

11/10/2015
2529

TOWNSHIP OF NORTH BRUNSWICK PLANNING BOARD

RESOLUTION

**M & M at North Brunswick, LLC
Block 140.01, Lots 3.02, 6.02 & 6.03
North Brunswick, NJ
Application Seeking Preliminary and
Final Major Site Plan Approval
& Lot Consolidation**

WHEREAS, pursuant to the applicable provisions of the North Brunswick Zoning Ordinance (herein defined as the "Ordinance"), an application has been submitted to the North Brunswick Township Planning Board (the "Board") by M & M at North Brunswick, LLC (the "Applicant") seeking Preliminary and Final Major Site Plan Approval to construct ±39,000 SF of retail and commercial buildings. The property is situated from US Route 1 to Livingston Avenue and consists of Lots 3.02, 6.02 and 6.03 in Block 140.01. The site is located in both the C-2 Zone and I-1 Zone; and

WHEREAS, the 9.04 acre irregularly shaped property in question is the site of the former Coca-Cola distributor and current used car dealership. The property is situated on the northerly side of NJ Highway Route U.S. 1 and the easterly side of Livingston Avenue; and

WHEREAS, the property is accessed via a right turn-in, right turn-out driveway connected to US Route 1 and a full movement driveway on Livingston Avenue; and

WHEREAS, the property contains support facilities that include paved and striped parking lots, access aisles, stormwater management and drainage structures, lighting, landscaping and signage. The Applicant is proposing to demolish the existing buildings, remove all parking areas, remove trees, and fill in the wetlands; and

WHEREAS, the Applicant is proposing to construct four buildings containing ±39,000 SF, including a 15,400 SF retail building, a 3,115 SF fast food building, a 15,000 SF flex industrial/warehouse space, and a 5,496 SF QuickCheck with a gas station; and

WHEREAS, CME Associates, the Board's Consulting Engineer, reviewed all documents submitted by the Applicant; and

WHEREAS, a report was issued by CME Associates, the Board's Consulting Engineer, dated October 7, 2015, a copy of which is incorporated herein and made a part hereof (the "Engineering Memorandum"); and

WHEREAS, a public hearing was held on this matter on October 13, 2015, and upon proper public and personal notice pursuant to N.J.S.A. 40:55D-12 and the relevant portion of the Ordinance; and

WHEREAS, during the course of the hearing, the Board reviewed and considered the written comments of various Township officials and professionals including the Engineering Memorandum; and

WHEREAS, during the course of the hearing on this application, the following reports and/or documents were considered by the Board:

<u>Description of Report/Document</u>	<u>Date of Report/Document</u>
---------------------------------------	--------------------------------

1. Plans entitled: "Preliminary and Final Major Site Plan for Market Place at North Brunswick, Block 140.01, Lots 3.02, 6.02 & 6.03, Township of North Brunswick, Middlesex County, New Jersey" prepared by EP Design Services, LLC, dated September 19, 2014, last revised September 30, 2015, consisting of twenty-six (26) sheets;	
---	--

2. Plans entitled: "Market Place at North Brunswick Preliminary Architecturals, Block 140.01, Lots 3.02, 6.02 & 6.03, North Brunswick, New Jersey" prepared by EP Design Services, LLC, dated May 8, 2013, consisting of ten (10) sheets;	
---	--

3. Plans entitled: "Boundary and Topographic Survey of Property Situated at Tax Lots 3.02, 6.02 & 6.03 in Block 140.01, Township of North Brunswick, Middlesex County, New Jersey" prepared by Solstice Surveying, dated January 10, 2014, consisting of one (1) sheet;
4. Report entitled: "Stormwater Management Report for Marketplace at North Brunswick, Block 140.01, Lots 3.02, 6.02 & 6.03, North Brunswick, New Jersey" prepared by EP Design Services, LLC, dated August 26, 2015;
5. Report entitled: "Stormwater Management Maintenance Plan for Marketplace at North Brunswick, Block 140.01, Lots 3.02, 6.02 & 6.03, North Brunswick, New Jersey" prepared by EP Design Services, LLC, dated August 26, 2015;
6. Report entitled: "Traffic Impact Study for Market Place at North Brunswick, Township of North Brunswick, Middlesex County, New Jersey" prepared by Langan Engineering & Environmental Services, Inc., dated July 31, 2015;
7. Report entitled: "Custom Soils Resource Report for Middlesex County, New Jersey, North Brunswick" prepared by USDA NRCS, dated August 25, 2014;
8. Report entitled: "Conditional Use Standards, Township of North Brunswick, M&M at North Brunswick, L.L.C." prepared by M&M at North Brunswick, LLC, dated July 27, 2015;
9. Map entitled: "Tax Map, Township of North Brunswick, Middlesex County, New Jersey" prepared by Raymond E. Borup Jr., P.L.S., dated June 1998;
10. Rider #1 Project Description prepared by M & M at North Brunswick, LLC, dated July 27, 2015;
11. Rider #2 Deed Restrictions Report prepared by M & M at North Brunswick, LLC, dated July 27, 2015;
12. Township of North Brunswick Application Documents;

13. Zoning Review Letter from Michael Proietti Administrative/Zoning Officer dated September 16, 2015;

14. Certificate of Completeness Letter from Michael Proietti Administrative/Zoning Officer dated September 17, 2015.

WHEREAS, during the course of the hearing on this application, the following reports and/or documents were entered into the record:

Description of Report/Document

A-1 Modified Site Geometry Plan

A-2 Landscaping Plan

WHEREAS, the Board, after carefully considering the evidence presented by and on behalf of the Applicant, and upon the advice and recommendations of the advisory municipal personnel, agencies and consultants, including, without limitations, those set forth in the Engineering Memorandum, make the following findings of fact:

FINDINGS OF FACT

1. Except as otherwise modified herein, any factual information as set forth in the reports and/or memoranda detailed above is incorporated herein by reference. Except as otherwise set forth herein, the proposed Preliminary and Final Major Site Plan Approval conforms to the bulk requirements of the zoning district in which the Property is located and applicable design standards as set forth in the Ordinance. Except as otherwise set forth herein, all of the recitals set forth above are incorporated herein as findings of fact.

2. The Applicant was represented by Bob Smith, Esq., Bob Smith & Associates, 216 Stelton Rd, Ste. B1, Piscataway, New Jersey 08854.

3. Prior to the hearing, the Board Attorney, Kevin G. Boris, Esq., reviewed the legal sufficiency of the notice provided by the Applicant, and the Board took jurisdiction of the matter.

4. Mr. Smith began by describing the application seeking Preliminary and Final Major Site Plan approval. He stated that no variances or waivers were required.

4. Mr. Smith then began by presenting the testimony of John Taikina, P.P. Mr. Taikina, the director of real estate development for M & M Realty Partners, was duly sworn.

5. Mr. Taikina testified that the Applicant either owned the land involved with the application, or was the contract purchaser. He described the location, stating that the Applicant proposed commercial buildings along Route 1 and industrial buildings along Livingston Avenue.

6. Mr. Taikina then introduced Exhibit A-1, a modified site geometry plan. He testified that the Applicant amended its plans to remove the need for a potential buffer variance. More specifically, a driveway was removed.

7. Mr. Taikina testified that the Applicant, as a condition of approval, would agree to remove the vehicles which are currently located on the DOT right of way.

8. Mr. Taikina then described the project: a 15,400 SF retail building; a 3,115 SF fast food restaurant; a 15,000 SF flex industrial/warehouse space; and a 5,496 SF QuickCheck with a gas station. He stated that some areas on the site were left undeveloped for possible future expansion.

9. Concerning the parking, 175 spaces are provided where 151 are required. Mr. Taikina testified that the parking was well distributed.

10. Mr. Taikina then introduced Exhibit A-2, the landscaping plan. He testified as to the landscaping buffer to the north, a board on board fence to the north and south, and a three foot hedge along the Route 1 frontage.

11. Regarding lighting, Mr. Taikina testified that the Applicant was proposing 25 foot high LED fixtures, which would be shielded from the adjacent properties.

12. The Applicant also proposed three stormwater basins; two dry basins and an underground basin.

13. Mr. Taikina testified that the Applicant had filed for DOT access permits and DEP wetlands permits. He also provided testimony regarding circulation and access from Route 1 and Livingston. Mr. Taikina testified about the changes in the plans regarding the crosswalks and the addition of a stop sign.

14. Concerning the proposed Wendy's restaurant and QuickChek, Mr. Taikina provided testimony concerning the delivery schedules and hours of operation.

15. Regarding the various reports received from the Township Engineer and/or other Township departments, Mr. Taikina testified that the Applicant would, as a condition of approval, comply with the recommendations contained within the Engineering Memorandum, Traffic Safety, Fire Chief's report, and American Water's report.

16. Mr. Taikina also testified that the Applicant would, as a condition of approval, construct the board on board fences along the "residential" side out of vinyl.

17. Mr. Smith then introduced Karl Pehnke, P.E., who was duly sworn and accepted by the Board as an expert in the field of traffic engineering. Mr. Pehnke testified that a traffic study was completed and submitted with the application. Mr. Pehnke stated that both frontages are under DOT jurisdiction, and he provided testimony concerning access to the site.

18. Mr. Pehnke also stated that he believed that the proposed parking lot was not an attractive cut-through from Route 1 to Livingston Avenue. Mr. Pehnke testified that the Applicant would, as a condition of approval, work with the Board Engineer to investigate additional signage or striping to discourage the site's use as a cut-through.

19. Mr. Smith then introduced Christine Nazzaro Cofone, P.P., who was duly sworn and accepted by the Board in the field of professional planning. She stated that there were no

variances or waivers, and that this Application fully conformed with the applicable zone standards.

20. Ms. Nazzaro Cofone also stated that the Applicant involved two conditional uses for the service station and drive through restaurant. Ms. Nazzaro Cofone testified that the Applicant met all required conditions, and thus these two uses are permitted uses. Additionally, the flex industrial/warehouse space and retail building are permitted uses as of right.

21. Mr. Smith then offered a brief summation.

NOW, THEREFORE, BE IT RESOLVED, that the North Brunswick Township Planning Board hereby grants Preliminary and Final Major Site Plan Approval with *and lot consolidation* regard to the property known as Block 140.01, Lots 3.02, 6.02 & 6.03, subject to the following conditions.

1. The Applicant shall comply with the Engineering Memorandum, Traffic Safety, the Fire Chief's Report and American Water's Report and the recommendations therein.

2. The Applicant will remove all vehicles from the Department of Transportation right of way.

3. The Applicant will construct a six foot high vinyl board on board fence along the "residential" side of the property.

4. The Applicant will work with the Board Engineer to investigate potential signage or striping to discourage the site's use as a cut-through.

5. The Applicant shall construct all trash enclosures out of masonry block.

6. The Applicant shall provide LED lighting throughout the project.

7. The Applicant shall revise the striping for a walkway through the loading zones.

8. The Applicant shall provide stability calculations to the Board Engineer for all retaining walls equal to or greater than four feet high.

9. The Applicant shall bring all escrow accounts within the Township current.

10. Except as specifically varied or waived herein, this approval does not in any way relieve the Applicant from constructing all improvements as herein approved in accordance with good and acceptable engineering and construction standards and all construction engineering requirements of the Township.

11. The Applicant shall obtain such other governmental or quasi-governmental approvals as may be legally required in order for the Applicant to develop the Property in the manner herein approved, including but not limited to approvals from the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Delaware & Raritan Canal Commission, the Freehold Soil Conservation District, the Middlesex County Planning Board, American Water Services, the North Brunswick Township Sewer (Department of Public Works), North Brunswick Traffic Safety, and North Brunswick Bureau of Fire Safety.

12. The Applicant shall comply with any representations made at the public hearing of this application.

THIS IS TO CERTIFY that the foregoing is a true copy of the Resolution adopted by the Planning Board of the Township of North Brunswick at its public meeting held on November 10, 2015.



Janice Larkin
Planning Board Secretary

1/9/2018
2529

TOWNSHIP OF NORTH BRUNSWICK PLANNING BOARD

RESOLUTION

**M & M at North Brunswick, LLC
Block 140.01, Lot 6.04
1500 Livingston Avenue & 1525 Route 1
North Brunswick, NJ
Amended Site Plan Application No. 2529**

WHEREAS, pursuant to the applicable provisions of the North Brunswick Zoning Ordinance (the "Ordinance"), an application has been submitted to the North Brunswick Township Planning Board (the "Board") by M & M at North Brunswick, LLC (the "Applicant") seeking Amended Preliminary and Final Major Site Plan Approval (the "Application"); and

WHEREAS, the property extends from US Route 1 to Livingston Avenue and consists of former Lots 3.02, 6.02 and 6.03, now Lot 6.04, in Block 140.01, in the C-2 and I-1 Zones (the "Property"); and

WHEREAS, by Resolution adopted November 10, 2015, the Board approved the site plan application to consolidate the existing lots into one (1) lot, to be designated as Lot 6.04, and to construct $\pm 39,400$ SF of retail and commercial buildings with associated site improvements on the Property; and

WHEREAS, the Boundary and Topographical Survey ("Survey") submitted with the original site plan application indicated that the Property was 9.04 acres in area; and

WHEREAS, based on a determination of fee ownership to a portion of the Property by the public utility, a revised Survey indicates that the Property is 8.848 acres in area, necessitating revisions to the plans; and

WHEREAS, the Applicant proposes to reduce the area of the proposed Flex Warehouse from 15,000 SF to 13,800 SF; and

WHEREAS, the Applicant proposes to realign the northerly drive aisle and the layouts of the curb, sidewalk and modular block retaining wall near the proposed Flex Warehouse and proposed retail building; and

WHEREAS, due to concerns expressed by Township professionals regarding parking for larger vehicles at the QuickChek, the Applicant is proposing four (4) additional parking spaces for commercial vehicles in addition to the four (4) such spaces previously approved, with appropriate signage designating eight (8) spaces as "Commercial Vehicle Parking"; and

WHEREAS, the addition of the four (4) larger vehicle parking spaces requires revisions to the site plans; and

WHEREAS, the Applicant proposes minor modification to the water system layout and removal of the previously-approved Fire Department connection near the fast food building; and

WHEREAS, the Applicant proposes to remove the previously-approved southerly wet tap on Livingston Avenue to allow the proposed eight (8) inch DIP to connect to the existing eight (8) inch water main approximately 350 east of the original location; and

WHEREAS, the Applicant proposes to reduce the size of the sanitary sewer system lateral from six (6) inches to four (4) inches to connect to existing improvements, and to modify the layout of the refuse enclosure, for the QuickChek; and

WHEREAS, John Kriskowski, PE, PP, CME, of CME Associates, the Board's Consulting Engineer, reviewed all documents submitted by the Applicant and issued a report dated December 5, 2017, a copy of which is incorporated herein and made a part hereof (the "December 5, 2017 Engineering Memorandum"); and

WHEREAS, a public hearing was held on this matter on December 5, 2017, upon proper public and personal notice pursuant to N.J.S.A. 40:55D-12 and the relevant portion of the Ordinance; and

WHEREAS, during the course of the hearing, the Board reviewed and considered the written comments of various Township officials and professionals, including but not limited to the December 5, 2017 Engineering Memorandum; and

WHEREAS, during the course of the hearing, the following reports and/or documents were considered by the Board:

Plans entitled, "Preliminary and Final Major Site Plan for Market Place at North Brunswick, Block 140.01, Lots 3.02, 6.02 & 6.03, Township of North Brunswick, Middlesex County, New Jersey," prepared by EP Design Services, LLC, dated September 19, 2014, last revised October 13, 2017, consisting of twenty-nine (29) sheets;

Plans entitled, "Boundary and Topographic Survey of Property Situated at Tax Lots 3.02, 6.02 & 6.03 in Block 140.01, Township of North Brunswick, Middlesex County, New Jersey," prepared by Solstice Surveying, dated January 10, 2014, last revised October 12, 2017, consisting of one (1) sheet;

Letter re: "M & M at North Brunswick, LLC, Market Place at North Brunswick, Block 140.01, Lots 3.02, 6.02 & 6.03," prepared by M & M at North Brunswick, LLC, dated October 16, 2017;

Letter re: "Market Place at North Brunswick, 1525 Route 1, Block 140.01, Lots 3.02, 6.02 & 6.03," prepared by Township of North Brunswick Department of Community Development, dated October 23, 2017;

Application for Amended Site Plan Approval dated November 14, 2017; and

WHEREAS, during the course of the hearing, the following exhibits were marked:

Exhibit A-1: Plan sheet entitled, "Proposed Site & Geometry Plan Market Place at North Brunswick for Block 140.01, Lots 3.02, 6.02 & 6.03 Township of North Brunswick," prepared

by EP Design Services, LLC, last revised
January 31, 2017 (previously approved);

Exhibit A-2: Plan sheet entitled, "Proposed
Site & Geometry Plan Market Place at North
Brunswick for Block 140.01, Lots 3.02, 6.02 &
6.03 Township of North Brunswick," prepared
by EP Design Services, LLC, last revised
September 21, 2017; and

WHEREAS, the Board, after carefully considering the evidence presented by and on
behalf of the Applicant, and upon the advice and recommendations of the advisory municipal
personnel, agencies and consultants, including, without limitations, those set forth in the
Engineering Memorandum, make the following findings of fact:

FINDINGS OF FACT

1. Except as otherwise modified herein, any factual information set forth in the
reports and/or memoranda detailed above is incorporated herein by reference. Except as
otherwise set forth herein, all of the recitals set forth above are incorporated herein as findings of
fact.
2. The Applicant was represented by Kevin G. Boris, Esq., of the Weingarten Law
Firm, 1260 Stelton Road, Piscataway, New Jersey 08854.
3. Prior to the hearing, the Board Attorney, Sarah E. Fitzpatrick, Esq., reviewed the
legal sufficiency of the notice provided by the Applicant, and the Board took jurisdiction of the
matter.
4. Mr. Boris began by describing the amended Application.
5. Mr. Boris then called John Taikina, P.P., as a witness. Mr. Taikina was accepted
by the Board as an expert in the field of professional planning and duly sworn.

6. Mr. Taikina explained that a dispute had arisen regarding whether the PSE & G right of way constituted an easement or fee. He testified that the Applicant had conceded fee ownership, as shown on the revised plans, which reduced the size of the Applicant's Property.

7. Mr. Taikina introduced Exhibit A-1, identified as the previously approved Site and Geometry plan sheet, and Exhibit A-2, the revised Site and Geometry plan sheet.

8. To accommodate the smaller square footage, Mr. Taikina explained that the size of the Flex Warehouse had been reduced on the revised plans, as shown on Exhibit A-2. He further testified that, in response to concerns regarding larger vehicles, such as landscape vehicles, using the QuickChek, four (4) additional parking spaces for commercial vehicles were added to the plans, signed as "Commercial Vehicle Parking," with accompanying revisions to facilitate access. These revisions are also depicted on Exhibit A-2.

9. Mr. Taikina testified that the Applicant, as a condition of approval, would agree to comply with all of the comments contained in the Engineering Report.

10. Mr. Boris next called Paul Latham, P.E. as a witness. Mr. Latham was accepted by the Board as an expert in the field of engineering and duly sworn.

11. Mr. Latham testified that the revisions to the plans resulted in a net decrease in impervious coverage on the Property.

12. In response to the Board Engineer's comment requesting testimony regarding removal of the "Fire Department Connection w/ Red Light and FDC Signage," Mr. Latham stated that the proposed improvements did not require fire suppression systems necessitating these features, and that the change had been approved by the Fire Marshal.

13. Counsel asked Mr. Latham to testify as to why the approved plans showing the 8-inch DIP water main were changed to now connect into the existing 8-inch water main. Mr. Latham explained that this was a field change after discovery that the existing water main is in

good condition and there was no need to lay new pipe. He further stated that the change would result in less disturbance of Livingston Avenue.

14. With regard to the modification from a 6-inch sanitary sewer lateral to a 4-inch sanitary sewer lateral on the revised plans, Mr. Latham explained that the architectural drawing showed a 4-inch lateral, which was sufficient to serve the improvements.

15. Finally, Mr. Latham testified that the changes to the lighting levels within the gas canopy fueling area were made to comply with QuickChek's requirements.

16. Mr. Boris then offered a brief summation.

NOW, THEREFORE, BE IT RESOLVED, that the North Brunswick Township Planning Board hereby grants Amended Preliminary and Final Major Site Plan Approval with regard to the property known as Block 140.01, Lot 6.04, subject to the following conditions.

- A. The Applicant shall comply with the Engineering Memorandum and the recommendations therein.
- B. The Applicant shall bring all escrow accounts within the Township current.
- C. Except as specifically varied or waived herein, this approval does not in any way relieve the Applicant from constructing all improvements as herein approved in accordance with good and acceptable engineering and construction standards and all construction engineering requirements of the Township.
- D. The Applicant shall obtain all other governmental or quasi-governmental approvals as may be legally required in order for the Applicant to develop the Property in the manner herein approved.
- E. The Applicant shall comply with the representations made at the public hearing of this application.

THIS IS TO CERTIFY that the foregoing is a true copy of the Resolution adopted by the Planning Board of the Township of North Brunswick at its public meeting held on January 9, 2018.



Janice A. Larkin
Planning Board Secretary

10/16/2018
2584

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

**M&M Realty Partners @ North Brunswick, LLC
Block 140.01, Lot 6.04
US Route 1 & Livingston Avenue**

WHEREAS, M&M Realty Partners at North Brunswick, LLC (the "Applicant") has applied to the North Brunswick Township Board of Adjustment for Use and Bulk Variances, Design Waiver and Amended Preliminary and Final Major Site Plan approval to construct an 38,000 square foot fitness center and a 5,200 square foot retail center which would replace 15,400 square feet of previously approved retail and 13,800 square feet of previously approved flex warehouse space at property located on US Route 1 & Livingston Avenue, Block 140.01, Lot 6.04 on the North Brunswick Township Tax Map, (the "Application"); and

WHEREAS, a public hearing was held on said Application by the Board of Adjustment on October 16, 2018; and the public was given the opportunity to be heard; 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, on October 16, 2018 the Board granted the Use and Bulk Variances, Design Waiver and Amended Preliminary and Final Major Site Plan, subject to certain conditions set forth below; and

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

Findings and Conclusions

1. The Property is located at US Route 1 and Livingston Avenue. The Property is 8.948 acres and is located in both the C-2 General Commercial District and I-1 Industrial District. The property is currently being developed for an approved Quick Chek convenience facility and a Wendy's Fast Food Restaurant.

2. The Applicant was represented by Douglas K. Wolfson, Esq. The following individuals testified and presented testimony in support of the Application; to wit:

- a) Director of Engineering – Ronald Aulenbach
- b) Traffic Engineer – Karl Pehnke
- c) Professional Planner – Justin Auciello

all of whom were accepted as experts in their respective fields.

3. The Applicant has submitted, and the Board has relied upon:

- a) Amended Preliminary and Final Major Site Plan prepared by EP Design Services, LLC, dated July 6, 2018.
- b) Architectural Plans, prepared by EP Design Services, LLC, dated 2018.
- c) Boundary & Topographic Survey, prepared by Solstice Surveying, dated January 10, 2014, and last revised February 5, 2018.
- d) Lot Consolidation Plan, prepared by Solstice Surveying, dated November 25, 2015, and last revised February 13, 2018.
- e) Stormwater Management Report prepared by EP Design Services, LLC, dated August 25, 2015 and last revised July 18, 2017.
- f) Stormwater Management Report Amended Preliminary and Final Site Plan prepared by EP Design Services, LLC, dated July 9, 2018.
- g) Stormwater Management Maintenance Plan prepared by EP Design Services, LLC, dated July 9, 2018.
- h) Traffic Impact Study prepared by Langan Engineering & Environmental Services, Inc., dated August 31, 2015.
- i) Deed Book 06888, Page 0030, recorded November 10, 2016.
- j) Rider #1 – Project Description prepared by M&M North Brunswick, LLC, dated July 25, 2018.
- k) Rider #2 – Deed Restrictions prepared by M&M North Brunswick, LLC, dated July 25, 2018.
- l) Rider #3 – Variance Waivers prepared by M&M North Brunswick, LLC, dated July 25, 2018.
- m) Aerial Photograph of site.

4. In addition, the Board heard the testimony of the Zoning Officer, Michael Proietti and received his report dated August 27, 2018, and, heard the testimony of the Board's Engineer, Charles Carley, PE and received the report of Charles Carley, PE, dated October 16, 2018.

5. The following Use Variances pursuant to N.J.S.A. 40:55D-70(d)(1) & 40:55D-70(d)(6) from the requirements of the C-2 General Commercial Zone District and I-1 Industrial District are required. The Property is located in both the C-2 General Commercial Zone District and I-1 Industrial District. As indoor recreation facilities are not a permitted use in the I-1 Industrial District, a "D-1" use variance is required. A "D-6" use variance is also required as the proposed fitness facility exceeds the maximum height permitted in the zone. Bulk variance relief is being sought for number and size of signs (1 permitted, 3 proposed and not to exceed 10% of the front façade area of the building). Design wavier relief is sought for deviation from residential buffer of 30' pursuant to Article 26, Section 205.75.b.

6. The project received Preliminary and Final Major Site Plan approval from the Planning Board on November 10, 2015. In May, 2016, the Zoning Board approved a signage package for a proposed Wendy's fast food restaurant and a proposed Quick Chek convenience facility. In January, 2018, the Planning Board approved further modifications to the project, reducing the size of the flex warehouse space, altering parking areas and adjusting utility connections.

7. Mr. Ronald Aulenbach, Director of Engineering for the Applicant testified on behalf of the Applicant. Mr. Aulenbach indicated that the subject site is the former Coca Cola facility which is presently

undergoing construction for a 5,496 square foot Quick Chek convenience store and fueling station facility and a 3,531 square foot Wendy's fast food restaurant. The property fronts on both Livingston Avenue and Route 1. The Applicant proposes to eliminate a previously approved 15,400 square foot retail site and a 13,800 square foot flex warehouse facility and to construct a 38,000 square foot fitness facility and a 5,200 square foot retail site. The proposed tenant for the fitness facility is "24 Hour Fitness" which will operate 24 hours per day and seven days per week. The daytime shift will have a maximum of between 7 to 10 employees while the off peak shift will have fewer employees but will be sufficiently staffed 24/7 with security controls in place and monitored cameras. Mr. Aulenbach stated that the first floor will contain a gym and fitness equipment and rooms and the second floor will be devoted to a basketball court. Mr. Aulenbach testified that the proposed retail site has no specific tenants yet, however, will likely be utilized for personal services and generally operate from 6:00 AM to 10:00 PM. In terms of deliveries, no tractor trailers will be permitted and/or accommodated on site and both the fitness center and retail site will utilize box trucks or vans for deliveries which will be scheduled during off peak hours. Mr. Aulenbach noted that 390 parking spaces are provided and a 6' high board on board fence is proposed on the property line adjacent to several existing residential structures which are located approximately 400' from the proposed fitness center. The height

of the proposed fitness center is 58.33' however, a parapet wall will enclose the proposed roof top equipment and the actual roof height without the parapet is 45'.

8. Mr. Karl Pehnke, PE provide professional traffic engineering testimony on behalf of the Applicant. Mr. Pehnke noted the proposed development constitutes a swapping of uses which will have no detrimental impact on traffic generation, levels of service and site circulation and as a result the existing NJDOT permits are valid and will not require any amendment. In terms of parking, Mr. Pehnke stated that 390 parking spaces are proposed while 235 are required and therefore the proposed parking field is more than adequate to accommodate the proposed uses. Finally, Mr. Pehnke opined that the proposed use constitutes an improvement to the site based upon the elimination of the flex warehouse building which generates increased truck traffic and deliveries and employees and the reduction of the retail space by over 13,000 square feet.

9. Mr. Justin Auciello, PP provided professional planning testimony on behalf of the Applicant. Mr. Auciello indicated that the proposed fitness center which is not a permitted use in the I-1 zone is more than suitable for the site in that it is compatible with other uses in the center and area and does not conflict with the goals of the 2014 Livingston Avenue Corridor Study in that it does not compete with existing

retail/commercial uses in the area. Mr. Auciello noted that the proposed use satisfies several goals of planning, including Paragraphs G, H & M and poses no negative detriment to the surrounding area, zone plan, zoning ordinance and Master Plan in that no traffic impacts arise, sufficient parking is proposed and fencing and buffering are being provided. According to Mr. Auciello, compliance with the permitted industrial uses in the I-1 zone would render the site no longer reasonably adaptable. In terms of the "D-6" height variance, although the building height is proposed at 58.33' and the zone only permits a maximum height of 40', the actual roof elevation is 45' and a proposed architectural parapet which screens the rooftop equipment triggers the "D-6" variance. In terms of bulk variance relief, the requested signage variance is de minimus in nature and can be granted under a flexible "C-2" analysis as per Mr. Auciello. Finally, Mr. Auciello noted that a design waiver is being sought for the 30' residential buffer which is only triggered due to the fact that roadway is located within the 30' area which was approved under the prior site plan application.

10. No individuals testified in opposition during the public portion of the hearing.

11. The Applicant agreed as a condition of approval to comply with the Zoning Officer's report of August 27, 2018, the Board Engineer's report of October 16, 2018 except to the limited extent modified herein.

12. As further set forth and detailed in the record, the Applicant submits that they have met the positive and negative criteria and have shown that the site is suitable for the proposed use and satisfied the special reasons pursuant to N.J.S.A 40:55D-70(d)(1) and NJSA 40:55D-70(d)(6). The Applicant submits that the proposed development plan advances a number of express purposes set forth in the Municipal Land Use Law under NJSA 40:55D-2 et seq. As such, the Applicant submits that subject to the conditions agreed upon, there is no negative impact on the public good, the master plan or zoning ordinances if this Application is approved.

13. As further set forth and detailed in the record, the Applicant submits that they have met the positive and negative criteria for the requested Bulk Variances pursuant to N.J.S.A 40:55D-70(c)(2) for the reasons expressed for the Use Variance. In light of the foregoing, the Bulk Variances with the conditions agreed upon will not cause a substantial detriment to the master plan, zoning ordinance or the surrounding area and these benefits substantially outweigh any detriments and the Variances can be granted. In sum, the Applicant submits that the negative impacts are outweighed by the positive impacts and that the Bulk Variances advance the Municipal Land Use Law with regard to providing for an appropriate use in an appropriate location as set forth in N.J.S.D.A. 40:55D-2, et seq.

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

- A. The Board finds that the proposed Project is appropriate and suitable at the proposed site for the reasons provided on the record. Specifically, the Applicant provided testimony and the Board concurred that the property is not reasonably adaptable for any of the industrial uses or purposes for which it was zoned. Moreover, consistent with the Township of North Brunswick's intent in preserving and redeveloping the Livingston Avenue corridor, the site is particularly if not uniquely suited for the proposed use as it is the type of use that can be placed on the property that would not conflict with, or cause any potential financial harm to existing retail and commercial establishments on the Livingston Avenue corridor. 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 & Bulk Variances pursuant to N.J.S.A. 40:55D-70(d)(1), 40:55D-70(d)(6) and 40:55D-70(c)(2) 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 and the Board adopts the Applicant's testimony, specifically that of their Planner in this regard. The Board concludes that the proposed Use Variances can be granted without substantial detriment to the Master Plan and Zoning Ordinance and without substantial detriment to the surrounding area.

Specifically, the proposed use is far less intense than the otherwise permitted industrial uses (ie: truck traffic, noise, etc.) The Board was provided with no evidence, and the Board concludes that the proposed Use Variances will not have a detrimental effect on the surrounding area.

- B. 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 pursuant to N.J.S.A. 40:55D-70(c)(2) and that they 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 and the Board adopts the Applicant's testimony, specifically, that of their Planner in this regard. In addition, as a matter of law all of the requested bulk variances are

subsumed within the request of the "D-1" use variance and the proofs offered to support said use variance are applicable to the granting of the bulk variances.

- C. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Amended Preliminary and Final Site Plan is in substantial compliance with N.J.S.A. 40:55D-38,39.41 and 50, and the applicable Township Ordinances, and advances sound land use principals and grants Amended Preliminary Site Plan approval and the Board adopts the Applicant's testimony, specifically that of their Planner and Engineer in this regard.

WHEREAS, at the conclusion of the hearing on October 16, 2018 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.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment on October 16, 2018, 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 Variances, Bulk Variances, Design Waiver and Amended Preliminary and Major Site Plan approval applied for by the Applicant subject to the following conditions:

1. The granting of the Use Variances, Bulk Variances, Design Waiver and Amended Preliminary and Final Site Plan 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.
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

The foregoing Approval was

Offered by: Mr. Abode

Seconded by: Mr. Baddeley

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

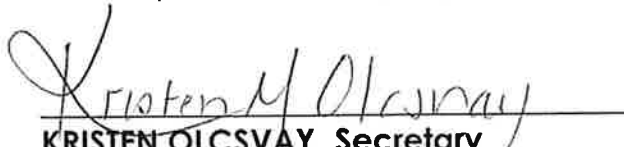
AFFIRMATIVE: Abode, Farhat, Malvone, Policastro, Baddley &
Hutchinson.

NAYES: Wright

ABSTAINED

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
16, 2018.


KRISTEN OLCSVAY, Secretary
North Brunswick Township Zoning Board

MEMORIALIZED DECEMBER 11, 2018

OFFERED BY:

SECONDED BY:

RECORDED VOTE:

ZONING BOARD MEMBER	YES	NO
ABODE		
FARHAT		
MALVONE		
POLICASTRO		
WRIGHT		
BADDLEY		
HUTCHINSON		
CHEDID		
MCCRATH		