

RESOLUTION: 01-2023

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: Woodlane Logistics, LLC

BOARD'S DECISION: Denying Application for Use Variance and Preliminary and Final Major Site Plan Approval

PROPERTY ADDRESS: Irick and Woodlane Roads - Block 804, Lot 12

ZONING DISTRICT: I – Industrial Zone

DATE OF HEARING: October 25, 2022, November 7, 2022, & December 7, 2022

WHEREAS, Woodlane Logistics, LLC (“Applicant”) filed an application with the Westampton Township Land Development Board (“Board”) requesting a use variance and preliminary and final site plan approval. The Applicant is proposing to construct two warehouse buildings totaling approximately 520,320 square feet. The proposed Warehouse Building 1 would contain 307,520 square feet, including 9,200 square feet of office space, and the proposed Warehouse Building 2 would contain 205,140 square feet, including 9,800 square feet of office space. The use variance is to permit the existing cell tower to continue to operate at the site in addition to the proposed warehouse uses. The proposed development will contain over 503 parking spaces, 92 loading spaces, and 45 trailer parking stalls. Access to the site will be provided through a right turn in and right/left turn out driveway on Irick Road. The site will also feature several stormwater management basins on the southern, western, and northern ends of the site. The property, located at Irick and Woodlane Roads, Westampton, New Jersey, is designated as Block 804, Lot 12 on the Township Tax Map (“Subject Property”). The Subject Property is within the I – Industrial Zone; and

WHEREAS, the Board had jurisdiction to hear this matter (the “Application”) under the New Jersey Municipal Land Use Law (“MLUL”), *N.J.S.A. 40:55D-1 et seq.*; and

WHEREAS, on October 25, 2022, a special meeting occurred to hear the application. At this special meeting, the applicant was represented by his attorney, Michael Floyd, Esq. from Archer and Greiner. Mr. Floyd presented the applicant’s witnesses, including professionals, Dan Hudson, John Pew III, Chris Roache, Dan Desario, Scott Daniel, and Greg Woodruff. Additionally, all exhibits relied upon by the applicant were presented to the Board and the Board had the opportunity to ask questions of the witnesses, including the professionals presented; and

WHEREAS, on November 7, 2022, another special meeting occurred to continue the presentation of the application. At this special meeting, the general public was given the opportunity to comment regarding the application. Following public comment from approximately 16 members of the public, Jeffrey I. Baron, Esquire presented testimony from two

individuals, Kristen Bjork-Jones and Kristina Goetz in objection to the application. Finally, Mr. Baron presented testimony from Barbara Woolley-Dillon, a New Jersey-licensed planner, in opposition to the application who also was cross-examined by Mr. Floyd; and

WHEREAS, following multiple hearings of the application and special meetings before the Board, the applicant came before the Board during the regularly scheduled public Board meeting held on December 7, 2022; and

WHEREAS, during the special and regularly scheduled meetings, the Board and Board Professionals were offered the opportunity to provide comments and questions. Additionally, the application was opened to the public for comment, and all members of the public having sought to comment on the application were given the opportunity to do so; and

WHEREAS, in rendering its decision, the Board considered all previous testimony, exhibits, and arguments provided by the applicant at all prior hearings before the Board; and

WHEREAS, based on all the evidence submitted, the Board renders the following factual findings and conclusions of law in addition to any contained in the preceding paragraphs:

1. The Board considered the following submissions from the Applicant:
 - A. The application;
 - B. Copy of previous variance approval from Zoning Board of Adjustment, dated December 16, 1997;
 - C. Signage Package prepared by Langan Engineering, dated June 13, 2022;
 - D. Traffic Impact Study prepared by Langan Engineering, dated April 4, 2022;
 - E. Water System Engineer's Report prepared by Langan Engineering, dated April 4, 2022;
 - F. Sanitary Sewer Engineer's Report prepared by Langan Engineering, dated April 4, 2022;
 - G. Stormwater Management Report prepared by Langan Engineering, dated April 4, 2022, and revised on June 14, 2022 and September 2, 2022;
 - H. Recycling Memorandum prepared by Langan Engineering, dated April 4, 2022, revised June 14, 2022;
 - I. Environmental Impact Statement, prepared by Langan Engineering, dated April 4, 2022, revised June 14, 2022;
 - J. Seven-sheet set of architectural drawings prepared by Ware Macomb, dated April 1, 2022;
 - K. Fifty-two-sheet set of site plan drawings prepared by Langan Engineering, dated April 4, 2022, revised September 7, 2022;
 - L. Eighteen-page letter from Langan Engineering addressing previous engineering comments, dated September 8, 2022;
 - M. Five-page letter from Langan Engineering addressing previous planning comments, dated September 8, 2022;
 - N. Exhibits presented by the Applicant and Intervenors and entered into evidence at the time of the hearings.

WHEREAS, the Applicant presented the following witnesses to provide testimony to the Board as part of its application:

- A. Dan Hudson, MRP Industrial Principal;
- B. John Pew III, co-executor of the estate of John Pew Jr.;
- C. Chris Roache, Licensed Professional Engineer with Langan Engineering;
- D. Dan DeSario, Licensed Professional Engineer with Langan Engineering;
- E. Scott Daniel, Architect with Ware Malcomb; and
- F. Greg Woodruff, Licensed Planner with Langan Engineering.

WHEREAS, the Applicant's witnesses provided testimony to the Board as follows:

1. Dan Hudson, MRP Industrial Principal, appearing on behalf of the Applicant was sworn in by the Solicitor.
2. After placing his credentials and experience on the record, Mr. Hudson testified before the Board that the location of the Subject Property is in an area desirable to the Applicant because of its proximity to the New Jersey Turnpike and Interstate 295. Mr. Hudson testified that the applicant liked the idea of placing two smaller buildings on the Subject Property. Mr. Hudson testified that the intended industrial tenants would be well-known companies with good credit and are solid job generators. Mr. Hudson testified about the partners of MRP Industrial for the application and the need for MRP to closely follow all traffic management plans. Mr. Hudson testified there are three regional connections for the Subject Property via the New Jersey Turnpike and Exits 45 and 47 from 295. Mr. Hudson testified that the existing cell tower on the Subject Property is owned by American Tower which leases space on the tower to different user groups. He testified American Tower did not express concern with the Application. Mr. Hudson testified the applicant does not have any concerns with the cell tower use.
3. Upon completion of his direct testimony, Mr. Borger asked for more information regarding logistic providers.
4. In response, Mr. Hudson testified that logistic providers would operate a warehouse or would represent retailers who need to move their goods but could not occupy the entire proposed building by themselves.
5. Mr. Jones asked whether cell phone usage by employees at the proposed warehouses would impact the cell phone tower service. Mr. Hudson responded that there would be no impact.
6. John Pew III, co-executor of the estate of John Pew Jr., appearing on behalf of the applicant was sworn in by the Board Solicitor.
7. Mr. Pew testified he is familiar with the work and ongoing farming operations at the Subject Property. He testified there was no past or present conflicts between the farming operations and the cell phone tower operations. Mr. Pew testified that, in 1997 when the use variance approval was granted for the cell phone tower, it was his intention, or his father's, to not take any action that would hinder future development of the Subject Property. Mr. Pew testified it was the intent of his family to sell the Subject Property to Burlington County, but Burlington County was not interested. Mr. Pew testified in support of the application for the proposed use on the Subject Property.

8. There were no questions from the Board of Mr. Pew.
9. Chris Roache, Licensed Professional Engineer, appearing on behalf of the Applicant, was sworn in by the Board Solicitor.
10. After placing his credentials and experience on the record, and having been deemed qualified as an expert in the field of civil engineering and able to render expert opinions in that field, Mr. Roache testified before the Board. Mr. Roache presented Exhibit A-1, an aerial photograph of the property and the surrounding uses, and Exhibit A-2, a rendering of the site plan. Mr. Roache testified that the applicant is proposing to construct two warehouse buildings totaling 512,660 square feet, with associated loading and parking areas. He testified building one would be constructed on the northern portion of the Subject Property and would be approximately 307,520 square feet in size with 53 loading docks, 45 trailer stalls, and 288 auto parking spaces. He testified the second warehouse would be located in the southern portion of the Subject Property and would be approximately 205,240 square feet in size with 39 loading docks and 215 auto parking spaces. He also testified approximately 28,800 square feet of building one and 20,400 square feet of building two would be used for office space.
11. He further testified the ordinances require 291 parking spaces and the Applicant is proposing 503 parking spaces. He testified eight ADA parking spaces are proposed for building one and seven ADA parking spaces are proposed for building two which would exceed the 14 ADA parking spaces required by law. He testified building one would have 14 visitor parking spaces and building two would have 10 visitor parking spaces. He testified the applicant is required to have 59 loading stalls but is proposing 92 loading stalls. Further, he testified the applicant would abide by the Township's ordinance prohibiting the parking of trailers for longer than 15 days.
12. Mr. Roache testified trash operations are determined by the tenants but conceptually the applicant proposed two exterior trash locations, located on the northeast corner of both buildings. He testified the trash locations would be screened in, according to the Township's ordinance requirements.
13. Mr. Roache testified to the overall stormwater management system and that the system has been designed to meet the latest State requirements. He testified the requirements are being exceeded due to the proposed construction of infiltration basins and several bio retention basins. Mr. Roache testified the sewer connection would be provided by the Mount Holly Municipal Utilities Authority through a gravity system on the Subject Property and a pump station. He testified the applicant would use a fork to connect to the existing system. He testified the water is being coordinated with the New Jersey American Water Company through an existing line in Woodlane Road. He testified the existing water line would be extended down Irick Road. He also testified a fire tank is proposed, which would be located in the front yard setback.
14. Mr. Roache testified the applicant is proposing 652 new trees and 869 new shrubs. He testified there would be 358 evergreen trees, 95 ornamental trees, and 199 shade trees. He testified the applicant is proposing 35 new light poles, 32 building mountain fixtures, with new LED fixtures and a lighting temperature of 3,000 Kelvin. He testified the lights would be 25 feet high and have been designed to meet the Township ordinance requirements relative to minimum lighting.
15. Mr. Roache testified there would be monument signs on the site plans, but the ultimate signage would be dictated by the tenant.

16. Mr. Roache testified the applicant is seeking a use variance for two uses on the Subject Property due to the existing use of the cell phone tower. He further testified relief was requested from Township Ordinance Section 250-22(a)(1) regarding the water tank in the front yard setback. He testified the applicant is seeking a waiver from the buffer strips requirement under Township Ordinance Section 250-22(b)(2). He testified the applicant was seeking a deviation from the required maximum lighting levels of 0.5-foot candles to a proposed 1.7 to 2.7 foot candles. He testified that he saw no issues with complying with the technical review comments from the Board Professionals.
17. Mr. Grace questioned how the proposed application would impact woodland, streams, wetlands, floodplains, and groundwater.
18. Mr. Roache testified that the site plan was created to limit any intrusion or site activities on the restricted areas. He testified the applicant went through the process with the New Jersey Department of Environmental Protection and agreed to constrained areas and negotiated buffers and would be staying outside of these sensitive areas. He testified the U.S. Fish and Wildlife Service provided a finding the proposed project would have no impact on potential threatened and endangered species.
19. Dan DeSario, Licensed Professional Engineer, appearing on behalf of the Applicant was sworn in by the Board Solicitor.
20. After placing his credentials and experience on the record and being deemed qualified by the Board Chair as an expert in the field of traffic engineering and able to render expert opinions in that field,, Mr. DeSario testified before the Board from his traffic study report provided to the Board. He testified the report concluded the proposed site driveways along Irick Road and Woodlane Road will operate safely and efficiently. He testified updated traffic counts were conducted on September 21, 2021, from 6:00 A.M. to 7:00 P.M. at the intersection of Irick Road and Woodlane Road. He testified the highest volume of traffic was found to occur from 7:30 A.M. to 8:30 A.M. and from 2:45 P.M. to 4:15 P.M. He testified the applicant elected to use higher projected trip rates even though the proposed warehouses would likely generate lower traffic volumes. He also testified on the adjacent streets, using street peak hour volumes. He testified the applicant is bound to the projections generated and estimated and if a tenant seeks to generate more traffic, the applicant would be required to return to Burlington County for reevaluation. He testified the applicant is committed to making improvements to the existing signalized intersection of Irick Road and Woodlane Road.
21. Mr. Fagan asked whether there is information related to the angle trucks make in negotiating a right-hand turn on the west side of Irick Road and Woodlane Road. He stated it is problematic for trucks making a right-hand turn at that location currently. Mr. DeSario testified in response that Mr. Fagan was correct that currently a truck travelling on Irick Road towards Woodlane Road making a right turn requires a truck to encroach over the center line. He testified the applicant is committed to installing a traffic signal at the intersection and conducting an evaluation of where the stop lines would need to be located.
22. Mr. Fagan asked if there are any considerations for air quality impact with the additional trucks and vehicles that would be travelling to and from the Subject Property. Mr. Floyd responded that there are no immediate concerns.
23. Mr. Guerrero asked whether this warehouse could be used as a fulfillment center type of distribution center.

24. Mr. DeSario responded that Mr. Hudson testified the buildings would not be suited for a fulfillment center operation.
25. Mr. Thorpe commented that Mr. DeSario's conclusion stated it was intended to widen Irick Road to provide for an 18-foot car way on the inside of the road's horizontal curve to the east of the Turnpike overpass as long as accommodated by the existing right of way. Mr. DeSario testified the 18-foot car way is measured from the painted center line to the edge of the pavement.
26. Mr. Dochney commented Mr. DeSario testified that the traffic management plan must be approved by the County and there could be an instance in the future where a tenant, post-occupancy, might create traffic exceeding the projected volumes. Mr. Dochney asked what measures Burlington County could take at that point.
27. Mr. DeSario testified in response that if there is an issue at the very early stage, there could be a collaborative discussion how to address the exceeding generation of traffic.
28. Mr. Roberts asked for an update on the application with Burlington County. Mr. Floyd responded that the application was submitted and is pending Burlington County Planning Board approval.
29. Mr. Thorpe asked if the bullet points in Mr. DeSario's report have been presented to Burlington County. Mr. DeSario testified in the affirmative.
30. Scott Daniel, Licensed Architect, appearing on behalf of the applicant and was sworn in by the Board Solicitor.
31. After placing his credentials and experience on the record, and being found by the Chair to qualify as an expert witness in the field of architecture and able to render expert opinions in that field, Mr. Daniel testified to the Board. Mr. Daniel presented Exhibit A-3, the proposed floor plan and elevations for building one. Mr. Daniel testified that building one is proposed to be 307,520 square feet of warehouse space, with 53 truck docks and is roughly 992 feet long and 310 feet in width. He testified the height clearance is 36 feet. He testified the exterior envelope would be constructed of precast concrete panels, with a concrete foundation, and the interior structure would be a steel structure of columns, girders, and web joists. He testified the roof would be constructed of metal deck extruded insulation and a single ply roof. He testified the elevations depict the top elevation showing the east elevation of the building. He testified to the use of different color schemes to break up the elevation.
32. Mr. Daniel presented Exhibit A-4, the conceptual floor plan and elevations for building two. Mr. Daniel testified the difference between the two buildings is the size of building two. He testified building two is 205,140 square feet, with three proposed truck docks. He testified the height clearance is 36 feet and the elevations are primarily the same. He testified the envelope construction and interior construction are the same.
33. Mr. Daniel presented Exhibit A-5, renderings showing the architecture of the entry feature. He testified there would be an accent color.
34. Mr. Daniel presented Exhibit A-6, an aerial view of the proposed building. Mr. Daniel testified the aerial view shows the New Jersey Turnpike and Irick Road. He testified A-6 depicted the proposed front of buildings one and building two. He testified to the location of the main entrance for trucks.
35. Mr. Daniel presented Exhibit A-7, an aerial view looking towards the proposed truck dock area. Mr. Daniel testified there is a retaining wall which backs up to the Subject Property line.

36. Mr. Daniel presented Exhibit A-8, a photo of an existing building at 100 Western Drive and the loading dock area.
37. Mr. Thorpe asked Mr. Daniel to clarify A-8 and whether this is how the proposed warehouses at the Subject Property would look. Mr. Daniel testified and clarified that A-8 shows how the precast concrete would appear but does not represent the elevations.
38. Mr. Thorpe asked about the length of the foliage and buffer depicted in A-7 along the retaining wall. Mr. Roache responded that the buffer in total is 25 feet with the intention to place planting on the high side of the wall.
39. Mr. Borger asked about the color of the building in A-8 and whether the building will be white and gray. Mr. Daniel responded the rear of the building will be more of a change in color in the façade on the truck dockside.
40. Mr. Thorpe asked for a clarification of A-7 and the 50-foot-wide buffer screen to be provided for all nonresidential properties and abutting residential zones.
41. Mr. Dochney responded, stating there is an inconsistency between the different sections of the Township Zoning Code within the Industrial District sites because some portions require a 25-foot buffer and others require a 50-foot buffer.
42. Greg Woodruff, Licensed Planner, appearing on behalf of the Applicant was sworn in by the Solicitor.
43. After placing his credentials and experience on the record and having been deemed by the Chair to be qualified as an expert in the field of planning, Mr. Woodruff testified before the Board. Mr. Woodruff presented two exhibits, A-10, an aerial view of 710 Rancocas Road, and A-11, a site aerial of 45 East Park Drive. Mr. Woodruff testified he reviewed the 1990 master plan re-examination, the 2000 re-examination report, the 2006 re-examination report, the 2015 re-examination report, and the 2020 re-examination report, and there were no recommendations related to the Subject Property changing the current industrial zone designation.
44. Mr. Woodruff testified that the existing cell phone tower was approved via use variance in 1997. He testified the size of the cell phone tower is less than 1% of the Subject Property. He testified the continued use of the cell phone tower would not pose any issues for the applicant's use of the Subject Property. Mr. Woodruff testified his belief that the cell tower provides a public good and there is no substantial detriment to the public good for the two uses of the Subject Property. Mr. Woodruff showed the Board A-10 where a cell tower appears on a property with another use. Mr. Woodruff showed the Board A-11 where billboards are a second use on one property. Mr. Woodruff testified to the similarity of billboards and cell phone towers. Mr. Woodruff testified regarding the waiver under Township Ordinance Section 196-8(b)(4) for paring (?) in the front yard and the landscape berm requirement.
45. Mr. Dochney commented that the use variance is needed for the applicant due to the proposed two uses on one property. Further, Mr. Dochney commended that the lighting exceeds the maximum average footcandle of the site.
46. Mr. Borger commented that applicants routinely come before the Board and are unable to meet the 0.5 foot candle usage but still have safety and security covered.
47. Mr. Guerrero commented that he noticed some berming along Woodlane Road but did not see any along Irick.
48. Mr. Dochney responded, stating the ordinances do not require berms for industrial uses. However, the Board may require berms at its discretion.

49. Mr. Woodruff testified there are grading issues on the Subject Property. Mr. Hudson testified, stating he would like to work with the Township planner for the berming to come up with a solution.
50. Mr. Thorpe responded, stating his desire to see 5-foot berms along Irick Road and Woodlane Road.
51. Mr. Thorpe stated the Board proposes light levels be dimmed during non-operational hours and there should be dimmable equipment.
52. Mr. Guerrero asked a question regarding traffic flow and how the traffic would get to the Subject Property. Mr. DeSario testified that the anticipation is most traffic would come from the Turnpike and some would come from 295 and Route 541 and local roads. Mr. Desario said the anticipation is most traffic would travel on Woodlane Road.

On November 7, 2022, Mr. Baron, on behalf of the intervenors, presented Kristen Bjork-Jones who testified she lives within 200 feet of the Subject Property and that local residents have come together to oppose the application. Following Ms. Bjork-Jones's testimony, Mr. Baron presented Kristina Goetz who testified she lives in Irick Lakes and has concerns for the safety of the community, students, and the drivers along Woodlane Road. She testified BCIT has 33 buses entering and exiting the parking lot four times a day. She testified BCSS has 30 buses entering and exiting the parking lot four times a day.

Mr. Baron then presented Barbara Woolley-Dillon, Licensed Planner, to testify before the Board on behalf of the Intervenor. She was sworn in by the Solicitor and, after placing her credentials and experience on the record, was deemed qualified by the Chair to be an expert in the field of professional planning and able to render expert opinions in that field. Ms. Woolley-Dillon testified before the Board as follows:

1. She testified that the applicant is required to demonstrate special reasons supporting the purposes of zoning or the positive criteria that support the application. She testified the applicant must demonstrate the use variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan and the zoning ordinances. She testified the applicant is required to demonstrate the Subject Property is particularly suited for the proposed use. She testified the applicant provided two purposes of zoning for the record, which were that the application encourages municipal action to guide the appropriate use or development of all lands in the state in a manner which promoted the health, safety, morals, and general welfare and to provide sufficient space in an appropriate location for a variety of uses according to their respective environmental requirements to meet the needs of New Jersey citizens.
2. She testified it was her opinion the Township Ordinances did not permit a cell tower to be a complementary use as part of an industrial development. She testified the Subject Property is occupied by bog turtles, an endangered species.
3. Mr. Floyd cross-examined Ms. Woolley-Dillon regarding her testimony.

WHEREAS, following the testimony of the professionals and other witnesses in support of the application, the Intervenor and their professional, and after hearing public comment, and

following the summary of the application by the Board's Solicitor, Mr. Borger asked for a motion to approve or deny the application.

WHEREAS, Mr. Fagan made a motion to deny the use application, seconded by Mr. Grace.

WHEREAS, Mr. Fagan, Mr. Grace, Mr. Guerrero, Ms. Tolor, and Mr. Thorpe voted to deny the Application and Mr. Borger and Mr. Jones voted to approve the use application.

WHEREAS, with regard to the requested use variance to permit multiple uses, a cell phone tower and warehouses, at the Subject Property, based upon the evidence and testimony submitted by the Applicant, the Board's Professionals, witnesses, the Intervenors, and members of the public, and based further upon the Findings of Fact set forth herein, the Board renders the following Conclusions of Law:

- a. **Conclusions of Law.** With regard to the requested N.J.S.A. 40:55D-70d(1) use variance to permit the multiple uses of the Subject Property as a cell phone tower and warehouses, based upon the evidence and testimony submitted to the Board before and during the Applicant's public hearing, including the application, the applicant's plans, the applicant's exhibits, and the testimony of the applicant's witnesses, as well as the Board engineering review letter, and the testimony of the Board's professionals and members of the public, the Board renders the following Conclusions of Law:
 - i. The purposes of the Township's Zoning Districts are set forth at Borough Code Section 250-2. These purposes include to establish a pattern for the use of land and buildings based upon the Master Plan and enacted in order to promote and protect the public health, safety, morals, comfort, convenience, and the general welfare of the people. Further, the Zoning Ordinances are intended to regulate the use of land within zoning districts; secure safety from fire, panic and other dangers; provide adequate light and air; promote orderly development; avoid undue concentration of population; prevent the overcrowding of land or buildings; establish standards of development; limit congestion in the streets; prohibit incompatible uses; regulate the alteration of existing buildings; protect against hazards; conserve the taxable value of land; preserve open space, historic and natural features; permit the development of land in accordance with the purposes of the low- and moderate-income provisions of this chapter; and encourage the inclusion of aesthetics, amenities of living and a balance of public services.
 - ii. Township Code § 250-20 provides that the Industrial Zone permits the following principal uses by right: (a) Offices; (b) Manufacturing plants of a type which carry on processes within completely enclosed buildings, including the manufacture, assembly or treatment of products from previously prepared materials; (c) Distribution centers

and warehouses; (d) Light Industry; (e) Laboratories dedicated to research, design, and experimentation; (f) repair garages and body shops; (g) Solar energy systems; and (h) solar energy systems as a secondary permitted use in addition to an existing industrial or warehouse use.

iii. Because the Applicant seeks to perform a second principal use on the Subject Property, a use variance to permit the applicant's proposed use of the Subject Property is required. N.J.S.A. 40:55D-70d.

1. The Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-70d(1) permits the Board to, "[i]n particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit: (1) a use or principal structure in a district restricted against such use or principal structure."

2. The Board may grant an N.J.S.A. 40:55D-70d(1) use variance where an applicant satisfies both the "positive criteria" and "negative criteria" necessary for use variance relief. N.J.S.A. 40:55D-70; *Price v. Himeji, LLC*, 214 N.J. 263, 285-86 (2013) (explaining the positive and negative criteria).

a. An applicant may satisfy the "positive criteria" by demonstrating "special reasons" why the variance should be granted. Generally, three categories of circumstances constitute "special reasons": (1) where the proposed use ... inherently serves the public good; (2) where a zoning restriction imposes an "undue hardship" on the property owner; and (3) where the use serves the general welfare because "the proposed site is particularly suitable for the proposed use." *See, e.g., Kane Props., LLC v. City of Hoboken*, 423 N.J. Super. 49, 63 (App. Div. 2011)

b. An applicant may satisfy the "negative criteria" by demonstrating, in accordance with the enhanced quality of proof, (1) the variance "can be granted without substantial detriment to the public good," focusing on any negative or adverse impact on adjacent or nearby properties and uses; William M. Cox & Stuart R. Koenig, *N.J. Zoning & Land Use Administration* § 36-2.2 (2020); and (2) "will not substantially impair the intent and the purpose of the zone plan and zoning." *Id.* "The proof required for the second prong of the negative criteria must reconcile the grant of the

variance for the specific project at the designated site with the municipality's contrary determination about the permitted uses as expressed through its zoning ordinance." *Price*, 214 N.J. at 286.

3. The grant of a use variance is the exception, not the rule, because legislative policy favors land use planning through ordinances, not variances. *E.g.*, *Kaufmann v. Planning Bd for Warram Tp.*, 110 N.J. 551, 557 (1988); *Kane*, 423 N.J. Super. at 63. Use variances are particularly disfavored. *Id.*
- iv. Here, the Applicant has failed to establish "special reasons" sufficient to satisfy the "positive criteria" necessary for an N.J.S.A. 40:55D-70d(1) use variance. Specifically, the Applicant has not shown through expert testimony and evidence and/or lay testimony and evidence that the proposed use inherently serves the public good, advances the purposes of the Township Zoning Ordinance/MLUL, that the site is particularly suitable for the two proposed uses, nor that the application of the Township Code's use regulations set forth at § 250-2 imposes any special hardship on the Applicant.
- v. Assuming, arguendo, the application did satisfy certain aspects of the positive criteria necessary for an N.J.S.A. 40:55D-70d(1) use variance, the applicant has failed to establish the "negative criteria" necessary for relief. Specifically, the applicant has not shown through expert testimony and evidence and/or lay testimony and evidence that the proposed use variance "can be granted without substantial detriment to the public good" and without "substantially impairing the intent and the purpose" of the Township Master Plan and zoning ordinance.
- vi. In sum, for all the above reasons, on balance, the Board concludes as a matter of law, the applicant has failed to satisfy its evidentiary burden that it is entitled to the requested use variance relief, N.J.S.A. 40:55D-70, and the application must, therefore, be denied.

NOW, THEREFORE BE IT RESOLVED by the Township of Westampton Land Development Board that, based upon the foregoing findings of facts and conclusions of law, and for the reasons stated on the record during the applicant's public hearing, that the application of Woodland Logistics, LLC seeking N.J.S.A. 40:55D-70d(1) use variance relief is hereby **DENIED** upon motion duly made and seconded, with a roll call vote recorded as follows:

MEMBER	THOSE IN FAVOR	THOSE OPPOSED	ABSTENTIONS
Gary Borger		X	
James Grace	X		
David Guerrero	X		
Frank Jones		X	
Joe Odenheimer	X		
Cherelle Tolor	X		
Ryan Fagan	X		
Robert Thorpe	X		

WESTAMPTON LAND DEVELOPMENT BOARD

BY: David M. Guerrero
David Guerrero, Vice Chair

ATTEST: Jodie Termi
Jodie Termi, Board Secretary

DATE MEMORIALIZED: 1/4/23