PLANNING & ZONING ANALYSIS BLOCK 4402, LOT 9

PEQUANNOCK, NEW JERSEY

FINAL REPORT

June 15, 2020

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This copy conforms to the original copy of this report which is stamped and signed by Michael F. Kauker, Professional Planner's License Number 993; in accordance with *N.J.S.A.* 45:14A regulating the practice of Professional Planning in the state of New Jersey.

Michael F. Kauker, PP

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Camp Auto and Truck Parts Inc... Pequannock Township, N.J.

INTRODUCTION

The applicant, Camp Auto and Truck Parts Inc., has submitted an application to the Pequannock

Township Board of Adjustment for a use variance to use an existing building and property as a

satellite towing facility in accordance with the Townships Towing requirements for authorized

tow companies. Kauker & Kauker, LLC has been retained by the applicant to evaluate their

application for the requested variances and to prepare a planning and zoning analysis in support

of the application for variances.

The following report consists of 3 major sections. The first section describes the subject

property, surrounding area and the proposed project. The second section documents the

development's relationship to the Townships Zoning Ordinance and Master Plan. The third

section addresses the substantive planning and zoning issues as they relate to the application for

the use variance and the statutory requirements of the Municipal Land Use Law (MLUL).

PROJECT REVIEW AND ANALYSIS

Property Description

The subject property is located in the extreme southerly portion of the Township at the end of

Industrial Avenue. The property is identified as Block 4402, Lot 9 in Pequannock's tax records

and has a lot area of 21,783 square feet. It is located at 12 Industrial Road and is within the

Townships I-1 industrial zone.

There is an existing one-story building located on the site and an associated parking lot. The

building is currently used as a business office. The proposed use is consistent and

complimentary with these existing uses.

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The following aerial photograph shows the subject property and its relationship to the surrounding area.

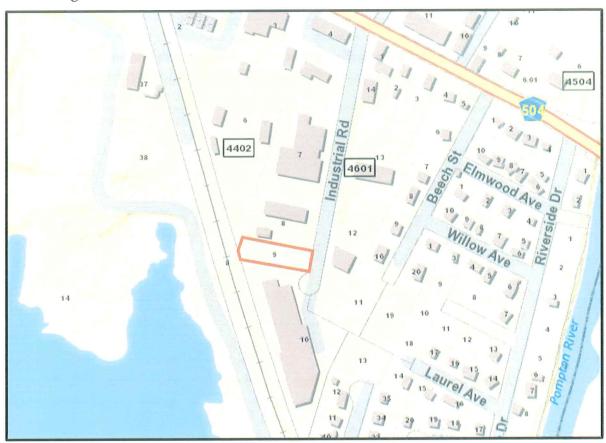


Aerial Map

Source: Google Earth



The following map depicts the subject property and its relationship to the other tax lots in the surrounding area.



Tax Map

Source: Morris County GIS



Surrounding Conditions

The surrounding area is comprised of a number of compliant light industrial and office uses including a Maresca Lumber and Building Materials, Jan Fence Company and Breyer Animal Creations manufacturing company. The adjoining uses to the north, south and east are fully developed with existing light industrial type uses and to the west is the rear most portion of the lumber yard and a heavily wooded area.

Proposed Use

The applicant proposes the continued use of the existing building as an administrative office for Camp auto Towing and short-term storage of towed vehicles as part of the Townships towing ordinance procedures to remove disabled vehicles from the Townships roads. The existing building is located at the front portion of the subject property at a setback of 29.3 feet, as compared to the required front-yard setback of 35 feet. The one-story building covers 7.18 % of the site as compared to the allowed building coverage of 35%. There is a paved parking area on the side of the building with a capacity of 8 parking spaces. The rear yard area of approximately 12,800 square feet can accommodate 34 vehicles at peak capacity.

RELATIONSHIP TO ZONING ORDINANCE AND MASTER PLAN

Zoning Ordinance

The property in question is located in the I-1 one acre Industrial District. A total of 10 separate light industrial type uses are permitted in the zone. Permitted uses include Offices, Veterinary hospitals, Research Laboratories, Product Development Laboratories, Warehousing, Metal and Wood Fabrication Facilities, Wholesale Distribution, Assembly of parts manufactured elsewhere, and Packaging of products manufactured elsewhere. Although not specifically permitted in the zone, the proposed use is substantially similar to many of the above noted permitted uses. There are two other Light Industrial Zones established within the Township, the I-2 and I-3 Industrial Districts. Of the three, the I-1 is the most intensive zone in terms of lot area and nature of uses permitted.

Master Plan

Pequannock's Master Plan provides a framework for development within the Township. The most recent Master Plan was prepared by H2M, adopted December 9, 2019. The proposed use is generally consistent with the recommendations included in the new Master Plan and will not

substantially impair the intent and purpose of the documents as described in the negative criteria section of this report. More specifically, it meets the following goals of the Master Plan.

Land Use Element

Land Use Goals

1. Maintain the character of the Township's established Neighborhoods

Response: The subject site is located on the west side of Industrial Ave and backs up to the Railroad Right of Way. There is a residential neighborhood to the east of the subject site which is buffered by a light industrial research use, vacant lands and the Industrial Ave Right of way. On page 46 of the Master Plan Report which covers the I-1District, it states that this I-1 District is "heavily buffered from the surrounding area"

2. Promote Growth in appropriate areas that meet current and future land use trends.

Response: As shown on the preceding surrounding area aerial photo, the I-1 District is a small but well established cluster of viable industrial uses. The use of the subject property will not adversely impact the integrity of this zone.

3. Promote growth in appropriate areas that meet current and future land use trends.

a. Ensure non-residential land uses are compatible with surrounding neighborhoods and

require buffers to mitigate adverse impacts.

Response: The presence of open space and intervening light industrial uses, adequately separates the proposed use from the adjacent residential neighborhood located in the R-9 Residence District.

RELATIONSHIP TO STATUTORY CRITERIA

The New Jersey Municipal Land Use Law (MLUL) at NJSA 40:55D-70 sets forth the statutory requirements for variance relief. The applicant is requesting one "D" or Use variances and a number of "C" or Bulk variances as classified under the MLUL. The remainder of this section outlines and addresses the criteria in the MLUL and applicable New Jersey case law regarding variances.

"D" Variances

NJSA 40:55D-70(d) permits a Board of Adjustment "in particular cases for special reason" to grant a variance to permit "a use or principal structure in a district restricted against such use or principal structure." This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a "D" Variance. The applicant must demonstrate that the proposed variance can be granted "without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Zone Plan and Zoning Ordinance."

When considering the granting of a "D" variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use "inherently serves the public good" or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that "special reasons" are those which promote the general purposes of zoning, as listed in *NJSA* 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990), however, that the MLUL includes all the zoning purposes listed in *NJSA* 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a "D" variance.

Positive Criteria

d(1) -Use Variance

In order for the board to grant a d (1) use variance the applicant must make an affirmative showing of the positive criteria through the showing of special reasons. Special reasons can be found if the general welfare as enumerated in the purposes of zoning as contained in the MLUL are advanced. The most often cited purpose of zoning is that the general welfare is advance because the site is **particularly suited** for the proposed use. It is my opinion that this site is particularly suited for the proposed use for the following reasons.

- The proposed use will be located on a property that is already developed with an existing building with similar uses already located on the site and in the area and parking area that can adequately accommodate the proposed use.
- The general welfare is promoted as the proposal represents a productive response to the

need created by the Township's Towing Ordinance requirements

- <u>The I-1 Industrial Zone District</u> is the most appropriate location for the proposed use as it is compatible and generically similar to the permitted uses in the zone.
- The proposed use is compatible with the existing uses on the subject property and with the existing land uses in the immediate area, which will result in the harmonious relationship between this use and other uses in the area.
- Based on the way the building was constructed and located the building is ideally suited for the proposed office use. The proposed storage area for towed vehicles, which is currently fenced, is located to the rear of the subject property and can be adequately screened from the street.

NEED

Pursuant to Pequannock Township Ordinance Section 185.06 C, an applicant for a towing license must have space available within Pequannock Township in order to accommodate and protect disabled vehicles or towed vehicles. Both the subject site and I-1 District provide the most appropriate location for such a mandated use. In addition, it is located within easy access to Route 23, enabling efficient highway access to the proposed site. There is no zone in Pequannock Township which permits the proposed use. The subject property is ideally suited both in its current zoning and site location and features for the proposed use.

"C" Variances

NJSA 40:55D-70(c) sets forth the criteria for a Board of Adjustment to grant a variance from the bulk requirements of a zoning ordinance. The first reason is for cases of hardship, such as the "exceptional narrowness, shallowness or shape of a specific piece of property," or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property. The other major reason is where the purposes of zoning would be advanced and the benefits derived by the variance would outweigh the detriments. The applicant will be requesting 6 bulk and yard variances for this project, for relief from the Township's Zoning Ordinance. It should be noted that all of the 6 deviations reflect existing conditions.

Pursuant to Puleio v. North Brunswick Township Board of Adjustment, if an application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use. Therefore, a Zoning Board, in considering a "d(1)" use variance, must consider the overall site design when evaluating the request and in essence, the "c" variances are subsumed in the "d" variance. We submit to the board that bulk variances would be subsumed in the request for the use variance as the site can adequately accommodate the deviations requested as the site is fully developed and the requested deviations are all existing conditions of the site.

Negative Criteria

No substantial detriment to the public good

Granting requested variance would not have negative impact on surrounding area or Township as the proposed use is consistent and compatible with the other uses in the building and the surrounding area. The office portion of the business will be contained within an existing building which will not be enlarged or altered with the exception of interior renovations. The rear yard vehicle holding area is not substantially different than other parking areas within the I-I District.

The proposed project will not create a significant increase in traffic and the roads in the immediate area can accommodate the traffic that will be generated by this proposal.

No substantial impairment to the intent and purpose of the zone plan and zoning ordinance

Granting of the variances to permit the proposed use would not impair intent or purpose of the Pequannock Township's Master Plan as a number of goals and objectives are met as described in a prior section of this report.

"Medici Enhanced Quality of Proof"

It is also required that the applicant provide an enhanced quality of proof and that specific findings are made by the board that the grant of a use variance is not inconsistent with the intent

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and purpose of the master plan and zoning ordinance. The proofs and findings must reconcile the omission of the proposed use from those that are permitted in the zone. This provides a more substantive basis to the second part of the negative criteria that the variance "will not substantially impair the intent and purpose of the master plan and zoning ordinance."

The deviation from the master plan is reconciled by the fact that the proposed use is generically similar and compatible with the uses permitted in the I-1 Zone and existing uses on-site and in the area.

CONCLUSION

It is my opinion that there are special reasons as outlined in this report in support of a use variance and that relief sought for the variance would meet the statutory criteria as outlined in the MLUL and that the positive criteria outweigh the negative criteria.