RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT TOWNSHIP OF LONG HILL MORRIS COUNTY, NEW JERSEY

664-676 VALLEY ROAD LLC 664-676 VALLEY ROAD GILLETTE, NEW JERSEY 07933 BLOCK 11107, LOT 16 APPLICATION NO.: 19-14Z

Hearing Dates: September 1, 2020

November 17, 2020

Board Action: November 17, 2020 Memorialization: February 16, 2021

WHEREAS, 664-676 Valley Road LLC (the "Applicant") is the owner of property currently improved with a Valero gas station and other structures, as identified below, located at 664-676 Valley Road in Gillette, designated as Block 11107, Lot 16 (the "Property") on the Long Hill Township Tax Map, in the B-1-20, Village Business, zoning district; and

WHEREAS, the Property is improved with a Valero service station and building containing a storefront, three service bays, and two pump islands along Valley Road; outdoor vehicle storage and containers to the rear of the service station building; a shed and a one-story frame building at the northwest corner of the Property; and a two-story two-unit residential dwelling with a paved driveway and parking area in the southwest corner of the Property; and

WHEREAS, the service station us was originally approved in 1959 and included the following conditions in a letter from the Planning Board Chair dated March 19, 1959 (the "1959 Resolution") that the Applicant was required to adhere to and that are relevant at present time:

- 1) That said Gas Service Station shall not become a garage.
- 2) Shall not retain damaged vehicles for a period of more than 10 days.
- 3) Shall not store or park vehicles.
- 4) That said area shall be landscaped.
- 5) Shall be kept orderly and clean in appearance at all times.
- 6) There shall be no storage or accumulation of oil cans or similar refuse so as to constitute a hazard in the area; and

WHEREAS, the Property received additional approval from the Township Committee in a resolution dated May 4, 1966 (the "1966 Resolution") in order to construct a one-story storage bay addition to the existing gas station building. The storage bay is currently the westernmost bay in the service station. The Township Committee's approval was conditioned upon six requirements, the following three requirements are relevant at present:

1) The proposed addition shall be utilized for storage purposes only and while designed outwardly to appear as an additional bay will not be utilized at any time in the future as an additional

service bay.

- 2) The earthen bank to the rear of the building and on the westerly side shall be landscaped and planted with shrubbery or another type of ground cover in such a manner and of such a type acceptable to the Township Committee.
- 5) All of the provisions of the letter dated March 19, 1959 from the Planning Board in connection with the original variance permitting erection of the gasoline station premises shall be fully adhered to; and

WHEREAS, the Property was granted variance approval to install an additional 6,000-gallon tank and gasoline pump to the side façade of the service station building in 1978 (the "1978 Resolution") subject to two conditions, the following condition being relevant at present:

2) prior to construction adequate screening man-made and/or evergreen shall be planted or installed on the northern property line and a fence shall be installed along the eastern end of the building to the property line; and

WHEREAS, the Applicant was found to have violated certain of the foregoing conditions and requirements and was issued a letter by the Township's Zoning & Code Enforcement Officer entitled "Property Violations 646-676 Valley Rd., Gillette, NJ" dated June 28, 2019 (the "Zoning Violation Letter"), listing the following violations:

- 1) A violation of condition number one of the 1966 Resolution in that the third garage bay is permitted for storage only but the Applicant has been utilizing the bay for servicing automobiles;
 - 2) The storage of equipment and trucks is prohibited on the Property.
- 3) The fence enclosing the trucks and equipment to the rear of the service station was not granted any approval.
- 4) The existing two-family dwelling is a pre-existing nonconforming use however it appears that more than two families are residing at the location.
- 5) The Property was not free of accumulations of trash, garbage, rubbish, refuse, etc. in contravention of section 16 1.7 of the Township Code; and

WHEREAS, in response to the Zoning Violation Letter, the Applicant applied to the Zoning Board of Adjustment of the Township of Long Hill (the "Board") with an application requesting relief from certain zoning regulations in order to abate the violations in the Zoning Violation Letter and to permit the continuation of the uses on the Property, as set forth below; and

WHEREAS, the Applicant requested the following relief from the Board (the "Relief Requested"):

Minor site plan approval in accordance with N.J.S.A. 40:55D-46.1;

Use variances in accordance with N.J.S.A. 40:55D-70d(1), as follows:

For conversion of the westernmost garage bay from a storage area to a front-end ramp alignment system for automobiles serviced at the station in contravention of condition #1 in the 1966 Resolution:

For the outdoor storage of vehicles and snow plows in contravention of condition #3 in the 1959 Resolution; and

WHEREAS, the Property contains several existing nonconformities for which the Applicant also requested ratification and approval, if required, which are also made part of the "Relief Requested", as aforesaid:

Two principal buildings and three principal uses on a single lot;

Bulk variances, if required, in accordance with N.J.S.A. 40:55D-70c, as follows:

Minimum front yard setback: Required: 50'; Existing: 33.8';

Minimum side yard setback: Required: 20'; Existing 19.9';

Minimum accessory structure setback (sheds and one-story frame structure):

Required: 10'; Existing: approximately 2';

Maximum lot coverage:

Permitted: 40%; Existing: 47.1%; and

WHEREAS, the Applicant submitted the following plans and documents in support of the Application, which plans and documents were made a part of the record before the Board, as follows:

Application with checklists and addenda dated December 18, 2019;

Site Plan entitled, "Lot 16 Block 11107 Passaic Valley Road & Mountain Avenue Township of Long Hill Morris County, NJ," prepared by Murphy & Hollows Associates LLC, dated September 13, 2019; and

WHEREAS, the Applicant first appeared before the Board on September 1, 2020 and Mr. Joseph Tokash, the Applicant's principal, briefly testified regarding the operation and uses on the Property but it was determined that the notice that had been provided did not vest the Board with the requisite jurisdiction in order to hear the Application.

WHEREAS, the Applicant re-noticed for the November 17, 2020 hearing and the Board found that the Applicant met all jurisdictional requirements enabling the Board to hear and act on the Application and appeared before the Board on November 17, 2020, as specified above; and

WHEREAS, the Board considered the following report from the Board's Planner:

Memorandum from Elizabeth Leheny, PP, AICP, dated August 24, 2020; and

WHEREAS, the following exhibits were marked into evidence before the Board on the Hearing Date:

Exhibit A-1: 13 Slide Power Point Presentation, prepared by Michael Tobia, dated November 17, 2020; and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicant, represented by attorney Vincent T. Bisogno, was given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, members of the public appeared to ask questions about and to speak with regard to the Application, as more fully set forth on the record; and

WHEREAS, the Applicant's attorney introduced the Application and the Applicant presented testimony to the Board from the following individuals:

- 1. Robert Tokash, Property Owner;
- 2. Michael Tobia, PP, Applicant's Planner; and

WHEREAS, the Applicant's witnesses testified, in part, as more fully set forth on the record, as follows:

1. Robert Tokash was sworn and testified that the vehicles not belonging to the service station have been removed. The service station owns two motor vehicles. Mr. Tokash testified that customer and two employee vehicles are parked on the Property.

With regard to the snow plowing business, Mr. Tokash testified that neither the office, nor employees, nor vehicles belonging to the snow plowing business are present on the Property. Mr. Tokash testified that eight snow plows and eight salt spreaders belonging to the snow plow business had been stored on the Property behind the gas station and in the garage. Mr. Tokash further testified that the snow plows and salt spreaders had been stored on the Property for the last 35 years since the 1980s. The storage sheds on the Property contain auto parts and some snow plow parts.

With regard to the use of the third bay for service, Mr. Tokash denied knowledge that the third bay of the service station was not approved for use as an alignment area. Mr. Tokash testified that the existing two-family dwelling is being used to house no more than two families.

2. Michael Tobia presented his qualifications to the Board and was accepted as a licensed professional planner. Mr. Tobia testified describing the previous approvals secured by owners of the Property over time. Mr. Tobia noted that the Applicant does not propose to change anything on the Property, only to legitimize existing conditions. Mr. Tobia presented a slide presentation depicting the Property. In terms of parking and storage, Mr. Tobia indicated that employees park cars on the Property, there are two service vehicles used by the service stations, the only other vehicles are cars awaiting repairs. Mr. Tobia testified that neither cars nor car parts obtained by stripping old vehicles are sold on the Property. Further, old, broken down vehicles are not kept on the Property. Mr. Tobia testified that the snow plowing equipment area is enclosed with a fence and vehicles awaiting repair are also kept in the storage area behind the service station. The storage containers on the Property contain materials used in conjunction with the service station. Mr. Tobia testified regarding snow plowing vehicles indicating that they are also repaired on the Property and then brought to a property on Snyder Avenue in Berkeley Heights to be stored. Mr. Tobia testified that the snow plowing business is not conducted on the Property and the dumpster labeled "Dean's Greens" is used for refuse storage on the Property.

Mr. Tobia testified that the shed directly behind the two-family dwelling in the northwest corner will be accessory to the dwelling. A smaller 6' x 6' shed next to the aforesaid shed will be removed. The larger one-story frame structure will be used to store snow plowing parts and equipment. Mr. Tobia indicated that the Applicant will provide a fence and landscape buffering behind the remaining shed and the one-story frame structure. Mr. Tobia described the fence that provides the separation between the service station and the residential dwelling as well as the fence behind the service station. Mr. Tobia stated that the fence behind the service station was constructed in response to a condition in a previous resolution.

With regard to the use variances requested, Mr. Tobia testified that the storage is necessary and incidental to a service station. With regard to the use of the third bay for service, Mr. Tobia testified that the past approval of the location of the service station demonstrated that the Township viewed the location as appropriate to a service station. Mr. Tobia testified that there is a strong linkage between the snow plowing business and the service station as the snow plowing equipment is serviced on the Property. Mr. Tobia noted that the site is particularly suited to the uses that the Applicant seeks to ratify and that approval of the Applicant's uses will not cause substantial detriment to the neighborhood, the zone plan or the zoning ordinance.

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The Property is designated as Lot 16 in Block 11107 in the B-1-20, Village Business, zoning district and is currently improved with a Valero service station and building containing a storefront, three service bays, and two pump islands along Valley Road; outdoor vehicle storage and containers to the rear of the service station building; a shed and a one-story frame building at the northwest corner of the Property; and a two-story two-unit residential dwelling with a paved driveway and parking area in the southwest corner of the Property. As more specifically described above, the Property applied for and obtained approvals from the Board in the past to operate the uses on the Property. Recently, the Township's Zoning Officer identified several violations of previous approvals and other violations of the Township's Ordinances. After receiving a letter from the Township's Zoning Officer detailing the violations, the Applicant applied to the Board for the Relief Requested, as stated above in detail.

- 2. Specifically, the Applicant has requested that the Board permit automobile service in the third garage bay in contravention of the Board's 1966 approval limiting the bay to storage and permit the storage of equipment and trucks on the Property which was prohibited by the Board's 1959 approval. Since the existing conditions of the Property deviate from certain provisions in the Township's Ordinances as well as from previous resolutions of approval from the Board, as enumerated in the Relief Requested, the Applicant has requested relief from the Board in the form of use variances in accordance with N.J.S.A. 40:55D-70d(1) and for bulk variances in accordance with N.J.S.A. 40:55D-70c(1) and (2), as the Property does not conform to several bulk standards, as stated in the Relief Requested above. The Applicant has also applied for minor site plan approval in accordance with N.J.S.A. 40:55D-46.1.
- 3. All jurisdictional requirements of the Application were met and the Board proceeded to hear the Application and render its determination which is memorialized herein.
- 4. As to minor site plan, the Board finds that the Applicant has satisfied the Township's requirements governing site plans and believes that good cause has been shown to grant approval of the Applicant's request as it relates to the minor site plan presented during the hearings on the Application.
- An applicant seeking a use variance has the burden of proving that it has satisfied the positive and negative statutory criteria in order to support an approval of such a variance. In order to satisfy the positive criteria an applicant must prove and the Board must specifically find that either: the proposed use inherently serves the public good; the owner of the property would suffer an "undue hardship" if required to use the property in the manner permitted by the zoning ordinance; or the use would serve the general welfare because the site is particularly suitable for the proposed use. See, Saddle Brook Realty, LLC v. Twp. Of Saddle Brook Zoning Board of Adjustment, 388 N.J. Super 67, 76 (App Div 2006). Here, the Applicant did not maintain that the use was inherently beneficial or that the owner would suffer undue hardship therefore the Applicant's request must be evaluated under the site suitability test of the positive criteria. The site suitability test focuses on (1) why the location of the site within the municipality is particularly suited to the use despite the zoning and (2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than a permitted use. See, Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 280 (1967). It is not enough to merely demonstrate that the proposed use promotes one or more of the purposes of zoning listed in the MLUL at N.J.S.A. 40:55D-2, an Applicant must demonstrate that the site is peculiarly fitted or particularly suitable for the proposed use. See, Fobe Associates v. Mayor and Council of Demarest, 74 N.J. 519 (1977). New Jersey Courts have found that "peculiar suitability special reasons exist where, generally, the use is one that would fill a need in the general community, where there is no other viable location, and where the property itself is particularly well fitted for the use either in terms of its location, topography or shape." Funeral Home Mgmt., Inc. v. Basralian, 319 N.J. super 200, 210 (App Div 1999).

To satisfy the negative criteria, an applicant must demonstrate that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. The applicant for a use variance must establish the negative criteria with an enhanced quality of proof. See, <u>Medici</u>, supra, 107 N.J. at 21. The

Applicant's proofs and the Board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district. <u>Id.</u> at 21-22.

- The Board finds that relief may be granted for the Applicant's proposal to retain the ongoing uses on the Property. Approvals for the principal uses currently on the Property were obtained by the Applicant previously in 1959 and 1966. The Board notes that, over time, the new uses that are the subject of this Application were added to the Property without required approval. As to the use of the third garage bay for service, the Board finds that the garage bay is suited for use as a service bay. The bay is the same in function and appearance as the other bays used for service. The bay has been used to service vehicles for a considerable amount of time without incident and with limited impact to surrounding uses. The Board finds that there is no rational reason to limit the bay to storage rather than service given that vehicle service already occurs on the Property. As to the outdoor storage of vehicles and snow plow equipment, the Board finds, as to vehicles, that temporary vehicle storage is necessary to a vehicle service business. The Board notes that the Applicant has agreed to limit the vehicles stored on the Property to employee vehicles and to vehicles waiting to be serviced. The Applicant has agreed not to lease or rent any portion of the Property for vehicle storage and has agreed to keep the vehicles penned and out of sight. As to the snow plows and salt spreading equipment, the Board is satisfied that the plows and equipment are brought on site for repair and will not be kept outdoors. The Applicant has agreed to store all of the snow plows and salt spreaders in the onestory frame garage when the equipment is not being serviced. The Board finds that the site and its existing structures is particularly suited to storing snow plowing equipment and agrees with the Applicant that such storage is closely related to the service station use as the equipment is serviced by the service station. With regard to the negative criteria, the Board finds that the existing uses do not pose a substantial detriment to the surrounding neighborhood as the uses were instituted, to a large extent, decades ago. The Relief Requested does not alter the impact of the Property, in any manner, upon surrounding properties. The most apparent use of the Property as a well-established service station located in a business zone does not substantially impact the zone plan or the zoning ordinance.
- An applicant requesting a bulk variance under subsection "c" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria, as well. The positive criteria in bulk variance cases may be established by the Applicant's showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created. The positive criteria may also be established by a showing that the application for variance would advance the purposes of the Municipal Land Use Law and the benefits of the deviation would substantially outweigh any detriment in accordance with N.J.S.A. 40:55D-70c(2). In order to establish the positive criteria for a c(2) variance, an applicant must show that the proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the Municipal Land Use Law, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

In order to satisfy the negative criteria for a "c" variance, an applicant must also show that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The requirement that the grant of the variance not substantially impair the intent and the purpose of the zone plan and zoning ordinance focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate. Unlike use variances, reconciliation of a bulk or dimensional variance with the zone plan and zoning depends on whether the grounds offered to support the variance, either under subsection c(1) or c(2), adequately justify the board's action in granting an exception from the ordinance's requirements.

8. As to the bulk variances, the Board finds that any bulk variances required for this Application are largely due to existing conditions, have already been contemplated and approved in previous Board resolutions, and are otherwise subsumed within the use variances requested by the Applicant. In addition, the requested bulk deviations are de minimis in their extent and are not being exacerbated by the current Application. The Board notes that the Applicant has agreed to reduce the nonconformity to one of the setbacks by removing an existing shed and has further agreed to mitigate any impacts on the residential portion of the Property and those residential properties beyond the property line by erecting a fence and landscaping. The Board finds that, overall, the Applicant's agreement to comply with the conditions imposed herein will mitigate any negative aspect of the Application, as it relates to any deviation from the zoning district's bulk standards. As to the negative criteria, the Board finds that the Applicant's agreement with the conditions imposed herein mitigate any negative aspect of the Property on the surrounding neighborhood. The existing nature of the Property with its marginal bulk deviations does not substantially impair the intent and the purpose of the zone plan or the zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Zoning Board of Adjustment does hereby GRANT the Relief Requested as noted above, subject to the following:

- 1. The Applicant is required to comply with the following conditions:
 - a. The Applicant shall comply with the Applicant's representations to and agreements with the Board during the hearing on this Application.
 - b. The Applicant shall show the location of the dumpster on the site plan, to the satisfaction of the Board Planner.
 - c. The Applicant shall ensure that the only vehicles stored on the Property will consist of service station employee vehicles, two road call vehicles, and customer vehicles waiting to be serviced.
 - d. The Applicant shall not store any vehicle or truck used for snow plowing on the Property, except in the instance that any such vehicle or truck is being serviced on the Property.
 - e. The Applicant shall store any vehicle present on the Property for service in a neat and orderly fashion behind the service station.
 - f. The Applicant shall not lease or rent any portion of Property for storage of any kind.
 - g. The Applicant shall remove the 6' by 6' shed.
 - h. The Applicant shall ensure that the one-story frame garage only be used for the storage of the snow plowing equipment.

- i. The Applicant shall not store any combustible or flammable fuel or other material in the one-story frame garage.
- j. The Applicant shall erect a stockade type fence along the westerly boundary line to the property line with adjoining lots 10 and 11, to the satisfaction of the Board Planner.
- k. The Applicant shall install, to the satisfaction of the Board Planner, and maintain landscaping along the length of the aforesaid stockade fence.
- 2. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, or the requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the Applicants in any approvals, as memorialized in resolutions adopted by the Township of Long Hill Board of Adjustment or Planning Board except as specifically stated in this Resolution.
- 3. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.
- 4. All fees and escrows assessed by the Township of Long Hill for this Application and the Hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property.
- 5. In accordance with the adopted ordinance provisions and the current requirements of the Township of Long Hill, to the extent applicable, the Applicant shall be required to contribute to the Township's "Affordable Housing Trust Fund" and/or otherwise address the impact of the subject application for development upon the affordable housing obligations of the Township, in a manner deemed acceptable by the Township Committee and in accordance with COAH's "Third Round Substantive Rules" and/or in accordance with enacted legislation and/or in accordance with direction from the Courts.
- 6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicants and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent or received by the Applicant.

BE IT FURTHER RESOLVED, that this Resolution, adopted on February 16, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Aroneo, Gianakis, Grosskopf, Hain, Malloy, Johnson, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Rosenberg, Pesce.

RESOLUTION DATE: February 16, 2021

ATTEST:

Debra Coonce, Board Secretary Edwin & Freehof

Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT	X				
VICE CHAIRMAN JOHNSON	X				
ARONEO			X		
GIANAKIS	2 ND				
GROSSKOPF	MOTION				
MALLOY	X				
ROSENBERG			X		
PESCE – ALT 1			X		
HAIN – ALT 2	X				

I hereby certify this to be a true copy of the Resolution adopted on February 16, 2021.

Debra Coonce, Board Secretary

STATE OF NEW JERSEY

SS.

MORRIS COUNTY

I, Debra Coonce, being of full age, being duly sworn upon her oath, certifies: that a notice of which the annexed is a true copy, was published in the Echoes Sentinel which is a newspaper published in Morris County, New Jersey; on the 25 day of February, 2021

in said newspaper.

Sworn and subscribed before me this

25 th day of FIBRUREY

Notary Public of New Jersey



OFFICIAL SEAL FRANCISCA D. CENTURION NOTARY PUBLIC OF NEW JERSEY My Comm. Expires Feb. 16, 2022

Long Hill Township

Public Notice NOTICE OF DECISION OF THE township of LONG HILL zoning board of adjustment

Public notice is hereby given that the following action was taken by the Township of Long Hill Zoning Board of Adjustment at its meeting on February 16, 2021:

Resolution of Approval Memorialized Minor Site Plan Application & Use Variance Block 11107 / Lot 16 / Zone B-1-20 664-676 Valley Road Application No. 19-14Z 664-676 Valley Road, LLC

Resolution of Approval Memorialized Extension of Resolution Block 13803 / Lot 1 / Zone R-2 26 Hickory Tavem Road Application No. 18-15Z Kirsten & Gustavo Alvarez

All documents relating to this application may be examined by the public by appointment in the Planning & Zoning Office in the Township of Long Hill Municipal Building day & Thursday - 8:30 AM to 4:30 PM, Wednesday - 8:30 AM to 6:30 PM and Friday - 8:30 AM to 2:30 PM.

Debra Coonce Zoning Board of Adjustment Secretary Planning & Zoning Coordinator Township of Long Hill

P.F.\$35.19

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