

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT
MEMORIALIZING RESOLUTION
ADJESS ASSOCIATES, LLC
590 Route 23 North
Block 902, Lot 16

WHEREAS, the applicant is the prospective purchaser of the subject property located at 590 Route 23 North, Pompton Plains, New Jersey, Block 902, Lot 16, located in C-3 zone district; and

WHEREAS, the applicant seeks the following relief:

- A. A variance pursuant to N.J.S.A. 40:55D-70d. (3) to permit a deviation from a specification or standard pertaining solely to a conditional use; and
- B. Variances pursuant to N.J.S.A. 40:55D-70c. to permit the following dimensional deficiencies:
 - (a) Lot area of .8 acres instead of the required 4 acres
 - (b) Lot width of 200ft. instead of the required 350 ft.
 - (c) Front yard setback of 50ft. instead of the required 75 ft.
 - (d) 38 parking spaces of 8' x 18'. instead of the required 9' x 18'; and
- C. Issuance of a flood plain development permit; and
- D. Preliminary and final approval of a commercial site plan; and
- E. Approval of one free standing sign greater than the permitted 50sq.ft. and approval of two wall signs, which combined, exceed the 82.5sq.ft. permitted; and

WHEREAS, testimony was taken at a public hearing on January 15, 2009, at which time the Board took sworn testimony and both the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the evidence and the testimony at the public hearing from which the Board makes the following factual findings:

1. All proper public notice has been given in accordance with the municipal land use law.
2. In addition to the application forms for a use variance, site plan approval and flood plain development approval, the Board has also reviewed and considered the following documentary evidence:

- (i) 6- page plan prepared by The Mylan Architectural Group bearing an original date of 8/28/08 and most recently revised 12/15/08; and
- (ii) 6-page plan prepared by Bertin Engineering Associates, Inc. bearing the date of 9/29/08 except for the final sheet, identified as SV-1 which is dated 7/30/08; and
- (iii) Letter dated December 18, 2008 from Bertin Engineering Associates, Inc. addressed to interested party advising of the filing of a flood hazard area permit application; and
- (iv) Letter dated December 18, 2008 from Bertin Engineering Associates, Inc. addressed to interested party advising of an application for Fresh Water Wetlands Protection Act letter of interpretation; and
- (v) Letter dated December 23, 2008 from Bertin Engineering Associates, Inc. addressed to the Township of Pequannock regarding a highway access permit; and
- (vi) Letter dated November 14, 2008 from Bertin Engineering Associates, Inc. addressed to Morris County Soil Conservation District; and
- (vii) Application for soil erosion and sediment control plan certification;
- (ix) 4-page planning report, prepared by Roger De Niscia, PP.; and
- (x) 4- page planning report dated 1/9/09, prepared by Eileen F. Banyra, PP., AICP, addressed to the Zoning Board of Adjustment; and
- (xi) 3-page engineering report dated 1/9/09, prepared by Michael Simone of Crew Engineering; and
- (xii) 1-page land development review report prepared by Pequannock Township environmental commission; and
- (xiii) 1-page memorandum prepared by Pequannock Township Health Department.

3. The subject property is a generally square parcel, located on the east side of northbound State Highway Route 23. It slopes gently toward the east which is the rear of the site. It is presently improved with a 1833sq.ft. commercial building which is presently unused. It was most recently occupied by a retail pet products business.

4. The applicant, Adjess Associates, L.L.C. is the commercial alter ego of the Barish family which is the purchaser under contract of the subject site. This applicant is also the owner of the property approximately 1000ft. to the north, 700 State Highway Route 23 northbound. On the other site (700 Rt. 23) the Barish family owns and operates a Honda automobile dealership through another alter ego, Fairfield Honda, LLC d/b/a/ Route 23 Honda. If this application is granted the applicant, Adjess Associates, LLC, would be the owner of the property at 590 Rt. 23 and Fairfield Honda, LLC d/b/a Route 23 Honda would be the operator of a used car facility on the subject property. That ownership and operation format would be the same as the ownership and operation of the 700 Rt. 23 location.

5. The applicant proposes to remove the existing structure on the subject property and construct a new 6012sq.ft., two-story used car dealership building. The site would be improved with a total of 56 parking spaces, 38 of which would be nonconforming in size, 18' x 8'. Those spaces would be used for parking inventory vehicles. The remaining 18 spaces would be conforming size, 18' x 9', and would be used for employee and patron parking as well as 5 display spaces in front of the building.

6. Access to the site is currently provided by drop curbing on the south side for ingress and drop curbing on the north side for egress. Initially the applicant proposed to redesign the north access point to be more perpendicular to the highway, but after discussion with the Board at the public hearing it agreed to review that redesign with a view toward a design which would discourage inbound traffic.

7. The applicant's principals testified that the proposed use of the subject property at 590 Rt. 23 would be accessory to its existing new car dealership at 700 Rt. 23. Testimony revealed that the applicant has searched for several years for available property to expand its present operation and the subject site is the only parcel reasonably close to their existing property which has recently become available. As a consequence of the size of the subject property there would be no service, repair, or washing of motor vehicles on this site. Vehicles would be driven into the site one at a time, for the most part. It is the applicant's intention to have no tractor trailer or other delivery of vehicles. The vehicles to be offered for sale at this site would be a maximum of five years old and would be subject to stringent regulations imposed by Honda for the sale of used vehicles. From the applicant's standpoint, it would have been preferable to purchase property immediately adjacent to its existing dealership at 700 Rt. 23, but no property became available and the subject site became the best alternate option. The applicant intends to operate the used vehicle facility on the subject property as an integral part of its single Honda dealership and has agreed to a condition in the granting resolution that the used car facility on the subject property would always be accessory to and dependent upon the operation of the new car dealership under the same ownership at 700 Rt. 23.

8. The site is located in the C-3 regional commercial district in which automobile sales are permitted as a conditional use, but this proposal does not meet the following conditions set forth in subsection 189.07.03.N of the Township Zoning Ordinance:

- i. Used vehicle sales are permitted only as an accessory to new vehicle sales; and
- ii. No more than 25% of the outdoor display may be devoted to used vehicles; and
- iii. At least 20% of the building shall be devoted to the display of new cars.

9. The applicant presented a professional planner, Roger De Niscia, PP., who testified that notwithstanding the failure of the subject property to meet the above conditions of the conditional use section of the zoning ordinance, in the limited context of this applicant's proposed plan the subject proposal continues to be an appropriate site for the conditional use. In support of that conclusion he emphasized the facts that the property is located on Route 23, which both the Township master plan as well as the zoning ordinance are identified for intense regional commercial uses. In addition, the site will accommodate a substantial building and the storage space for an adequate number of vehicles. The site is in the commercial zone in which auto sales are a permitted use and outdoor display is also permitted.

10. Mr. De Niscia also pointed out that this is a substantially undersized site which will be used in conjunction with and extricably linked to a larger conforming site approximately 1000ft.

north on the same side of the highway. The property is presently developed with a much smaller retail structure in deplorable condition and the applicant's proposal will significantly improve the overall appearance of the property and bring it back into commercial use. In addition, all service and repairs of vehicles will be performed for this site at the 700 Rt. 23 site, thereby reducing the activity at this location. Moreover, the cars to be sold will not exceed more than five years in age and therefore will be in reasonably good condition and very similar to a new car facility. Based upon all of the above, Mr. De Niscia rendered the opinion that this application meets the standards set forth in the case of *Coventry Square v. Westwood Zoning Bd. of Adjustment*, 139 NJ Super. 285 (1994), for approval of a conditional use which does not meet all of the conditions of the ordinance.

11. In addition to the variance pursuant to N.J.S.A. 40:55D-70d (3), there are several dimensional variances. Of the dimensional variances, lot area and lot width are preexisting nonconforming dimensions over which this applicant has no control. The dimensional variance for a front yard setback of 50ft. instead of 75ft. is directly related to the size of the property and the necessity for safe vehicular interior traffic flow around the building. There is a slight improvement in front yard setback from the existing building which has a 47.4ft. building setback whereas the proposed building would have a 50ft. building setback. The applicant has also proposed that all vehicle inventory spaces be 8ft. wide instead of 9ft. Since there will be limited movement of these vehicles and then only by professional staff, the reduction in parking space width is reasonable.

12. The applicant has also requested certain sign variances. However, at the public hearing the applicant proposed reducing both the number and size of the signs. Subject to review and approval by the board planner and board engineer, the Board finds that the applicant's proposal to reduce the size of the free standing Honda sign at the front of the property is reasonable under the circumstances. As originally proposed it would have 64sq.ft. because it is a double-faced sign there would actually be 128sq.ft. of sign, but under the current ordinance only one face is factored into the calculations. The applicant proposed to reduce the size of that sign by 1 panel but the exact square footage of that reduction was unavailable at the public hearing. However, since the only modification of that sign will be the reduction of its area thereby bringing it more into conformity with the ordinance, the sign is satisfactory.

13. The applicant also agreed to remove one of the wall signs from the south side of the building. At the public hearing the applicant agreed to remove the "Honda" wall sign from the south side of the building and replace it with the "used cars" sign shown on the east side of the south facade on page A-1 of the Mylan Architectural Group plan. Once again the exact square footage of that revision was not available at the public hearing, but once again it is a reduction which will bring the wall signs into more conformity with the ordinance.

14. No members of the public appeared to testify in connection with this application.

Based upon the above factual findings, the Board has reached the following conclusions:

1. The applicant has sustained its burden under N.J.S.A. 40:55D-70d. (3) to permit a variance from the ordinance conditions set forth above because the proposed site for this conditional use, in the context of this applicant's site plan, continues to be an appropriate site for this conditional use notwithstanding the required variances.

2. This Board has evaluated the impact of the proposed conditional use upon the adjacent properties and determined that it will not cause such damage to the character of the neighborhood as to constitute a substantial detriment to the zone plan, zoning ordinance or the public good.

3. In reaching the above conclusions, the Board has taken into consideration the facts that the use is permitted in the zone as a use accessory to a new car dealership and under the unique circumstances of this case the proposed use on this site will be accessory to an existing new car dealership, albeit not on the same lot. The board has also considered the fact that the applicant has agreed to permanently link the use of the subject property with its existing new car dealership which will provide all service, repair, maintenance and washing of vehicles, and therefore the undersized aspect of the property will not have a negative impact on the surrounding properties.

4. The applicant has sustained its burden under N.J.S.A. 40:55D - 70c(1)(a) that by reason of the size and shape of this specific piece of property there is a zoning hardship and the strict enforcement of the setback requirements of the zoning ordinance would impose exceptional practical difficulties to this property. Two of the dimensional deficiencies are preexisting non-conformities over which the applicant has no control. The front yard setback is the result of the size and shape of the property which require that sufficient space be provided behind the proposed building in order to provide safe vehicular traffic flow on site.

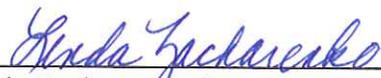
NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 5th day of February, 2009 that the application of Adjess Associates, LLC is hereby granted for the following relief:

- A. A variance pursuant to NJSA 40:55D-70d. (3) to permit a deviation from a specification or standard pertaining solely to a conditional use; and
- B. Variances pursuant to NJSA 40:55D-70c. to permit the following dimensional deficiencies:
 - (a) Lot area of .8 acres instead of the required 4 acres
 - (b) Lot width of 200 ft. instead of the required 350 ft.
 - (c) Front yard setback of 50 ft. instead of the required 75 ft.
 - (d) Parking spaces of 8 ft. by 18 ft. instead of the required 9 ft. by 18 ft.; and
- C. Issuance of a flood plain development permit; and
- D. Preliminary and final approval of commercial site plan; and
- E. Approval of one free standing sign greater than the permitted 50 sq. ft. and approval of two wall signs which combined exceed the 82.5 sq. ft. permitted.

The granting of the above relief is subject to the following conditions:

1. All construction shall be in substantial conformity with the plans filed with the application, prepared by The Mylan Architectural Group and Bertin Engineering Associates, Inc., as the applicant agreed to modify those plans at the time of the public hearing;
2. The Board's decision to grant the variance pursuant to NJSA 40:55D-70d. (3) for a conditional use which does not conform to all of the ordinance standards is based in large part on the unique relationship between the subject property and this applicant's existing new car dealership approximately 1000ft. north on the same side of Route 23. This Board would not have granted that variance without the applicant's agreement, which is hereby imposed as a condition of this grant, that the use of the subject property for the use permitted herein is considered as accessory to the existing new car dealership, and therefore shall remain in existence only as long as the ownership and operation of the new car dealership at the 700 Rt. 23 North location remains in common ownership with the subject property, as testified to at public hearing of this application. If that new car dealership is abandoned, the rights granted herein shall terminate. If the ownership and operation of the new car dealership shall be separated from the ownership and operation on the subject property, the rights granted herein shall terminate.
3. In accordance with the agreement of the applicant there shall be no service, repair or washing of motor vehicles on this site.
4. There shall be no storage or distribution of gasoline or other petroleum products on this site.
5. The motor vehicles offered for sale on the subject property shall not be more than five model years old.
6. The applicant shall comply with the requirements of the board engineer of his report dated 1/19/09 included but not limited to revising the plans to show the size of the incoming water supply line, the soil log information and the zero net fill calculations.
7. There shall be no motor vehicle deliveries to this site by commercial carrier. Vehicles placed on this site shall be driven to this location on an individual vehicle by vehicle basis.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on February 5, 2009, by a vote of 7 to 0 .



Linda Zacharenko, Secretary