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January 26, 2022

Zoning Board of Adjustment
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922

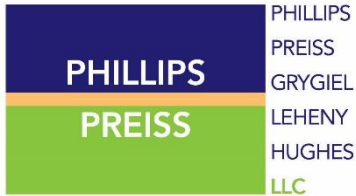
**Re: Planning Review #3
Application #14-21
Site Plan w/ Variances
Block 1901, Lot 40
40 Russo Place
Michael Cline c/o First Student, Inc.
LI Light Industrial District**

Dear Chairman Sullivan and Members of the Board:

This is the third review letter issued in association with the above-mentioned project. The applicant proposes to convert the existing site, which is currently used by a non-conforming environmental waste recovery company, into a school bus parking lot with associated administrative office space. Following the last hearing, the applicant has provided revised plans and additional materials; we are in receipt of and have reviewed the following:

- Cover Letter from Matrix New World, dated January 14, 2022.
- NEDEP Permitting Plan Set for “Bus Parking Facility 40 Russo Place – Zone LI Block 1901, Lot 40,” consisting of 4 sheets, prepared by Matrix New World, dated January 14, 2022.
- Preliminary/Final Site Plan for “Bus Parking Facility 40 Russo Place – Zone LI Block 1901, Lot 40,” consisting of 10 sheets, prepared by Matrix New World, dated June 25, 2021, last revised January 14, 2022.

This third review reproduces the content our previous letter #2, dated October 21, 2021, while noting changes in accordance with the revised plans. In the following sections, any modifications to initial comments or new comments are denoted in underlined text. Unless stated otherwise, the original comments from the previous letter shall remain valid.



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Site & Development History

Existing Conditions

The subject property is a triangular lot totaling 1.46 acres. It is located at the end of the Russo Place, and has vehicular access via the cul-de-sac. A 20-ft wide drainage easement runs along the western property line. The site is currently improved with a 2-story building in the center of the site, and several accessory structures along the eastern and western perimeters of the site, including concrete block material storage shelters, multiple storage tanks and containers, mounded dirt, concrete block walls, and bollards. According to the Zoning Officer, the property is currently occupied by an environmental waste recovery company used as a contractor's storage yard, for which a zoning permit has never been issued; zoning violations have been issued and never resolved. Our office has reviewed Township records pertaining to previous applications for the site and correspondence regarding the zoning violations, which are summarized in the following subsections.

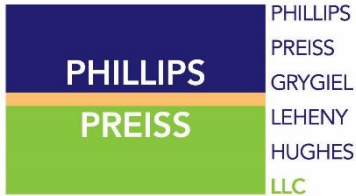
Original Bus Depot Use

As indicated in Resolution No. 39-87 of the Township Board of Adjustment, the subject property had been in use as a school bus parking and maintenance facility since the 1970s, and was granted use variance approval for this non-conforming use in 1987. While there is precedent of using the subject property as a non-conforming school bus parking use, the Board should note that this use was not formally recognized as a legally established pre-existing non-conforming use and not awarded a certificate of non-conformity.

Subsequent Violations

In December 2014, the Township Zoning Officer issued a notice of Zoning Violation to the owner of the site: the site was being used as a maintenance and storage yard for an environmental contracting business, a fuel oil service company, and a fuel tank cleaning and servicing operation, which were all non-permitted uses in the LI zone and never acquired Township approval. In addition, there were several violations in regards to the placement of accessory structures, the encroachment upon the drainage easement, and the prohibited storage of gas above ground. At the time, the Zoning Officer and the Environmental Commission (EC) also raised concerns regarding encroachment upon flood hazard areas and riparian zones around the Robbins Avenue Brook that traverses the site.

Under the terms of a court settlement agreement, the tenant at the time (ANCO Environmental Services Inc.) submitted an application to the Board of Adjustment for a use variance approval to allow the operations to continue on the site. The applicant at the time had also submitted requests to the NJ Department of Environmental Commission for Letters of Interpretation to verify any Freshwater Wetlands and Flood



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Hazard Areas located on the site. However, according to Township records, the application had become dormant, and it is unclear if a final resolution was reached. The most recent Township record on this matter is a copy of a Notice of Violation issued to ANCO by the NJ Department of Environmental Protection in April 2019, for unauthorized placement of a 48" diameter corrugated pipe within approximately 440 linear feet a tributary of the Robbins Avenue Branch.

Compliance

Proposed Development

The applicant is currently before this Board to convert the site into a school bus depot use. The main building will remain. The previous plans proposed extending the building by 10 feet towards the south in the area where there is currently a concrete/gravel area; the revised plans appear to abandon this idea and maintain the building as is. All other existing structures located along the eastern and western property lines will be removed. Along the property lines, the applicant will provide 40 (reduced from previously proposed 42) bus parking spaces measuring 11 feet by 40 feet each and 5 car parking spaces measuring 10 feet by 24 feet each. The applicant will newly install an 8-ft tall chain link fence with screen netting surrounding the perimeter of the site, except along the eastern property line. The applicant is proposing to restore the tributary with silt fencing and is currently in coordination with NJDEP.

D(3) Conditional Use Variances

The proposed school bus depot use is a conditionally permitted use in the LI zone. The following sets forth the application's compliance with the conditions enumerated in §7.1.5.K1:

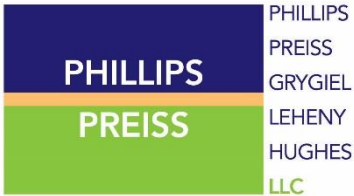
- a. The site shall have a minimum of 2.5 acres.
The site is deficient at 1.46 acres; d(3) variance required.

- b. There shall be no parking within 50 foot front yard setback
Complies

- c. A landscape of screen fence buffer must be provided around the perimeter of the vehicle parking. The buffer shall be a minimum of 8 feet
Complies

- d. A site plan must be submitted to the Planning Board for approval including:
 - 1. Written Use Plan
 - 2. Traffic Circulation Plan

The applicant has provided a narrative of the use of the site in the application forms and included vehicle turning analyses diagrams in the site plan. We defer



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to the Board Engineer if the supplied information is sufficient to make a determination on the merits of the on-site circulation.

- e. Unrestricted repairs of all vehicles will be permitted to take place inside the confines of a building. No outside repairs will be permitted. In addition, repairs will only be permitted on vehicles that are permanently housed on the premises.

The applicant shall provide testimony to demonstrate compliance, or else seek a d(3) variance.

In the Response Letter, the applicant noted that no outside repairs will take place. No d(3) variance shall be required for this condition; however, we continue to recommend that the Board include compliance with this condition as a condition of approval.

- f. Parking spaces for vehicles must be clearly marked on the pavement and designated on the plan
Complies.

- g. Tractor trailers not permitted.

The applicant shall provide testimony to demonstrate compliance, or else seek a d(3) variance.

In the Response Letter, the applicant noted that no trailer parking will be provided. No d(3) variance shall be required for this condition; however, we continue to recommend that the Board include compliance with this condition as a condition of approval.

- h. Parking spaces for school buses and/or commercial vehicles shall be in addition to spaces required by section 11.1.3.

The applicant indicates that the site will contain 1,000 sf of office space, requiring 4 car parking spaces. However, the applicant noted in the application forms that the total floor area after the proposed extension is 6,091 square feet. The applicant should explain what use is proposed in the ±5,091 sf of non-office portions of the building, and update the parking requirements accordingly. If the resulting car parking requirement exceeds the proposed number of 5 spaces, a d(3) conditional variance shall be required.

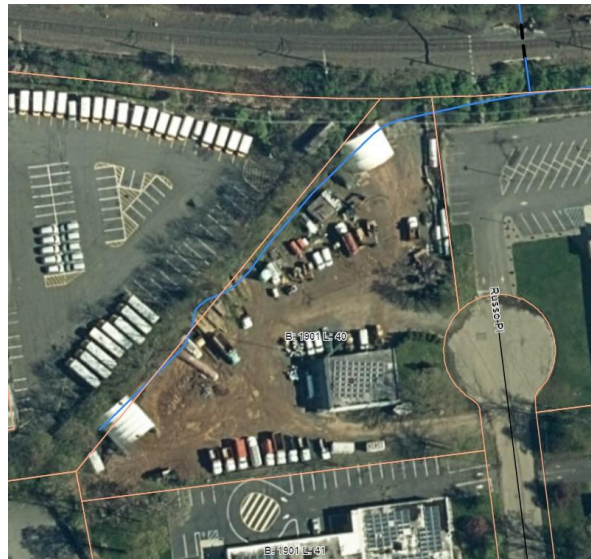
The applicant no longer proposes the building extension; the existing building will be utilized as is. The applicant in the Response Letter indicated that 1,000 sf will be used for administrative offices and 2,453 sf will be used as a storage and

light maintenance shop for repair and preventative maintenance of the school bus fleet. However, the application forms indicated that the exiting building has total floor area of 5,837 square feet. We continue to request clarification on how the remaining 2,384 square feet of space will be used. Because the parking requirement already exceeds the 5 spaces provided, a d(3) conditional use variance shall continue to be required.

C Variances

- Activities and improvements within a riparian zone: The Robbins Avenue Branch tributary appears to run along the western property line. The location can be observed on the National Hydrography Dataset for New Jersey provided on NJ Department of Environmental Protection’s NJ-GeoWeb mapping service (see Figure 1). Pursuant to §15.28.240.3, a 50-ft wide riparian zone is required on both sides of a surface water body, and up to 150 feet may be required if the brook is considered a trout production water or an upstream tributary.

Figure 1: Location of Robbins Avenue Branch tributary (in blue)



The applicant in the Response Letter noted that a pipe was previously installed within the stream, and that it is difficult to confirm the location of the bank and the associated riparian zone. The Board should note that this pipe was the subject of a NJDEP violation citation issued to the previous owner.

The current applicant indicates that they have revised the site layout to accommodate a restored tributary and its riparian zone. They have submitted for permitting to the NJDEP and is currently undergoing review.

- The Board should also note that there is an existing non-conformity with respect to the lot depth: in the LI zone, the minimum lot depth is 250 feet, whereas the subject property has a lot depth of 188 feet. Because this is an existing non-conformity and no change affecting this condition is proposed, it is our opinion that no new variance is required.

Design Exceptions

The application requires a design exception from §11.1.3.B.12: school bus parking spaces required to have width of 12 feet, whereas the proposed spaces are 11 feet in width.

Other deviations

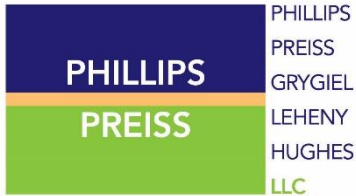
- Improvements within the drainage easement: the applicant will install fencing and provide parking within the 20-ft wide drainage easement area. The applicant has not provided details regarding the specific perimeters of the easement and whether such improvements and activities would be allowed.

The applicant has moved all previously proposed improvements largely out of the drainage area. As noted previously, the applicant is currently seeking approval from the NJDEP; NJDEP approval should be a condition of Board approval for this application.

- Improvements within flood hazard areas: according to the FEMA National Flood Hazard Layer Effective Panel for New Jersey, a portion of the site is located in Flood Hazard Zone A – i.e. 100-year flood plain (see Figure 2). As such, improvements and activities in those areas would require approval from the NJ Department of Environmental Protection. It should be noted that no Letter of Interpretation has been submitted with this application.

Figure 2: Location of Flood Hazard Areas (in blue)





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As noted previously, the applicant is currently seeking approval from the NJDEP; NJDEP approval should be a condition of Board approval for this application.

Planning Comments

1. Pursuant to the MLUL at N.J.S.A. 40:55D-70d(3), the Board may grant a “d(3)” conditional use variance “in particular case for special reasons.” Per the NJ court in *Coventry Square v. Westwood Board of Adjustment*, 138 N.J. 285, 298-299 (1994), the Board’s focus is on whether the site is appropriate for the conditional use despite the failure of the application to conform with all of the conditions. In addition, the applicant must address the “negative criteria,” that the variance can be granted without substantial detriment to the public good, zoning ordinance, or master plan.

In accordance with the positive and negative criteria described above, the applicant shall provide testimony to justify the deviations from the conditions. As noted in the “Compliance” section, the applicant should provide clarification on the use of the building and associated car parking requirements, and also confirm if there would be outdoor repair activities or trailer parking. In addition to the deficient lot size, the applicant shall provide justification for any additionally identified d(3) variances.

As noted previously, there are remaining questions regarding the use of the building and associated car parking requirements. The applicant shall provide justification for the d(3) variances associated with deficient lot size and deficient car parking. Additionally, the Board should consider prohibiting outdoor repair activities and trailer parking as conditions of approval.

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

substantially impair the intent and purpose of the zone plan and zoning ordinance.

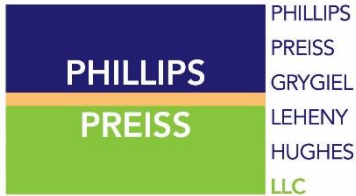
As noted previously, the applicant is currently coordinating with NJDEP to restore the tributary. However, the proposed bus parking spaces will still be closer than the required riparian buffer of 50 feet to the restored tributary, and as such, a “c” variance shall be required. The Board should also include a condition that NJDEP approval must be granted.

3. The applicant shall provide testimony to justify the design exception with respect to the deficient width for the bus parking spaces. Pursuant to the MLUL at N.J.S.A. 40:55D-51, the Board may grant a design exception from site plan design standards “as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval...if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.”
4. The applicant should revise the site plan to indicate the location of the brook and associated riparian zone, the flood hazard area, and any wetlands areas and associated buffer areas that intersect with the subject property. The applicant should also supply any Letters of Interpretation from the NJDEP to verify the locations of these environmental areas.

The applicant is currently undergoing NJDEP approval. The Board should consider conditioning the approval for this application on NJDEP approval.

5. The site appears to be largely unpaved, and the areas proposed to be parking are currently gravel surfaces. The applicant indicates that there would be new striping to delineate the spaces, but has not indicated if there would be paving/grading activities. The applicant shall provide testimony to clarify.
6. The applicant should move all improvement outside of the drainage easement or provide documentation on the terms of the easement to demonstrate that the proposed improvements and use are permitted. The Board does not have jurisdiction to provide relief in the case of a violation, as it is outside the scope of municipal land use regulations.

As noted previously, the applicant is currently undergoing NJDEP review. The Board should consider conditioning the approval for this application on NJDEP approval.



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7. The applicant should provide proof of approval from the NJDEP to improve and perform activities within the flood hazard area. Alternatively, if the Board looks favorably on the application, NJDEP approval could be included as a condition of approval.

8. We additionally defer to the Township engineer for comments regarding the adequacy traffic and circulation, paving and grading, drainage and stormwater management, utilities, and other site improvements.

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

Respectfully submitted,

Keenan Hughes, AICP, PP