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**TO:** Pequannock Township Zoning Board of Adjustment  
**FROM:** Jill A. Hartmann, PP, AICP  
**RE:** USE VARIANCE APPLICATION TO PERMIT A TOWING AND VEHICLE STORAGE YARD USE; 8 INDUSTRIAL ROAD; BLOCK4402, LOT 8; APPLICANT: JERSEY TOWING-DENNIS BRANCACCIO.  
**DATE:** November 2, 2022

This is a Use Variance Application to permit a towing and disabled vehicle storage yard use. The subject site is located in the I-1 Industrial District of the Township. The proposed towing and disabled vehicle storage yard business is not permitted in the I-1 District. A d(1) use variance is required for the proposed towing and disabled vehicle storage yard business. The Zoning Board of Adjustment has jurisdiction to hear this application. The following submitted documents were utilized in the preparation of this planning report:

- Completed Pequannock Township Application for Variance signed by Dennis Brancaccio, dated July 11, 2022.
- Completed Pequannock Township Flood Plain Development Application signed by Dennis Brancaccio, dated July 11, 2022.
- Preliminary and Final Major Site Plan with Variances, consisting of 7 sheets, prepared by Daniel V. Doherty, PE of Dewberry-Goodkind, Inc., dated October 2, 2006 with revisions through January 2, 2022.
- Architectural Layout of Metal Accessory Building, consisting of 2 sheets, prepared by James P. Cutillo Associates, dated July 15, 2022.
- Planner's Report, prepared by Steven M. Lydon, PP, AICP of Burgis Associates, Inc., dated August, 2022.

### ZONING ANALYSIS AND COMMENTS

1. The subject site is a 1 acre interior parcel that contains an existing one story office and indoor equipment and material storage areas, a metal garage for vehicle, equipment and material storage, a vehicle, equipment and parking area and a cell tower.
2. The application proposes to establish a towing business, at the subject site. This will be in addition to the existing approved use of the site. No site plan changes are proposed to the approved site plan. However, the application proposes to change the use of the metal garage from the storage of vehicles, equipment and materials to the storage of towed disabled vehicles. The 50' x 30' metal garage has oversized truck access doors in the front and rear and can accommodate up to 9 disabled vehicles.

In addition, the rear portion of the main building will also be used to provide space for up to 12 disabled vehicle storage .

3. The applicant seeks to be included as part of the Pequannock Township towing rotation. As such, The Township Ordinance requires that the applicant be licensed to tow and store vehicles. Section 352-6© requires that the applicant, for a license, must have available space within the Township of Pequannock for properly accommodating and protecting all disabled motor vehicles to be towed or

otherwise removed from the place where they are disabled. The proposed towing and disabled vehicle storage use is not permitted in the I-1 District. A d(1) use variance is required.

The Municipal Land Use Law (MLUL) sets forth the positive and negative criteria for variance relief. It permits the Zoning Board of Adjustment to grant a d(1) use variance in particular cases. When a use or d(1) variance is required, the applicant must satisfy both the positive and the negative criteria. The positive criteria or special reasons include the showing, by the applicant, that the granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the municipal master plan. The negative criteria establishes that the variance can be granted without substantial detriment to the public good; that the benefits of the deviation would outweigh any detriment and that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

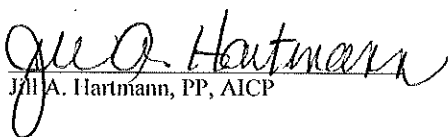
Additionally, an applicant for a use variance is required to address the planning issues raised in the New Jersey Supreme Court case Medici v. BPR Co. 107 NJ (1987). The guidelines set forth in Medici require that an applicant, for a use variance, must demonstrate that special reasons are satisfied by either showing that the proposed use is one which, inherently serves the public good or that the proposed use, promotes the general welfare because the site is particularly suited for that use. The Medici decision provides, that along with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of the requested use variance is not inconsistent with the intent and purposed of the Master Plan or Zoning Ordinance.

The Larry Price v Himeji LLC and the Union City Zoning Board of Adjustment, provides new guidance on particular suitability of a site for a proposed use not permitted in the zone. The Supreme Court upheld more general understanding of particular suitability, which requires the applicant demonstrate that the particular property as developed for the proposed use serves the general welfare, because its location is particularly suited for the use. Therefore, (1) the facts must distinguish the subject site from surrounding sites; and (2) the applicant must demonstrate that the particular property as developed for the proposed use serves the general welfare, because its location is particularly suited for the use.

Finally, in Puleio v. North Brunswick Zoning Board of Appeals, the Appellate Division determined that if an application is for a use that is not permitted in the zone, the bulk regulations established for that use cannot be applicable for the proposed use. Thus a Zoning Board, when considering a use variance, must consider the overall design of the site. In essence, the c variances or bulk and area variances, are subsumed into the use variance.

4. The attached zone table provides the schedule for the I-1 District. Existing non-conforming conditions will not be impacted by the proposed use variance. No "c" variances are required.

It is certified that all copies of this document are in conformance with the original prepared by Jill A. Hartmann, PP, AICP, License No. 4088

  
Jill A. Hartmann, PP, AICP

**Zone Table**

8 Industrial Avenue

I-1 District

*(For comparison purposes only)*

Item	Required	Existing	Variance
Lot Area	43,560 sf	43,560 sf	OK
Lot Width	150''	150'	OK
Front Yard Setback	50'	50.6'	OK
Side Yard Setback	30'	3' 31.2'	Existing Non-Conforming Condition OK
Rear Yard Setback	30'	38.7'	OK
Building Coverage	35%	23.25%	OK
Impervious Surface Coverage	75%	47%	OK