



LEBANON BOROUGH  
PLANNING BOARD & BOARD OF ADJUSTMENT  
MINUTES  
Tuesday June 13, 2023

The Regular meeting of the Lebanon Borough Planning Board/Board of Adjustment was called to order by Chairman at 7:00 P.M.

The meeting was convened in compliance with the Open Public Meetings Act of 1975. Three local newspapers were notified, and a notice is posted at Borough Hall.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited by all.

**MOMENT OF SILENCE**

Chairman Saharic called for a moment of silence for our fallen soldiers.

**ROLL CALL:**

Members Present: Alexander Saharic, Joseph Hauck, Ron Lapczynski, James Newman, Dr. Christopher Uchrin, Robert Weingart, Mayor Pittinger,

Absent: Brad Wetzal, David Abeles, and Councilman Berger

Also present: Karen M. Romano Planning Board Sec, Jonathan Drill Esq, Attorney,

Abstain:

**MINUTE APPROVAL:**

Mr. Hauck moved, and Mr. Weingart seconded, a motion to approve the Minutes of minutes of March 14, 2023.

The motion passed with the following roll call vote:

**Ayes:** Saharic, Hauck, Weingart, Lapacynski, Pittinger, Newman and Dr. Uchrin

**Absent:** Wetzel, Abeles, and Councilman Berger

**MEMORIZATION: RESOLUTION 2023-02 SUPERIOR TOWING**

Councilman moved, and Mr. Hauck seconded, a motion to approve the Amendment as stated.

**LEBANON BOROUGH PLANNING BOARD / BOARD OF ADJUSTMENT**

**SUPERIOR TOWING AND TRANSPORT, LLC  
1239 HIGHWAY ROUTE 22  
BLOCK 5, LOTS 31 AND 32**

**APPLICATION NO. 2023-02**

**RESOLUTION MEMORIALIZING GRANT OF “D(1)” USE AND “C(1)” BULK  
VARIANCES AND PRELIMINARY AND FINAL SITE PLAN APPROVAL TO ALLOW  
CONSTRUCTION AND USE TOWING AND AUTO MECHANIAL AND BODY  
REPAIR FACILITY**

**RESOLUTION NO. 2023-02**

**WHEREAS**, Superior Towing and Transport, LLC (the “**applicant**”) is the lessee of property consisting of two lots located at 1239 Highway Route 22 (“**Route 22**” or the “**highway**”) on the eastbound side of the highway, designated on the Borough of Lebanon (the “**Borough**”) tax maps as Block 5, Lots 31 and 32 (the “**property**”), which property is located in the Commercial-Research, Office and Manufacturing 100,000 zoning district (the “**Com-Rom 100,000 Zone**”), and is currently developed with two (2) office /commercial buildings that are utilized as a towing and auto mechanical body repair business (the “**existing improvements**”);

**WHEREAS**, the applicant made application to the Lebanon Borough Planning Board/ Board of Adjustment (the “**Board**”) for two (2) “d(1)” use variances, several “c(1)” bulk variances, and preliminary and final site plan approval (the “**application**”) to allow demolition of the existing buildings and construction of a proposed new building, consisting of 9,840 square-foot of floor area, including a 2<sup>nd</sup> story office space, to be used for its towing and auto mechanical and body repair business (the “**proposed building**”), along with associated site

improvements (the “**proposed improvements**”) (the proposed building and the proposed site improvements together constitute the “**proposed development**”), and the proposed development will be utilized as and serve as the new Superior Towing and Transport towing and auto mechanical and body repair facility (the “**proposed facility**”);

**WHEREAS**, the “d” variances confer exclusive subject matter jurisdiction over the application with the Board, exercising the powers of a zoning board of adjustment, 1 pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-70d, -76b, 70c, -46, and -50;

**WHEREAS**, because the Board is exercising its powers as a zoning board of adjustment in considering “d(1)” variances, the Class I and Class III members of the Board did not participate in the proceedings in accordance with N.J.S.A. 40:55D-25c;

**WHEREAS**, a number of documents were submitted with regard to the application by the Applicant, the Board’s professionals, various Borough departments and professionals, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which the Applicant seeks Board approval, which plans, drawings and documents have been on file and available for public inspection for at least ten (10) days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Building Elevations prepared by Shirk Pole Buildings, LLC, consisting of two (2) pages, dated January 14, 2020 (the “**Architectural Drawings**”), and
2. Site Plan, prepared by Steven Parker, PE, of Parker Engineering and Surveying, PC, consisting of eight (8) sheets, dated April 2, 2021, revised through July 5, 2022 (the “**Site Plans**”);

**WHEREAS**, the application was deemed to be complete;

**WHEREAS**, a duly noticed public hearing was held on the application, commencing on April 12, 2022 and continuing to and concluding on September 14, 2022, with affidavits of service and publication of notices of the hearing being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Tara A. St. Angelo, Esq. and Noel Lesica, Esq. (of Gebhardt & Kiefer, P.C.) and the Board was represented by Jonathan E. Drill, Esq. and Joseph Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

**WHEREAS**, the following individuals testified during the hearing, were subject to cross examination and questioning, and the testimony is part of the record in this matter:

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1 The Board is a planning board which also has the powers of a zoning board of adjustment pursuant to N.J.S.A. 40:55D-25c.

1. Michael Girgis (Applicant's managing member),
2. Steven Parker, PE (Applicant's engineering expert),
3. Henry Hinterstein, P.P. (Applicant's planning and landscape architecture expert).
4. Bob Brightly, PE (Board's engineering expert), and
5. Stan Slalchetka, PP (Board's planning expert);

**WHEREAS**, the following exhibit was entered into evidence during the hearing, is on file with the Board, and is part of the record in this matter:

B-1 Drone photo of property;

**WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBIT REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS**

1. **The Property, Zoning, Existing Improvements, and Surrounding Area.** As set forth above, the property consists of two lots located in the ROM-COM 100,000 Zone. Lot 32 is a 0.724 acre (31,572 square feet) corner lot located at the northwest corner of Route 22 and Clark Road. Lot 32 is presently developed with a 2-story frame structure located near the northwest corner of the lot, a 1-story masonry building located on the eastern portion of the lot with frontage along Route 22 East, and accessory shed and associated gravel and asphalt parking and driveway areas. Lot 31 is a 0.1864 acre (8,121 square feet) lot that is contiguous to the southerly line of Lot 32, with frontage on Clark Road. Lot 31 is presently developed with a 2-story residential frame structure, a shed, an asphalt driveway that serves the residence, and a gravel and asphalt area that is utilized for overflow from the towing business being conducted on Lot 32. Lot consolidation / merger, which does not need Board approval, is proposed as part of the development of the property and the resulting property will be a 0.9112 acre (39,693.4 square feet) corner lot. A variety of commercial properties within the ROM-COM 100,000 Zone surround the property. Adjacent to the east of the property is an existing, single-family, two-story residential dwelling located on lot 34. To the south of the property is an existing, multi-family residential apartment complex located on lot 35.

2. **The Proposed Development.** As set forth above, the proposed development includes demolition of the existing buildings and existing improvements on the property and construction of a new proposed building, consisting of 9,840 square-feet of floor area, including a 2<sup>nd</sup> story office space, that will be used for the Applicant's towing and auto mechanical and

body repair business. The proposed development will also include associated parking and blacktop asphalt driveway areas, as well as landscaping and lighting improvements. The proposed building will be a two-story structure with 2,880 square feet of office space. The remainder of the building (6,960 square feet) will be used for storage and repair of vehicles and will include six (6) “repair” bays, four (4) of which will include lifts, and four (4) “storage” bays. The rear of the property will be used outdoor truck and vehicle storage.

3. **The Required and Requested “D(1)” Use Variance Relief.** Pursuant to ordinance section 15.01, “only the following uses are permitted uses in the ROM-COM 100,000 Zone”: (1) Offices for business, professional, executive or administrative purposes; (2) Research Offices; (3) Research and scientific laboratories; (4) Manufacturing, fabrication, treatment or conversion of products; (5) Industrial warehouses and wholesale distribution centers; (6) A store or shop for retail business or wholesale display entirely within the confines of a building; (7) An indoor theater; (8) Accessory uses customarily incident to the “foregoing permitted uses; (9) Outdoor storage only as an accessory to the primary use, and such storage shall be adequately screened and shall not exceed 25% of the lot area; and (10) Any use by the Borough. The proposed towing and auto mechanical and body repair business is not included in the list of permitted uses set forth in ordinance section 15.01 and thus is prohibited in the ROM-COM 100,000 Zone. Additionally, in as much as storing towed vehicles is not an accessory use to a permitted use in the zone, the outdoor storage of vehicles is also a prohibited use in the zone. The applicant thus requires and has requested “d(1)” use variances from ordinance section 15.01 to allow the property to be used for a towing and auto mechanical and body repair business as well as to allow the outdoor storage of vehicles on the property as part and parcel of the principal use and not as a permitted accessory use.

4. **The Required and Requested “C” Variance Relief.** The Applicant also requires a number of “c” bulk and other type “c” variances and has requested the following “c(1)” or so-called “hardship” variances from the requirements of the ROM-COM 100,000 Zone as set forth in ordinance section 15.04:

a. “C(1)” variance from ordinance section 15.04-1 which establishes 100,000 square feet as the minimum lot area to allow the proposed facility on a 39,693.42 square foot lot;

b. “C(1)” variance from ordinance section 15.04-3 which establishes 40% as the maximum lot coverage to allow 94.75% lot coverage for the proposed improvements;

c. “C(1)” variance from ordinance section 15.04-4 which requires the main structure on a lot in the zone to “have a floor area of not less than 15,000 square feet” to allow the proposed building to be constructed with 9,840 square feet of floor area;

d. “C(1)” variance from ordinance section 15.04-6 which establishes 75-foot as the minimum front yard setback requirement to allow a front yard setback of 47.9 feet along Route 22;

- e. “C(1)” variance from ordinance section 15.04-6 which establishes 75-feet as the minimum front yard setback to allow a front yard setback of 15 feet along Clark Road.
- f. “C(1)” variance from ordinance section 15.04-6 which provides that “not more than 20% of the front yard [setback], exclusive of walks, may be paved” to allow 83% of the front yard to be paved;
- g. “C(1)” variance from ordinance section 15.04-7(B) which establishes 50-feet as that the minimum side yard setback adjacent to a residential use to allow a setback of 45.9 feet for the side yard adjacent to a multi-family residential building located on Lot 35;
- h. Three (3) “c(1)” variances from ordinance section 15.04-9(B) which requires that any fence screening outdoor storage not be closer than 25 feet to any side yard property line and 35 feet to any rear property line to allow the proposed fencing to be located approximately four (4) feet from the side yard property lines adjacent to Lots 33, 34 and 35.
- i. “C(1)” variance ordinance section 15.04-10(A) which requires off-street parking to “be in accordance with the requirements of Article 6 of this ordinance where ordinance section 6.03 requires a total of 19 parking spaces for the proposed development in as much as ordinance section 6.03-1.07 requires one (1) space per 300 square feet of floor area (2,880 square feet and 10 spaces) and section 6.03-1.03 requires one (1) space per 800 square feet of gross area or 1.5 spaces per two (2) employees, whichever is greater (6,960 square feet and 9 spaces) to allow a total of 12 parking spaces (which is separate and apart from the number of towed and other vehicles which will be stored on the property as part of the business operation);
- j. “C(1)” variance from ordinance section 15.04-10(B) which permits only the side and rear yards to be used for off-street parking areas to allow nine (9) parking spaces in the front yard; and
- k. Three (3) “c(1)” variances from ordinance section 15.04-10(C) which provides that off street parking areas shall not be closer than ten (10) feet from any side yard property line and not closer than twenty (20) feet from any rear yard property line to allow the proposed truck parking and vehicle storage area to be located approximately 5.5 feet from the easterly side yard property line adjacent to Lots 33 and 34, and the southerly side yard property line adjacent to Lot 35.

5. **Findings as to the “D(1)” Use Variance to Allow the Towing and Auto Mechanical and Body Repair Business Use.** The Board’s findings as to the positive and negative criteria regarding the requested “d(1)” use variance to allow the towing and auto mechanical and body business use are as follows:

- a. **Positive Criteria Findings.** The Board’s findings as to the positive criteria of the “d(1)” use variance to allow the towing and auto mechanical and body repair

business use are as follows. First, while the Applicant has more than one location for his towing business, it is the only towing business on the State Police list in this area and is an absolute benefit to Hunterdon County. As such, the Board finds that the business promotes the general welfare by providing a necessary service to the community. Second, the Board finds that the property's location makes it particularly suited for the proposed towing and auto mechanical and body repair use as it is located on Route 22 and less than one (1) mile from Interstate Route 78.

b. **Negative Criteria Findings.** The Board's findings as to the negative criteria of the "d(1)" use variance to allow the towing and auto mechanical and body repair use are as follows. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "d(1)" use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance.

6. **Findings as to the "D(1)" Use Variance to Allow Outdoor Storage of Vehicles.** The Board's findings as to the positive and negative criteria of the "d(1)" use variance to allow the outdoor storage of vehicles on the property are as follows.

a. **Positive Criteria Findings.** The Board's findings as to the positive criteria of the "d(1)" use variance to allow the outdoor storage of vehicles on the property are as follows. First, as set forth above, the Board recognizes that the proposed outdoor storage of vehicles is not an accessory use to a permitted use in the COM-ROM 100,000 Zone but is part and parcel of the proposed prohibited towing use. Quite simply, the proposed towing business cannot be conducted without the ability to store towed vehicles outdoors. As such, the Board finds that the same positive reasons warranting the grant of the "d(1)" use variance to allow the towing and auto mechanical and body repair business on the property warrant the grant of a "d(1)" variance to allow the outdoor storage of vehicles on the property. To repeat from above, the Board finds that the towing business is the only towing business on the State Police list in this area and is an absolute benefit to Hunterdon County. As such, the Board finds that the business promotes the general welfare by providing a necessary service to the community. Second, the Board finds that the property's location makes it particularly suited for the proposed towing business use as it is located on Route 22 and less than one (1) mile from Interstate Route 78.

b. **Negative Criteria Findings.** The Board's findings as to the negative criteria of the "d(1)" use variance to allow the outdoor storage of vehicles on the property are as follows. Provided that the conditions set forth below are imposed and complied with, the Board finds that the "d(1)" use variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance.

7. **Findings as to the "C(1)" Bulk Variances for Lot Size, Yard Setback and Impervious Coverage Deviations.** As set forth above, the applicant has requested the following "c(1)" bulk variances: (a) "C(1)" variance from ordinance section 15.04-1 which establishes

100,000 square feet as the minimum lot area to allow the proposed facility on a 39,693.42 square foot lot; (b) “C(1)” variance from ordinance section 15.04-3 which establishes 40% as the maximum lot coverage to allow 94.75% lot coverage for the proposed improvements; (c) “C(1)” variance from ordinance section 15.04-4 which requires the main structure on a lot in the zone to “have a floor area of not less than 15,000 square feet” to allow the proposed building to be constructed with 9,840 square feet of floor area; (d) “C(1)” variance from ordinance section 15.04-6 which establishes 75-feet as the minimum front yard setback requirement to allow a front yard setback of 47.9 feet along Route 22; (e) “C(1)” variance from ordinance section 15.04-6 which establishes 75-feet as the minimum front yard setback to allow a front yard setback of 15 feet along Clark Road; (f) “C(1)” variance from ordinance section 15.04-6 which provides that “not more than 20% of the front yard [setback], exclusive of walks, may be paved” to allow 83% of the front yard to be paved; (g) and (h) “C(1)” variance from ordinance section 15.04-7(B) which establishes 50-feet as that the minimum side yard setback adjacent to a residential use to allow a setback of 45.9 feet for the side yard adjacent to a multi-family residential building located on Lot 35. The Board’s findings as to the “c(1)” bulk variances for insufficient lot size, insufficient yard setbacks and greater than permitted impervious coverage are as follows.

a. **Positive Criteria Findings.** The Board’s findings as to the positive criteria are as follows. First, the Board notes and finds that, because the property totals only 0.9112 acre (39,693.4 square feet) in area, which is a mere 40% of the minimum required lot size of 100,000 square feet, unless a “c” variance is granted from the minimum required lot size, no use (whether a permitted use or a prohibited use) can be made of the property which would zone the property into inutility. Thus, the Board finds that it must grant a “c(1)” or so-called “hardship” variance from the minimum lot size requirement to avoid a taking of the property. That said, the Board finds that the extent of the development to be allowed on the property is subject to the negative criteria which will be discussed below. Second, the Board finds that the deviations from the required minimum yard setbacks and the required maximum impervious coverage requirements are directly related to the fact that the property is a mere 40% of the minimum required lot size and that any use of the property (whether a permitted use or a prohibited use) would run afoul of these bulk requirements. The Board thus finds that unless “c(1)” or “hardship” variances are granted, these bulk regulations will inhibit the extent to which the property can be used. That said, similar to the lot size variance, the Board finds that the extent of the development to be allowed on the property is subject to the negative criteria which will be discussed below.

b. **Negative Criteria Findings.** The Board’s findings as to the negative criteria are as follows. First, the Board finds that the “c(1)” variances at issue can be granted without substantial detriment to the public good if the conditions set forth below are imposed and complied with. In this regard, the Board notes and finds that the conditions set forth below will limit the intensity of the use of the property through limitations on the number of vehicles that can be stored / parked on the property at any one time, limitation of vehicular ingress and egress from Route 22 only, and through the limitation on the hours of operation. The Board also notes and finds that the condition requiring all repairs to be performed indoors and the fencing conditions will limit the noise generated by the operation as well as the aesthetic detriment of the

operation. Second, the Board finds that the “c(1)” variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance if the conditions set forth below are imposed and complied with. In this regard, the Board not only notes and finds that the conditions identified above are required for this finding but that the condition requiring that the applicant convey at no cost to the Borough an easement along Clark Road for sidewalks to be constructed by others in relation to the Board’s approval of the so-called “Town Center” inclusionary multi-family housing development across the highway from the property, and which is the center piece of the Borough’s compliance with its state constitutional Mount Laurel affordable housing obligation. The Board finds that, while granting the “c(1)” variances at issue will impair to a certain extent the intent and purpose of the master plan and zoning ordinance provisions regarding lot size, yard setbacks and impervious coverage, the granting of the easement by the applicant is entirely consistent with the Borough’s Housing Plan Element and Fair Share Plan Element of the Master Plan and, weighed against the deviations, results in the “c(1)” variances being able to be granted without any substantial impairment.

8. **Findings as to the Remaining “C(1)” Variances.** In addition to the bulk variances set forth above, the applicant has requested the following additional “c(1)” variances: (a) Three (3) “c(1)” variances from ordinance section 15.04-9(B) which requires that any fence screening outdoor storage not be closer than 25 feet to any side yard property line and 35 feet to any rear property line to allow the proposed fencing to be located approximately four (4) feet from the side yard property lines adjacent to Lots 33, 34 and 35; (b) “C(1)” variance ordinance section 15.04-10(A) which requires off-street parking to “be in accordance with the requirements of Article 6 of this ordinance where ordinance section 6.03 requires a total of 19 parking spaces for the proposed development in as much as ordinance section 6.03-1.07 requires one (1) space per 300 square feet of floor area (2,880 square feet and 10 spaces) and section 6.03-1.03 requires one (1) space per 800 square feet of gross area or 1.5 spaces per two (2) employees, whichever is greater (6,960 square feet and 9 spaces) to allow a total of 12 parking spaces (which is separate and apart from the number of towed and other vehicles which will be stored on the property as part of the business operation); (c) “C(1)” variance from ordinance section 15.04-10(B) which permits only the side and rear yards to be used for off-street parking areas to allow nine (9) parking spaces in the front yard; and (d) Three (3) “c(1)” variances from ordinance section 15.04-10(C) which provides that off street parking areas shall not be closer than ten (10) feet from any side yard property line and not closer than twenty (20) feet from any rear yard property line to allow the proposed truck parking and vehicle storage area to be located approximately 5.5 feet from the easterly side yard property line adjacent to Lots 33 and 34, and the southerly side yard property line adjacent to Lot 35. The Board’s findings as to the above remaining “c(1)” variances are as follows.

a. **Positive Criteria Findings.** The Board’s findings as to the positive criteria of the remaining “c(1)” variances are similar to its findings as to the “c(1)” bulk variances and are that, unless “c(1)” or “hardship” variances are granted, the zoning regulations at issue here will inhibit the extent to which the property can be used. The Board’s specific findings in this regard are as follows. First, the Board finds that in order for fencing to adequately screen the outdoor storage of vehicles in this particular application the fencing must

be closer than 25 feet to the three side yard property lines adjacent to Lots 33, 34 and 35 due to the small size of the property as referenced above. Subject to satisfaction of the negative criteria, the Board finds that allowing the fencing to be as close as 4-feet to the side property lines adjacent to the three lots at issue is necessary. Second, the Board finds that in light of the number of vehicles that will be stored outdoors, there will not be enough space to accommodate the number of parking spaces required by the ordinance so that granting a “c(1)” parking variance to allow less than the required number of parking spaces is necessary, subject to satisfaction of the negative criteria. Further, again subject to satisfaction of the negative criteria, the Board finds that the small size of the property prevents the applicant from complying with the parking area requirements so that “c(1)” variances are necessary to allow nine (9) parking spaces in the front yard and, additionally, to allow the off street parking areas to be closer than ten (10) feet from any side yard property line and closer than twenty (20) feet from any rear yard property line to allow the proposed truck parking and vehicle storage area to be located approximately 5.5 feet from the easterly side yard property line adjacent to Lots 33 and 34, and the southerly side yard property line adjacent to Lot 35.

b. **Negative Criteria Findings.** The Board’s findings as to the negative criteria are as follows. First, the Board finds that the “c(1)” variances at issue can be granted without substantial detriment to the public good if the conditions set forth below are imposed and complied with. Similar to the Board’s findings with respect to the bulk variances, the Board notes and finds in this regard that the conditions set forth below will limit the intensity of the use of the property through limitations on the number of vehicles that can be stored / parked on the property at any one time, limitation of vehicular ingress and egress from Route 22 only, and through the limitation on the hours of operation. Second, the Board finds that the “c(1)” variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance if the conditions set forth below are imposed and complied with. Again, similar to the Board’s findings with respect to the bulk variances, the Board notes and finds in this regard that, in addition to the conditions identified above being required for the Board to make this finding, the condition requiring that that the applicant convey at no cost to the Borough an easement along Clark Road for sidewalks to be constructed by others in relation to the Board’s approval of the so-called “Town Center” inclusionary multi-family housing development, which is the center piece of the Borough’s compliance with its state constitutional Mount Laurel affordable housing obligation, is critical. The Board finds that, while granting the “c(1)” variances at issue will impair to a certain extent the intent and purpose of the master plan and zoning ordinance provisions regarding fencing and parking, the granting of the easement by the applicant is entirely consistent with the Borough’s Housing Plan Element and Fair Share Plan Element of the Master Plan and, weighed against the deviations, results in the “c(1)” variances being able to be granted without any substantial impairment.

9. **Findings as to Preliminary and Final Site Plan Review.** The Board’s findings as to preliminary and final site plan review are as follows. With the exception of the variances that have been requested, the Board finds that the Site Plans and Architectural Drawings will comply with all other applicable zoning ordinance regulations and all site plan ordinance requirements, provided that the conditions set forth below are imposed and complied with. The

Board finds that approval of these documents, subject to the revisions required below being made, is appropriate in this particular application because the documents, as revised, will then comply with all applicable ordinance regulations and requirements (other than from those ordinance provisions from which variances have been sought). Provided that the conditions set forth below are imposed and complied with, the Board also finds that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development. Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that preliminary and final site plan approval can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the master plan and zoning ordinance. For all of the foregoing reasons, the Board's ultimate finding is that preliminary and final site plan approval is warranted provided that the conditions set forth below are imposed and complied with.

## **B. CONCLUSIONS OF LAW**

1. **The "D(1)" Use Variances.** The Board's conclusions as to the "d(1)" use variances at issue are as follows:

a. **Standards for Considering the "D(1)" Use Variances.** The Board has the power to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." Medici v. BPR Co., 107 N.J. 1, 18 (1987). Our courts have held that certain uses are deemed "inherently beneficial" which essentially means that, by definition, the use per se promotes the general welfare. Id. The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. Id. Thus, in a typical non-inherently beneficial use application – and the application here is a typical non-inherently beneficial use application – the standard the Board must employ to determine whether special reasons have been proven is whether the property is particularly suited for the very use proposed. Id. Our courts held that proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project. Price v. Himeji, 214 N.J. 263, 292-293 (2013). All that said, the Board may not exercise its power to grant a "d(1)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987). As to the zone plan (the master plan) and zoning ordinance, the Medici court held that the applicant must prove and the Board must find by an "enhanced quality or proof" that there will be no substantial impairment. The applicant must "reconcile" the use proposed with the ordinance's omission of

the use from those permitted in the zone. Id.

b. **Grant of the “D(1)” Use Variances.** As set forth in the factual findings above, the Board found that the towing and auto mechanical and body repair business promotes the general welfare by providing a necessary service to the community and that the property’s location makes it particularly suited for the proposed towing and auto mechanical and body repair use as it is located on Route 22 and less than one (1) mile from Interstate Route 78. As also set forth above, the Board found that the same positive reasons warranting the grant of the “d(1)” use variance to allow the towing and auto mechanical and body repair business on the property warrant the grant of a “d(1)” variance to allow the outdoor storage of vehicles on the property. Finally, the Board found that, provided that the conditions set forth below are imposed and complied with, the “d(1)” use variances can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance. As such, the Board concludes that the requested “d(1)” use variances can and should be granted subject to the conditions set forth below.

2. **The “C(1)” Variances.** The Board’s conclusions as to the “c(1)” variances at issue are as follows:

a. **Standards for Considering “C(1)” or “Hardship” Variances.** The Board may grant “c(1)” or so-called “hardship” variances pursuant to N.J.S.A. 40:55D-70c(1) where: (1) “(a) by reason of exceptional narrowness, shallowness or shape of a specific piece property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon; (2) the strict application of any regulation . . . would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.” This is the so-called “positive” criteria of a “c(1)” variance. The “hardship” that the applicant must prove is not that the zoning regulation at issue has zoned the property into inutility. While inutility caused by a zoning regulation would require a variance to avoid an /unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit “the extent” to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available to relieve “personal hardship” of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). A hardship variance is also not available to relieve hardship caused by a mistake, Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956), and/or for an intentionally created situation, which is referred to as a “self-created” hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979). Even if an applicant proves the “positive” criteria of a “c(1)”, the Board may not exercise its power to grant the variance unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70, “no variance or other relief ... may be granted ... unless such variance or other relief ... can be granted without substantial detriment to the public good and will not

substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means the Township “master plan.” Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. **Grant the “C(1)” Variances.** As set forth above, the Board found that all of the requested “c(1)” variances were warranted because of the property’s small size. Specifically, subject to satisfaction of the negative criteria, the Board found that the “c(1)” variance requested for insufficient lot size had to be granted to avoid a taking of the property and all other requested “c(1)” variances were warranted to avoid the regulations at issue inhibiting the extent to which the property can be used. As also set forth above, the Board found that the “c(1)” variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that it can and should grant the “c(1)” variances subject to the conditions set forth below.

3. **Preliminary and Final Site Plan Review.** The Board’s conclusions as to preliminary and final site plan approval are as follows:

a. **Standards for Considering the Positive Criteria of Preliminary and Final Site Plan Review.** N.J.S.A. 40:55D-46a and 50a are the focal points for preliminary and final site plan review. N.J.S.A. 40:55D-46a provides that the Board “shall” grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. Thus, if the application complies with all ordinance provisions, the Board must grant approval. Conversely, if the application does not comply with all ordinance provisions, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are exceptions: The first exception is where an application does not comply with all ordinance regulations and requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance regulations and requirements and grant approval if the application complies with all such remaining regulations and requirements. The second exception is where the application does not comply with all ordinance regulations and requirements, but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the prior to the Board granting approval. Even if all ordinance regulations and requirements are met, the Board cannot grant approval unless matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety are addressed. D’Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. Super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). And, if information and/or plans related to such essential elements of the development plan have not been submitted to the Board

in sufficient detail for review and approval as part of the site plan review process, approval must be denied. *Id.* Finally, because the preliminary and final site plan applications here are connected to a “d” variance, any site plan approval otherwise warranted cannot be granted pursuant to N.J.S.A. 40:55D-76b “unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. *Medici v. BPR Co.*, 107 N.J. 1, 4, 21 (1987).

b. **Grant of Preliminary and Final Site Plan Approval.** As set forth in the factual findings above, with the exception of the variances that have been requested and which the Board has concluded can and should be granted, the Board found that the Site Plans and Architectural Drawings will comply with all other applicable zoning ordinance regulations and all site plan ordinance requirements, provided that the conditions set forth below are imposed and complied with. As also set forth in the factual findings above, provided that the conditions set forth below are imposed and complied with, the Board found that matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development. Finally, as further set forth in the factual findings above, the Board found that preliminary and final site plan approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance, provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that preliminary and final site plan approval can and should be granted but subject to the conditions set forth below.

4. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval it grants. *North Plainfield v. Perone*, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, *Alperin v. Mayor and Tp. Committee of Middletown Tp.*, 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); *Eagle Group v. Zoning Board*, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). *Urban v. Manasquan Planning Board*, 124 N.J. 651, 661 (1991) explained that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” (citing with approval *Orloski v. Ship Bottom Planning Board*, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions). *Stop & Shop Supermarket Co. v. Springfield Board of Adj.*, 162 N.J. 418, 438-439 (2000) explained that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties. Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance

requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). Another source of authority for a board to impose conditions upon a developmental approval is municipal ordinances and Board rules. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2022), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The Board concludes that the conditions set forth below are warranted and should be imposed on all of the above-mentioned bases.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON SEPTEMBER 13, 2022, AS FOLLOWS:**

**C. RELIEF GRANTED**

1. **“D(1)” Use Variance to Allow the Towing and Auto Mechanical and Body Repair Business.** Subject to the conditions set forth below, a “d(1)” use variance is hereby granted to allow the towing and auto mechanical and body repair business on the property, which uses are not permitted in the ROM-COM 100,000 zone pursuant to ordinance section 15.01.
2. **“D(1)” Use Variance to Allow the Outdoor Storage Use.** Subject to the conditions set forth below, a “d(1)” use variance is hereby granted to allow the outdoor storage in connection with the towing and auto mechanical and body repair business, which outdoor storage is not permitted in the ROM-COM 100,000 zone pursuant to ordinance section 15.01.
3. **“C(1)” Front Yard Setback Variance Adjacent to Route 22.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-6, which requires a minimum front yard setback of 75 feet, to allow a front yard setback of 47.9 feet adjacent to Route 22.
4. **“C(1)” Front Yard Setback Variance Adjacent to Clark Road.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section

15.04-6, which requires a minimum front yard setback of 75 feet, to allow a front yard setback of 15 feet adjacent to Clark Road.

5. **“C(1)” Side Yard Setback Variance Adjacent to Residential Use on Lot 35.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-7(B), which requires a minimum side yard setback of 50 feet where the side yard is adjacent to a residential use, to allow a side yard setback of 45.9 feet for the side yard adjacent to a multi-family residential building located on Lot 35.

6. **“C(1)” Impervious Coverage Variance.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-3, which allows a maximum impervious coverage of 40%, to allow 78% impervious coverage on the property.

7. **“C(1)” Floor Area Variance.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-4, which requires a minimum floor area of 15,000 square feet, to allow a floor area of 9,840 square feet.

8. **“C(1)” Front Yard Impervious Coverage Variance.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-6, which allows a maximum front yard impervious coverage of 20%, to allow front yard impervious coverage of 83%.

9. **Three (3) “C(1)” Fence Variances.** Subject to the conditions set forth below, three (3) “c(1)” variances are hereby granted from ordinance section 15.04-9(B), which requires fencing screening outdoor storage to be placed at least 25 feet from any side yard property line, to allow the fence to be placed four (4) feet from the side yard property lines of Lots 33, 34 and 35.

10. **“C(1)” Parking Space Variance.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance sections 6.03-1.03, -1.07 and -1.13, which require a total of 19 parking spaces (actual vehicle parking spaces, not vehicle storage spaces) for the proposed development, to allow a total of 12 parking spaces.

11. **“C(1)” Variance to Allow Off Street Parking in the Front Yard Area.** Subject to the conditions set forth below, a “c(1)” variance is hereby granted from ordinance section 15.04-10(B), which allows off-street parking only in side yards and rear yards, to allow nine (9) off-street parking spaces in the front yard area.

12. **Three (3) “C(1)” Variances for the Location of Off Street Parking.** Subject to the conditions set forth below, three (3) “c(1)” variances are hereby granted from ordinance section 15.04-10(C), which provides that off street parking areas shall not be closer than ten (10) feet from any side yard property line, to allow the truck parking and storage area to be located 5.5 feet from the easterly side yard property line adjacent to Lots 33 and 34, and the southerly side yard property line of Lot 35.

13. **Preliminary and Final Site Plan Approval.** Subject to the conditions set forth below, which include revisions to the Site Plans and Architectural Drawings referenced above, preliminary and final major site plan approval is granted to the Site Plans and Architectural Drawings to allow construction of the proposed development.

D. **CONDITIONS**

1. **Revisions to Site Plans and Architectural Drawings.** The applicant shall revise the Site Plans and Architectural Drawings referenced above to the satisfaction of the Borough Engineer in accordance with the comments set forth below. The revisions shall be made, and the site plans signed by the Borough Engineer and Board Chair evidencing that the revisions have been made no later than December 13, 2023 (which is six (6) months from the adoption of the within resolution). In the event that the applicant fails to revise the Site Plans and Architectural Drawings as required and/or fails to obtain signatures on the site plans as required, all within said time period, or extension thereof as granted by the Board, the approvals shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would have continued the hearing on an application for no more than a six (6) month period to provide the applicant with the opportunity to revise the Site Plans and Architectural Drawings, and failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required revisions, would result in denial of the application.) The required revisions are as follows:

a. **Comments Emanating in the following sections of the Memo to the Board from Kendra A. Lelie, A.I.C.P., P.P., L.L.A. (Board Planning Expert) dated September 12, 2022:**

(Intentionally omitted if not listed herein)

D. Landscaping

1. Pursuant to ordinance section 4.12-1, all areas between the street and the structure or use, not used for walls, driveways and off-street parking shall be devoted to the planting of grass, trees, shrubs, flowers, and ornamental plants. The Site Plans shall be revised to provide additional plantings to the proposed lawn areas adjacent to the west of the front yard parking area and the front yard area to the east of the proposed macadam driveway.

2. Pursuant to ordinance section 15.04-10(D), where off-street parking areas abut a zone used for residential purposes, the parking areas shall be screened, buffered, and landscaped in accordance with Section 4.12 and 4.13 of the land use ordinances. The Site Plans shall be revised to provide screening, buffering and landscaping in the proposed lawn areas adjacent to the front yard parking and driveway areas.

#### E. Buffering and Screening

1. The planting schedule provided in the Landscaping Plan does not indicate whether the proposed plantings are shrubs, ornamental trees, or shade trees. The planting schedule shall be revised to make this distinction and the applicant shall work with the Board planning expert as to the types and sizes of the plantings. In the event that the applicant and the Board planning expert cannot agree on any issues, the applicant can apply by letter to the Board without having to provide notice for the Board to resolve the matter.

2. Pursuant to ordinance section 15.04-9(A), all outdoor storage shall be screened by special planting and or fences so that it is not visible from any adjacent property or public thoroughfare. The applicant proposes a six (6) foot high solid vinyl fence with privacy slats along the southern and northern edges of the proposed macadam parking lot and vehicle storage areas. Privacy slats shall be included in the gate. The applicant shall revise the Landscaping Plan to the satisfaction of the Board planning expert to ensure that the requirements of the Borough's ordinance are being met. In the event that the applicant and the Board planning expert cannot agree on any issues, the applicant can apply by letter to the Board without having to provide notice for the Board to resolve the matter.

3. Pursuant to ordinance section 4.13-1(A), all planted screens shall consist of a strip not less than five (5) feet wide, densely planted with shrubs or evergreens not less than four (4) feet high at the time of planting and of a type that will form a year-round screen of not less than six (6) feet in the height within three (3) years from the date of plantings. The applicant proposes 61 Hetzi junipers for screening along the eastern and southern property lines. There is a wooden fence on the adjoining property. However, the height of the proposed plantings and proposed spacing does not technically conform to the ordinance requirement and places the burden for screening on the adjoining property owner. The applicant shall revise the Landscaping Plan to the satisfaction of the Board planning expert to ensure that the requirements of the Borough's ordinance are being met. In the event that the applicant and the Board planning expert cannot agree on any issues, the applicant can apply by letter to the Board without having to provide notice for the Board to resolve the matter.

4. The Landscaping Plan shall be revised as follows:

a. Evergreens or conifers shall be used, and no deciduous screening shall be used, in accordance with ordinance sections 4.13-1(B) and (C).

b. Add a note to the plan stating that the integrity of the buffering and screening plan shall be preserved by maintenance and replacement of buffering and screening in accordance with ordinance section 4.13-3, and such maintenance and replacements shall be a condition of approval.

#### F. Lighting

1-2. Revise the Lighting Plan to provide that all light pole fixtures shall be equipped with house side shields and to provide that any building mounted and parking area light fixtures will not create spillover into adjacent lots and streets.

#### G. Building Design

1. Revise the Architectural Drawings to provide that the façade facing Clark Road shall be designed to the satisfaction of the Board planning expert with an enhanced aesthetic treatment and not a blank wall. If no windows or wall offsets can be provided, attractive landscaping of sufficient height shall cover the long wall.

2. Add notes on the Architectural Drawings to specify the color selection for all exterior walls and the roof, which color selection shall be satisfactory to the Board planning expert who shall consult with the Board on this issue.

3. The zoning table on the Layout Plan (sheet 3) shall be revised to remove the variance designation for the 45.9 foot side yard adjacent to Lot 35. Additionally, the side yard setback adjacent to a residential use should be corrected from 47.9 feet to 45.9 feet.

4. The building elevations provided are not to scale and shall be revised with a measurement scale included.

#### H. Other Planning Comments

1. Add note(s) and indication(s) on the Site Plans reflecting that the applicant will be dedicated an easement to the Borough for \$1.00 adjacent to Clark Road for a sidewalk to be constructed by others.

2. The locations of any freestanding signs shall be shown on the site plan and any and all such signs shall comply with all Borough ordinance regulations and requirements. The existing Oasis Commons sign located in the Clark Road right-of-way shall be entitled to remain.

3. Add notes on the Site Plans stating the following:

- a. There shall be no trucks used for the towing operation and/or towing equipment parked and no vehicle storage within, the front yard parking and access aisle areas.
- b. A maximum of six (6) trucks used for the towing operation and/or towing equipment vehicles used in connection with the towing and auto body repair business may be parked outside on the property at any one time.

- c. Only inoperable or impounded vehicles with no fluid leaks shall be parked / stored in the fenced-in area.
  - d. There shall be no more than 60 inoperable or impounded vehicles parked / stored in the fenced-in area at any one time.
  - e. Vehicle repairs shall be performed indoors in the building only with the garage doors closed, and only between the hours of 7 am to 5 pm, and only in two (2) of the five (5) bays service bays in the building. Emergency repairs of business vehicles only may be performed after 5 pm but only until 11 pm. There shall be no work done whatsoever from 11 pm to 7 am, other than an employee being on-site for emergency calls and the in-take of vehicles as a result of emergency calls.
  - f. The site shall be accessible from Route 22 only. There shall be no use of Clark Road whatsoever.
  - g. There shall be a maximum of 10 employees on the site at any one time.
  - h. There shall be no outdoor uncovered tire storage.
  - i. Idling of vehicles on the site shall be limited to that permitted under existing law.
- 4. Revise the Site Plans to show the refuse storage and collection area(s) to the satisfaction of the Board engineering and planning experts.
  - 5. (Intentionally omitted)
  - 6. (Intentionally omitted)
  - 7. (Intentionally omitted as no plan revisions are necessary)

**b. Comments Emanating in the Memo to the Board from Robert C. Brightly, P.E., P.P., C.M.E. (Board Engineering Expert) dated August 30, 2022:**

(Intentionally omitted if not listed herein)

B. Site Plan Review

- 1. Revise the Site Plans to clarify the proposed building floor area indicated in the table of zoning requirements on sheet 3. The layout plan on sheet 3 indicates the office

portion of the building will be 2-stories, but no dimensions are provided. The floor plan drawing does not show the 2<sup>nd</sup>-floor area. Also, there is a discrepancy in the exterior dimensions of the building between the floor plan and the site plan layout.

2. (Intentionally omitted as no plan revisions are required)
3. (Intentionally omitted as no plan revisions are required)
4. (Intentionally omitted as no plan revisions are required)
5. In as much as the proposed development will create more than 0.25-acres of impervious coverage, the proposed development is considered a major stormwater management development. If not already submitted and reviewed and approved by the Engineer, the applicant shall submit stormwater management calculations that demonstrate compliance with the stormwater management rules in effect on September 13, 2022 for review and approval by the Borough Engineer.
6. (If not previously satisfied)
7. Revise the Site Plans as to sidewalks as follows:
  - a. The proposed sidewalk shall be set back a minimum of three (3) feet from the curb line of Clark Road.
  - b. The recently constructed curb ramps and sidewalk crossing of Clark Road at the southwest corner of Lot 31 shall be shown on the plans. The new sidewalk shall be shown to meet the existing curb ramp.
  - c. The new curb installed on Clark Road shall be located and labeled as “existing curb.” The plan shall indicate that the depressed curb at the existing driveway openings along Clark Road shall be replaced with full height curb.
  - d. The sidewalk shall be shown to continue from Clark Road to the curb ramp at the Route 22 traffic signal. Alternatively, the buffer strip along the easterly and southerly property line may be made larger to accommodate a sidewalk.
  - e. If the sidewalk is to run across the front of the property, additional spot grades shall be provided to demonstrate a maximum cross slope of 2%. Additional spot grades shall be provided to demonstrate conforming curb ramps and crosswalks are being proposed at the ingress and egress drives. Detailed grading plans for each curb ramp shall be provided, along with standard NJDOT details.
8. Revise the Site Plans to provide additional spot grades at all corners of the proposed concrete sidewalk under the overhang; at all corners of the 6-foot sidewalk along the

parking area; and at all corners of the proposed accessible route. Presently, it appears that the sidewalk will exceed a 2% cross slope in multiple locations. If the proposed accessible route exceeds running slope of 5% a conforming ADA ramp will be required. Details of the ramp, including width and landing dimensions and conforming handrails, shall be added to the Site Plans.

9. Add a note to the Site Plans stating that the proposed connection to the sanitary sewer and the use of the existing lateral shall be approved by the LBSA Engineer. Additionally, revise the Site Plans to provide liquid collection troughs along the perimeter of the inside of the building for the entire width of all garage doors which collect liquids for disposal by a licensed waste remover / hauler, and all such collected liquids shall not flow into the sanitary and/or the stormwater sewer systems.

10. The lighting plan, sheet 5, shall confirm that the 3 pole mounted fixtures will be equipped with house side shields. The plan does not indicate Any code required lighting at the building entrance, or at the other exterior doors shall be indicated on site plan drawings.

11. Add a note to the Site Plans stating that the Board will maintain jurisdiction over site lighting for a one (1) year period beginning at the issuance of a certificate of occupancy.

12. Revise the Site Plans to clarify the variety of the juniper planting proposed along the easterly and southerly perimeter of the vehicle storage area.

### C. Miscellaneous Items

1. The Architectural Drawing building elevation is not to scale. Additionally, the drawing indicates the width of the front porch is 40 feet while the Site Plans indicate that the front porch is approximately 36 feet. The dimension shall be added to the site plan drawing and the plans made consistent.

2-9. (Intentionally omitted as plan revisions are not required)

c. **Comments Emanating from the Board Members During the Hearing on the Application:** Revise the Site Plans to add a floor drain containment system that does not drain to the sewer system and collects fluids for pickup and legal disposal by a reputable fluid collection business.

2. **Lot Merger.** A deed merging/consolidating Lots 31 and 32 shall be recorded after review and approval of same, including a metes and bounds description, by the Board Attorney and the Borough engineering expert. A copy of the recorded deed of merger/consolidation shall be submitted to the Borough prior to the issuance of any zoning and/or construction permits.

3. **Design, Construction and location of Improvements.** The applicant shall be required to design, construct and locate the proposed development to be substantially similar to that reflected on the approved and signed Site Plans and the approved Architectural Drawings referenced above.

4. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void.

5. **Use Restrictions.** The following use restrictions shall apply to the property:

a. There shall be no trucks used for the towing operation and/or towing equipment parked in the ten (10) off-street parking spaces.

b. A maximum of six (6) trucks and/or towing equipment vehicles used in connection with the towing and auto mechanical and body repair business may be parked outside on the property at any one time.

c. Only inoperable or impounded vehicles with no fluid leaks shall be parked / stored in the fenced-in area.

d. There shall be no more than 60 inoperable or impounded vehicles parked / stored in the fenced-in area at any one time. Such number may increase during times of emergency, however, in no event shall the storage of such vehicles obstruct access aisles.

e. Vehicle repairs shall be performed indoors in the building only with the garage doors closed, and only between the hours of 7 am to 5 pm, and only in two (2) of the five (5) bays service bays in the building. Emergency repairs of business vehicles only may be performed after 5 pm but only until 11 pm. There shall be no work done whatsoever from 11 pm to 7 am, other than the presence of an employee on-site for emergency calls or the in-take of inoperable or impounded vehicles in response to emergency calls.

f. The site shall be accessible from Route 22 only. There shall be no use of Clark Road whatsoever.

g. There shall be a maximum of 10 employees on the site at any one time.

- h. There shall be no outdoor uncovered tire storage.
- i. Idling of vehicles on the site shall be limited to that permitted under existing law.
- j. There shall be liquid collection troughs along the perimeter of the inside of the building for the entire width of all garage doors which collect liquids for disposal by a licensed waste remover / hauler, and all such collected liquids shall not flow into the sanitary and/or the stormwater sewer systems.

6. **Outside Agency Approvals and Permits as Condition Precedents to Issuance of Zoning and Construction Permits.** The within approvals are conditioned upon and subject to the applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments, including but not limited to the following, and obtainment of all permits and/or approvals shall be a condition precedent to the issuance of zoning and construction permits:

- a. Certification of the Soil Erosion and Sediment Control Plan by the Hunterdon County Soil Conservation District (while a certification was issued April 29, 2021, a re-submission is required);
- b. Lebanon Borough Sewer Authority (LBSA) approval, which was granted on October 7, 2021; and
- c. NJDOT approval of the modification of the driveway and the proposed sidewalk or a letter of no interest.

7. **Engineering Cost Estimate and Posting of Performance Guarantees and Inspection Escrow.** As a condition precedent to the issuance of zoning and construction permits, the applicant's engineer shall prepare and submit a detailed cost estimate for the proposed development which shall be subject to review and modification by the Borough Engineer for purposes of establishing the amount of the performance guarantees and inspection escrow.

8. **As-Built Plan as Condition Precedent to Issuance of Certificate of Occupancy and/or Use.** As a condition precedent to the issuance of a certificate of occupancy and/or use, the applicant shall submit an as-built plan acceptable to the Borough Engineer.

9. **Time Within Which to Obtain Permits, Complete Construction, and Obtain Permanent Certificate of Occupancy and/or Use.** The applicant shall obtain zoning and construction permits for the proposed development by June 13, 2025 (which is two (2) years from the adoption of the within resolution). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a zoning and/or construction permit,

the within approval and all relief granted herein shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the first construction permit to commence construction and obtain a permanent certificate of occupancy or use for the proposed development. If during said one (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy or use is not obtained, the within approval and all relief granted herein, shall automatically expire and become null and void. Any and all extension requests made in accordance with the within condition must be made prior to the expiration of the approvals.

10. **Subject to Other Laws, Regulations and Approvals.** The within approval and the use of all properties subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, state and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

11. **Board Jurisdiction Over Site Lighting for a One (1) Year Period.** The Board shall maintain jurisdiction over site lighting for a one (1) year period beginning at the issuance of a certificate of occupancy.

\*\*\*\*\*

**VOTE ON MOTION DULY MADE AND SECONDED ON SEPTEMBER 13, 2022:**

**THOSE IN FAVOR: SAHARIC, UCHRIN, HAUCK, WEINGART, ABELES, NEWMAN & LAPCZYNSKI.**

**THOSE OPPOSED: NONE.**

\*\*\*\*\*

The within resolution was adopted on June 13, 2023 by the following vote of Board members:

| <u>Member</u> | <u>Yes</u> | <u>No</u> | <u>Abstain</u> | <u>Absent</u> |
|---------------|------------|-----------|----------------|---------------|
| ABELES        |            |           |                | X             |
| HAUCK         | X          |           |                |               |
| LAPCZYNSKI    | X          |           |                |               |
| NEWMAN        | X          |           |                |               |

|          |   |
|----------|---|
| SAHARIC  | X |
| UCHRIN   | X |
| WEINGART | X |

ATTEST: \_\_\_\_\_  
**Karen Romano**  
**Board Secretary**

**The motion passed with the following roll call vote:**

**Ayes:** Saharic, Hauck, Weingart, Lapcynski, Pittinger, Newman and Dr. Uchrin

**Absent:** Wetzel, Abeles, and Councilman Berger

**PUBLIC COMMENT:**

Chairman Saharic opened the floor for public comment. There being none the floor was closed.

**MISCELLANEOUS:**

**ADJOURN**

**Dr. Uchrin moved, Mr. Weingart seconded a motion to adjourn, there being no further business to come before the Board.** The motion was passed by unanimous vote. The meeting was adjourned at 8:35 p.m.

Respectfully submitted,

\_\_\_\_\_  
Karen Romano  
Planning Board Secretary





























