



Board of Adjustment x 245

## Township Of Mahwah

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Property Maintenance x 246

# FILE COPY

Zoning/Planning Board x 245

December 5, 2017

Mr. Fredric F. Azrak  
AZRAK & ASSOCIATES, L.L.C.  
627 Newark Pompton Turnpike  
Pompton Plains, NJ 07444

RE: **Resolution of the Township of Mahwah Board of Adjustment**  
Docket #1411-16 – Quick Chek  
280-290 State Highway 17 South, Block 136, Lots 5.01 & 5.02

Dear Mr. Azrak:

Enclosed please find a certified copy of the Resolution adopted by the Board of Adjustment at its meeting held on November 1, 2017 conditionally approving the above referenced application.

Should you have any questions or require additional information, please do not hesitate to contact me. Thank you.

Sincerely,

Angela Dragone  
Administrative Clerk

Enclosure

cc: Mr. M. Kelly, Administrative Officer  
Mr. Dan Mairella, Construction Code Official  
Mr. P. McArthur  
Mr. P. Wilkins  
Chief J. Batelli, Police Department

**RESOLUTION  
BOARD OF ADJUSTMENT  
TOWNSHIP OF MAHWAH**

**DOCKET NO. 1411-16**

**QUICK CHEK CORPORATION  
APPROVAL OF CONDITIONAL USE VARIANCES, BULK VARIANCES,  
PRELIMINARY AND FINAL SITE PLAN, SITE PLAN DESIGN EXCEPTIONS,  
CHECKLIST WAIVERS, AND SOIL MOVEMENT PERMIT**

WHEREAS, QUICK CHEK CORPORATION (the "Applicant"), located at 3 Old Highway 28, P.O. Box 600, Whitehouse Station, NJ, has applied to the Board of Adjustment of the Township of Mahwah (the "Board") for Conditional Use Variance Approval, Bulk Variance Approval, Preliminary and Final Site Plan Approval, Site Plan Design Exceptions, Waiver Approvals, and Soil Movement Approval (the "Application") for the property located at 280-290 New Jersey State Highway Route 17 South, Mahwah, New Jersey, also known as Block 136, Lots 5.01 and 5.02 (the "Property") on the Tax Assessment Map of the Township of Mahwah; and

WHEREAS, the Property is a 2.11 acre pentagon shaped lot with flat topography, located along Route 17 South between West Ramapo Avenue and Corporate Drive, south of the I-287 interchange; and

WHEREAS, the Property has been occupied for many years by Robbie's Music Store, which use predates the construction of the schools along Ridge Road; and

WHEREAS, the Property is located in the B-40 Highway Business Zone wherein the Applicant's proposed principle use of the Property as a Service Station is conditionally permitted; and

WHEREAS, the Property is located within 500 feet of a school use (the "schools"), and thereby does not satisfy one of the conditions of Mahwah General Ordinance § 24-6.7, which

sets forth that “[n]o gasoline station or vehicular repair shop shall be located within five hundred (500’) feet of the following uses: schools, playgrounds, churches, hospitals, public libraries or institutions for dependent children”; and

**WHEREAS**, the Application proposes to demolish the existing buildings and structures on the site and construct a new service station, accessory convenience store, and related site improvements including but limited to the creation of a cross access easement between Lot 5.01 and Lot 5.02 (the Hampton Inn Property); and

**WHEREAS**, the Applicant has submitted plans entitled “Preliminary/Final Site Plan” prepared by Bohler Engineering, containing the following sheets:

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>	<u>Last Revised</u>
1 of 19	Cover Sheet	6/29/16	11/9/16
2 of 19	Demolition Plan	6/29/16	11/9/16
3 of 19	Overall Site Plan	6/29/16	11/9/16
4 of 19	Site Plan	6/29/16	11/9/16
5 of 19	Grading Plan	6/29/16	11/9/16
6 of 19	Drainage Plan	6/29/16	11/9/16
7 of 19	Utilities Plan	6/29/16	11/9/16
8 of 19	Lighting Plan	6/29/16	11/9/16
9 of 19	Landscaping Plan	6/29/16	11/9/16
10 of 19	Soil Erosion and Sediment Control Plan	6/29/16	11/9/16
11 of 19	Soil Erosion and Sediment Control Details	6/29/16	11/9/16
12 of 19	Detail Sheet (A)	6/29/16	11/9/16
13 of 19	Detail Sheet (B)	6/29/16	11/9/16
14 of 19	Detail Sheet (C)	6/29/16	11/9/16
15 of 19	Detail Sheet (D)	6/29/16	11/9/16
16 of 19	Detail Sheet (E)	6/29/16	11/9/16
17 of 19	Detail Sheet (F)	6/29/16	11/9/17
18 of 19	WB-50 Truck Turning Exhibit	6/29/16	11/9/16
19 of 19	SU Truck Turning Exhibit	6/29/16	11/9/16

**WHEREAS**, Applicant is the prospective Lessee of the Property. The Property is owned by Barn Village Inc., which consented to QuickChek Corporation’s filing of this Application. The Property has been occupied for over many years by Robbie’s Music Center.

**WHEREAS**, this Application came to be heard at a meeting of the Board held on April 5, 2017. The Application seeks approval from the Board to raze the existing structures on the Property and construct certain improvements, including a 5,496 square foot convenience store, gasoline fueling area with canopy, diesel fueling area with canopy, parking areas for cars and related site improvements. The Application proposes to have a cross-access easement with Lot 5.01.

**WHEREAS**, the Applicant seeks a conditional use variance pursuant to this Board's power under N.J.S.A. 40:55d-70(d)(3) and additional bulk variances, checklist waivers, and site plan exceptions, as appropriate, for: Conditional Use; minimum distance from a school (Section 24-6.7 (a) (1)); Wall Height (Section 24-5.3 (d) (3)); parking stall size (Section 22-6.2(c)(2)); parking area edging (Section 22-6.2(k)(3)); parking setback (Section 22-6.2(b)(2)); acceleration lane (Section 22-6.2(c)(1); driveway width (Section 22-6.2(6)(c)); driveway curb radii (Section 22-6.2(6)(c)); depressed curb length (Section 22-6.2(d)(6)(c)); loading zone location (Section 22-6.3(c)); grading slope ratio (Section 22-2.4(b)(6)); sidewalks along Route 17 (Section 22-6.7(c)(1)); lighting levels in a parking area (Section 22-6.4(a)(10)(a)); lighting levels at a street intersection (Section 22-6.4 (10)(a)); buffering (Section 22-6.5(b)); Landscaping – Tree Replacement (Section 14-4(d)); Wall sign area (Section 24-6.8); Canopy sign area (Section 24-6.8(f)(5)); Text height (Section 24-6.8); Logo Height (Section 24-6.8); Top Letter to Bottom Letter (Section 24-6.8) and

**WHEREAS**, Applicant furnished to the Board proof of proper notice and the Board properly exercised jurisdiction over this application based thereon; and

**WHEREAS**, the Board held hearings on the Application on: April 5, 2017, April 19, 2017, May 17, 2017, June 7, 2017 and September 20, 2017; and deliberated and voted to approve the Application on September 20, 2017; and

**WHEREAS**, over the course of the hearing, the Board heard sworn testimony from Robert A. Vallario, Real Estate Manager for Applicant Quick Chek Corporation, Keith Cahill, P.E., from Bohler Engineering, the applicant's site engineer; Matthew Seckler P.E., and Charles Olivo, P.E. both from Stonefield Engineering and Design, the applicant's traffic engineers and John McDonough, LA, PP, AICP, the applicant's professional planner and also heard the sworn testimony of its own engineer, Michael Kelly, P.E.; and its own traffic engineer, Gary Acolese, P.E.; and

**WHEREAS**, the following documents were offered on the hearing dates as evidence and were considered by the Board in connection with this Application: A-1 Highlands Consistency letter dated December 22, 2016; A-2 Bergen County Planning Board Letter of June 29, 2016; A-3 Bergen County Soil and Conservation District letter of July 19, 2016; A-4 Historic Commission letter dated March 10, 2017; A-5 Environmental Commission letter dated February 22, 2017; A-6 Letter from Mahwah Construction Official; A-7 Letter from the Mahwah Department of Public Works; A-8 Letter from the Mahwah Chief of Police dated March 5, 2017; A-10 Letter from the Township of Mahwah Health Department dated February 28, 2017; A-11 DOT letter; A-12 Aerial Exhibit Sheet1 dated April 19, 2017; A-13 Rendered Site Plan dated April 19, 2017; A-14 Colorized WB50 Truck Turning exhibit dated November 9, 2016; A-15 Color Photo Rendering of the Site looking to the West dated April 19, 2017; A-16 Photo Rendering of the site looking to the Northwest dated April 19, 2017; A-17 Aerial Exhibit Sheet 1 of 1 dated April 19, 2017; A-18 Lighting Plan, Page 8 of 18 revision 5 dated April 25, 2017; A-

19 Tree Replacement Plan, Revision 8 dated April 21, 2017; A-20 Site Plan Sheet 4 of 19 revised May 17, 2017; A-21 Internally illuminated Free Standing ID sign dated April 15, 2017 dated April 28, 2017; A-22 Color Rendition of Sheet A-1 dated April 15, 2017; A-23 Curriculum Vitae Of Matthew Seckler; A-24 Pylon Sign and Line of Sight Exhibit dated May 17, 2017; A-25 Soil Movement Exhibit Sheet 1 of 1 dated 5/24/17; A-26 Flag Pole Exhibit Sheet 1 of 1 dated June 7, 2017; A-27 Weave Analysis dated May 25, 2017 and A-28 NJDOT Pre Application Meeting Minutes dated May 23, 2015; A-29 Curriculum Vitae of John McDonough, LA, P.P., A.I.C.P; A-30 Aerial Photograph of the site; A-31 Photographs depicting 4 views of the subject site; A-32 Photographs depicting 4 views of the area surrounding the site; A-33 DOT Permit with Correspondence dated August 14, 2017 and

**WHEREAS**, the Board makes the following factual findings in connection with its motion to grant the variances, waivers and exception for this Application:

(1) The Board heard and found credible the testimony of Robert A. Vallario, Real Estate Manager for the applicant. Mr. Vallario stated that the premises would be open to the public 24 hours per day, 7 days a week, 365 days per year. Mr. Vallario further testified that the applicant intends to hire between 35 to 50 people to work at this store with 7 to 9 employees working per shift. In terms of deliveries, Vallario indicated that Quick Chek typically receives 3 to 5 tractor-trailer deliveries per week. Additionally, Box trucks will bring certain items such as milk, bread, soda, chips and snacks. Each Store has delivery times and routes with the Vendors who deliver to Quick Chek. In terms of garbage pickup, Mr. Vallario testified to expect 1 to 3 pick-ups per week. The stores are company owned and operated and are not franchises. Moreover, Mr. Vallario testified to the complex system of alarms to safeguard against environmental issues and as far as the underground fuel storage tanks, they are double walled

with an interstitial section. Vallario also confirmed that Quick Chek does not provide any table service. The seating that is provided on the plans is for the convenience of the customers. Mr. Vallario further testified that the diesel delivery that is provided is low-flow diesel for cars so that tractor trailers are discouraged from coming onto the Quick Chek site to fuel. Finally, Mr Vallario stated that the size of the store proposed is their standard size store.

(2) The Board heard and found credible the uncontroverted testimony of Keith Cahill, P.E. regarding the civil engineering aspects of the Application. He testified that the store would be 5,496 square feet and would have 13 internal seats and 8 external seats. The fuel component of the use would be housed under a canopy with 8 dispensers and 16 fueling positions. Cahill stated that the fuel is stored in 4 underground storage tanks, two that hold 20,000 gallons and 2 that are 12,000 gallons. There are 64 parking spaces. Mr. Cahill further stated that the property is located in the Highlands Planning Area and that as part of the Consistency Determination the applicant received from the Highland's Council, some of the parking spaces were required to be pervious pavement. The Applicant will have the employees park in the 7 10 x 18 spaces for which the applicant is requesting a waiver. Mr. Cahill also provided testimony that the access and egress to and from the site was safe and efficient as a result of the "right in right out" driveway from Route 17 which provided for larger sweeping movements due to the 20 foot entrance lane, 30 foot throat and 65 foot travel lane. He further stated that the ordinance requirement of 25 foot drive aisles were met throughout the site with 27 foot drive aisles being provided along the sides of the building and 35 to 37 feet being provided around the gas canopy. The loading zone is located in the rear of the store and is 12 feet in width at a minimum and 120 feet in depth. Cahill also said there was a sidewalk connecting lot 5.01 and lot 5.02. Cahill then opined to the Board through Exhibit A-14 that the 3-5 weekly tractor trailer deliveries for food

and 6-8 weekly tractor trailer deliveries for fuel will traverse the site safely and efficiently. Moreover, Mr. Cahill indicated that Quick Chek utilizes state of the art technology with the fuel component of their proposed use. In fact, the applicant implements double walled fiberglass tanks which have a continuous monitoring system, sensors and an alarm system which exceeds the State of New Jersey DEP regulations. The gas tanks provide for overspill protection as well with automatic shutoffs and separate alarm systems which are visible to employees dispensing the fuel. Mr. Cahill testified that the building will be serviced by electric, gas, sanitary sewer and water. Their location in the front of the property limits the ability of the applicant to plant shade trees in the front of the building. Cahill also stated that the Highlands Council as part of their consistency determination required the applicant to implement heavy landscaping south of the building and south in the site up along the frontage in the form of rain gardens which will collect water from the roofs of the building and the canopy. This will enhance the water quality aspects of the applicant's proposed storm water management system in conformance with DEP and Highlands Council guidelines. Mr. Cahill then reviewed the lighting aspects of Quick Chek's application. 18 foot high LED compliant with the ordinance will be provided. There are also 12 yard lights in and around the site. There are also 24 canopy lights underneath the canopy that are flush mounted fixtures which shine straight down. There are also 37 soffit lights around the perimeter of the building as well as two wall sconce lights in the rear of the building by the loading area. Cahill opined that even though the lighting levels are a little higher than those provided by the ordinance, there would not be any negative impacts in providing lighting for circulation on site and the dispensing of fuel as there are no residential properties in the area. The Board agrees with Mr. Cahill that the waiver for street intersections is de minimus in nature as the average is only .22 foot candles higher than the ordinance standard. Mr. Cahill also testified

that upon construction, the site will be cut down to provide less slope which is the reason for the variance for the 8.2 foot retaining wall. Landscaping, specifically "Creepers" will be provided to soften the appearance of the retaining wall. Overall, applicant per Cahill's testimony will provide 18 different species and 2,042 plants as part of this application. There are no shade trees provided in the front per the underground utilities provided for the site as well as the overhead wires in the immediate area. Nonetheless, Cahill stated that Shade trees will be provided more along the perimeters of the parking area. The applicant withdrew their request for a variance for height of the fence on top of the retaining wall by decreasing it from 6 feet high to 4 feet high. Mr. Cascio and Mr. Kelly concurred with Mr. Cahill that the proper interpretation of the ordinance in this respect was to treat the height of the wall and the fence separately. As to the signage, Mr. Cahill testified that the variance for area of the free standing sign, which was 120 square feet proposed and 100 square feet required by the ordinance, was required due the proximity of an overpass 1100 feet to the north of the site for site recognition and safety. In this regard, Cahill opined that the proposed freestanding sign would not obstruct any signage for the hotel use on lot 5.01 because the setback for said sign is 15 feet as required by the ordinance. Mr. Cahill also reiterated Mr. Vallario's testimony that the dispensers will only pump 7 to 9 gallons per minute which is considered low flow which will discourage tractor trailers from fueling on Quick Chek's site. Mr. Cahill then stated that Quick Chek would advise any tractor trailer which parked on the shoulder of the State Highway in front of their site to move along and have placed no parking signs along the shoulder on the site plan. Additionally, the applicant agreed to install a security camera, over and above the security cameras which will be implemented for on-site security, to further prevent tractor trailer parking on the shoulder of Route 17 southbound. Regarding the proximity requirement of the ordinance to schools, Mr. Cahill through the use of

Exhibit A-17 opined that from building to building, Mahwah High School would be 785 feet from the applicant's convenience store which is in excess of the 500 foot proximity requirement of the ordinance. Additionally there is heavy vegetation and an industrial building between the applicant's property and the school property. With regard to the size and number of the canopy signs, (3 signs of 22.6 square feet each) Cahill stated that they all will not be seen at once by the travelling public and thus are necessary for site identification.

(3) Mr. Cahill continued his testimony before the Board on May 17, 2017. First, the applicant reduced the square footage of the freestanding sign to 100 square feet, thereby eliminating any need for that variance. Additionally, Mr. Cahill also submitted a revised lighting plan, A-18 which was amended to provide for 'a mirage series' that is 300K which obviated the need for the applicant to apply for a waiver. As a result of that compliance with the ordinance, however, the waiver for parking lot average rose slightly to 3.96 foot candles. Mr. Cahill opined that safety was the justification for the lighting waivers occasioned by A-18. Also the waiver for maximum foot candles off site is 3.0 but Cahill noted that the reading was taken from an area of the existing Hampton Inn hotel adjacent to the site. Additionally, Cahill testified to the elimination of another waiver that was formerly required for tree replacement as the applicant decided to keep 5 trees along the property line. Mr. Cahill described the reduction of the square footage for the free standing sign to the Board through Exhibit A-20 which will be in the same location. Now the freestanding sign is compliant with the ordinance as to the size, location and setback. Moreover, Cahill stated that on site circulation with respect to the cross-access easement with lot 5.01 was safe and efficient from a design standard. Mr. Cahill added that there was no storm water detention which existed previously on the site and the within application which brings storm water management to the site is an improvement. Based upon all of this testimony

given, Cahill was of the opinion that the site was appropriate for the proposed use from an engineering standpoint; that the use would not be detrimental to the public good from an engineering standpoint; that the site was designed in accordance with safe engineering design principles and that the site accommodated the proposed use of a convenience store with a retail gas component. Upon questioning of the Board and its experts, Mr. Cahill testified that the landscaping placed in accordance with the applicant's landscaping plan would be irrigated. The Board engineer indicated that a variance is not needed for 1 pylon sign and 1 wall sign. Furthermore the applicant agreed to make a monetary contribution to the Township's Shade tree bank equal to the equivalent cost of the replacement trees. The Board engineer indicated that a waiver the porous pavement was not necessary and he was satisfied with the under drain in that area which was previously approved by the Highlands council. Mr. Cahill agreed to provide the Board with his semi-annual inspection reports. Mr. Cahill then provided justification for the waivers identified by the Board Engineer, namely providing the loading zone in the front yard because the circulation operates safely; providing all structures within 200 feet of the site as the applicant has provided aerial exhibits; providing a 500 foot drainage map as the on-site drainage provided will capture all of the on-site drainage; minimum parking space set back is 8 feet where 0 feet is provided on the southwest corner of property near the hotel as it does not have any negative impact due to its unique location; not providing landscape buffers between parking areas as there is a wall with a fence on top of it which is a permanent buffer; providing sidewalks along Route 17 as the applicant will contribute to the Township's sidewalk fund; and providing a 3-1 grade as opposed to a 4-1 grade because there will not be high pedestrian traffic in this area. Furthermore Mr. Cahill testified that Quick Chek will provide a metes and bounds

description of all site triangle improvements as well as no idling and no overnight parking signs in accordance with the Board Engineer's request.

(4) The Board finds that the testimony and opinions offered by Matthew Seckler, P.E., a traffic engineer from Stonefield Engineering and Design to be reasonable, credible, well supported by the applicable NJDOT regulatory standards, the NJ Highway Access Management Code and the documentary evidence presented by the applicant. Mr. Seckler began his testimony by testifying that Route 17 on both sides of the Highway carries 80,000 vehicles per day. He determined that the peak hour for traffic for this site is 7:15 A.M. to 8:15 A.M. in the morning and 5:30 P.M. to 6:30 P.M. in the evening. Mr. Seckler did his original counts in 2015 and then applied a 3 year growth rate of one per cent per year anticipating a 2018 build out. He opined that the Institute of Traffic Engineers recognizes that this use is not a destination trip such as a movie theatre. The 4,000 vehicles that are on the road during the A.M. peak hour constitutes this uses customer base. Thus to be conservative, Mr. Seckler applied a 63 percent pass by rate to his calculations. Based thereon, Mr. Seckler found a level of service C or D at the site driveway and at the intersection of Route 17 and Corporate Drive. He also indicated that in the pre-application meetings with the DOT, the DOT specifically requested a deceleration lane which has been added to the site plan. Further, Mr. Seckler stated that the application meets the ordinance parking requirement of 1 space per 175 square feet of building space. Moreover, this application exceeds by 2 to 3 times the requirement of how close a driveway can be to an un-signalized intersection. Through Exhibit A-24, Mr. Seckler opined that there was no conflict with the proposed freestanding sign and the existing freestanding sign for the Hampton Inn as you can see the hotel sign about 353 feet before you reach the applicant's site driveway. Mr. Seckler also performed a weave analysis for a right turn coming out of the applicant's site versus the right

turn going into Corporate Drive and found it operated at a Level of service "B" after the numbers in his report for traffic entering and leaving the site in the morning were doubled. Mr. Seckler confirmed that there would be cross-easements between lot 5.01 and lot 5.02.

(5) The Board heard the Quick Chek's application for Soil Removal and Movement on June 7, 2017. Mr. Cahill on behalf of the applicant asked for three waivers: 1) grades within 200 feet which are off-site, 2) present grades for abutting streets and 3) slopes greater than 4-1. Mr. Cahill stated that as to the first and second waivers, the applicant is not disturbing the west and north areas. The reasoning is the same that he previously testified to in connection with the site plan waivers relative to off-site topography. As to the 4-1 slope, there is only a small portion where the applicant has a detention basin which is 3-1 which is the industry standard. Mr. Cahill further stated that the soil that will be cut is 13,637 cubic yards. At the Board engineers request an additional 5,000 cubic yards are added to include the import material for a total of 18,637 yards to be exported from the property in question. The construction entrance is as denoted in the Soil Erosion Plan. There will be no staging of equipment on the Hotel property. All trucks leaving the property with soil will only use Route 17 and not Corporate Drive. Based upon the foregoing, the Board Engineer agreed that all ordinance requirements were met with respect to the soil movement application. Accordingly, the Board finds that the Applicant's soil movement report and proposed soil movement of soils complies with the requirements of the ordinance.

(6) At the June 7, 2017 hearing, Mr. Cahill testified as to some additional changes to the Site Plans. As to the Signage, when the calculations were redone boxing out the "Q" and the smallest rectangle adds up to 69 square feet thereby eliminating that requested variance. Through exhibit A-26, the applicant agreed to the placement of a flag pole in the northeast corner of the site. Cahill stated it would be a 30 foot pole with a 5 foot by 8 foot U.S. flag. Mr. Cahill

concluded his testimony by testifying that he reviewed the weave analysis conducted by Stonefield Engineering and Design and reiterated that site access and egress at the entrance to the site was still safe and efficient. Thereafter, Mr. Seckler continued his testimony regarding the weave analysis (A-27) he performed. He reiterated that he did his analysis based upon what the ITE trip generation manual said that the applicant's use would generate and then to be conservative doubled and tripled that trip generation number. He concluded that the level of Service was "B" or better for all time frames studied. As part of that analysis, the Board accepted as A-28 the DOT pre-application meeting minutes dated May 23, 2015 requested by the Board's traffic engineer. Based upon the foregoing, Mr. Seckler opined that from a traffic engineering standpoint: 1) the site was appropriate for its intended use; 2) the site will not be detrimental to the adjacent roadway network or the Zoning Code for the Township of Mahwah; 3) that the site is in accordance with safe and efficient engineering design principles; 4) that this use was particularly suited for its proposed use; 5) this site can accommodate the proposed use; 6) the on-site circulation was safe and efficient, and 7) the ingress and egress to the site was safe and efficient not only from the site driveway but from Corporate Drive also.

(7) The Board finds credible and reasonable the testimony of the applicant's planner, John McDonough, L.A., P.P, AICP. He began his testimony by stating that it is important for this land use to be located at a site where it's easily accessible and available to the motoring public so from a site suitability aspect, this is a prime location for this land use. Additionally, Mr. McDonough stated that this site is more than two times the zoning requirement at 92,133 square feet. The application proposes a new fresh land use to replace one that is in poor condition which will constitute an upgrade from that which exists there today. McDonough also testified this is a site which the zone contemplated interaction between two active land uses including the hotel

and retail or restaurant that is on lot 5.01. Further, due to the grade separation, terrain, massing of the buildings and landscaping, the proposed use is effectively separated from the school despite the 500 foot proximity requirement. Mr. McDonough testified that from a planning perspective, the proposed site has a very balanced layout and will provide ease of navigation in finding the buildings. Moreover the Mahwah Master Plan contemplates aesthetics for the Route 17 Corridor. The Convenience store is a permitted use in the zone. Gas stations are conditionally permitted uses with the only condition being violated being the 500 foot proximity limitation to the school. Ninety-eight percent of the Mahwah High School property is outside of the 500 foot radius around the property in question. Just a small corner of the school itself is within the 500 foot radius and that is 380 feet away. Ridge Road, the Road that Mahwah High School is located, is not impacted directly and is in fact roundabout and inconvenient to get to from the site. McDonough testified that as a planner, he often looks to a vertical elevation as justification for horizontal relief and in his opinion that is exactly what is happening with this application. He stated that pursuant to the Coventry Square Case, the use is not the issue. For the proof of the positive criteria, the focus is on the deviation from the condition and whether or not the site can accommodate the deviation. Citing the TSI case, McDonough also correctly cited the proofs necessary for the negative criteria, namely that the enhanced quality of proof required by Medici is inapplicable here. McDonough further testified that there are four purposes of the Municipal Land Use Law that are satisfied by this application including purpose a) the promotion of the general welfare with safe and convenient access to food and fuel; g) the proposed use provides for a variety of uses in appropriate locations in serving the motoring public; i) to promote a desirable visual environment with all new improvements and a very positive and fresh upgrade of that which is presently there; and m) the planning goal to use our land efficiently. In support

of goal m), McDonough stated that this constitutes redevelopment of previously disturbed land with very little tree disturbance. He stated that there is not going to be any operational impacts on the school as a result of the proposed use. McDonough also testified that the characteristic of the neighborhood is nonresidential between the proposed use and the school and the massing of the buildings between the school and the proposed use operates as a buffer, in addition to the existing landscaping. As to the negative criteria, when looking at the impact of that 120 feet or so of encroachment onto the school property it relates mainly to a patch of grass. McDonough also cited the "mountain" of uncontroverted testimony from Mr. Cahill and Mr. Seckler that the site is safe and will operate efficiently. There is no substantial detriment to the public good in light of the physiography that is there to provide the separation. Mr. McDonough also testified to a number of the goals of the Mahwah Master Plan being advanced by the application. First, Goal Number 1 to encourage a proper distribution of land uses. Second, to meet existing areas of stability in the community. Third, to concentrate development in the eastern portion of the township. Finally, there is a recognition for the Route 17 corridor to be aesthetically pleasing. He also testified that from a planning perspective the reasons for the proximity requirements from these type of uses such as explosions, fire, environmental issues, and traffic no longer exist and certainly don't exist in relation to this site in 2017. Moving along to the design exceptions, McDonough stated that all of them can be granted for the technical reasons that Mr. Cahill gave for them but also because they are reasonable and practical from a legal and planning viewpoint. As to the parking space size, 57 of the 64 spaces comply, are located at the rear of the property and will be where the employees park. It would create larger walls, less landscaping and provide no useful purpose. Reducing coverage in the Highlands region area is another reason. McDonough further testified that the parking edging becoming flush with the sidewalk is

becoming an industry standard because it is more handicapped compliant and easier and safer for the general population to get into the building. As to the parking setback relief, it is only one or two spaces which is not overwhelming in the entire context of this site. As to the Acceleration lane not being provided, the design promotes safe and efficient traffic flow without the acceleration lane. It is also has been and will be the subject to the review of the DOT. McDonough further testified that the two dimensional relief related to driveway width and curb radius is reasonable and practical because the design as it is provides for safe sweeping movements of cars and tractor trailers alike. To increase them serves no useful design purpose at this location. McDonough also provided the same reasoning as to the depressed curb length. As to the loading zone, its location relative to this use is inherent to the use because the fueling tanks are always in the front and relocating the same serves no functional. As to the grading, Mr. McDonough testified that the 3-1 slope is typical and appropriate of a commercial site, particularly because no foot traffic will be going over the area. It is also a non erosive and mowable slope at 3 to 1. Shallower slopes provide for more complicated walls. Under the circumstances it provides a better zoning alternative. As to the lack of a sidewalk not being along Route 17, there is no sidewalk for it to connect to on either side of the property and McDonough stated would also reduce green space along the property frontage. McDonough said that the next design waiver is the lack of trees in front of the site. He opined that it is a better zoning alternative not to have them so the motorist can safely identify the site. As to the lighting waivers, McDonough stated that it provides for the effective balance between safe illumination without objectionable glare and to be sure no objectionable glare will be impacting any residential property. McDonough also testified that the landscaping waivers that A-17 provides a wall system in the back and will step up and plant things associated with it along the top and this

meets the double tier intent of the ordinance. Next, as to the variance required for canopy signage area are not overly obtrusive, or gaudy and is reconcilable under the proofs pursuant to N.J.S.A 40:55D-70(c)(2). As to the wall height variance, McDonough said that the same test is met under N.J.S.A 40:55D-70 (c) (2) because the benefits of minimizing the disturbance in the back of the property, maximizing the circulation area provides effective balancing. Finally McDonough clarified that the applicant is only seeking two canopy signs, thereby obviating the need for a variance under the Mahwah ordinance.

(8) The Board also finds as reasonable and credible the testimony of Charles Olivo, P.E. , the principal of Stonefield Engineering and Design who testified on behalf of the applicant on September 20, 2017. He stated that the Applicant received an unsigned DOT permit which required minor site plan changes and if payments for fees and bond plan were made, the permit would be signed by DOT. Furthermore, the minor changes did not relate to an acceleration lane, if this was an issue, Olivo stated DOT would have raised it early in the application process.

**WHEREAS**, the Board makes the following conclusions as a matter of law in connection with its motion to grant the use and bulk variances, as well as site plan exceptions, and/or checklist waivers for this Application:

(1) The Board concludes that the site continues to be appropriate for the use notwithstanding the generally applicable conditional use standard requiring a five hundred foot separation between service stations and certain public uses, including the schools, because the massing of buildings, proposed landscaping, the vertical separation and wall and fencing plan will effectively buffer and screen the site from the neighboring properties, and will provide all of the benefits of the required (or intended) spatial separation. The Board further concludes that the grant of the variance is reconcilable with the municipality's determination that the condition be

imposed on the use because the massing of buildings, vertical separation, landscaping proposed fencing and buffering, as well as the indirect access from Ridge Road to the Site will serve to completely separate the site from the neighboring properties, including the schools, and that the proposed development will pose no significant detriment to the Township of Mahwah or the neighboring properties. The proposed use is a permitted conditional use in the B-40 zone and will be consistent with the zone plan for the Township notwithstanding the requested variance. In addition, the school facilities are topographically separated from the proposed use and are also separated by Ridge Road and additional land area with buildings thereon thereby meeting the intent of the condition requiring a 500 foot separation between the uses.

(2) The Board also concludes that the site can accommodate the problems associated with the use and requested variance through the improvements proposed for the site, including the landscape elements and screening and also the vertical separation and massing of buildings which act as a buffer between the proposed use.

(3) The Board concludes that, for the reasons offered by Mr. McDonough, Mr. Cahill and Mr. Seckler and as more specifically set forth in this resolution, all the bulk or sign variances and waivers requested are justified because in the case of the variances, they constitute a better zoning alternative and the benefits of granting the variances outweigh the detriments, and in the case of the waivers enforcement would be impracticable or would exact undue hardship because of peculiar conditions pertaining to the land in question and it is otherwise reasonable to grant the same.

(4) The Board concludes that the proposed stormwater drainage system complies with all applicable law.

(5) The Board concludes that the Application proposes a service station, a use that is conditionally permitted in the B-40 zone district and thus the Board's powers to grant relief pursuant to section N.J.S.A. 40:55D-70d(3) are implicated. The Board further concludes that in applying Coventry Square Inc. v. Westwood Zoning Bd. of Adj., 138 N.J. 285 (1994), the Applicant has convincingly demonstrated that the site continues to be appropriate for the use notwithstanding the deviation from the condition imposed by the ordinance (the positive criteria) and that the impact of the proposed development on adjacent properties will not cause such damage to the character of the neighborhood as to constitute substantial detriment to the public good, and that the variance is reconcilable with the master plan and the municipality's determination that the condition be imposed on the use (the negative criteria).

(6) Based on the testimony of the Applicant's witnesses and all of the evidence presented, the Board also concludes that the bulk variances proposed in connection with the Application, N.J.S.A. 40:55D-70D(c)(2) of the Municipal Land Use Law, be granted. The Board further concludes in applying the traditional c(2) tests found in Kaufman v. Planning Bd. for Warren Tp., 11 N.J. 551 (1988) as to the Bulk and sign variances that the Applicant has convincingly demonstrated a better alternative to the existing zoning scheme by advancing the civic design, public safety and aesthetic purposes of the Municipal Land Use Law in order to satisfy the positive criteria, and has shown that the grant of the variances will not pose any substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

(7) Based on the testimony of the Applicant's witnesses and all of the evidence presented, the Board concludes that Applicant's site plan substantially conforms with the Performance Standards and Design Criteria of the Mahwah Township Ordinance Section 24-8 et

result of a Township of Mahwah inquiry regarding the intersection of Corporate Drive and Route 17 South in the Township of Mahwah.

(2) Applicant shall cooperate with the Board Engineer in communicating the Board's concerns, regarding the conditions of the intersection of Corporate Drive and Route 17 Southbound, to the NJDOT.

(3) All trucks leaving the property with soil shall only use Route 17 and shall not use Corporate Drive.

(4) No queue of construction vehicles shall be permitted on Corporate Drive.

(5) Applicant shall keep the property neat, clean and in good physical condition, including open spaces, sidewalks, signs, lighting, landscaping, buffer areas, irrigation system, driveways, parking areas and fences. Applicant shall comply with all maintenance requirements under Zoning Code 24-6.11b(6) or be subject to penalties provided under 24-11.5c.

(6) Applicant shall post 'no idling' and 'no overnight parking' signs in accordance with the Board Engineer's request.

(7) Any soils excavated from the Property during construction shall be stockpiled in accordance with the Soil Movement Report submitted with this Application. Any contaminated soil shall be managed in accordance with applicable law and NJDEP requirements, and must be removed from the site within two (2) days of excavation. Applicant shall provide a dust control plan to be implemented during the work to the satisfaction of the Board Engineer.

(8) Applicant shall contribute to the Township Sidewalk Fund the equivalent cost of sidewalks along Route 17.

(9) Applicant shall make a monetary contribution to the Township's Shade Tree bank in an amount equivalent cost of the replacement trees.

(10) Applicant shall include cross-easements between lot 5.01 and lot 5.02.

(11) Applicant shall provide a landscaping and irrigation plan to the reasonable satisfaction of the Board Engineer.

(12) Applicant shall revise all plans in accordance with this approval and which shall specifically include all Conditions of Approval.

**BE IT FURTHER RESOLVED** that a copy of this Resolution shall be provided to the Applicant, the Construction Official of the Township of Mahwah, and notice of this decision of the Board shall be published in the newspaper of official record within ten days of the date hereof and thereafter be published according to law.

MOTION TO TAKE ACTION

DATE: September 20, 2017

MOVED BY: Mr. Montroy

SECONDED BY: Mr. Straffin

AFFIRMATIVE VOTES: (7)

NEGATIVE VOTES: (0)

ABSTENTION: (0)

1. Mr. Dator
2. Mr. Kearney
3. Mr. Larson
4. Mr. Montroy
5. Mr. Straffin
6. Mr. Whiteman
7. Mr. Rabolli

TOTAL VOTES: (7)

ADOPTION OF RESOLUTION

MOVED BY: Mr. Larson

SECONDED BY: Mr. Whiteman

AFFIRMATIVE VOTES ( 5 )

NEGATIVE VOTES ( )

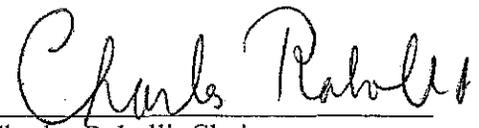
ABSTENTION ( )

1. Mr. Dator
2. Mr. Kearney
3. Mr. Larson
4. Mr. Rabolli
5. Mr. Whiteman

Dated: November 1, 2017

Attested By:

  
Michael J. Kelly, Administrative Officer

  
Charles Rabolli, Chairman

Prepared by: Ben R. Cascio, Esq.