

RESOLUTION: 08-2023

WESTAMPTON TOWNSHIP LAND DEVELOPMENT BOARD

APPLICANT'S NAME: Rancocas Holdings LLC

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

PROPERTY ADDRESS: 598 Rancocas Road, Block 201, Lots 10 and 11

ZONING DISTRICT: B-1 – Business Zone

DATE OF HEARING: March 1, 2023

WHEREAS, Rancocas Holdings LLC (“Applicant”) filed an application with the Westampton Land Development Board (“Board”) requesting a Use Variance and Preliminary and Final Site Plan approval. The Applicant is proposing to develop the site with a 123-space parking lot for trucks and trailers or other large wheelbase vehicles. The property is currently improved with an auto repair shop and associated site improvements. The existing access driveways for the auto repair shop along Rancocas Road (Burlington County Route 626) are proposed to be removed. Access to the proposed facility shall be provided by one (1) ingress/egress drive from Highland Drive. The 8.3-acre tract of property is located south of Rancocas Mount Holly Road with frontage along Rancocas Road (Burlington County Route 626) and Highland Drive, Westampton, New Jersey, designated as Block 201, Lots 10 and 11 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 August 3, 2022 Board meeting, the Applicant, through its attorney, Patrick F. McAndrew, Esquire, requested the Application be carried to the September 7, 2022 Board meeting for further legal discussions with the Board’s Solicitor regarding this Application; and

WHEREAS, during the New Business portion of the August 3, 2022 Board Meeting it was announced the Applicant requested to carry this Application until the September 7, 2022 Board meeting to advise any members of the public present for the Application that the Application would be heard at the next meeting; and

WHEREAS, during the Old Business portion of the September 7, 2022 Board Meeting it was announced the Applicant requested to carry this Application until October 5, 2022 Board meeting to advise any members of the public present for the Application that the Application would be heard at the next meeting; and

WHEREAS, during the Old Business portion of the November 2, 2022 Board Meeting, Patrick McAndrew, Esq., attorney for the Applicant, requested the Application to be carried until December 7, 2022 because of the time limitation, which the Board agreed to permit; and

WHEREAS, at the December 7, 2022 Board Meeting, Patrick McAndrew, Esq. attorney for the Applicant, presented the professionals and witnesses for the Applicant; and

WHEREAS, at the December 7, 2022 Board Meeting, Chairman Gary Borger indicated there was an issue of res judicata brought before the Board and that the Board is required to make the following findings:

1. The second application is substantially similar to the first.
2. The same parties or their property are involved.
3. There must be no substantial change in the application itself or conditions surrounding the property.
4. There must have been an adjudication on the merits of the first application; and
5. Both applications must involve the same cause of action.

WHEREAS, Mr. McAndrew informed the Board the Application is to permit large vehicle storage on the Subject Property. He explained this Application is different than the Application considered by the Board in April 2022, which was denied. He explained the Applicant is no longer proposing two uses on one lot because the existing service station would be terminated. He further explained, the Applicant would be consolidating both lots into one and the service station would be converted into an office use connected to the proposed use.

WHEREAS, Mr. Sullivan swore in Kevin Hetzel ("Mr. Hetzel"), advisor to the Applicant. Mr. Hetzel testified the repair should no longer be used, eliminating the need for a two-use variance on the Subject Property. He testified the repair shop would be converted into an office space. He testified there would initially be 4-5 workers at the Subject Property. He testified the purpose is for there to be a storage area for vehicles and would be monitored all day every day. He testified users would have a lease agreement to park at the Subject Property and the users would have 24/7 access through an app or key fob to gain entrance. He testified the users would be owner operators, long haul drivers, etc. He testified the storage of trailers or campers would not be permitted and all storage would be short-term; and

WHEREAS, following the testimony of Mr. Hetzel, Mr. Sullivan swore in Kevin Shelly, who was deemed a qualified expert in Civil Engineering by the Board. Mr. Shelly shared Exhibit A1, a color site rendering of the Project. He testified there are 15 proposed parking spaces for workers in front of the proposed building. He testified the proposed curb cuts on Rancocas Road have been removed. He testified the Applicant is proposed a 5' berm with mature plantings on top along the frontage on Rancocas Road. He testified the Applicant was proposed a 8' aluminum fence and 3 bio retention basis in front of the proposed building. He testified there would be a total of 129 parking spaces, the majority of those would be 12' wide x 75' deep that would accommodate a tractor and trailer. He testified there are some spaces that would be 54' deep that would store smaller vehicles. He testified a use variance would be needed for the truck parking facility and a use variance would be needed for the setback from Rancocas Road; and

WHEREAS. Following the testimony of Mr. Shelly, Mr. Sullivan swore in Andrew Feranda ("Mr. Feranda"), who was deemed a qualified civil engineer and traffic engineer by the Board. Mr. Feranda provided Exhibit A2, a google image of the front of the current service station. He testified the service station would no longer have access to Rancocas Road and the flow of traffic would be oriented to the traffic signal on Highland Drive; and

WHEREAS, following the testimony of Mr. Feranda, Mr. Sullivan swore in Charles Heydt, who placed his credentials on the record and was deemed an expert by the Board as a Planner. Mr. Heydt testified that the repair station would be removed, eliminating the need for a use variance for two uses on the Subject Property. He testified the parking lot landscaping would not need a design waiver. He testified the Applicant would need a bulk variance for the setback of 200' for the office building and the foot candles requirement for lighting levels. Mr. Heydt provided (1) Exhibits A3(a), a color rendering of the east side of the Subject Property with the proposed improvements; (2) Exhibits A3(b), demonstrating main access to property via Highland Drive; (3) Exhibit A3(c), proposed berms along Rancocas Road; and (4) aerial view looking at the front of the office building.

WHEREAS, following the testimony of the professionals and witnesses of the Applicants, Dough Heinold, Esq. on behalf of the Intervenor, stated the position of Ballard that the Applicant does not have approved access to Highland Drive.

WHEREAS, Mr. Sullivan swore in Dave Ricci, who placed his credentials on the record and was deemed an expert in real estate by the Board. Mr. Ricci testified he is a partner of the Flynn Company, and they are the leasing agents on behalf of Ballard, who owns most of the real estate in the Highland Business Park. Mr. Ricci testified to his concern regarding extra traffic on Highland Drive due to the Application. He testified traffic is currently an issue on Highland Drive.

WHEREAS, the Board took a vote on the res judicata question, whether the Applicant was barred by res judicata. Following a vote of the Board, it was determined the Application was not barred by res judicata.

WHEREAS, following the testimony of the professionals and witnesses for the Applicant, the hearing was adjourned until January 4, 2023 to permit the Intervenor Highland Business Park to present testimony; and

WHEREAS, prior to the Board meeting on January 4, 2023, Doug Heinold, Esq., attorney for the Intervenor, and Patrick McAndrew, Esq., provided a request and consent to an adjournment of the hearing until February 1, 2023.

WHEREAS, prior to the Board meeting on February 1, 2023, Patrick McAndrew, Esq. requested an adjournment of the hearing until March 1, 2023 due to the Board having less than seven (7) voting members.

WHEREAS, on March 1, 2023, Mr. Sullivan swore in Mr. James Pinkerton, Senior Vice President of Ballard, on behalf of the Intervenor. Mr. Pinkerton testified he is the Senior Vice-President and handles portfolio management acquisitions and asset management. He testified to

his concerns about the fiduciary duty owed to Ballard's shareholders to preserve the value of Ballard's investments and the concerns regarding the Application due to traffic concerns; and

WHEREAS, following the testimony of Mr. Pinkerton, Mr. Sullivan swore in Bethann Grass ("Ms. Grasso"), who provided her qualifications and was deemed an expert by the Board as a Licensed Professional Engineer. She testified she found multiple issues with the traffic report prepared by the Applicant. She testified in her opinion the wrong figures were used when referencing another project in the report. She testified the appendices were not complete or correct and the comparable was related to a storage lot that no longer exists. Ms. Grasso presented Exhibits 01-04. She testified the proposed driveway configuration would lead to a right turn encroaching into the incoming traffic lane and the median would need to be modified. She testified inbound and outbound maneuvers would overlap; and

WHEREAS, following the testimony of Ms. Grasso, Mr. Sullivan swore in Geoffrey Gray-Cornelius, who stated his qualifications and was found to be an expert Licensed Professional Planner by the Board. Mr. Gray-Cornelius testified to his reasons the Application has failed to meet the statutory requirement of both the positive and negative criteria for a use variance. He testified in his professional opinion, the lot should be used as zoned for permitted uses in the B-1 zone.

WHEREAS, following the testimony of the professionals and other witnesses in support of the application, the Intervenors 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. Guerrero made a motion to deny the Application, seconded by Ms. Tolor.

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 Application.

WHEREAS, with regard to the requested use variance to permit large vehicle storage 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 a vehicle storage facility 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. 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 § 250-15 provides that Business Zone permits the following principal uses by right: (a) Retail sales establishments; (b) Retail service establishments; (c) Restaurants; (d) Hotel and motels; (e) Certain Indoor Recreation Facilities; (f) Flex Space or office/service center involving at least 20% of the total floor area as office, with the remaining floor area as warehouse or light industry; (g) Light industry; (h) Warehousing; (i) office for business, executive, professional and administrative purposes; (j) Laboratories dedicated to research, design, and experimentation; (k) Computer and data processing centers and facilities; (l) Banks and financial institutions; (m) Conference centers; (n) Medical and dental clinics and laboratories; (o) child-care centers; (p) Agricultural uses; (q) public building and uses; and (r) solar energy systems as a secondary permitted use in addition to an existing industrial or warehouse use.
- iii. Because the Applicant seeks to operate a large vehicle storage facility at 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 Warrant 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 proposed use, nor that the application of the Township Code’s use regulations set forth at § 250 imposes any special hardship on the Applicant.

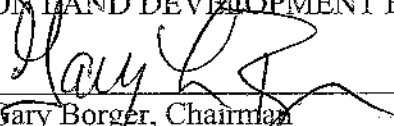
- v. Assuming, arguendo, the Application did satisfy certain aspects of the positive criteria necessary for an N.J.S.A. 40:55D-70d(1) use variance, the Applicant has failed to establish the "negative criteria" necessary for relief. Specifically, the Applicant has not shown through expert testimony and 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 Rancocas Holdings, 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	
Ryan Fagan	X		
Joseph Oddenheimer	X		
David Guerrero	X		
Frank Jones		X	
Cherelle Tolor	X		
Robert Thorpe	X		

WESTAMPTON LAND DEVELOPMENT BOARD

BY:


 Gary Borger, Chairman

ATTEST:


 Jodie Termi, Board Secretary

DATE MEMORIALIZED:

4/5/23