Conditional Use Variance, Amended Preliminary

and Final Site Plan Approval & Bulk Variances

 Bricktown UE c/o Urban Edge Properties

 644 NJ State Highway 70

 Block 701, Lots 7, 8, 8.03,

9.03, 15 & 16

 Zone: B-3 Highway Zone

Application No. BA-3179-A-PSP-FSP-D-CU-12/19

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3179-A-PSP-FSP-D-CU-12/19**

**OCTOBER 7, 2020**

 **WHEREAS**, Bricktown UE c/o Urban Edge Properties (the “Applicant”) has applied to the Brick Township Zoning Board of Adjustment (the “Board”) for conditional use variance relief, pursuant to N.J.S.A. 40:55D-70d(3), amended preliminary and final site plan approval, pursuant to N.J.S.A. 40:55D-46 and 50, with ancillary bulk variances pursuant to N.J.S.A. 40:55D-70c, for lands known and designated as Block 701, Lots 7, 8, 8.03, 9.03, 15 & 16 on the official Tax Map of the Township of Brick and more specifically known as 644 NJ State Highway 70, 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 16, 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 hearing at which a record was made:

1. The Applicant is seeking conditional use variance relief, amended preliminary and final site plan approval, along with ancillary bulk variance relief permitting the demolition and removal of the +/-2,850 square foot bank building from the southeasterly portion of the Property and to construct a new +/-7,100 square foot pad building which would contain two (2) separate restaurant uses (Restaurants “A” and “B” as designated on the plans). Restaurant “A” would contain 3,200 square feet with a 400 square foot outdoor seating area and Restaurant “B” would contain 3,900 square feet with an 800 square foot outdoor seating area. The existing parking areas and drive aisles in the easterly and southeasterly portions of the site in the vicinity of the existing bank building and proposed new restaurant building, are proposed to be modified. This would result in a net increase of thirteen (13) parking spaces in that portion of the Property. Drainage and lighting improvements are also proposed and a portion of the existing landscaping along the NJ State Highway Route 70 frontage is proposed to be removed and replaced with new landscaping. On-site sidewalk improvements are also proposed and the existing site identification signs along NJ State Highway Route 70 and Chambers Bridge Road/CR 549 are proposed to be modified. The proposed improvements would result in a net increase in impervious coverage of approximately 6,200 square feet. The stormwater runoff from the proposed development area is proposed to be collected by five (5) inlet catch basins and conveyed to the existing drainage system on the Property.
2. The Property is located on the southwesterly corner of the intersection of NJ State Highway Route 70 and Chambers Bridge Road and contains 23.6 acres within the B-3 (Highway Development) Zone. The Property is currently fully developed with the “Brick Town Plaza” shopping center. The shopping center is a +/- 287,000 square foot mixed use commercial building containing a variety of retail, restaurant and various other commercial uses including a “Shop Rite” supermarket and a “Kohl's” department store. The Property is also improved with associated parking and loading areas and a 2,850 square foot bank pad site. Access to and from the Property is to/from both Route 70 westbound and Chambers Bridge Road. Private drive aisles also provide for interior circulation within the Property. The adjacent properties to the north, west and across Route 70 to the south are also located in the B-3 Zone and contain a mixed use residential and commercial development that is currently under construction; vacant, wooded open space; and the “Brick Plaza Shopping Center.” The properties across Chambers Bridge Road to the east are located in the B-2 (General Business) Zone and contain a mix of professional offices and other commercial and retail uses as well as several apparent single-family residential properties. Freshwater wetlands, wetlands transition areas, flood hazard areas or other environmentally sensitive and regulated areas are not present on the Property. The lot to the south contains environmentally sensitive areas associated with the Cedar Bridge Branch of the Metedeconk River.
3. The Applicant previously received conditional use variance relief, preliminary and final site plan approval and ancillary bulk variance relief in February 2016 permitting the construction of a +/-3,757 square foot building addition along the southerly side of the existing shopping center building. Thirteen (13) existing parking spaces were approved to be removed to allow for the construction of the building addition, but modifications to the existing parking lot in the easterly portion of the Property resulted in the total number of parking spaces remaining unchanged. Reconfiguration of the interior drive aisle, new interior sidewalks, new curbing, lighting modifications, landscaping improvements and other minor site improvements were also approved.
4. The Applicant was granted “d(3)” conditional use variance relief permitting the following deviations:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Required | Existing | Approved |
| Minimum front setback | 100 feet  | 100 feet  | 54.4 feet |
| Minimum required parking space quantity (4 spaces per 1,000 s.f. of gross floor area) | 1,162 spaces | 1,034 spaces  | 1,034 spaces  |

1. In addition to the above, the Applicant was granted the following bulk variance relief:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Required | Existing | Approved |
| Maximum permitted impervious coverage | 65%  | 87% | 88% |
| Minimum landscape area as a percentage of total lot area | 20%  | 13% | 12% |
| Minimum parking area setback to street right-of-way line | 20 feet | 0 feet(1) | 0 feet(1) |

1. Setback to parking spaces south of proposed building addition, which are proposed to be restriped.
2. The Applicant was then granted conditional use variance relief, amended preliminary and final site plan approval and ancillary bulk variance relief in February 2018 permitting the demolition of the 1,045 square foot retail commercial building located on Lot 8.03 along with the water and sewer hookups to said building. The Applicant was further permitted to provide an additional fourteen (14) parking spaces for a total of 1,048 where 1,162 parking spaces are required.
3. The instant application requires conditional use variance relief from the following requirements:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Required** | **Existing/Previously Approved** | **Proposed** |
| Minimum Front Yard – Proposed Restaurant  | 100 feet | 74 feet (1) | 49.5 feet |
| Minimum required parking space quantity (4 spaces per 1,000 s.f. of gross floor area) | 1,180 | 1,048 | 1,061 |

(1) Existing front setback to bank building, which is proposed to be removed.

1. In addition to the above, the Applicant requires the following bulk variance relief:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Required** | **Existing/Previously Approved** | **Proposed** |
| Maximum Impervious Coverage | 65% | 86.7% | 87.3% |
| Minimum Landscape Area | 20% | 13.3% | 12.7% |
| Parking Space Size 245-311.J | 10’x18’ | 10’x 18’ | 10’x18’& 9’x18’ |
| Parking Space Setback | 20 feet | 0 feet | 0 feet |
|  | **Required** | **Existing/Previously Approved** | **Proposed** |
| Maximum Area for Monument Sign | 200 s.f. | >200 s.f. | >200 s.f. |
| Maximum Height for Monument Sign | 20 feet | 30 feet | 30 feet |
| Minimum Setback Identification Monument | 25 feet | 2 feet | 2 feet |

1. Counsel for the Applicant, John A. Giunco, Esq., explained that the application required conditional use variance relief along with amended preliminary and final site plan approval.
2. The Applicant’s Engineer, Timothy P. Lurie, P.E., P.P., testified that the Property is located in the B-3 Highway District Zone. He stated that the Applicant was proposing to demolish the existing 2,800 square foot bank building located on Lot 7. He added that the Applicant was also proposing to reconfigure the area to provide an additional thirteen (13) parking spaces for a total of 1,061 spaces. Mr. Lurie also stated that the Applicant was proposing to reconfigure the northerly interior accessway located around the perimeter of the proposed restaurant building to now be one-way. He then noted that an additional sidewalk extending from the sidewalk fronting NJ State Highway 70 to the accessway fronting the proposed restaurant building would be added.
3. Mr. Lurie further testified that “d(3)” variance relief from conditional use standards applicable to shopping centers as set forth in Section 245-291 of the Township Land Ordinance was necessary. He stated that the Applicant was proposing 1,061 parking spaces where 1,162 spaces are required and 1,048 presently exist. The Applicant was also seeking the continuation of the front yard setback relief previously granted in 2016 and 2018. He further stated that a reduction of the maximum permitted impervious coverage from 88% to 87% was required. Mr. Lurie added that the landscaped area as a percentage of total lot area would be decreased from 13.3% to 12.7% where a 20% minimum is required. He also testified that the Applicant was proposing to add landscaping around the perimeter of the reconfigured parking areas and lighting consistent with the existing shopping center lighting.
4. Mr. Lurie then went over the prior approvals. He explained that the prior approval included the removal of thirteen (13) existing parking spaces to allow for the construction of the building addition.
5. Mr. Lurie further testified that the Applicant was now proposing to construct a pad building containing two (2) restaurants with outdoor seating sections in the front area. He explained that two (2) tenants were currently being sought by the Applicant to occupy the proposed restaurant space. Mr. Lurie stated that the parking area to the east and along Route 70 would be expanded to include thirteen (13) additional parking spaces. He next testified that curbing and a dumpster enclosure would be installed between the proposed restaurant building and the existing McDonald’s restaurant. He explained that the 18 foot by 25 foot proposed shared dumpster pad would be enclosed. Mr. Lurie then testified that bollards would be installed on the edge of all travel lanes which front the outdoor seating areas of the proposed restaurant space. He stated that the outdoor seating space for Restaurant A would be 400 square feet and the proposed outdoor seating space for Restaurant B would be 800 square feet.
6. Mr. Lurie went on to explain that drainage pipes and inlets to accommodate the restaurant building would also be installed. He testified that the proposed lighting to be installed on the exterior of the building would match the current lighting scheme of the shopping center. Mr. Lurie confirmed that the ring road which surrounds the restaurant pad would be maintained. He added that the northerly portion of the ring road would be one-way only from the interior ring roadway of the shopping center, in accordance with recommendations made by the Board Planner.
7. Mr. Lurie further testified that the Applicant would expand the landscaped area between the parking area fronting Route 70 and the existing sidewalk along Route 70. He stated that a crosswalk would be installed perpendicular to the existing Route 70 sidewalk in order to provide access to the proposed restaurant building.
8. Mr. Lurie then reviewed the Board Engineer’s May 29, 2020 Report. He stated that nineteen (19) green banked parking spaces were previously approved but had not been included in the 1,061 parking space total on the site. He added that the Applicant would determine the need for the spaces in the future but opined that it is unlikely that the green banked parking spaces will be needed. Mr. Lurie also testified that a rain garden would be installed south of the restaurant building which would improve drainage on the site. He then stated that the Applicant will work with the Board Engineer to revise the grading plan.
9. Mr. Lurie further testified that the Applicant was proposing raised drive-aisles and crosswalks adjacent to the proposed restaurant building to improve the safety of pedestrians. He then stated that bollards would be installed along the perimeter of the outdoor seating areas of the restaurants.
10. The Board’s Planner, Tara Paxton, P.P., requested that appropriate signage and restriping be made of the updated intersection and raised crosswalks.
11. Mr. Lurie testified that the bulk variances for permitted impervious coverage and minimum landscaped area are existing conditions which would be slightly exacerbated. He added that the benefits of the project i.e. increased circulation and parking outweigh any detriment. Mr. Lurie further stated that the proposed improvements would not generate any more noise or trash on the Property. It was therefore his opinion that the Applicant had satisfied the positive and negative criteria for “c(2)” variance relief.
12. Mr. Lurie then testified that the Applicant proposed the following six (6) façade signs: two (2) signs on the front of the building (one (1) sign for each restaurant), one (1) sign on each side of the proposed building and two (2) signs in the rear of the building (one (1) for each restaurant). Mr. Lurie then stated that the signs were necessary for identification of the restaurants for the benefit of potential customers. He stated that the restaurant building would essentially be in the center of the internal roadways surrounding the building. Mr. Lurie explained that the proposed signs would aid in the movement of traffic and improve safety within the vicinity of the building. He therefore concluded that there would be no detriment to the neighboring properties or the zone plan or the zone ordinance.
13. Upon questioning from the Board, Mr. Lurie stated that it was possible to expand the outdoor seating area and that the Applicant would work with the Township Planner as to plan revisions to increase the outdoor seating area.
14. Ms. Paxton then confirmed that the Applicant has worked with the Board and Township’s professionals regarding the ring road and agreed that the northerly one-way roadway surrounding the restaurant building would improve traffic circulation and safety in the area.
15. Mr. Lurie then reiterated that the Applicant would install a rain garden to the south of the proposed restaurant building in order to improve drainage. He added that the Brick Township Municipal Utilities Authority had approved this application subject to the installation of grease traps for the restaurant. Mr. Lurie then confirmed that the Applicant would submit a revised dumpster plan and coordinate the installation of the dumpster pad with the Township professionals.
16. Mr. Lurie then confirmed that fencing would be installed in between the bollards proposed to be installed around the perimeter of the outdoor seating areas for the restaurants. He stated that the fencing and bollards would be located approximately 7 feet from the outdoor dining area for Restaurant B and approximately 3 feet from the dining area for Restaurant A. The Board then expressed concern about pedestrian access to/from the parking spaces to be located across the internal roadway from the restaurant pads. Mr. Lurie stated that the Applicant would work with the Township to provide an additional accessway/crosswalk to join with the proposed crosswalk that would extend from the sidewalk fronting Route 70 to the parking area across from the restaurant building.
17. Mr. Lurie then confirmed that distance from the restaurant building to the dumpster would be approximately 111 feet. He stated that rolling cans would be utilized to transport waste and recycling to the dumpster pad area.
18. The Applicant’s Traffic Expert, Scott Kennel, testified that the proposed restaurant use would generate an additional 30 peak hour trips to the restaurant building. He stated that these trips, however, would not necessarily be totally new trips to the shopping center area. Mr. Kennel explained that NJDOT had issued a Letter of No Interest for this project dated February 12, 2020. He then discussed the parking counts that his firm conducted in December 2018. Mr. Kennel stated that the firm conducted parking counts on December 20, 2018 from 11:00 a.m. to 6:00 p.m. and December 22, 2018 from 11:00 a.m. to 3:00 p.m. He testified that on December 20, 2018, 864 parking spaces were utilized and on December 22, 2018 (the Saturday before Christmas), 947 spaces were occupied. Mr. Kennel opined that the 1,061 parking spaces to be provided by the Applicant were more than adequate to accommodate both the shopping center and the new restaurant uses. He agreed that the creation of the one-way accessway to the north of the restaurant building was the best option for circulation and safety.
19. The Applicant’s Architect, Mike Gokberk, AIA, testified that the proposed style of the restaurant building façade was consistent with the architectural style of the existing shopping center. He stated that the awnings for the front entrance and the proposed signage created a desirable visual image for the restaurant building. Mr. Gokberk further testified that each restaurant would have a separate kitchen. He then explained that the proposed parking in the vicinity of the restaurant building would provide adequate space for fire department equipment. Mr. Gokberk stated that the entire development would be constructed at ground level. He then explained that the proposed signage was consistent with the existing signage for the shopping center.
20. 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 application before the Board requires conditional use variance relief, amended preliminary and final major site plan approval along with ancillary bulk variance relief to permit the demolition of an existing 2,800 square foot bank building and to construct a 7,100 square foot restaurant building in the southeasterly portion of the Property.
2. The Applicant requires d(3) variance relief for a conditional use. The New Jersey Supreme Court in Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994), enunciated a modified version of the traditional use variance standard tailored specially for the conditional use context. The Supreme Court lessened the burden on an Applicant seeking a d(3) variance. The standard enunciated in Coventry reflects the Court’s opinion that conditional uses, even when they do not comport with the requisite conditions, are nonetheless essentially permitted uses in the zone. Thus, the focus of a Board in considering a conditional variance application is not on whether the proposed use is particularly suitable for the site. Id. at 298-299. Rather, a Board must determine whether the Property can accommodate the use despite the deviation from the conditions. This requires an analysis of the problems the conditions were meant to address. Id.
3. The Board finds the Applicant has satisfied the positive criteria. The Board first recognizes that the proposed use is permitted within the B-3 Zone subject to certain conditions.  The Board finds the purpose of the relevant Conditional Use requirements from which the Applicant is seeking relief are to ensure that adequate space exists for all proposed uses and improvements on the Property. The Board finds that the proposed 49.5-foot front yard setback (where 100 feet is required) would still provide adequate space for the additional thirteen (13) parking spaces proposed. The Board further finds that although the proposed increase for parking spaces on the Property is less than what is required by the Ordinance, the Board accepts the Applicant’s Traffic Expert’s testimony that adequate parking exists on the Property to accommodate the existing uses and the proposed restaurant use on the Property.
4. The Board further finds that the Property is large and has successfully accommodated the existing uses on the Property. There is also an absence of any residential uses in the immediate area.  The Board therefore finds that the proposed restaurant building and upgraded signage continue to adequately address the issues and harms that the conditional use standards were intended to protect against.   The Board, therefore, finds that the Property remains suitable for the proposed restaurant building and upgraded signage and that the positive criteria has been satisfied.
5. The Applicants must also satisfy the negative criteria for the d(3) variance relief. The Board concludes the Applicant’s proposal to construct the restaurant building will not result in a substantial detriment to, but actually enhance, the character of the surrounding neighborhood by providing both indoor and outdoor dining space. The restaurant building is replacing a vacant bank building. Adequate circulation and parking exist. The Board therefore finds that the requested conditional use variance relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Board, therefore, concludes that the Applicant continues to satisfy the negative criteria. The Board concludes that the positive criteria substantially outweighs the negative criteria and that conditional use variance relief pursuant to N.J.S.A. 40:55D-70d(3) may be granted in this instance.
6. The Applicant also requires bulk variance relief as stated above for maximum impervious coverage, minimum landscape area, parking space size, parking space setback, maximum area and height for monument sign and minimum setback for an identification monument sign.
7. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.
8. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.
9. The Board finds that the positive criteria has been satisfied. The Board finds that the maximum impervious coverage increase is mitigated by the additional thirteen (13) parking spaces proposed. The Board also finds that the reduction in size of some of parking spaces would allow for adequate spacing for parking and maintain adequate circulation on the Property. Likewise, the Board finds that the 0-foot parking space setback permits additional parking located adjacent to the restaurant building which would actually enhance the circulation around the area of the proposed restaurant building.
10. The Board also finds that the upgrade to the monument signs would enhance the identification of the Property by motorists on both State Highway Route 70 and Chambers Bridge Road. The redesign of the monument signs would enhance the aesthetics of the Property. The Board further finds that the 2-foot setback for the identification monument will increase the visibility of the monument sign and promote safety at the accessways to the shopping center.
11. The Board further finds that the application advances the intent and purpose of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2a and i. Specifically, the proposed addition will advance the purpose of N.J.S.A. 40:55D2a because they will be constructed in compliance with FEMA regulations and enhance safety on the site. The proposed improvements will also advance the purpose of N.J.S.A. 40:55D2i because they will eliminate a vacant commercial building with limited utility on the Property. The Board therefore finds the positive criteria has been satisfied.
12. The Board finds the Applicant has also satisfied the negative criteria. The Applicant’s proposal to demolish an existing building, construct a new restaurant building, add parking spaces and to reconfigure a perimeter roadway all result in a site with improved stormwater management, site circulation and parking. These improvements benefit the entire public. The requested variances can therefore be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. The Board concludes, therefore, that the Applicant has satisfied the negative criteria. The Board concludes that the positive criteria substantially outweighs the negative criteria and variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.
13. Aside from the above referenced relief, the Applicant complies with all other requirements of the Township’s site plan, zoning and design standard ordinances. Amended preliminary and final site plan approval may therefore be granted pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50.

**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 16, 2020 granting Application No. BA-3179-A-PSP-FSP-D-CU-12/19 of Bricktown UE c/o Urban Edge Properties for amended preliminary and final major site plan and conditional use, and bulk variance approval 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”.

1. 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.
2. 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.
3. All conditions of previous approvals shall remain in full force and effect except as modified herein.
4. The Applicant shall install an 18-foot by 25-foot shared enclosed dumpster pad subject to the approval of the Board Planner and Board Engineer.
5. The Applicant shall install a sidewalk that will extend from the existing sidewalk fronting State Highway Route 70 to the parking area adjacent to the restaurant building.
6. The Applicant shall install a sidewalk that connects through a landscaped bump-out area located within the parking area across from the restaurant that will connect to the sidewalk that will extend from State Highway Route 70.
7. The Applicant shall install thirteen (13) parking spaces on Lot 7 along the property line fronting State Highway 70 and ensure proper drainage occurs from these new parking spaces.
8. The Applicant shall install a rain garden subject to the approval of the Board Planner and Board Engineer.
9. The Applicant shall install appropriate stop signs and raised crosswalks and restriping the ingress and egress intersection adjacent to the restaurant building for safety purposes subject to the review and approval of Board Engineer.
10. The Applicant shall install landscaping within the buffer between the roadways surrounding the restaurant building and State Highway Route 70, subject to the approval of the Board Planner and Township Engineer.
11. The Applicant shall install bollards with fencing which border the outdoor seating area of the proposed restaurants.

1888888\_1. BRICKZB-366E Bricktown UE c/o Urban Edge Properties Resolution for Conditional Use Variance, Amended Preliminary and Final Site Plan 10.7.20