

RESOLUTION: 10-2022

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: PAG New Jersey CS, LLC  
BOARD'S DECISION: Granted Minor Site Plan Approval and a "D" Use Variance  
PROPERTY ADDRESS: 1971 Burlington-Mount Holly Road - Block 804, Lot 16  
ZONING DISTRICT: B-1 Business Zone  
DATE OF HEARING: December 14, 2021

**WHEREAS**, PAG New Jersey CS, LLC ("Applicant") filed an application with the Westampton Land Development Board ("Board") requesting a Use Variance, Minor Site Plan approval and bulk variances. The Applicant is proposing the addition of a 6,000 gallon fuel tank, fueling pad and 2 paint booths to the existing Carshop (Carsense) automobile sales and service facility. The proposed improvements would result in the loss of five parking stalls. The property is located at 1971 Burlington-Mount Holly Road, Westampton, New Jersey, designated as Block 804, Lot 16 on the Township Tax Map ("Subject Property"). The Subject Property is within the B-1 Business 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**, prior to the November 3, 2021 Board meeting, the Applicant, through its attorney, Sara R. Werner, Esquire, requested the Application be carried to the December 1, 2021 meeting as it was determined that the Applicant needed to revise its notice and advertisement; and

**WHEREAS**, the Board solicitor announced the Applicant's request at the November 3, 2021 meeting to advise any members of the public present for the Application that the Application would be heard at the next meeting; and

**WHEREAS**, the Applicant agreed to re-notice and re-advertise for the December 1, 2021 meeting; and

**WHEREAS**, thereafter, the Board scheduled and noticed/advertised for a special meeting to be held virtually on December 14, 2021, all in accordance with all applicable laws; and

**WHEREAS**, Applicant provided the required notice and advertisement for the hearing on the Application to be held at the Board's special virtual meeting of December 14, 2021; and

**WHEREAS**, the Application came before the Board at the special public meeting held virtually on December 14, 2021. The Applicant was represented by Sara R. Werner, Esquire. The Board heard testimony from the Applicant as to the nature, purpose, location, and description of the requested variance relief; and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-25c, the Class I and Class III Board members may not participate in a request for a Use Variance, and none were present for the hearing; and

**WHEREAS**, the Board discussed the Application and the Board Professionals offered recommendations. The Application was opened to the public for comment, and any members of the public wishing to comment on the Application were given the opportunity to do so.

**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. Three (3) Sheet set of site plan drawings prepared by Menlo Engineering Associates, dated July 6, 2021, with no revisions;
  - b. Partial Topographic & Utility Survey prepared by Control Point Associates, Inc, dated June 30, 2021, with no revisions;
  - c. Survey prepared by NF Engineers dated May 16, 2016, and revised October 7, 2019;
  - d. Two (2) Sheet set of Site Plan drawings prepared by Menlo Engineering Associates of the Approved Lighting Plan, dated December 8, 2017, last revised March 2, 2018;
  - e. Copy of Resolution 3-2018, of Land Development Board, dated February 7, 2018;
  - f. Application form and associated material
2. The Board considered the following review letters submitted by the Board professionals:
  - A. A letter prepared by the Board Engineer, James Winckowski, PE, CME, dated November 1, 2021; and
  - B. A letter prepared by the Board Planner, Chris Dochney, PP, AICP, CME, dated December 6, 2021
3. The PAG New Jersey CS, LLC, is the owner of the Subject Property, which is located at 1971 Burlington-Mount Holly Road, Westampton, New Jersey. The Subject Property is designated as Block 804, Lot 16, and lies in the B-1 Business Zone.
4. The Applicant is seeking approval of an addition of a 6,000 gallon fuel tank, fueling pad and 2 paint booths to the existing CarShop (formerly Carsense) automobile sales and service facility. Automobile Sales and Service is not a principal permitted use in the zoning district. The Automobile Sales and Service facility received a Use Variance from the Board by way of Resolution No. 17-2006. The proposed paint booth addition and the fuel tank constitute the expansion of the previously approved nonconforming use. The Applicant is seeking a 'D' variance along with Minor Site Plan approval and any other variances and waivers that may be required. The Premises is located at 1971 Burlington-Mount Holly Road, Westampton, New

Jersey and is known as Block 804, Lot 16 on the Tax Map of the Township of Westampton in Zoning District B-1.

5. The following witnesses and professionals were sworn in and appeared and testified in favor of the Application during the December 14, 2021 hearing: Scott Turner, PE, CME, the Applicant's civil engineer; James Miller, Applicant's professional planner and Jeff Anderson, Applicant's Vice President of construction.

6. The Applicant submitted the following exhibits during the December 14, 2021 hearing: A-1 – Overall Plan, A-2 – Site Plan Exhibit, A-3 – Sample Fuel Tank and A-4 – Photo Rendering of Paint Booth.

7. Ms. Werner presented and introduced the Application to the Board and explained the requested relief.

8. After placing his credentials on the record, the Applicant's engineer, Scott Turner, testified on behalf of the Application and described multiple exhibits he shared on the screen; that the fuel station and paint booth will be for inventory cars on the lot only; there will not be any retail sale of fuel at the Subject Property; there will be no custom painting at the Subject Property; the paint booth is intended as a "scratch and dent" booth only intended to repair nicks and dents; other than the use variance, the Applicant is not requesting any other variances.

9. Mr. Borger and Mr. Guerreo both asked questions about the fueling operation and how the utilities extend to the fuel tank. Mr. Turner testified as to the utilities and operations of the fuel tank.

10. Ms. Burkley asked about ventilation in the paint booth and the height of the fuel tank and Mr. Turner testified as to the ventilation and height as requested.

11. Mr. Guerreo asked about colors of the paint booth and fuel tank. Mr. Turner presented "Exhibit A-3," photo of the fuel tank and "Exhibit A-4," photo of the paint booth addition.

12. Mr. Roberts asked about the fuel tank enclosure and Mr. Turner responded to questions regarding the exhibit of the fuel tank enclosure.

13. After placing his credentials on the record, the Applicant's professional planner, James Miller, testified on behalf of the Application including the requested relief which is an amendment to the prior use and approval. Mr. Miller testified that the use continues to meet the prior approval requirements; neither the tank nor the paint booth are visible to the street or to neighbors; there is no change to the character or the intensity of the use; both improvements are relatively small; the site continues to be particularly suited for the use even with the addition of the tank and booth; no increase to the footprint of the site; will not diminish the suitability of the dealership when the Board granted its prior use; there is no substantial detriment to the public good; there is nothing around the property that would be affected by the additional use and no impact on the surrounding neighborhood.

14. Mr. Thorpe asked why there are two paint booths and the Applicant just wanted to make sure they can repair two cars at the same time.
15. Mr. Guerreo asked if the paint booths would be heated, the Applicant's representative responded to this question.
16. Ms. Werner called Jeff Anderson, Vice-President of Corporate Construction for Penske Automotive Group, the owner of CarShop. Mr. Anderson testified as to the questions that the Board had about the paint booth and fuel tank storage and elaborated on the reasons for the paint booth and fuel tank. Mr. Anderson further clarified that CarShop does not do any retail body work on cars, and that the paint booth is for work on the cars that are coming to them for them to sell only.
17. The Board stated that they were concerned that the paint booth be used as a body shop and the Applicant agreed that as a condition, the paint booth will not be used as a body shop and limited to the Applicant's vehicles only, no retail cosmetic work, the paint booth shall only be used for reconditioning for the Applicant's auto sales only.
18. The Applicant also agreed as a condition that the fuel tank would not be used for retail sales, but rather specifically, only for the facility as placed on the record.
19. After testimony presented by the Applicant's witnesses and professionals, the matter was opened to the public for comment, and seeing none, the public meeting was closed.
20. Ms. Werner provided a closing summary again requesting the D(2) use variance and the minor site plan approval and reiterating the Applicant's agreement with the conditional use of both the fuel tank and the paint booth.
21. With regard to the request for use variance relief, through the testimony presented, the Board finds that the Applicant has established that the Application:
  - a. relates to a specific piece of property, namely the Subject Property;
  - b. that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely the promotion of the public health, safety, morals, and general welfare by allowing for the offering of a needed service in the community and the preservation of neighborhood character and conservation of neighborhood values;
  - c. that the variances can be granted without substantial detriment to the public good because the Township will benefit from the provision of the Applicants' services in the community;
  - d. that the benefits of the deviations would substantially outweigh any detriment and that the variances will not substantially impair the intent and purpose of the zone plan and ordinance.

22. The Board further finds that the Subject Property is particularly suitable for the proposed use because of the testimony presented by Mr. Miller herein and as more fully provided on the record from the December 14, 2021 hearing.

23. The Board further finds that the proposed use would not negatively impact the local neighborhood and community or be a substantial detriment to the public good because it is a low impact and the proposed use will not substantially impair the intent and the purpose of the zone plan and zoning ordinance as provided on the record by Mr. Miller and the Property has already been approved and is being used in a similar nonconforming use.

24. With regard to the requested minor site plan approval, through the evidence submitted and testimony presented by the Applicant's witnesses, professionals, the Board's professionals, and members of the public, the Board finds and concludes that the proposed site plan complies with all site plan and other standards, specifications, and requirements established by the Township's Zoning Ordinance, and that the Subject Property is suitable for the proposed development. *See, e.g., Levin v. Livingston Twp., 35 N.J. 500, 510-11 (1961); Pizzo Martin Group v. Randolph Twp., 261 N.J. Super. 659 (App. Div. 1993), aff'd. as modified, 137 N.J. 216 (1994).*

**NOW, THEREFORE, BE IT RESOLVED**, by the Land Development Board of the Township of Westampton that based upon the findings of facts and conclusions of law along with the testimony provided by the Applicant's witnesses and professionals, that the application of PAG New Jersey CS, LLC seeking use variance relief pursuant to *N.J.S.A. 40:55D-70d(2)* to permit the proposed paint booth addition and the fuel tank which constitute the expansion of the previously approved nonconforming use was and is hereby **GRANTED**, by a vote of six (6) in favor and none (0) opposed, upon motion by Ms. Burkley and seconding by Mr. Odenheimer.

ROLL CALL VOTE

	<u>Ayes</u>	<u>Nayes</u>	<u>Abstentions</u>	<u>Recusal</u>
Borger	x			
Burkley	x			
Guerrero	x			
Thorpe	x			
Odenheimer	x			
Haas	x			

**BE IT FURTHER RESOLVED**, by the Land Development Board of the Township of Westampton, that the within Application for site plan approval for the addition of a 6,000 gallon fuel tank, fueling pad and 2 paint booths to the existing CarShop (formerly Carsense) automobile sales and service facility. The proposed improvements would result in the loss of five parking stalls on the Subject Property in the B-1 Business District upon motion duly made by Ms. Burkley and seconded by Ms. Haas was and is hereby **GRANTED**, subject to the testimony and representations set forth on the record by the Applicant, and any conditions set forth herein.

ROLL CALL VOTE

Ayes      Naves      Abstentions      Recusal

Borger	x			
Burkley	x			
Guerrero	x			
Thorpe	x			
Odenheimer	x			
Haas	x			

**IT IS FURTHER RESOLVED**, that all of the above relief is subject to the following conditions:

1. the paint booth will not be used as a body shop and shall be limited to the Applicant's vehicles only, no retail cosmetic work, the paint booth shall only be used for reconditioning for the Applicant's auto sales only as more fully placed on the record; and
2. the fuel pump will not be used for retail or resale use but rather only for use by the facility as further placed on the record.

**IT IS FURTHER RESOLVED**, the above relief is subject to the following standard conditions:

1. That the Application, all exhibits, testimony, map, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for relief. In the event that it is determined by the Board, on non-arbitrary, non-capricious and reasonable grounds, that the Application, exhibits, testimony, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought by the Applicant, the Board may review its approval and rehear the Application, if circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice;
2. At any time within 45 days after the adoption of this resolution should a party of interest appeal to the Board for an order vacating or modifying any term or condition as set forth herein, upon presentation of clear and convincing evidence of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the facts at said hearing confirm that there had been a material fault in the Application, the Board

shall take whatever action it deems appropriate at that time, consistent with the MLUL and case law, including but not limited to a reconsideration of its prior approval, a rehearing, a modification of its prior approval, or such other action as appropriate;

3. The Applicant shall comply with all comments and recommendations set forth in the Board Engineer's February 28, 2020 Review Letter and the Board Planner's March 1, 2020 Review Letter;
4. The Applicant shall comply with all terms, conditions, and recommendations set forth in the Fire Marshal's Report.
5. The Applicant shall comply, satisfy and adhere to any and all conditions and/or requirements imposed by the Board at the hearing of this Application;
6. The Applicant shall comply, satisfy and adhere to any and all conditions and/or requirements contained within this Resolution;
7. The Applicant shall indemnify and hold the Township harmless from any Claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to *N.J.S.A. § 40:55D-12(c)*, and publication of the notice of public hearing in this matter in accordance with the law;
8. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed;
9. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required;
10. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner;
11. The Applicant must pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law;

12. The Applicant assumes all risks should the Applicant fail to obtain any other construction or other municipal permits required with respect to the relief as granted herein during the statutory appeal period associated with the language of this resolution;
13. The Applicant must obtain any other construction or other municipal permits required with respect to the relief as granted herein;
14. Failure of the Applicant to comply with any representation, requirement or condition contained within this Resolution or stated on the record during the hearing of this Application will permit this Board, at its sole option, to rescind the approval and relief granted under this Resolution and/or advise the Township to revoke any permits issued to the Applicant in connection with the proposals contained in this Application.

WESTAMPTON LAND DEVELOPMENT BOARD

BY: David M. Guggler  
~~Gary Berger, Chairman~~  
DAVID GUGGLER, VICE CHAIRMAN

ATTEST: Jodie Termini  
Emily Hess, Board Secretary  
Jodie Termini

DATE MEMORIALIZED: 2/2/2022