Use Variance Relief, Amended Preliminary &

Final Site Plan Approval & Bulk Variances

 PMG New Jersey, LLC

1 Lanes Mills Road

 Block 1466.03, Lot 4

 Zone: B-2 (General Business) Zone

 Application No. BA-3028-A-PSP-FSP-C-D-5/20

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3028-A-PSP-FSP-C-D-5/20**

**MEMORIALIZED OCTOBER 7, 2020**

**WHEREAS**, PMG New Jersey, LLC (the “Applicant”) has applied to the Brick Township Zoning Board of Adjustment (the “Board”) for use variance relief, pursuant to N.J.S.A. 40:55D-70d(1), amended preliminary and final site plan approval, pursuant to N.J.S.A. 40:55D-46 and 50, with ancillary bulk variance relief pursuant to N.J.S.A. 40:55D-70c, for lands known and designated as Block 1466.03, Lot 4 on the official Tax Map of the Township of Brick and more specifically known as 1 Lanes Mills Road, Brick, NJ 08723 (the “Property”); and

 **WHEREAS**, a complete application has been filed, the fees as required by Township Ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

 **WHEREAS**, a public hearing was held on September 3, 2020 via the Zoom virtual meeting platform, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties having an opportunity to be heard.

 **NOW, THEREFORE**, the Board makes the following findings of fact based on evidence presented at its public hearings at which a record was made:

1. The Applicant is seeking use variance relief as well as amended preliminary and final site plan approval along with ancillary bulk variance relief permitting the removal of the existing +/-936 square foot masonry carwash building and the +/- 1,061 square foot convenience store beneath the fuel canopy and to construct a new 5,246 square foot building in the rear portion of the Property to contain 3,010 square feet of retail space and a 2,236 square foot fast food restaurant with a drive through lane. Four (4) new fuel pumps are also proposed beneath the existing fuel canopy to provide eight (8) new fueling positions. The Applicant also proposes to modify the existing parking area with pavement expansion/reconstruction, curb installation, traffic striping and other pavement markings. The expanded gas station and new fast food restaurant/retail building are proposed to share a common 24-space parking area, the access to which is to be provided via two (2) existing access drives extending to/from Lanes Mills Road to the west. An underground stormwater management basin comprised of thirty (30) inch diameter high density polyethylene (HDPE) pipes is proposed to mitigate the stormwater impact of the proposed development. The discharge will be connected to the existing drainage system within the Lanes Mill Road right-of-way to the west. The new retail/restaurant building is proposed to be serviced by existing public water and sanitary sewer mains within the adjacent right-of-way. Lighting, landscaping and signage improvements are also proposed. There are no public improvements proposed.
2. The Property contains +/-1.2-acres and is located on the southeasterly corner of the intersection of Lanes Mill Road and Burnt Tavern Road and has frontages of approximately 215 feet along each roadway within the B-2 Zone. The Property also has +/-220 feet of rear frontage along the Garden State Parkway right-of-way. The Property and the adjacent lots to the south and across Lanes Mill Road to the west are all situated in the B-2 (General Business) Zone and are improved with commercial uses. The properties to the east and across Burnt Tavern Road to the north are within the Garden State Parkway right-of-way, while the properties diagonally across the Burnt Tavern Road/Lanes Mill Road intersection to the northwest are located within the R-7.5 (Single Family Residential) Zone and are improved with residential uses. The Property is currently fully developed with a 4-pump gasoline service station, an overhead canopy, a convenience store, a non-operating drive-through car wash facility and paved parking areas, as well as other associated improvements. The Property is not located within a FEMA-designated flood hazard area.
3. The proposed stormwater management system will collect runoff from the proposed development with traditional catch basin inlets and convey the runoff via subsurface collection pipes to an underground detention basin consisting of two (2) proposed 150-foot long 30-inch diameter HDPE pipes. Stormwater runoff will then be discharged to an existing inlet catch basin located along Lanes Mill Road near the southwest corner of the Property through a multi-staged underground outlet control structure. The proposed development does not meet the threshold of a major development as defined in N.J.A.C. 7:8 and therefore the Applicant is not required to meet the recharge, quantity and water quality requirements of N.J.A.C. 7:8-5.2 or N.J.A.C. 7:8-5.4.
4. The Property was previously granted use variance relief and site plan approval on June 18, 2014 permitting the modification of pre-existing sign package and fuel canopy. The following bulk variance relief was applied for but subsumed within the use variance relief granted in the 2014 approval:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Required | Existing | Proposed |
| Maximum driveway width | 35 feet | +/-50 feet |  +/-50 feet |
| Loading area required | Yes | No | No |
| Parking space dimensions | 10 feet by 18 feet  | 9 feet by 18 feet | 9 feet by 18 feet  |
| Maximum sign area – site identification sign | 40 s.f.  | +/-74 s.f. | +/-85 s.f. |
| Maximum sign height | 12 feet | 20’-2” | 20’-2” |

1. The Property was also granted additional use variance relief permitting the installation of signage with digital (LED) fuel price displays, as this type of signage was not permitted at that time. The Township Code has since been amended to permit digital/LED fuel price displays.
2. The Property was once again granted use variance relief and preliminary and final site plan approval on April 18, 2018, permitting the removal of the existing masonry car wash building and the +/- or 1,061 square foot convenience store beneath the fuel canopy and to construct a new 5,246 square foot building in the rear portion of the Property to contain 3,010 square feet of retail space and a 2,236 square foot fast food restaurant with a drive-thru lane. Four (4) new fuel pumps were also approved beneath the existing fuel canopy to provide eight (8) new fueling positions. The Applicant applied for the following bulk variance relief which was subsumed within the use variance relief:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Required | Existing | Proposed |
| Minimum Front Setback(Commercial/Restaurant Building to Burnt Tavern Road) | 50 feet | N/A | 41.5 feet |
| Minimum Front Setback (Fuel Canopy to Lanes Mill Road) | 50 feet  | 39.4 feet(1) | 39.4 feet(1) |
| Minimum Front Setback (Commercial/Restaurant Building to Garden State Parkway) | 50 feet | N/A | 157 feet |
| Maximum Impervious Coverage | 65% | 65.2% | 79.8% |
| Maximum Quantity of Façade Signs (1 per Each Façade Facing a Lot Frontage) | 3  | Not Indicated | 6 |
| Maximum Area of Monument/Freestanding Signs | 40 s.f. | 54.8 s.f | 79.9 s.f. (1) |
| Maximum Quantity of Monument/ Freestanding Signs | 1 | 1 | 2 |
| Pylon Signs | No | Yes | Yes |
| Maximum Height for Freestanding Sign | ½ eave height(2) = 8.16 feet  | 20.2 feet | 20 feet |
| Minimum Setback – Parking Areas to right-of-way | 20 feet | ±5 feet | 5.1 feet(3) |
| Maximum Commercial Driveway Width | 35 feet | 50 feet | 50 feet(1) |
| Minimum Sidewalk Width Abutting Parking | 6 feet | N/A | 5 feet(4) |
| Parking Space Size | 18’x 10’ | 18’x 10’ | 18’x 9’ |

(1) Existing condition; no change proposed.

(2) The eave height of 16.33 feet was used to determine the maximum freestanding sign height. This is the height of the proposed roof parapet above the adjacent grade.

(3) Proposed parking area setback to Garden State Parkway right-of-way. Existing parking area setback to Lanes Mill Road is +/-8 feet and is not proposed to change. However, parking stalls are proposed with a setback of +/-18 feet to Burnt Tavern Road, whereas the closest existing parking stall to the right-of-way has a setback of +/-58 feet.

(4) A 5-foot wide sidewalk is proposed along the four angled parking spaces. All other sidewalks adjacent to parking spaces are compliant with the 6-foot width requirement.

1. The Applicant was represented by Jason Tuvel, Esq. Mr. Tuvel stated the Board previously granted use variance relief with preliminary and final site plan approval in April 2018 permitting the construction of a fast food restaurant with a drive-thru and convenience store/gas station on the Property. He noted that the gas station is not a permitted use in the B-2 Zone (and was not a permitted use in 2018). He stated the Applicant further proposed to add two (2) pumps to the existing gas station for a total of eight (8) fuel pumps on the site, which was likewise approved by the Board in 2018. Mr. Tuvel explained that the Applicant had satisfied all conditions of Resolution Compliance pertaining to the 2018 approval. He then stated that the Ocean County Planning Board approval required a right-of-way dedication which altered the size of the Property and therefore required new use variance relief along with amended preliminary and final site plan approval.
2. The Applicant’s Engineer, Jeffrey Martell, P.E., stated that the Ocean County Planning Board approval required an additional 3,346 square foot right-of-way dedication. The lot size of the Property had therefore been reduced from 52,404 square foot to 49,058 square feet. He testified that the roadway dedication did not fundamentally change the uses approved by the Board for the Property in 2018. Mr. Martell then explained that the roadway reduction would impact the impervious coverage, the front yard setback for the parking and the proposed signage.
3. Mr. Martell then testified that the proposed southerly driveway off Lanes Mill Road would be a 20-feet wide right-in/right-out accessway with a 20-foot island median. He stated that the setback for the fuel canopy would remain unchanged from the 2018 approval.
4. Mr. Martell then reviewed the following changes proposed in the instant application from the approval granted by the Board in 2018:
	1. Minimum front yard setback (commercial/restaurant building). The proposed front setback would be 32.1 feet where 41.5-foot setback was approved in 2018 and a 50-foot setback is required;
	2. Minimum front yard setback (canopy) where a 35.4-foot setback was now proposed, and 39.4-foot setback was granted by the Board in 2018 where a 50-foot setback is required;
	3. Maximum impervious coverage where a 79.8% was approved by the Board in 2018 and the Applicant now proposes 83.2% and a maximum 65% impervious coverage is permitted;
	4. Minimum parking area setback to Lanes Mill Road where 8 feet was approved by the Board in 2018 and a 0.5-foot setback was now proposed, and a 20-foot setback is required;
	5. Parking area setback to Burnt Tavern Road where an 18-foot setback was approved by the Board in 2018 and an 11-foot setback was now proposed, and a 20-foot setback is required; and
	6. Setback for a freestanding sign where a 7.6-foot setback was now proposed where a 10-foot setback is required, and a conforming 21-foot setback was proposed by the Applicant in 2018.
5. The Board’s Planner, Tara Paxton, P.P., AICP, testified that the Applicant had satisfied all conditions contained in the 2018 Resolution with the exception of the right-of-way dedication required by Ocean County Planning Board.
6. The Applicant’s Planner, Justin Auciello, P.P., AICP, testified that the Property is located in the B-2 (General Business) Zone. He explained that the Applicant was seeking d(1) use variance relief to permit the expansion of the existing gas filling station because gas filling stations are not permitted uses in the B-2 Zone. He stated, however, that all proposed retail and restaurant uses are permitted in the Zone.
7. Mr. Auciello then testified that the Property is particularly suited for the proposed uses because it is located 100 feet from the entrance to the Garden State Parkway, which borders the rear of the Property, and the benefits of the proposed uses far outweigh the detriments. He added that the Township Master Plan supports an increase in the intensity of commercial development on existing commercial sites as opposed to new commercial development in new areas. He stated that the improvements will have no negative impact on the zone plan or zoning ordinance.
8. Mr. Auciello noted that the total area of the four (4) proposed signs is 115 square feet where a maximum 298 square feet is permitted and that the signs, which provide instruction for motorists, are small when compared to the scale of the proposed QSR/convenience store.
9. Mr. Auciello then testified that the Applicant satisfied the positive criteria because the proposed development would advance four (4) purposes of the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2. Specifically, Mr. Auciello stated the application would promote the general welfare of the Township because it will improve the commercial development on Lanes Mill Road and Burnt Tavern Road in accordance with N.J.S.A. 40:55D-2a. Mr. Auciello further testified that N.J.S.A. 40:55D-2g would be advanced because the project would provide sufficient space for a variety of uses. He also asserted that N.J.S.A. 40:55D-2h would be advanced because the Applicant proposes separate right-in/right-out access areas to channel traffic to and from the site and avoid additional traffic on Lanes Mill Road. He added that N.J.S.A. 40:55D-2i would also be advanced because the improvements will upgrade the existing site and improve the aesthetics of the Property. Finally, Mr. Auciello stated that N.J.S.A. 40:55D-2m would be advanced because the proposed development would encourage the efficient use of the land by improving commercial development on Lanes Mill Road.
10. Mr. Auciello then testified that the Applicant had satisfied the negative criteria because the proposed development would not be a substantial detriment to the zone plan because the existing B-2 Zone permits a broad variety of smaller retail uses and the proposed gas station use on a site adjacent to the entrance of the Garden State Parkway is similar to those proposed uses and will not have a negative impact on the neighborhood. Therefore, the proposed gasoline station use for the B-2 Zone presents no substantial detriment to the zone plan or the Township’s Land Use Ordinance.
11. Mr. Auciello concluded that the benefits of the project outweigh any detriments and those detriments would have to be substantial to prevent the Applicant from obtaining use variance relief.
12. There were no members of the public expressing an interest in this application.

**NOW, THEREFORE**, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. The Applicant has requested use variance relief pursuant to N.J.S.A. 40:55D-70d(1) to permit the Property to contain a gas station, convenience store and fast food restaurant in the B-2 Zone. While the convenience store and fast food restaurant are permitted uses within the B-2 Zone, they will be located alongside the prohibited gas station and must therefore be considered as part of the request for use variance relief.
2. Under the Municipal Land Use Law, a Board of Adjustment, when considering a “d” variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board’s responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.
3. The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2.
4. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board’s focus is on the variance’s effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most “d” variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.
5. The Board finds the Applicant satisfies the positive criteria. The Applicant was previously granted use variance relief and preliminary and final site plan approval by the Board on February 7, 2018 (Application No. BA-3028-PSP/FSP-C-D-3/17) subject to conditions enumerated in the approving Resolution, which was memorialized on April 18, 2018. The Board finds that its findings of fact and conclusions of law for the 2018 approval remain unchanged. The Board continues to find that pursuant to N.J.S.A. 40:55D-2a, the general welfare will be promoted by approval of this application because the Property is an appropriate location for the commercial uses which will be located adjacent to Interchange 91 of the Garden State Parkway. Section 2g is promoted by providing sufficient space in appropriate locations for a variety of commercial uses. Section 2i is promoted because the improvements will upgrade the Property. Section 2m is promoted because the approval of this application will result in more efficient use of land.
6. The Board reaches these conclusions because the Property is located adjacent to a series of commercial lots located along Lanes Mill Road and Burnt Tavern Road as well as Interchange 91 of the Garden State Parkway. This distinguishes the Property from others in the zone. The Board also finds that the multiple uses proposed on the site fit with the adjacent commercial uses which have existed for decades along Lanes Mill Road and Burnt Tavern Road.

 8. The Board finds the Applicant continues to satisfy the negative criteria. The Board continues to find that the multiple commercial uses of the Property would be a benefit to the surrounding commercial properties and that there would not be a significant negative impact on adjoining commercial properties. The Board’s conclusions remain the same for the instant application. The Board therefore finds that variance relief can be granted without substantial detriment to the public good and that the variances can be granted without substantial impairment of the zone plan and zoning ordinance. The Board also finds that the commercial uses, which are contained in the B-2 Business Commercial Zone, are consistent with the zone plan and zoning ordinance. The negative criteria has therefore been satisfied.

9. Based upon the foregoing, the Board concludes that the positive criteria substantially outweighs the negative criteria and that the use variance relief pursuant to N.J.S.A. 40:55D-70d(1) may be granted.

10. Generally, an application for a “c” and “d” variance cannot co-exist. If the application is for a use not permitted in the zone, the bulk regulations designed for that zone cannot be applicable to the intended use. A Zoning Board in considering a use variance must then consider the overall site design. In essence, the “c” variances are subsumed in the “d” variance. See, Puleio v. North Brunswick Zoning Board, 375 N.J. Super. 413 (App. Div.) certif. den. 184 N.J. 212 (2005). The requests for bulk variance relief in the instant application are therefore subsumed with the grant of use variance relief.

 The Applicant has also requested preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50. As previously stated, the Applicant has satisfied the proofs necessary to be granted use variance relief pursuant to N.J.S.A. 40:55D-70d(1). The use variance analysis subsumed consideration of the bulk requirements for the Property. No other relief is therefore necessary. The Board therefore determines that preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and final site plan approval pursuant to N.J.S.A. 40:55D-50 are appropriate.

**NOW, THEREFORE, BE IT RESOLVED**, by the Brick Township Zoning Board of Adjustment on this 7th day of October, 2020, that the action of the Board taken on September 3, 2020 granting Application No. BA-3028-A-PSP-FSP-C-D-5/20 of PMG New Jersey, LLC for use variance relief, pursuant to N.J.S.A. 40:55D-70d(1), preliminary and final site plan approval, pursuant to N.J.S.A. 40:55D-46 and 50 is hereby memorialized, subject to the following conditions:

1. Applicant shall comply with standard Zoning Board of Adjustment conditions as set forth in attached Schedule “A”.

2. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application, as revised by the terms hereof.

3. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with the recommendations contained in the reports of the Board’s professionals.

4. The Applicant shall submit a revised sign plan for review and approval of the Board Engineer.

5. The Applicant shall comply with all Township Fire Department requirements.

6. The Applicant shall install sidewalks and curbing subject to the approval of the Township Planner.

1883194\_1 BRICKZB-380E PMG New Jersey, LLC Resolution for Use Variance, Amended Prelim. & Final Site Plan (BA-3028-A-PSP-FSP-C-D-5/20) 10.07.20