



TOWNSHIP of HOPEWELL
MERCER COUNTY

201 WASHINGTON CROSSING – PENNINGTON ROAD
TITUSVILLE, NEW JERSEY 08560-1410

PROJECT / APPLICATION

BLOCK:

LOT:

ADDRESS:

PROJECT NAME:

REVIEW REPORTS

CONTENTS



TOWNSHIP OF HOPEWELL

201 Washington Crossing-Pennington Road
Titusville, New Jersey 08560-1410
Phone 609.737.0605 Ext. 6280

MEMORANDUM

TO: Hopewell Township Zoning Board of Adjustment

CC: Applicant

FROM: James Hutzemann PE, PP - Board Engineer 

DATE: August 16, 2022

RE: **Engineering Review – Use Variance & Site Plan Waiver**
New Use; Special Industrial Zone
Block 91, Lot 14.01; 1613 Reed Rd.

I. Application Submission Items

The following documents were received by the Township:

- A. Planning Board & Zoning Board Application
- B. Submission Checklist and Design Waiver Request Form

II. Completeness

The application is complete and may be scheduled for a hearing date.

III. Description

The entire tract is 8.36 acres located within the Special Industrial (SI) zoning district. There is a total of four buildings within the Hopewell Valley Industrial Park. Numerous uses/businesses exist within the park include a tree service, chimney sweep, automotive service/restoration center, and a piano warehouse. There is an adjacent residential property directly to the north of the site, a residential property opposite the site across Reed Road and a landscaping business to the south

The applicant proposes to use a portion of an existing automotive service/restoration business for the limited sales of high-end and collectible automobiles. Vehicles will be stored indoors only and there will be no outdoor storage. The building is a stand-alone 10,000 SF building occupied by Automotive Performance Solutions within the front portion of the property. No site improvements are proposed to accommodate the proposed use.

IV. Zoning

- A. The site is located within the SI zoning district (Ordinance Section 17-165). The proposed automotive dealership is not a permitted principal use within the SI district (Ordinance

Section 17-165.b.). Accordingly, the applicant is requesting a use variance.

- B. The applicant is not proposing any exterior site improvements and will be co-located within the building footprint of an existing automotive service business. No outdoor storage of vehicles is proposed. The applicant is requesting a site plan waiver.

V. Comments

- A. The applicant shall provide testimony in support of his use variance. This should include testimony regarding the positive and negative criteria.
- B. The applicant shall provide testimony about the adequacy of the existing site improvements to accommodate the expanded use, including parking, site lighting, and circulation.
- C. Testimony shall be provided regarding operation of the vehicle sales business, including on-site advertising, anticipated on-site customer demand, and hours of operation. The applicant should provide information related to how all uses will operate on the same property without conflict.
- D. Given the co-location and compatible uses of the vehicle sales with the existing automotive service business in the existing building, I offer no objection the waiver of site plan approval.
- E. The applicant has an existing sign for the proposed business on the free-standing sign in the front of the property. The applicant is to provide testimony as to whether any additional signage is proposed for the facility.

VI. Required Approvals

- A. The following approval or letters of no interest shall be obtained by the applicant:
 - 1. Mercer County Planning Board
 - 2. Hopewell Township Fire Official
 - 3. Hopewell Township Health Officer

VII. Recommended Conditions of Approval

- A. Continued payment of any required application and escrow fees.
- B. Obtain all applicable review agency approvals or letters of no interest.

TOWNSHIP of HOPEWELL

MEMORANDUM

TO: Hopewell Township Zoning Board

FROM: Glen Belnay, Ph. D, PP, AICP, CEP

DATE: August 29, 2022

SUBJECT: Just Two, LLC
1613 Reed Road
Pennington, NJ 08534
Block 91, Lot 14.01
Case 22-08



The applicant, Just Two, LLC, proposes to use a portion of an existing building located at 1613 Reed Road, Block 91, Lot 14.01 for the limited sale of high-end automobiles. The cars intended for sale will be stored indoors in an existing building currently occupied by Automotive Performance Solutions. These two businesses will share the building.

The application must provide a report from a New Jersey Licensed Professional Engineer addressing whether any additional employees will occupy the building, which would increase the wastewater load on the existing septic system. The engineer must determine if an alteration to the septic system will be necessary to provide any additional wastewater disposal capacity.

Memorandum

To: Hopewell Township Zoning Board of Adjustment

From: Francis J. Banisch III, PP/AICP

Date: September 5, 2022

Re: Use Variance and Site Plan Waiver

Applicant: Just two, LLC

Block 91, Lot 14.01

Zone: SI – Special Industrial

1. DOCUMENTS REVIEWED:

- Land Use Application stamped July 5, 2022

2. NATURE OF APPLICATION

- 2.1 The site is located at 1613 Reed Road, Block 91, Lot 14.01, in the SI Zone. The is currently developed and is part of the Hopewell Valley Industrial Park. The business in question, Automotive Performance Solutions, currently provides automotive repair and services for specialized cars.
- 2.2 The applicant proposes to provide limited indoor automotive sales within the existing facility. No exterior sales, improvements, or storage are proposed.

3. VARIANCE DISCUSSION

- 3.1 Automobile sales are not a permitted use in the SI District and therefore a d(1) Use variance is required (§17-165b).
- 3.2 In relation to the d (1) variance requests, the Board has the power to grant “d (1)” variances to permit non-permitted uses or principal structures pursuant to N.J.S.A. 40:55D-70(1) “in particular cases and for special reasons.” This is the so-called *positive criteria* of a “d (1)” variance.

The Board may not exercise its power to grant a “d (1)” variance, however, unless the so-called “*negative criteria*” can be satisfied. The negative criteria are outlined in N.J.S.A. 40:55D-70 as follows: “No variance or other relief may be granted ... without a showing that such variance or other 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.”

Special Reasons (*positive criteria*)

The statute provides for a (d) type variance “*In particular cases and for special reasons...*”, describes the concept of special reasons this way:

Generally, there are sufficient "special reasons" for the grant of a d variance under two broad circumstances: (1) when the refusal to allow the project would impose on the applicant an undue hardship (see 32-2 below) and/or (2) when a proposed project carries out a purpose of zoning as defined in N.J.S. 40:55D-2.¹

Since this case does not present a hardship argument for the applicant, the testimony in support of the variance must explain which purposes of zoning (MLUL) are advanced by the application.

Negative Criteria

The applicant should also demonstrate that the requested relief for a d (1) variance would not result in significant negative impacts to the intent and purpose of the zone plan or zoning ordinance or to the public good. Here the question should focus on the impact to the character of the Township, to cite Medici:

We also emphasize, for the guidance of boards of adjustment and their counsel, that in the event a use variance is challenged, a conclusory resolution that merely recites the statutory language will be vulnerable to the contention that the negative criteria have not been adequately established. The board's resolution should contain sufficient findings, based on the proofs submitted, to satisfy a reviewing court that the board has analyzed the master plan and zoning ordinance, and determined that the governing body's prohibition of the proposed use is not incompatible with a grant of the variance. If the board cannot reach such a conclusion, it should deny the variance. 107 N.J. 23 (emphasis added)

Enhanced Quality of Proof

In the Medici case, the N.J. Supreme Court identified the need an “enhanced quality of proof”, as follows:

In the use-variance context, we believe this can best be achieved by requiring, in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicant's proofs and the board's findings that the variance will not "substantially impair the intent and purpose of the zone plan and zoning ordinance," N.J.S.A. 40:55D-70(d), must reconcile the proposed use variance with the zoning ordinance's

¹ Cox and Koenig, *New Jersey Zoning and Land Use Administration* (GANN, 2018), §32-1, p.679

omission of the use from those permitted in the zoning district. For example, proof that the character of a community has changed substantially since the adoption of the master plan and zoning ordinance may demonstrate that a variance for a use omitted from the ordinance is not incompatible with the intent and purpose of the governing body when the ordinance was passed. [107 N.J. 21] (emphasis added)

4. COMMENTS

- 5.1 The application indicates the spaces for automobile sales will be fully within the existing facility and no outdoor storage or sales are to occur.
 - 5.2 The applicant should provide testimony regarding the operations of the sales area, if any additional site improvements are required and if they general business operations (i.e., times of operations and staff) will be altered by the sales area.
 - 5.3 The applicant should identify if any new signage related to the sales area is proposed, and, if so, the location and details. Any new signage may require variances or waivers.
 - 5.4 The applicant should identify if any exterior site improvements are proposed that affect circulation, drainage, lighting, or required parking.
 - 5.5 Any approval by the Zoning Board should be conditioned on approval by any other agency having jurisdiction.
- cc: Jaimie Laird, via e-mail for distribution to the Zoning Board and applicant