of the proposed lot coverage and provide additional buffering to adjacent residential uses.

DESIGN WAIVERS

Proposed improvements include the construction of a gravel storage area, retaining wall, fencing and site grading on Block 488, Lot 1. Additionally, 34 evergreens are proposed to be planted within a 6’ wide planting strip along the rear of Lots 4.01 and 4.02. The proposed improvements require the following relief, or the applicant shall request a design waiver.

1. Section 540-519F requires goods for sale stored outdoors to be setback at least 25’ from any street right of way and 15’ from any side or rear lot line. The goods for sale on Lot 1 shall comply with this minimum setback or provide justification for a waiver.
 - a. The Parking Area Exhibit shows encroachment of parked vehicles from the adjacent business on Lot 9 on the proposed trailer storage area on Lot 1. Testimony shall be provided whether the vehicles will be removed or proposed to remain.
2. Section 540-603 requires sidewalks in all parking areas for five or more vehicles, between parking areas and principal structures, along aisles and driveways and wherever pedestrian traffic shall occur. The applicant shall describe how the site functions between customers, employees and vehicles, and comply with the standard or provide justification for a waiver.
3. The applicant is proposing perimeter fencing and retaining wall on Lot 1. Testimony shall be provided to determine conformance with 540-616, including fence height, setback and style for all fencing to remain and proposed, and height and location of the retaining wall.

4. Clarification for compliance with Section 540-627B(6) - this section requires parking to be no closer than 20' from any street line. Parking areas located less than 20' from Highway 36 on Lot 1 will require a design waiver.
5. 540-634 governs sidewalk construction and contributions. No sidewalk construction or contributions are required for this application as it is a lot line adjustment and no new lots are being created.
6. The applicant shall indicate in testimony whether any new signage is being proposed as part of this application.
7. 540-645 governs street trees. No street trees are required for this application as it is a lot line adjustment, and no new lots are being created.

MISCELLANEOUS COMMENTS

1. Grading Plan approval for the proposed site improvements will be required from the Township Engineer.
2. Approval or waiver from the following agencies will be required.
 - NJDOT
 - Freehold Soil Conservation District
 - TOMSA
 - Middletown Fire Advisory Review Board

DOCUMENTS REVIEWED

- Parking Area Exhibit, prepared by Kennedy Consulting Engineers, LLC, dated January 9, 2023;
- Stormwater Calculations for JLV Holdings, LLC, prepared by Kennedy Consulting Engineers, LLC, dated January 9, 2023;
- Minor Subdivision Plat, prepared by Yorkanis & White, Inc., consisting of one sheet, dated September 30, 2022, last revised January 5, 2023;
- Minor Subdivision and Preliminary and Final Major Site Plan, prepared by Kennedy Consulting Engineers, LLC, consisting of six sheets, dated October 26, 2022, last revised January 5, 2023;
- Boundary and Topographical Survey Map, prepared by Yorkanis & White, Inc., consisting of one sheet, dated August 12, 2022;
- Certificate of Title for the subject property, prepared by Rick Brodsky, dated December 19, 2022;
- Zoning Officer Denial, dated November 29, 2022;
- Development Application Permit, dated November 10, 2022;
- Narrative, undated;
- Certification that property taxes are current for the subject property;
- Summary of waivers for completeness, undated;
- Property Deed for Block 488, Lot 1 and Block 488, Lots 4.01 & 4.02
- Disclosure of Ownership for JLV Holdings, LLC;

Prepared by:



Amy H. Citrano, P.P., A.I.C.P.
Director of Planning

LOCATION MAP

