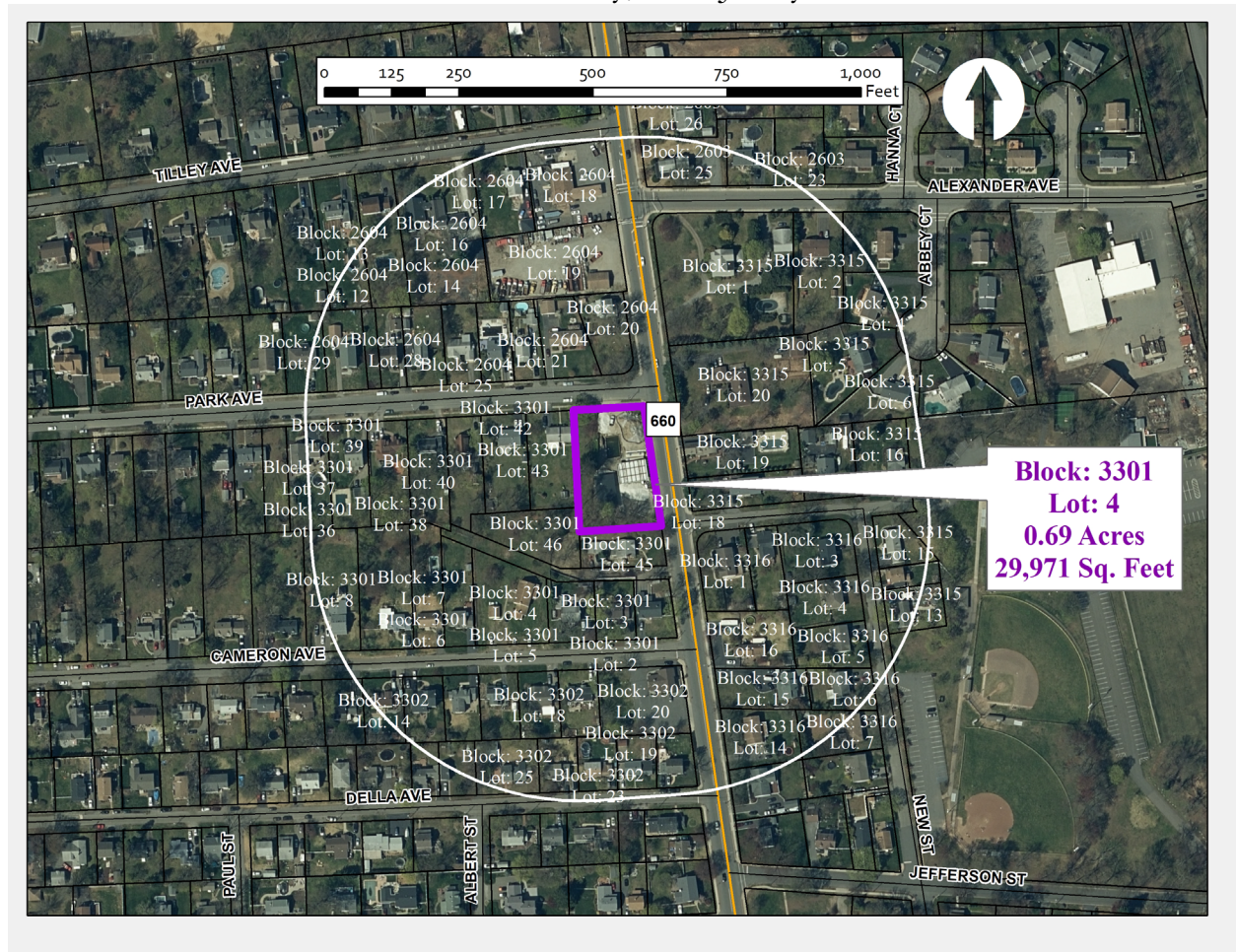


403 Newark Pompton Turnpike, LLC

403 – 411 Newark Pompton Turnpike Preliminary and Final Site Plans with Use Variances

Block 3301, Lot 44
403 – 411 Newark Pompton Turnpike
Township of Pequannock
Morris County, New Jersey



October 20, 2022

Prepared by:

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INTRODUCTION

The Applicant, 403 Newark Pompton Turnpike LLC, is proposing improvements to an existing gasoline station to convert the existing repair garage to a convenience store/deli with seating for 12 in a residential zone. The application consists of one existing lot, Block 3301, Lot 44 which is located in the R-11 Residential Zone. The site is pre-existing non-conforming and located along Newark-Pompton Turnpike. A d(1) use variance is required along with bulk variances for proposed signs on the property.

EXISTING CONDITIONS

The site currently operates as a Gulf Brand Gas Station with an auto repair station with three (3) service bays. The site is located on the corner of Newark Pompton Turnpike (County Route # 660) and Park Avenue. The existing building is 2,289 square feet with a 2,058 square foot canopy. The site has an impervious coverage of 19.3 percent. There are currently eight (8) parking spaces provided on the site. There is existing lighting, signage, landscaping and air pump and vacuum stations on the subject property.

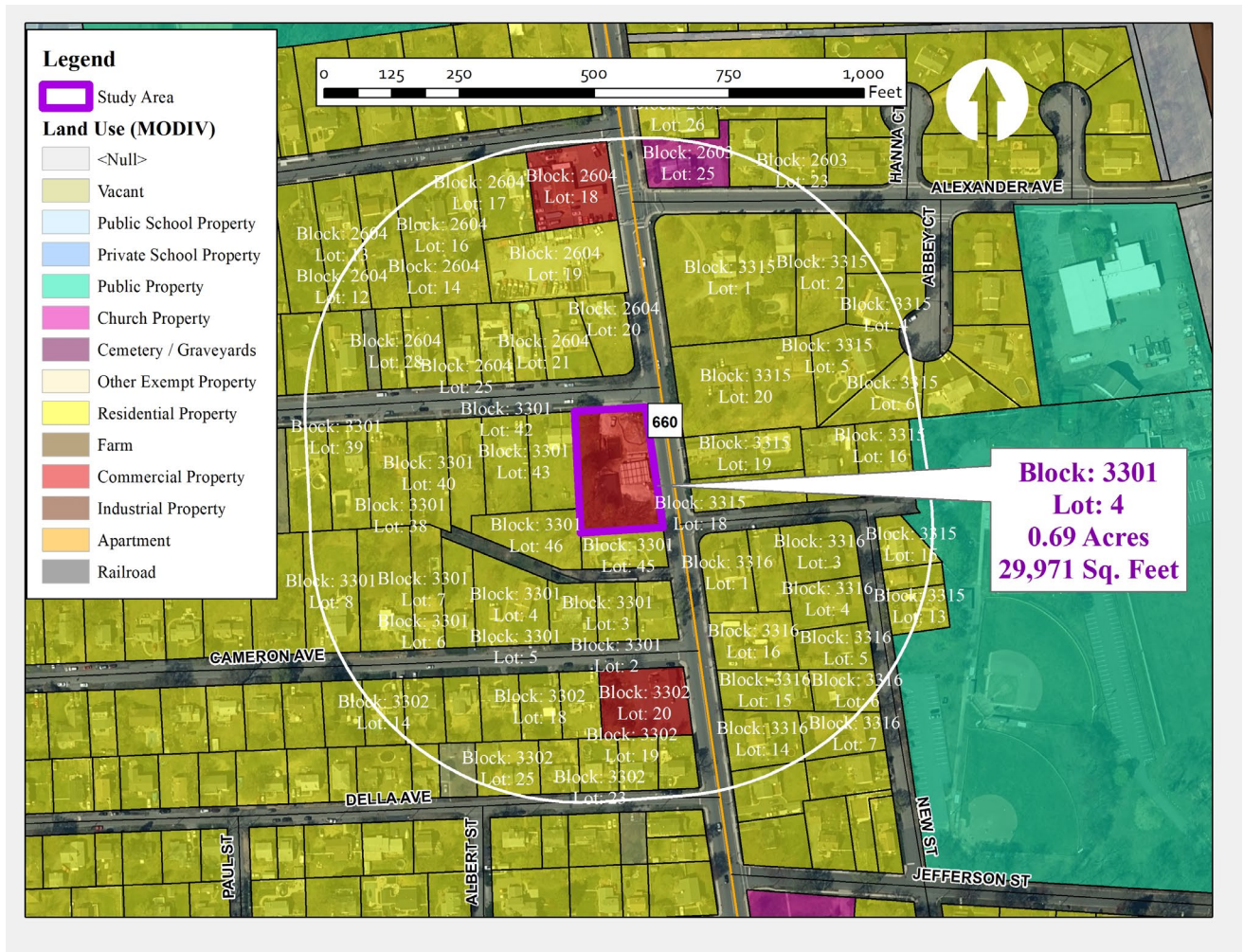
PROPOSED USE

The Applicant is proposing to renovate the existing auto repair station and replace it with a convenience store/deli with 12 seats while keeping the existing gas station use. The proposed convenience store/deli is proposed within the existing repair garage building and building footprint. The impervious coverage on the site is proposed to remain at 19.3 percent. The Applicant will add four additional parking spaces to the site for a total of 12 spaces to meet the parking requirements for the retail and restaurant use. Existing lighting, landscaping, bollards, some signage and the air pump and vacuum stations are proposed to remain. The existing freestanding sign is proposed to be removed and relocated to the corner of Newark Pompton Turnpike and Park Ave with a sign area of 51 square feet and a height of 14 feet. One (1) new building mounted sign is proposed, which is 24 square feet. Two pole mounted signs are proposed to be removed. The existing canopy signs are proposed to remain.

SURROUNDING USES

The site is surrounded by primarily residential uses; however, a contractor yard and Delta Gas Station are located to the north of the site at the corner of Tilley Avenue. The developed portion of the site is closest to Newark Pompton Turnpike and the site is well buffered from adjacent residences with fences and landscaping. The existing gas station was recently renovated and the structures are in good condition.

Land Use Map of the Site and Surrounding Land Uses



Existing Zoning

PROJECT NAME: 403 Newark Pompton Turnpike, LLC 403 – 411 Newton Pompton Turnpike		Zone: R-11 – Residential District		
Proposed Use:		Conversion of Vehicle Repair Garage to a Convenience Store / Deli with Seating for 12		
Block 111, Lot 1.01 & 1.02 (Block 111, Lot 1.05 & Block 320.01, Lot 1 for Parking)				
	Required	Existing	Proposed	Complies
Principal Use	One-Family Detached Public Recreation Private Open Space	Gas Station Vehicle Repair Garage	Gas Station Deli / Convenience Store	Existing Non-Conformance Variance Required ¹
Min. Lot Area	11,250 SF	29,971 SF / 0.69 Acres	29,971 SF / 0.69 Acres	Yes
Min. Lot Frontage	90 Feet	337.13 Feet	337.13 Feet	Yes
Max. Lot Width	90	N/A	N/A	N/A
Minimum Lot Depth	125 Feet	133.70 Feet	133.70 Feet	Yes
Minimum Front Yard - Turnpike	50 FT	68.3 Feet – Garage 5.71 Feet - Canopy	68.3 Feet – Store 5.71 Feet Canopy	Yes – Store ENC - Canopy
Minimum Front Yard Park Avenue	50 Feet	126.8 Feet – Garage 104.6 Feet -	126.8 Feet – Store 104.6 Feet	Yes

PROJECT NAME: 403 Newark Pompton Turnpike, LLC 403 – 411 Newton Pompton Turnpike		Zone: R-11 – Residential District		
Proposed Use:		Conversion of Vehicle Repair Garage to a Convenience Store / Deli with Seating for 12		
Block 111, Lot 1.01 & 1.02 (Block 111, Lot 1.05 & Block 320.01, Lot 1 for Parking)				
	Required	Existing	Proposed	Complies
		Canopy	Canopy	
Minimum Rear Yard Newark-Pompton Turnpike	30 Feet	30.9 Feet – Garage 73.4 Feet - Canopy	30.9 Feet – Store 73.4 Feet Canopy	Yes
Minimum Rear Yard Park Avenue	30 Feet	30.7 Feet – Garage 76.5 Feet – Canopy	30.7 Feet – Store 76.5 Feet Canopy	Yes
Maximum Building Coverage	16% / 4,795 Square Feet	14.5% / 4,347 Square Feet	14.5% / 4,347 Square Feet	Yes
Maximum Impervious Coverage	40% / 11,988 Feet	19.3 % / 5,789 Square Feet	19.3 % / 5,789 Square Feet	Yes
Maximum Building Height	2.5 Stories / 32 Feet	1 Story 16.56 Feet	1 Story 16.56 Feet	Yes

PROJECT NAME: 403 Newark Pompton Turnpike, LLC 403 – 411 Newton Pompton Turnpike		Zone: R-11 – Residential District		
Proposed Use:		Conversion of Vehicle Repair Garage to a Convenience Store / Deli with Seating for 12		
Block 111, Lot 1.01 & 1.02 (Block 111, Lot 1.05 & Block 320.01, Lot 1 for Parking)				
	Required	Existing	Proposed	Complies
Parking	Retail (convenience): 1 spot Per 200 SF $2,289 \text{ SF} / 2 = 1,145.5 \text{ SF} = 5.7255 \text{ Spaces} = 6 \text{ Spaces}$ Restaurant: 1 space per 3 seats $12 \text{ Seats} = 4 \text{ Spaces}$ $6 \text{ Spaces} + 4 \text{ Spaces} = 10 \text{ Spaces}$	8 Spaces	12 Spaces	Yes

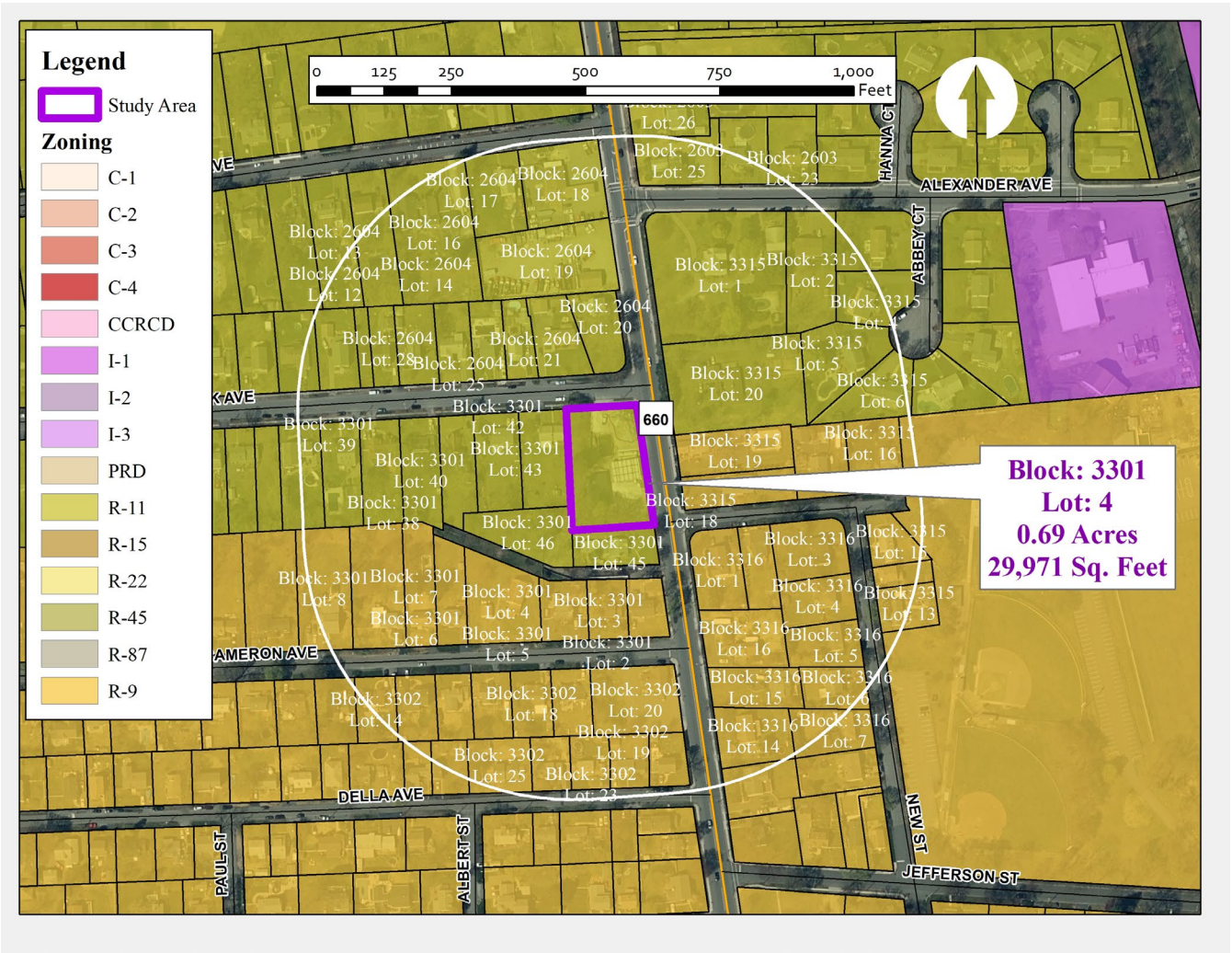
¹ Variance Requested ²Pre-Existing Non-Conforming Use

Sign Table & Variances Required

TOWNSHIP OF PEQUANNOCK ZONING SCHEDULE SIGN REGULATIONS RESIDENTIAL DISTRICT				
ITEMS	REQ'D / ALLOWED	EXISTING	PROPOSED	REMARKS
MAXIMUM NUMBER OF SIGNS	1	3	3	VARIANCE REQ'D
<u>FREESTANDING SIGN - PRICE SIGN (1)</u>				
MAXIMUM AREA	NOT PERMITTED	45 SF	51 SF	VARIANCE REQ'D
HEIGHT	NOT PERMITTED	14 FT	14 FT	VARIANCE REQ'D
LOCATION	NOT PERMITTED	±1.4 FT TO ROW	5.0' TO ROW	VARIANCE REQ'D
ILLUMINATION	NOT PERMITTED	YES	YES	VARIANCE REQ'D
<u>FREESTANDING SIGN - LIGHT POLE MOUNTED SIGN (2)</u>				
MAXIMUM AREA	NOT PERMITTED	26 SF	N/A	REMOVED
HEIGHT	NOT PERMITTED	10.3 FT	N/A	REMOVED
LOCATION	NOT PERMITTED	±10.6 FT TO ROW	N/A	REMOVED
ILLUMINATION	NOT PERMITTED	YES	N/A	REMOVED
<u>ATTACHED - BUILDING MOUNTED SIGN (3)</u>				
MAXIMUM AREA	NOT PERMITTED	N/A	24 SF	VARIANCE REQ'D
HEIGHT	NOT PERMITTED	N/A	11.0 FT	VARIANCE REQ'D
LOCATION	NOT PERMITTED	N/A	ABOVE DOOR	VARIANCE REQ'D
ILLUMINATION	NOT PERMITTED	N/A	YES	VARIANCE REQ'D
<u>CANOPY SIGN (4)</u>				
MAXIMUM AREA	NOT PERMITTED	90 SF	90 SF	EXIST NON-CONF
HEIGHT	NOT PERMITTED	±19 FT MAX	±19 FT MAX	EXIST NON-CONF
LOCATION	NOT PERMITTED	ON CANOPY	ON CANOPY	EXIST NON-CONF
ILLUMINATION	NOT PERMITTED	YES	YES	EXIST NON-CONF

- (1) EXISTING PRICE SIGN TO RELOCATED TO NORTHEAST CORNER OF THE SITE. ONE (1) 6 SF ILLUMINATED SIGN DEPICTING THE CONVENIENCE STORE NAME WILL BE ADDED BELOW THE PRICE SIGN.
- (2) ONE (1) 26 SF LIGHT-POLE MOUNTED SIGN TO BE REMOVED.
- (3) ONE (1) 24 SF ILLUMINATED BUILDING MOUNTED SIGN DISPLAYING THE CONVENIENCE STORE NAME OVER MAIN ENTRANCE.
- (4) THREE (3) EXISTING CANOPY MOUNTED SIGNS: ONE (1) GULF DISK (50 SF) AND TWO (2) GULF WORD MARKS (20 SF EACH).
- (5) REFER TO ARCHITECTURAL DRAWINGS AND GULF SIGN SPEC FOR ADDITIONAL INFORMATION

Zoning Map of the Site and Surrounding Areas



“D” VARIANCE

The Applicant is requesting a use variance pursuant to N.J.S.A. 40:55D-70d (1) for the conversion of the existing Gas Station and Vehicle Repair Garage, a non-conforming use, to a Gas Station and Convenience Store/Deli with 12 seats, which is also not a permitted use in the R-11 Residential Zone.

VARIANCE CRITERIA

The Municipal Land Use Law (MLUL) sets forth the statutory positive and negative criteria for variance relief. It permits a Zoning Board of Adjustment to grant a “D” variance in particular cases and for special reasons. The courts have determined that special reasons include showing by the applicant that granting of the variance will effectuate the intents and purposes of the MLUL and advance the goals and objectives of the local master plan. This is the “positive” criteria of the statute.

To address the “negative criteria”, the applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good, nor will the granting of the variance will substantially impair the intent and the purpose of the zone plan and zoning ordinance of the municipality.

Additionally, the applicant for a use variance is obligated to address the Planning issues raised in the New Jersey Supreme Court case *Medici v. BPR, Co.*, 107NJ 1 (1987). In accordance with the guidelines set forth in *Medici*, an applicant for 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 proposed site is particularly suitable for that use. The *Medici* decision provides that in conjunction with the demonstration of the negative criteria, an enhanced quality of proof must be demonstrated to indicate that the grant of requested use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

POSITIVE CRITERIA

The site meets the positive criteria for the following reasons:

(a) To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.

Case law has determined that a site that is “particularly suited” to a specific use meets the “general welfare” purpose of zoning. The evaluation of suitability revolves around the two questions “why the location is particularly suited to the use despite the zoning” and “what unique characteristics of the site make it particularly appropriate.

The site is particularly suited for this use for the following reasons:

- 1. The site has been in operation as a gas station and repair shop for many years and the conversion to a convenience store can be done completely within the existing building on the site.*
- 2. The site can accommodate adequate parking and circulation for the use without increasing the impervious coverage or building coverage.*
- 3. The existing building proposed for the convenience store meets the setbacks, building coverage and height for the zone district.*
- 4. The site is more than 2.5 times the minimum lot size for the zone district.*
- 5. The site has adequate access from Newark Pompton Turnpike for the size of vehicles necessary for deliveries and emergency services.*
- 6. The site is well-buffered from surrounding residential uses and is located along a minor arterial road.*
- 7. Newark Pompton Turnpike (CR 660) is a minor arterial which is appropriate from a planning standpoint for this type of use by providing adequate traffic, access and circulation for the use.*
- 8. There is a commercial use on the southwestern corner of the two closest intersections that is similar in scale and scope to the existing use and what is proposed illustrating the type of use is not atypical in the area.*

(g) To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. *The proposal provides a better mix of business uses that will be appropriate along Newton Pompton Turnpike and will provide a resource for people who frequent the nearby park which is used for active recreational activities. A convenience store/ deli would provide the type of use which people can frequent after utilizing the park without having to go into all the way into the business district which is to the east along Route 23 and provide options for locals to pick up food or convenience items on their way home.*

(h) To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight. *The site is located along a County Road and is designed to support proper movement for both residential as well as small commercial uses. Allowing for the use will create a use that will lessen potential travel through local roads to Route 23 and allow for shorter trips within town which could promote a more walkable and scalable neighborhood within the municipality.*

(i) To promote a desirable visual environment through creative development techniques and good civic design and arrangement. *The proposal will provide a visual improvement to the building and the site by improving the exterior of proposed convenience store.*

(m) To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land. *The site serves a community need for gasoline and convenience grocery and deli service and the expansion of and improvement to the existing facility allows for the efficient use of an existing site which is currently non-conforming in the zone.*

NEGATIVE CRITERIA

To address the "negative criteria," the Applicant must demonstrate that the impacts associated with the conditions that cannot be met can be granted "without substantial detriment to the public good" nor will the granting of the variance "substantially impair the intent and the purpose of the zone plan and zoning ordinance" of the municipality. The following narrative addresses the negative criteria.

No Substantial Detriment to the Public Good

- The site is located along a county roadway and already is in use as a gas station. While neither the gas station nor convenience store are permitted uses in the zone, they are complimentary uses and conveniences that are found in residential zones along county roadways and are not out of scale and scope with surrounding uses.
- The site is well-buffered from adjacent residential properties with existing screening landscaping and fencing.
- The proposed convenience store is less likely to have negative impacts on adjacent properties, such as noise than the existing repair shop.
- The use of the site could enable a more walkable neighborhood, which would provide a benefit to both the residents of Pequannock and people visiting the area.

No Substantial Impairment to Zone Plan

- Within the 2019 Pequannock Master Plan Update, there are two goals which are consistent with this proposal:
 - Maintaining the Character of the Township in established neighborhoods, and
 - Promoting land uses consistent with the Township of Pequannock's historic patterns.

As the Newark Pompton Turnpike is a county roadway and primary connector within the Township, having a slight mix of complementary businesses that have been in existence and use for years maintains the character of the established neighborhoods. The proposal creates convenient commerce near residential uses, which is not out of scale and scope with the neighborhood, and reflects the patterns of development which have been established up the corridor despite not being directly permitted within the zone.

“C” VARIANCE CRITERIA

The Application requires bulk variances for signage proposed on the property. The Applicant is proposing a 51 square foot freestanding sign and one 24 square foot building mounted sign as well as to maintain existing canopy signage. Because the site is in a residential zone, the Township’s Ordinance does not permit commercial signs. Therefore, variances are required for the sign type, sign size and location. There are two provisions within the MLUL for granting variances from zoning standards such as sign standards:

The first provision for granting a “c” variance is under N.J.S.A. 40:55D-70c (1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures lawfully existing thereon.

The second provision for granting a “c” variance is under N.J.S.A. 40:55D-70c(2) where the Board must find that the application relates to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and that the variance will not substantially impair the zone plan or ordinance. Under c (2), the Applicant should show that the proposal is a better zoning alternative to that which is permitted by the ordinance.

POSITIVE CRITERIA

The proposal furthers two of the purposes of the Municipal Land Use Law as follows:

(g) To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens. *The proposal provides a better mix of business uses that will be appropriate along Newton Pompton Turnpike and will provide a resource for people who frequent the nearby park which is used for active recreational activities. A convenience store/ deli would provide the type of use which people can frequent after utilizing the park*

without having to go into all the way into the business district which is to the east along Route 23 and provide options for locals to pick up lunch or something small before heading to their homes.

(h) To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight. *The site is located along a County Road and is designed to support proper movement of homes as well as small commercial uses. Allowing for the signs will assist the traveling public in identifying the uses on the site and making safe turning movements into the site. Additionally, the gas price signs are required by law to be provided to consumers.*

Pequannock Master Plan

The 2019 Pequannock Master Plan Update has the following two goals which are consistent with this proposal:

- Maintaining the Character of the Township in established neighborhoods, and
- Promoting land uses consistent with the Township of Pequannock's historic patterns.

NEGATIVE CRITERIA

To address the negative criteria, the Applicant must demonstrate that the proposed variance can be granted without substantial detriment to the "public good" nor will the granting of the variance substantially impair the intent and the purpose of the "zone plan and the zoning ordinance" of the municipality.

No substantial detriment to the public good:

The proposed signage will not negatively impact adjacent properties as the Applicant's improvements to the site have minimized impacts from the site and improved the look of the site. Improvements include cleaning up of the site, improving the building façade, improving the landscaping on the site and improving circulation and layout.

No substantial impairment to the intent and purpose of the zone plan or ordinances:

The intent and purpose of the sign ordinance is: "The following regulations are adopted to allow for the identification, notification and advertisement of uses of property and of events within the Township of Pequannock in a manner that provides information and safe access for the pedestrian or the motoring public while eliminating clutter and unreasonable distractions. These regulations seek to establish an

aesthetic approach to signage based on conformity, relationship to use, location, and the structural context in which a sign is installed.”

The proposed sign does not impair the intent of the sign ordinance which was established based on zones and doesn't account for non-conforming uses in the zone. The proposed signs are similar to signs that would be permitted for commercial uses in commercial zones and allow for advertisement of the uses and safe access for the motoring public and pedestrians while eliminating clutter and unreasonable distractions. Therefore, I believe there is no substantial impairment of the zone plan or ordinance. Overall, the benefits of granting the variance outweigh any potential detriments.

CONCLUSION

Based on the above presented proofs, the proposed use can be granted the requested variances without any detriment to the public good or negative impact on the zone plan and zoning ordinance.