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August 30, 2023

Via Federal Express

Kristen Olcsvay, Secretary  
Zoning Board of Adjustment  
Township of North Brunswick  
710 Hermann Road  
North Brunswick, NJ 08902

Re: Lot 15, Block 230  
Nimitz Place and Route 130  
Extension of Use and Bulk Variance Approval

Dear Ms. Olcsvay:

This firm represents Joanne LaBarbera, the administrative CTA of the Estate of Santos LaBarbera (the "Estate"), which Estate is the owner of the above referenced property. Please accept this letter as the Estate's request that the Zoning Board grant a two (2) year extension of the previously granted Use Variance.

The Zoning Board previously approved the bifurcated application of the prior contract purchaser of the subject property, East Ridge Development, Inc. for use variance and bulk variance approvals to allow "a 5,670 s.f. QuickChek food/convenience store with eleven (11) indoor seats and eight (8) outdoor seats; a canopy to host eight (8) multi-product fuel dispensers in the R-2 Single Family Residential Zone, which does not permit retail stores or motor vehicles service stations". That bifurcated use variance/bulk variance approval is memorialized in that certain Zoning Board Resolution of Approval adopted by the Board on October 18, 2022 (copy enclosed).

Township Code Section 205-135.1(I) provides that:

- I. Expiration of Variance. Any variance from the terms of any ordinance hereafter granted by the Board of Adjustment permitting the

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erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation, unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within 12 months from the date of entry of the judgment or determination of the Board of Adjustment; except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the governing body or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding.

Construction and/or use of the subject property in accordance with the granted variances has not yet commenced for reasons stated below.

The above cited code section requires that the variances granted shall expire 12 months from the date of the Zoning Board determination. Since the Board determination was memorialized by Resolution adopted on October 18, 2022, the variances are set to expire on October 17, 2023.

Construction and/or use of the property as a QuickChek Convenience Store has not commenced for several reasons, including but not limited to the following. The former Applicant, East Ridge Development Inc., despite diligent efforts was delayed by the NJDOT approval process (which continues to be slow and arduous). Unfortunately, the NJDOT approval process is likely to be lengthy, requiring substantial time to complete. A change in the NJDEP stormwater regulations required time to analyze the effect of same on the development proposal. QuickChek is still very interested in the site. QuickChek is currently working closely with a developer QuickChek has worked successfully with on past projects. The Estate is optimistic that QuickChek and its developer will bring this project to fruition. Accordingly, the Estate is working with that new contract purchaser to take over the approval process and the eventual construction of the QuickChek. The above delays are disappointing to the Estate; however, this is the reality of the situation.

In light of the foregoing, the Estate hereby respectfully requests a two (2) year extension of the previously granted use and bulk variances from October 18, 2023 to October 18, 2025.

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If any additional submissions are required for this extension request, please advise (including of course any application fees).

Please schedule this matter for consideration by the Zoning Board at the next available Zoning Board public meeting.

Thank you for your attention to this matter.

Very truly yours,



RONALD L. SHIMANOWITZ  
For the Firm

RLS:pc

Enclosure

cc: Chadd Heyman, Zoning Board Chairman (via regular mail)  
Lawrence Sachs, Esq., Zoning Board Attorney (via email only)  
Charles Carley, PE, Zoning Board Engineer (via email only)  
Thomas Vigna, PP, Zoning Board Planner (via email only)  
Joanne LaBarbera (via email only)  
Mark Fauci (via email only)  
Mike Sanders (via email only)  
Mike Baker (via email only)

**RESOLUTION OF THE  
NORTH BRUNSWICK TOWNSHIP BOARD OF ADJUSTMENT  
MIDDLESEX COUNTY, NEW JERSEY**

**EAST RIDGE DEVELOPMENT  
PROPOSED QUICKCHEK  
ROUTE 130 SOUTH**

WHEREAS, East Ridge Development, Inc. (the "Applicant") applied to the North Brunswick Township Board of Adjustment for a bifurcated Use Variance and Bulk Variance approval to permit a 5,670 s.f. QuickChek food/convenience store with eleven (11) indoor seats and eight (8) outdoor seats; a canopy to host eight (8) multi-product fuel dispensers in the R-2 Single Family Residential Zone, which does not permit retail stores or motor vehicle service stations; and

WHEREAS, the property is located on at the corner of Nimitz Place and Route 130 and is known and identified as Block 230, Lot 15 on the North Brunswick Township tax map (the "Property"); and

WHEREAS, the Property is approximately 3.511 +/- acres in area and is currently vacant and undeveloped; and

WHEREAS, the Applicant submitted a bifurcated use variance application on July 8, 2019, as supplemented by additional submissions on October 1, 2019 and November 6th, 2019, and

WHEREAS, the Applicant published a proper newspaper hearing notice of the hearing and notified the Property owners within 200 feet of the subject Property of the Board's scheduled hearing pursuant to N.J.S.A. 40:55D-12; and

WHEREAS, a public hearings were held on said Application by the Board of Adjustment on the following dates:

February 25, 2020 (hearing adjourned for lack of space)  
December 15, 2020 (on notice to public)  
February 2 2021  
April 20 2021  
June 9 2021  
June 15, 2021 (for carried notice only)  
July 20, 2021 (not reached- carried to September 21)  
September 21 2021  
October 19 2021  
November 30 2021  
January 25 2022  
March 15 2022  
April 19 2022  
May 17 2022  
July 19 2022 (deliberation and vote on application)  
and

WHEREAS, the hearings included a large number of the public who were given the opportunity to be heard; and

WHEREAS, some members of the public engaged legal counsel, Sills Cummis (Meryl Gonchar and Adam Faiella) to represent their interest, who presented the testimony of Lee Klein, PE and Peter Steck, PP and conducted cross examination of Applicant's witnesses; and

WHEREAS, on July 19, 2022 the Board granted the requested Use & Bulk Variances, subject to certain conditions set forth below; and

WHEREAS, at the conclusion of the hearing on June 19, 2022 the Board has taken action by voting on said Application in accordance with N.J.S.A. 40:55D-10(g) of the Municipal Land Use Law and has directed that a resolution memorializing such action be prepared.

WHEREAS, the Board, after carefully considering the evidence presented to it by the Applicant and neighboring interested parties, and all the documents filed by the Applicant and the interested parties, and the comments of the appropriate Township officials and agencies, has made the following findings of fact:

#### FINDINGS AND CONCLUSIONS

1. The Applicant was represented by Henry Kent-Smith, Esq. of Fox Rothschild, LLP. The following individuals testified and presented testimony in support of the Application; to wit:
  - (a) QuickChek real estate- Jeff Albanese, Richard Lamont, fact witnesses
  - (b) Professional Engineer -Keith Cahill, PE of Bohler Engineering, qualified as an expert site engineer
  - (c) Licensed Architect – Oliver Young, AIA of GK & A Architects, qualified as an expert architect
  - (d) Traffic Engineer- Gary Dean, PE of Dolan and Dean qualified as an expert in traffic
  - (e) QuickChek Security- Lou Linares, fact witness
  - (f) Professional Planner – Christine Cofone, P.P. of Cofone Consulting, qualified as an expert in planning
  - (g) Acoustical Engineer- Norman Dotti PE, PP, INCE of Russell Acoustics, qualified as an expert in acoustical engineering
2. The Applicant has submitted, and the Board has relied upon:

The Application and supporting site plans filed on July 8, 2019, as supplemented by additional submissions on October 1, 2019, November 6th, 2019 and November 20, 2020. Exhibits from the site plan submission as identified in the pre application submission of November 20, 2020 including the following:

Color aerial of subject property dated 11/15/ 2019; and

Color rendering of site plan and landscaping plan dated 2/5/2020;

The pre-application submission is made part of the record in its entirety.

Exhibits marked at the public hearing as follows:

- A1 Color rendering of concept plan with berm, dated 2/25/2020
- A2 Alternative concept plan with a landscaped berm, dated 2/25/2020
- A3 Cross sections from residences to QuickChek, dated 2/25/2020
- A4 Architectural elevations, three sheets, dated June 26, 2019
- A5 Acoustical analysis by Russell Acoustics, dated July 8, 2021.

3. The objectors were represented by Meryl Gonchar and Adam Faiella and presented the testimony of Lee Klein, PE and Peter Steck, PP. Mr. Steck entered two exhibits into the record:

- O-1 Concept plan for conforming single family subdivision in the R-2 zone
- O-2 Zoning map February 20, 2007 with R2 zone highlighted

4. In addition, the Board heard the testimony of the Board's Engineer, Charles Carley, PE and received the report of Charles Carley, PE, dated January 20, 2020, and received the reports of the Township Staff appended to Mr. Carley's report. In addition, the Board heard the testimony of Zoning Officer, Andrei Alexeev and received a zoning report dated September 9, 2019.

5. Use Variance approval is required as a convenience store with fuel service is not a permitted use in the R-2 Zone District. Bulk Variance approval is required for Building height of 32' where 30' is permitted; accessory structure of 275 SF; Access drive located in a residential zone lack of six inch curb surrounding the building, Applicant providing bollards instead to prevent vehicular and pedestrian conflict; Sign variance as follows:

- a. 1 pylon sign of 74.8 s.f.
- b. Freestanding sign set back 10 feet where 20 feet is required
- c. 2 façade wall signs of 22.6 s.f. feet and one façade wall sign of 57.7 square feet
- d. 2 canopy signs of 22.6 s.f.
- e. Directional enter and exit signs setback of 0 feet where 20 foot setback is required.

6. Mr. Albanese testified regarding the particular suitability of the Property for the proposed QuickChek with fuel service, as well as the proposed operation of the QuickChek use. Mr. Albanese described the two existing QuickChek locations in North Brunswick on Route 1 and at How Lane. He confirmed the proposed QuickChek would be operated in a similar manner as the two existing locations in the Township.

7. Mr. Albanese discussed how the location of the Property at a signalized intersection is ideal for controlled ingress and egress for this type of use, and the size of the Property allows for an efficient site layout with a 100' buffer to the rear residents.

8. Mr. Albanese explained that the southbound Route 130 market was underserved by modern convenience store with fuel service uses. The 10 to 11 mile stretch of Route 130 southbound is only served by older gas stations or stand-alone convenience stores.



9. The Board expressed concerns about hours of operation being 24/7. The Applicant agreed to restrict hours of operation between 1 a.m. and 5 a.m., with all exterior operations closed and only interior maintenance and food preparation allowed during these hours.

10. The Board expressed concerns regarding product delivery times. The Applicant agreed to restrict deliveries by tractor-trailers (WB 50 or greater) utilizing the rear loading zone to be prohibited between the hours of 10 p.m. and 7 a.m..

11. The Board expressed concerns regarding tractor trailer parking and fueling on the Property. The Applicant agreed to prohibit non-delivery tractor trailer parking at the rear of the building and limiting parking to vehicles less than a WB-50 size. The Applicant agreed to prohibit fueling of tractor trailers at any fueling location on site.

12. Mr. Cahill provided professional engineering testimony on behalf of the Applicant and was accepted as an expert by the Board. He testified that the Property is currently vacant and has been vacant for decades. The Property is located on the southwest corner of Nimitz Place and Route 130 and directly across the southern property line is the existing traffic signal for Washington Place.

13. Mr. Cahill describe the Property as a large site that is rectangular shaped and has sufficient room to provide for landscape buffering as well as an efficient layout of the building and fuel service islands. The Property is relatively flat but is bisected by a 24 inch storm sewer pipe that will be relocated in conjunction with the application.

14. The main property ingress/egress would be at the traffic signal at Washington Place which would become a four leg intersection in which the site driveway would be a new connection into the signal. Mr. Cahill confirmed there is adequate parking proposed for the proposed use, and that tractor trailers and trucks can freely circulate the site.

15. The original Concept plan marked as Exhibit A1 proposed as part of the application provided a 100 foot natural landscape buffer. There would be a fence and then the site improvements, including a 5670 square foot convenience store with indoor and outdoor seating as well as 8 multi product dispensers with 16 fueling positions and associated underground fuel storage tanks located towards the frontage of Route 130.

16. Mr. Cahill introduced Exhibit A2, an alternative concept plan that showed a landscaped berm at the rear of the Property between the rear residences and the proposed QuickChek. The berm would be approximately 10 feet in height with a fence at the top, and landscape, with evergreen and similar trees to minimize visual impact on the rear residence from the proposed use.

17. Mr. Cahill described the visual benefits of the proposed berm through Exhibit A3, which involved cross sections from the rear residents to the proposed QuickChek showing that the berm provided effective screening.

18. Mr. Cahill's opinion was that the proposed concept layout represented a safe, efficient and appropriate site plan design for the proposed use.

19. Mr. Carley reviewed his engineering report with Mr. Cahill and Mr. Cahill agreed to comply with the requirements set forth in Mr. Carley's Report in conjunction with the site plan approval process.

20. Gary Dean, PE testified as an expert in traffic engineering and was accepted as a traffic expert by the Board. Mr. Dean reviewed his Traffic Impact Analysis dated November 7, 2019. Mr. Dean described his investigation of traffic conditions on Route 130, Nimitz Place and Washington Place. He described the prospective traffic generation and discussed the pass by traffic

associated with this type of use, where vehicles already on the road system enter and exit the site without generating new traffic to the road system.

21. Mr. Dean described the improvements to be made to the existing traffic signal at Washington Place and Route 130 to accommodate the entrance and exit to the QuickChek at the traffic signal. He testified that the traffic signal could incorporate the fourth leg of the intersection without detriment to the operation of the traffic signal.

22. The Applicant has agreed that it would agree as a condition of any approval that it would be entirely responsible for the design, permitting and construction of an upgraded traffic signal at Washington Place and Route 130 to accommodate the QuickChek driveway and that the traffic signal would be operational as a condition of issuance of a certificate of occupancy.

23. Mr. Dean confirmed that the proposed site driveways comply with NJDOT standards and present a safe and efficient means of ingress and egress to the Property.

24. Mr. Dean opined that there was sufficient parking to adequately address parking demand for the proposed use and that the fuel locations and access were also safe and efficient.

25. Mr. Dean testify regarding concerns raised by the Township engineer Mr. Carley. Mr. Dean agreed to work with Mr. Carley to resolve issues raised by Mr. Carley in his report.

26. Applicant presented Oliver Young, AIA, a professional architect accepted by the Board as an expert architect. Mr. Young presented the proposed building elevations, fuel canopy and proposed signage.

27. On questioning by Mr. Alexeev, Mr. Oliver agreed that the building elevation and façade signs will comply with sign height ordinances and that the building roof area and will properly screen all roof equipment, and will occupy less than 10% of the roof area.

28. The Applicant presented the testimony of a licensed professional planner, Christine Nazzaro-Cofone, PP who was accepted as a planning expert by the Board.

29. Ms. Cofone testified that there is a need in the general community for the proposed use, as the proposed use provides the immediate area with a modern, full service convenience store including gasoline service. The present Route 130 corridor in the vicinity of the Property lacks a modern convenience store and retail gas use. There are no modern Convenience Stores with fuel service on Route 130 in North Brunswick, the nearest being the QuickChek on northbound 130 in Dayton and none on the south bound side until one reaches Cranbury.

30. Ms. Cofone explained that the Property is particularly well-suited for the Proposed Use as it fronts on Route 130 and will be located among other commercial uses fronting on Route 130, but is in close proximity to neighborhoods so that it can serve the surrounding residential developments. The proposed QuickChek will provide local residents and employees with access to the company's food and grocery items, ATM service and gasoline. The combination of these uses provides a "one-stop" convenience store experience, which is an efficient land use.

31. As to the Property's particular suitability for the proposed use, Ms. Cofone explained that the shape and location of the Property is particularly suited for the Applicant's use because the Applicant is proposing to align the main access driveway on Route 130 with the existing traffic signal at Washington Place, creating a four way signalized intersection to accommodate site traffic in a controlled fashion, thereby enhancing public safety. This Property is one of the few remaining traffic signal controlled intersections large enough to accommodate the proposed use and available for connection into a traffic signal.

32. In addition, the Property is 3.5 acres in size with 425 feet of frontage on Route 130 that allows for both a side by side layout and substantial buffering directly behind the store.

33. Ms. Cofone testified as to the special reasons that support the grant of the use variance. In particular, she opined:

(a) Criteria a is satisfied by guiding the appropriate use or development of all lands to promote the public health safety and general welfare. The Property has been vacant for decades. As such it is an "orphan" parcel that is appropriately developed for a highway commercial type use given the frontage on Route 130 and the existence of a traffic signal. The proposed use allows for consolidation of vehicle trips by "one-stop shopping", which reduces car trips. The upgrading of the traffic signal at Washington Place and the proposed access onto a signalized intersection increases public safety.

(b) Criteria c is satisfied by providing adequate light, air and open space through the provision of a substantial buffer in excess of the buffering requirements established under the Township zoning requirements for similar uses. The site configuration allows the highway commercial activity to front on Route 130, thereby decreasing impact on the residential properties

(c) Criteria g is satisfied because the Property is an appropriate location for this type of use given it is located at a traffic signal on a state highway. The Applicant has agreed to upgrade the existing traffic signal.

(d) Criteria g is satisfied through creative development techniques and good civic design which permit the provision of a substantial natural buffer between Route 130 and the residents.

(e) Criteria m is satisfied by lessening the cost of public expenditures through the upgrade to the Washington Place / Route 130 traffic signal at QuickChek's sole cost and expense.

34. Ms. Cofone addressed the negative criteria by testifying that there is no substantial detriment to the public good through the provision of a natural buffer and proposed sound attenuation. The visual impact would be mitigated by the berm, such that residents would be insulated from the Route 130 corridor, yet still have either a 100 foot natural landscape buffer or a 50' buffer and landscaped berm.

35. Ms. Cofone reconciled the grant of the requested variance with the Master Plan and Zoning Ordinance by observing that the Property has been zoned R- 2 for decades and has never fulfilled its intended zoned use. The grant of the variance does not impair the intent and purpose of the zone plan or the Master Plan because the subject Property is an isolated lot. This parcel is

only one of a few vacant R-2 parcels that front on Route 130 and therefore has specific and unique characteristics warranting site specific use variance relief. The parcel is a de minimus part of the R-2 zone, which for the most part is already developed.

36. Ms. Cofone observed that the governing body permits this use as a conditional use in other zones. She testified that the location of this parcel on a signalized intersection on a heavily traveled state highway warrants site specific relief, and may well have been intended by the governing body for use variance treatment in order to assure the highest level of scrutiny over any commercial development that may occur on the subject property.

37. Ms. Cofone testified that the bulk variance requirements relate to residential use, and as such the Property from a bulk design perspective warrants bulk variance relief that would be subsumed into the granted the use variance.

38. On cross examination, the Board was persuaded that the direct testimony provided by the Applicant's professionals was credible, and that issues raised in the cross examination were adequately addressed by Applicant's experts.

39. At the beginning of the June 9, 2021 public hearing, counsel for the Applicant read into the record proposed conditions that the Applicant will agree to in the event the Board approved the application. At this hearing, the Applicant agreed to the following conditions of approval:

(a) Eliminate non-delivery tractor trailer parking at the rear of the building, limiting to vehicles less than a WB-50 size.

(b) The Applicant will reserve the oversized rear spaces required by the Township Ordinance 205-62H in the C-2 zone for oversized vehicles such as delivery vans, landscape vans and similar smaller vehicles.

(c) Applicant shall post "No Idling" signage.

(d) No fueling of tractor trailers at any fueling location on site. This condition will be enforced through signage and employee monitoring of any tractor trailer seeking to fuel, and a requirement that Tractor trailers must exit the property and seek fuel elsewhere.

(e) Deliveries of product in tractor-trailers (WB 50 or greater) utilizing the rear loading area shall be prohibited between the hours of 10 PM and 7 AM. Smaller step van or other similar deliveries (milk, bread, and the like) shall not be subject to this restriction.

(f) Hours of operation. QuickChek shall restrict hours of operation between 1 a.m. and 5 a.m. ("Restricted Hours"). QuickChek employees may remain in the premises for purposes of cleaning, inventory control, baking and related preparation of food and product for the morning hours. All fueling operation shall be closed, all signage illumination turned off and all access doors locked to prevent customer access during Restricted Hours.

40. Given the concerns raised by the Board relative to noise levels associated with the proposed use, the applicant submitted an acoustical study prepared by Norman Dotti of Russell Acoustics dated July 8, 2021. The Board was interested in determining the most efficient way of addressing noise levels from the proposed use that would have the least impact on the residential properties to the rear of the site.

41. At the September 21, 2021 hearing, Mr. Dotti reviewed his acoustical analysis, which evaluated existing sound levels at the residential properties closest to the proposed QuickChek and compared those sound levels to post development conditions mitigated by the construction of an acoustical barrier. In lieu of the berm proposed in prior testimony by Mr. Cahill, Mr. Dotti recommended an acoustical barrier, which would be 18 feet in height and constructed using either wood or PVC. The acoustical barrier would be in lieu of the proposed berm, and set back from the QuickChek curb line by approximately 10 feet, leaving at least 80 feet of natural buffer between the rear residential property line and the proposed use.

42. Mr. Dotti's analysis showed that the level of sound at the residential properties will actually be less than the level of sound under the existing conditions. The installation of the sound barrier will ameliorate the noise emanating from the proposed use and would reduce the ambient noise from Route 130.

43. Mr. Lou Linares described the security measures utilized by QuickChek to assure public safety concerns were addressed. Mr. Linares described the security measures used by

QuickChek at the two existing North Brunswick locations. He described the security cameras, monitoring, and staffing to maximize security at each location in North Brunswick. Mr. Linares confirmed that QuickChek has not experienced any significant security or criminal activity at either of its existing locations in the Township.

44. All witnesses presented by QuickChek were subject to extensive public questioning. The witnesses provided appropriate responses and made offers of plan changes to address public concerns. These changes include the operational limitations set forth in paragraph 39 above, as well as maximizing sound attenuation in conjunction with preserving a minimum 80 foot naturally buffer.

45. Ms. Gonchar presented the testimony of two professionals, Mr. Klein and Mr. Steck.

46. Lee Klein, PE testified it was accepted as a traffic engineering expert on behalf of the objectors. Mr. Klein testified his concern related to vehicular queuing that would interfere with the operation of the site driveways.

47. On cross examination, Mr. Klein conceded that there was no NJDOT standard relative to vehicle queuing at a traffic signal. The concern regarding queuing was a normal operating condition that did not violate NJDOT requirements

48. Peter Steck, PP testified it was accepted as a professional planner on behalf of the objectors.

49. Mr. Steck entered two exhibits into the record: O-1 a concept plan for a conforming single family subdivision in the R-2 zone and O-2, a Township Zoning map from February 20, 2007 with the R2 zoned properties highlighted.



50. Mr. Steck testified that the Applicant failed to meet its burden of proof related to establishing special reasons to support the grant of the use variance. Mr. Steck asserted that the application actually required multiple use variances for fuel service, convenience store, a restaurant and multiple uses on one lot.

51. Mr. Steck presented Exhibit O-1 to demonstrate that in his opinion, the subject Property could be readily developed with a single family subdivision conforming to the R-2 zone. Mr. Steck asserted that it was the property owners choice to not develop the Property as zoned, and the fact that the Property has remained vacant for decades is not a relevant consideration.

52. Mr. Steck presented Exhibit O-2 to demonstrate that there are numerous properties in the R2 zone that front on state highways, including Route 130. Mr. Steck asserted that there was nothing in the R2 zone that precluded development of the subject Property as a single family residential lot.

53. Mr. Steck opined that the applicant had failed to reconcile the requested variance with the master plan and zoning ordinance preclusion of the use, citing the most recent Master Plan and Re-examination.

54. Mr. Steck testified that in his opinion, the measures proposed by the applicant to address the neighbors' concerns related to noise and sound we're not appropriate measures and demonstrated the inappropriateness of the use on the Property.

55. On cross examination, Mr. Steck had no credible response to the fact that the Property had not been developed in decades, and that it was never developed in conjunction with the initial residential subdivision constructed in the 1970s. Mr. Steck had no response to the fact the Property had remained undeveloped during three separate residential booms in the 1980s, the 2000s and most recently the post financial crisis housing boom, except that it was the owner's

choice. Mr. Steck did not speak with either the owner or the broker for the Property. The Board finds Mr. Steck's testimony to not be credible on the issue of the suitability of the site for the existing zone, based on the fact the Property has never been developed as zoned. The Board finds Mr. Steck's Exhibit O-1 to be irrelevant to the viability of development of the Property as zoned, as it is not an engineered or credible lot design.

56. In consideration of the special reasons to support the grant of the requested variance, the Board finds Ms. Cofone's testimony to be credible, and that Mr. Steck's testimony overstates the issues relative to the proposed use on the Property. In particular, the Board notes that this particular use is expressly permitted under the North Brunswick zoning ordinance in other zones located on State highways, and therefore constitutes a recognized use under the Township zoning ordinance. The Board accepts the applicant's testimony regarding the efficiency of this use at this particular location. Finally, the Board accepts that the Property is an uniquely appropriate location for the proposed use as opined by Ms. Cofone.

57. The Board rejects Mr. Steck's testimony related to the appropriateness of the R2 zone in this specific location based upon his Exhibit O-2. The Board accepts Ms. Cofone's testimony that Property constitutes an "orphan lot", in light of the fact the Property has been zoned R-2 for decades yet never developed as zoned and therefore fails to achieve the purpose of the R-2 zone.

58. In addition, the Board finds Mr. Steck's Exhibit O-2 actually supports the applicant planning testimony that the requested variance will not substantially compromise the Master Plan and Zoning Ordinance. Mr. Steck conceded that at least 95% of the R-2 zone has already been developed and therefore has accomplished the Master Plan stated objectives. The Board finds Mr. Steck's testimony that the grant of a variance would compromise the Master Plan and zoning plan

to not be credible in light of the existing near complete build out of the R2 zone with permitted residential development.

59. The fact that the Township has not rezoned the Property does not create the negative adverse inference opined to by Mr. Steck. The Board is aware of only one other use variance application on this Property, which was a self-storage facility denied by the Board because of the lack of any buffering and the improper massing of the structure in close proximity to the residents. Because the Board denied the variance, the Board does not believe any negative inference can be drawn by the fact that the Property has not been rezoned. The board accepts Ms. Cofone's testimony that the Property is an "outlier" and is particularly appropriate for site specific use variance relief.

60. The Board rejects Mr. Steck's opinion regarding the applicant's measures to address neighboring property owners concerns of noise, lighting and traffic. Mr. Steck's testimony is not credible and does not recognize simple facts brought out during his cross examination. Mr. Steck had no credible response to the acoustical engineering study that demonstrated that the proposed use and sound attenuation barrier would significantly reduce ambient sound to existing residents.

WHEREAS, the Board has made the following ultimate findings and conclusions based upon the foregoing findings and fact:

1. The Board finds that the proposed Project is appropriate and suitable at the proposed site for the reasons provided on the record. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has satisfied the positive and negative criteria requirements for the Use Variance pursuant to N.J.S.A. 40:55D-70(d)(1) and that it can be granted without substantial detriment to

the public good and without substantially impairing the intent and purpose of the Township's Master Plan and Zoning Ordinances. The Board adopts the Applicant's testimony, specifically that of their Planner Ms. Cofone, who the Board finds presented compelling support for the special reasons in support of the grant of the variance. In this regard, the Board finds as true and accurate that the proposed use combines retail functions that would otherwise be located in individual locations. The Board agrees with Ms. Cofone that this combined use is a more efficient use of land. In addition, the Board finds the Applicant's commitment to upgrade the existing signal at Washington Place and the site frontage constitutes a public benefit and special reason in support of the variance.

2. The Board specifically adopts Ms. Cofone's testimony that the subject property is uniquely and particularly suited for the proposed use, and rejects Mr Steck's finding to the contrary as unsupported by the facts and testimony. The Board finds that the subject property is a minuscule remaining undeveloped property in the R-2 zone. The Board finds that the R-2 zone has been substantially built out as intended by the Master Plan. The Board finds that the development of this particular use at this particularly suitable location does not compromise the intent and purpose of the Master Plan, as the R-2 zone has substantially fulfilled its intended purpose. For this reason, the Board does not agree with Mr. Steck's conclusion that the failure to recommend a zoning change as part of the Master Plan reexamination is evidence that the Township is opposed to the grant of the variance at this specific location.

3. The Board was provided with no evidence to substantiate any detrimental impact, particularly in light that the subject property constitutes well less than 5% of the entire R-2 zone. The Board concludes that the proposed Use Variance will not have a detrimental effect on the surrounding area as a result of the numerous conditions agreed to by the Applicant, including but

not limited to the creation of an 80 foot natural buffer and the agreement to construct a sound attenuation barrier that the Board finds will ameliorate any adverse impact on the residential properties associated with the proposed use. In addition, the Applicant agreed to limit truck parking and use, hours of operation and provided compelling evidence that appropriate security would be in place to assure public safety.

4. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has satisfied the positive and negative criteria requirements for the Bulk Variances. Specifically, the Board concurs with Ms Cofone that the associated bulk variances are subsumed in the grant of the use variance. In addition, the Board recognizes that the Applicant has removed the sign and parapet height variance and that the structure will otherwise conform with the zone height standard. As a result, the Board finds that they requested bulk deviations can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Township's Master Plan and Zoning Ordinances. The Board adopts the Applicant's testimony, specifically, that of the Planner in this regard.

5. The Board has carefully considered the public questions and comments in evaluating the application and is satisfied that the Applicant has taken every reasonable measure to address the legitimate concerns of the public. The Applicant agreed that the acoustical barrier will be constructed as early as is feasible in the course of construction of the proposed QuickChek, so as to eliminate not just the operating sound levels but also mitigating construction noise. The Applicant has agreed to limit the hours of operation of the proposed use, as well as a limitation on delivery hours. The Applicant has presented compelling testimony from Mr. Linares that concerns related to public safety have been adequately addressed. The Board specifically finds that the two

existing QuickChek locations have operated without major incident in the Township. The Board concludes that the proposed Use Variance can be granted without substantial detriment to the Master Plan and Zoning Ordinance and without substantial detriment to the surrounding area.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment on July 19, 2022, on the basis of the evidence presented to it, the foregoing findings of fact and ultimate findings and conclusions, that the Board does hereby grant Use Variance and Bulk Variance approval applied for by the Applicant subject to the following conditions:

1. The granting of the Use Variance and Bulk Variance approval shall not be construed to eliminate satisfaction of any other requirements of the zoning ordinance and/or other requirements of the agencies, boards and authorities of the Township of North Brunswick, County of Middlesex or State of New Jersey, specifically that the Use Variance Approval is expressly conditioned on the application, consideration, hearing and approval of a Preliminary and Final Major Site Plan application by this Board
2. Any and all fees properly due and owing the Municipal Board of Adjustment for hearing the Application must be paid in advance of building permits being issued.
3. Applicant shall comply with representations and agreements as well as all Township Staff reports except as otherwise indicated in this Resolution.
4. All conditions contained in this Resolution and in the record of the proceedings in this matter, including any agreements made by the Applicant, were essential to the Board's decision to grant the approvals set forth herein. A breach of any such condition or a failure by the Applicant to adhere to the terms of any agreement within the time required may result in the automatic revocation of the within.

5. Prohibit non-delivery tractor trailer parking at the rear of the building, limiting to vehicles less than a WB-50 size. The Applicant will reserve the oversized rear spaces required by the Township Ordinance 205-62H in the C-2 zone for oversized vehicles such as delivery vans, landscape vans and similar smaller vehicles. Applicant shall post "No Idling" signage.

6. No fueling of tractor trailers at any fueling location on site. This condition will be enforced through signage and employee monitoring of any tractor trailer seeking to fuel, and a requirement that Tractor trailers must exit the property and seek fuel elsewhere.

7. Deliveries of product in tractor-trailers (WB 50 or greater) utilizing the rear loading area shall be prohibited between the hours of 10 PM and 7 AM. Smaller step van or other similar deliveries (milk, bread, and the like) shall not be subject to this restriction.

8. Hours of operation. QuickChek shall restrict hours of operation between 1 a.m. and 5 a.m. ("Restricted Hours"). QuickChek employees may remain in the premises for purposes of cleaning, inventory control, baking and related preparation of food and product for the morning hours. All fueling operation shall be closed, all signage illumination turned off and all access doors locked to prevent customer access during Restricted Hours.

9. Applicant shall review its security plan with the North Brunswick Police Department and shall coordinate its security protocols with the Township Police Department.

10. Applicant shall proceed with the site plan showing the proposed acoustical barrier. The barrier shall be located no closer than 80' from the rear property line. The Applicant shall submit design plans and specifications, including color, height and construction details for the proposed acoustical barrier as part of the site plan submission.

11. No later than 90 days following opening, Applicant shall submit a post opening sound study along the common QuickChek-residential property lines to demonstrate compliance with State noise levels.

12. Applicant shall provide a supplemental evergreen buffer planting adjacent to the acoustical barrier facing the residents, with planting locations designed in a manner to minimize disturbance of existing vegetation.

13. Applicant shall submit a complete, full upgraded traffic signal design for the Washington Place / Route 130 traffic signal to the NJDOT as part of the NJDOT permit application for this property. Applicant shall provide the proposed signal upgrade design to the Township Engineer for his review and comment prior to submission to the NJDOT. Applicant shall pay all costs associated with the Traffic Signal upgrade.

14. Applicant shall submit the design for the relocation of the existing storm sewer line and easement as part of the Site Plan submission. Applicant shall pay all costs associated with the relocation of the storm sewer line.

15. Applicant shall lower the facade sign logo to 30' to eliminate the sign height variance.

16. All roof top mechanical equipment shall be fully screened from public view from Route 130 and from the second floor windows of the neighboring residential properties.

17. All site lighting shall be down lighting and screened from the residents, so as to minimize glare. Applicant shall submit a "night lighting plan" for the Restricted Hours to show what lights shall remain on during the Restricted Hours.

18. The driveway on Nimitz shall be right in only from Nimitz



19. The Sound barrier shall be constructed as early as is feasible following completion of grading.

20. Applicant shall not disturb existing vegetation in the 80 foot rear buffer facing residents. Applicant shall plant landscaping adjacent to the acoustical wall on both sides as approved by the Board during the site plan review process.

The Resolution was

Offered by: Mr. Goldenbarg

Seconded by: Mr. Guadagnino

and adopted by the Zoning Board of Adjustment of the Township of North Brunswick by the following vote:

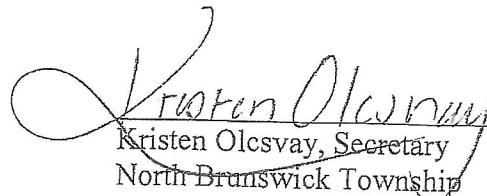
AFFIRMATIVE: Goldenfarb, Guadagnino, Malvone, Policastro, Wright, Heyman & McGrath

NAYS: None

ABSTAINED: None

#### CERTIFICATION

The foregoing is a true copy of the Resolution adopted by the Board of Adjustment of the Township of North Brunswick at this meeting of October 18, 2022.

  
Kristen Olcsvay, Secretary  
North Brunswick Township  
Zoning Board