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August 24, 2020

Edwin F. Gerecht, Jr., Chair
Long Hill Township Zoning Board of Adjustment
915 Valley Road
Gillette, New Jersey 07933

RE: **Application: 19-14Z**
Applicant: 664-676 Valley Road, LLC
Use and Bulk Variances
664-676 Valley Road
Block 11107 Lot 16
B-1-20 Zone

Dear Chairperson Gerecht and Members of the Board:

The following is a review letter of the above-referenced development application. The following documents have been reviewed:

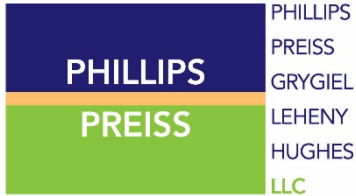
- Application for Development for 664-676 Valley Road, signed by Robert Tokash, dated 12/18/2019, including addendum and exhibits.
- Site Plan entitled "Lot 16 Block 11107 Passaic Valley Road & Mountain Avenue Township of Long Hill Morris County, NJ," prepared by Murphy & Hollows Associates LLC, dated 9/13/2019.

The subject property is improved with a long-standing service station (currently Valero) and two-family dwelling uses. As discussed in detail in the foregoing letter, the present application does not concern any new disturbance or change to use. Rather, the applicant seeks to remedy violations of previous approvals granted for the property, or seek appropriate variances in association with existing uses and improvements.

Description of Site and Development History

The subject property is a ±1.3 acre lot located at the intersection of Passaic Valley Road and Mountain Avenue. The southeast corner of the property is presently developed with the Valero service station building containing a storefront and 3 service bays; 2 pump islands with a total of 3 gasoline pump stations along street frontages; outdoor vehicle storage and containers enclosed by fences to the rear of the building; and signs and other accessory improvements. The northwest corner of the property is improved with a shed and a 1-story frame building. Finally, a 2-story two-family dwelling and a paved driveway and parking area accessible from Valley Road are present in the southwest corner.

According to records provided by the applicant, the service station use was initially approved in 1959, with the following conditions (out of 7 total) relevant to the present application set forth in a letter by the Chairman of the Planning Board dated 3/19/1959:



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- 1) That said Gas Service Station shall not become a garage.
- 2) Shall not retain damaged vehicles for a period of more than 10 days.
- 3) Shall not store or park vehicles.
- 4) That said area shall be landscaped.
- 5) Shall be kept orderly and clean in appearance at all times.
- 6) There shall be no storage or accumulation of oil cans or similar refuse so as to constitute a hazard in the area.

In 1966, the property was granted approval to construct a one-story storage room addition to the existing gas station building (i.e. the westernmost bay in the present building). Per Resolution dated 5/4/1966, the Governing Body permitted the application with the following relevant conditions (out of 6 total):

- 1) The proposed addition shall be utilized for storage purposes only and while designed outwardly to appear as an additional bay will not be utilized at any time in the future as an additional service bay.
- 2) The earthen bank to the rear of the building and on the westerly side shall be landscaped and planted with shrubbery or another type of ground cover, in such a manner, and of a type acceptable to the Township Committee.
- 5) All of the provisions of the letter dated March 19, 1959 from the Planning Board in connection with the original variance permitting erection of the gasoline station premises shall be fully adhered to.

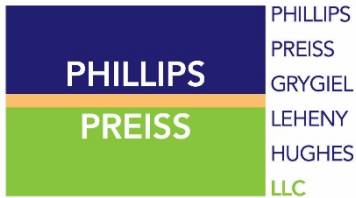
Finally in 1978,¹ the property was granted variance approval to install an additional 6,000 gallon tank and gasoline pump to the side façade of the building, subject to the following relevant condition (out of 2 total):

- 2) Prior to construction adequate screening man-made and/or evergreen shall be planted or installed on the northern property line and a fence shall be installed along the eastern end of the building to the property line.

Zoning Compliance

The Township Zoning & Code Enforcement Officer and Planning & Zoning Coordinator previously issued a letter entitled “Property Violations 646-676 Valley Road, Gillette, New Jersey” dated June 28, 2019 listing 5 property violations. For the present application, the applicant has provided responses to these citations in an addendum. The violations and applicant responses are summarized below:

¹ There seems to be a mistake in Exhibit E concerning the 1978 application provided by the applicant. The Board of Adjustment Resolution is dated 10/23/1978; however, the second page of the presumably Township Committee Resolution for the same application is missing and replaced with a page from the previous 5/4/1966 resolution. As such, the exact date of the presumably Township Committee Resolution approving the tank with conditions is unverifiable.



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1. Third garage bay in service station building: Pursuant to Condition #1 of the 5/4/1966 Resolution, the third garage bay is only permitted as storage, but the applicant has been utilizing this area for a front end ramp alignment system for cars serviced by the service station for approximately 50 years.

The applicant intends to continue with this use and seeks a modification of Condition #1.

2. Storage of equipment and trucks: it appeared that a landscaping business was utilizing the two rear structures in the northwest corner for storage purposes, and trucks and equipment were also stored on the site. These uses are prohibited on the property.

The applicant indicates that the two rear buildings are in fact used by the service station to store tires and snow removal equipment and submits that the use does not constitute a violation.

The applicant does not specifically address the issue of commercial trucks of the landscaping business that were previously observed at the property. However, the applicant seeks a modification of Condition #3 of the 3/19/1959 letter in order to continue the parking of vehicles and outdoor storage of snow plows owned by the gas station.

3. Fence: No previous application submitted nor approval granted for the fence enclosing trucks and equipment to the rear of the service station.

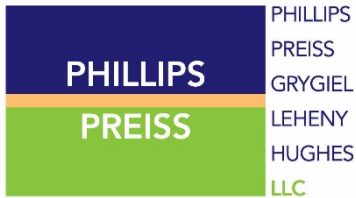
The applicant indicates that the fence was erected in response to Condition #2 of the 1978 resolution, which required a man-made and/or evergreen screen on the northern property line and a fence along the eastern end of the building to the property line.

4. Two-family dwelling: The existing dwelling is a preexisting nonconforming two-family dwelling, but it appeared that more than two families and/or tenants were residing at the location.

The applicant submits that no more than two families occupy the dwelling.

5. Outdoor storage & debris: Pursuant to §16-1.7 of the Township code, all lots shall be kept free of accumulations of trash, garbage waste, rubbish, refuse, junk or noxious or offensive materials or substances, whereas the property had debris like broken grill and washing machine outside.

Applicant has not provided a response or photographs specifically addressing this issue.



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Pursuant to the above, the following variances required for the application are identified at this time:

- “d(1)” variance for the use of the westernmost garage bay for a front end ramp alignment system for cars serviced at the station, instead of storage as previously required by Condition #1 of the 5/4/1966 Resolution.
- “d(1)” variance for the outdoor storage of vehicles and snow plows, which were prohibited by Condition #3 of the 3/19/1959 letter.

The Board should also note that a number of preexisting nonconforming conditions are present on the site. However, as no new disturbance or changes to the building or site are proposed, no new variances are necessary. The existing nonconformities are listed below for reference purposes:

- Two principal buildings and uses on a single lot.
- Minimum front yard setback: 50 feet required whereas 33.8 feet existing.
- Minimum side yard setback: 20 feet required whereas 19.9 feet existing.
- Maximum lot coverage: 40% permitted, whereas 47% existing.

Planning Review Comments

1. There are “d(1)” use variances required for this application. The MLUL at N.J.S.A. 40:55D-70d(1) permits a Board to grant a variance to allow “a use or principal structure in a district restricted against such use or principal structure.” Per the MLUL, a “d” variance may be granted only “in particular cases for special reasons.” These “special reasons” for a use variance may include that the use is inherently beneficial, that the property owner would suffer undue hardship if compelled to use the property in conformity with the permitted uses in the zone, or that the site is particularly suited for the use so as to promote the general welfare.

In addition, a variance applicant must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality. A d(1) variance applicant for a use that is not inherently beneficial is further required to address the “enhanced quality of proof” per *Medici v. BPR Co.* (107 NJ 1 [1987]): “the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance.”

2. The applicant should confirm if the previously observed landscaping business and associated storage of equipment and trucks on the site were eliminated. The Board should note that the property previously received a property

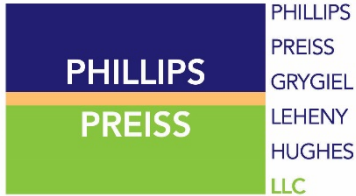
maintenance report for the illegal storage of commercial vehicles on the property associated with the landscaping business.

3. The applicant should clarify the relationship between the gas station and its “snow plowing business” as mentioned in the application addendum, which utilizes the northwestern buildings for storage of snow removal equipment and stores snow plows to the rear of the gas station. The Board should note that approximately 20 snow plows were observed at the rear of the building in June 2019,² at the time of the initial inspection by the zoning officer and coordinator. If a separate snow plowing business is conducted on the site, that would constitute a third principal use on the property and require a “d(1)” use variance.
4. The applicant should provide additional information regarding the fence. While the applicant submits that the fence was approved as part of the 1978 Resolution for the new tank and pump, the description of the screening required by Condition #2 in the resolution does not match exactly with the location of the existing fence. As noted previously, the condition required screening “on the northern property line” and a fence “along the eastern end of the building to the property line.” The fence presently on the site, in contrast, extends from the northeastern and southwestern edges of the building to form an enclosure around the rear paved parking lot. If the applicant cannot provide additional documentation or testimony regarding previous approvals for the fence, a “c” variance shall be required.

Pursuant to the MLUL at N.J.S.A. 40:55D-70c, the Board may grant a “c” variance on two basis: (1) by reason of exceptional narrowness, shallowness, shape, exceptional topographic conditions, or other extraordinary and exceptional situation uniquely affecting a specific piece of property, the strict application of the regulation would result in practical difficulties or undue hardship upon the developer; or (2) the purposes of zoning would be advanced by the deviation and the benefits of deviating from the ordinance requirements outweigh any detriments. The Board must also be satisfied that the granting of the variance would not cause substantial detriment to the public good or substantially impair the intent and purpose of the zone plan and zoning ordinance.

5. The applicant should provide testimony regarding the use of the two-family dwelling. The June 28, 2019 letter by the zoning officer and zoning coordinator

² Site conditions and photographs were documented in the Area in Need of Redevelopment Study for the area containing the subject property, prepared by J Caldwell & Associates, dated June 6, 2019.



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noted that “based on the amount of vehicles continuously located at the property as well as multiple entrances to the dwelling that more than (2) families and/or tenants are residing at the location, whereas the residence was grandfathered as a two family dwelling only.” The applicant should provide documentation attesting to results of follow-up site visits conducted by the Zoning and/or Building Inspectors or other information to confirm that the dwelling is indeed occupied by no more than two families. If the Board finds information to the contrary, a “d(1)” variance shall be required.

- 6. The applicant should confirm if the previously observed debris on the property were removed.

We trust that the above information is responsive to your needs.

Respectfully submitted,

Elizabeth Leheny, AICP, PP

cc: Debra Coonce
Rich Keller, PE, PP, CME
Jolanta Maziarz, Esq.

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