

***Planning Department Review Memo***

**To:** Wayne Township Board of Adjustment: Chair and Commissioners

**From:** Christopher J Kok, PP, AICP  
Township Planner

**Date:** May 28, 2024

**Subject:** **Board of Adjustment Case # BOA-2023-030**  
**55 Haul Road; Block 1508, Lots 1 & 2**  
**55 Hall St NJ, LLC**  
**Use Variance with Preliminary and Final Major Site Plan**

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The purpose of this memo is to provide the Board with guidance in its review of application BOA-2023-030, in which Applicant 55 Hall Street NJ, LLC requests use variance relief to permit the use of existing parking areas for the on-site storage of cars, trucks, and storage containers. *Submission waivers are required, and applicant shall request said waivers prior to providing testimony on the contents of the application.*

***Reviewed Documents***

Application Packet signed by Zalman Blizinsky, dated September 8, 2023.  
Preliminary and Final Site Plan drawings signed and sealed by Gerard Fitamant, P.E., dated September 1, 2023, revised through March 20, 2024, consisting of five sheets.  
ALTA/NSPS Land Title Survey signed and sealed by David R. Avery, P.L.S., dated July 23, 2021, revised through August 27, 2021.  
Union Carbide Corporation General Plan Layout, dated June 15, 1978.  
FEMA Flood Insurance Rate Map 34031C0192G revised through April 17, 2020.

***Submission Waivers Required***

Required submission waivers are as follows:

Section 134-111.5.3:

Submission of 1 copy of the plans and exhibits in digital media pursuant to the criteria set forth in § 134-101.C.  
*At the time the application is ready to be scheduled, the Township will send an FTP link requesting PDF copies of all application materials.*

- Section 134-111.5.4: Letter of Interpretation (LOI) or Presence/Absence letter from the NJ DEP  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.5: Stormwater management/drainage calculations report  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.10: Site Plan shall be drawn at a scale of not less than 1"=30' using an engineer's scale  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.29: Landscaping plan  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.33: With respect to the Environmental Protection ordinance, provide: location map of environmental factors; calculation of number of building lots/residential density; limit of disturbance lines showing areas to be disturbed by grading/construction; MAD/TADA calculations; tree removal plan showing: all trees over 18 inches in caliper; trees to be removed indicated by an x; replacement trees; entire wooded areas, if such exists  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.35: Spot elevations of the following: existing buildings on the site; walls; fences; culverts  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.37: Sight triangles at driveway/road intersections  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.43: The location of all existing of the following for on-site and on-tract: storm drainage ponds; streams; above-ground utility lines and appurtenances, including transformer boxes; below-ground utility lines and appurtenances; pipe sizes, grades and direction of flow; outdoor storage areas (for applications where outdoor storage is proposed)  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*

- Section 134-111.5.44: The location of all existing of the following for off-tract for a distance of 200 feet from the extreme limits of the property in question: storm drainage ponds; streams; above-ground utility lines and appurtenances; below-ground utility lines and appurtenances; pipe sizes, grades and direction of flow  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.45: Proposed dumpster location  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.49: For all rights-of-way abutting the property in question, show existing edge of pavement for entire frontage  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.50: Existing and proposed curb radii  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.51: Circulation, vehicular and pedestrian, information: means of ingress and egress; width of driveways; walkways: location, material and width; and  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.52: Loading areas, providing: dimensions, locations, aisles, with dimensions, and barriers  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.54: Outdoor lighting plan; providing: location of light stanchions and wall lights; direction of illumination; heights of the lights/luminaires, whether on a stanchion or wall; details of the lights/luminaires, whether on a stanchion or wall; details of the extent of illumination (isolux lines)  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*
- Section 134-111.5.55: Wetlands and wetlands transition areas in accordance with the LOI  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*

Section 134-111.5.58: Existing and proposed contours, referred to United States Coast and Geodetic Survey datum, with a contour interval of two (2) feet for slopes of 5% or less and a contour interval of five (5) feet for slopes over 5%. Existing contours are to be indicated by dashed lines and proposed contours are to be indicated by solid lines  
*Given the limited scope of this application, the Planning Department does not object to the granting of a submission waiver.*

### *Neighborhood Context*

The subject site property is located on Haul Road, between Newark Pompton Turnpike and the northern portion of the Old Wayne neighborhood. The site is specifically set between the former Erie Railroad, which is being converted into a recreational trail, on the west and the North Jersey District Water Supply Commission land on the east. West of the former Erie Railroad right-of-way is Old Wayne, however, in this area, the blocks closest to the subject site are largely undeveloped. To the east of the Water Supply Commission land are two residential streets (James Street and Stylon road) as well as properties fronting on Newark Pompton Turnpike. The properties fronting on Newark Pompton Turnpike are residential in character, however, given the large depth of the lots, several of the rear yards of the properties are used as contractor storage yards. The majority of the site is within the 100-year flood hazard area, and according to NJDEP mapping, there are wetlands both on the northern and southern portions of the property.

### *Site Conditions*

The subject site consists of two tax lots occupying 41.88 acres of land. The site is developed with an industrial manufacturing building with a 210,141 square foot footprint. 16 large tanks are located on the west side of the building near the north side of the building. Paved areas are located at the northern and southern sides of the building, with limited paving on the west side of the building. There are two large distinct parking fields on the east side of the building. Loading docks are located on the south, east, and north sides of the building. Access is provided from Haul Road via a driveway extending along the eastern property line. Access previously was provided via Stylon Road, however, it appears that this access is restricted by use of a fence.

### *Zoning*

The subject site is zoned I-Industrial, which permits contractor storage yards, but does not permit parking unrelated to contractor storage yards as a principal use. Additionally, the Township Council adopted Ordinance 3 of 2015, explicitly prohibiting storage containers used as accessory or principal structures. Containers that were located on-site as accessory or principal structures may be subject to certain protections under NJSA 40:55D-68, however, protections are lost if the use is abandoned.

*Proposal*

Applicant proposes to use existing parking areas for the on-site storage of cars, trucks, and storage containers. Specifically, Applicant proposes the use of six areas, beginning on the south of the building and being numbered in a counterclockwise direction:

Area	Location	Size	Proposed Use
Area 1	South side of building	55,892 sf	<ul style="list-style-type: none"> <li>• Outside industrial and vehicle storage</li> <li>• Vehicles</li> <li>• Containers</li> <li>• Construction Equipment</li> <li>• Building and Infrastructure supplies</li> </ul>
Area 2	Southern portion of eastern parking lot	53,367 sf	<ul style="list-style-type: none"> <li>• Outside industrial and vehicle storage</li> <li>• Vehicles</li> <li>• Containers</li> <li>• Construction Equipment</li> <li>• Building and Infrastructure supplies</li> </ul>
Area 3	Middle portion of eastern parking lot	46,655 sf	<ul style="list-style-type: none"> <li>• Outside industrial and vehicle storage</li> <li>• Vehicles</li> <li>• Containers</li> <li>• Construction Equipment</li> <li>• Building and Infrastructure supplies</li> </ul>
Area 4	Northern portion of eastern parking lot	36,523 sf	<ul style="list-style-type: none"> <li>• Employee and visitor parking</li> </ul>
Area 5	North side of building	6,355 sf	<ul style="list-style-type: none"> <li>• 11 storage containers and trucks</li> <li>• Infrastructure supplies</li> </ul>
Area 6	Southern portion of western side of building	17,409 sf	<ul style="list-style-type: none"> <li>• Outside industrial and vehicle storage</li> <li>• Vehicles</li> <li>• Containers</li> <li>• Construction Equipment</li> <li>• Building and Infrastructure supplies</li> </ul>

*Variance Relief Required*

The subject application will require the following variances under NJSA 40:55D-70(d):

- Section 134-28.1.G: Uses prohibited in all districts
  - Type: D(1)
  - Proposed: undetermined number of storage containers
- Section 134-48.1: Permitted Uses in I District
  - Type: D(1)
  - Proposed: Parking as a principal use

The subject application will require the following variances under NJSA 40:55D-70(c):

- Section 134-31.2.A: Accessory Parking
  - Required: 263 spaces (based on manufacturing use)
  - Proposed: 71 spaces
- Section 134-67.4.A: Uses of Outdoor Storage
  - Required: Storage to be related to principal permitted industrial use(s) of the premise.
  - Proposed: Undetermined

- Section 134-67.4.B: Outdoor Storage Locations
  - Permitted: Storage in side and rear yards
  - Proposed: Area 5 is located in the front yard.
- Section 134-67.4.D: Outdoor Storage Screening
  - Required: Screening of all outdoor storage so that the storage is not visible from any adjacent property.
  - Proposed: Undetermined
- Section 134-67.4.F: Maintenance of Outdoor Storage Areas
  - Required: Storage to be maintained in an orderly manner and not include any discarded or abandoned materials or vehicles.
  - Proposed: Undetermined
- Section 134-67.4.G: Storage of Trailers and Containers
  - Required: Storage of trailers and containers not associated with the operations of a permitted industrial use are not permitted.
  - Proposed: Undetermined

*Criteria required to grant D(1) use variance relief*

Variance relief may be granted for this application under the criteria established in NJSA 40:55D-70(D)(1). Variances granted under NJSA 40:55D-70(D) are subject to greater scrutiny and bear a higher burden of proof as compared to variances granted under NJSA 40:55D-70(C) because they have a greater potential to cause detriments to the public welfare and to impair sound zoning as established through the Master Plan and Zoning Ordinance. Variance relief under this section is under the sole jurisdiction of the Board of Adjustment. Variance relief may only be granted if testimony is provided to the Board's satisfaction showing the following:

1. Positive Criteria
  - a. The site is particularly suitable for the proposed use.
  - b. Because of the particular suitability of the use, there are special reasons to grant the variance. Special reasons for the granting of variance relief typically refers to undue hardship or to advancement of the purposes of the Municipal Land Use Law (NJSA 40:55D-2).
2. Negative Criteria
  - a. The granting of the variance relief will not cause a substantial detriment to the public good.
  - b. The granting of the variance relief will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Because the variance requested can be granted only under NJSA 40:55D-70(d), the variance is subject to an enhanced burden of proof by which the board "must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance..." Medici v. BPR Co., 107 N.J. 1 (1987)

*Planning Comments & Requested Testimony*

1. Proposed Use
  - a. Applicant shall provide testimony as to the types of goods being stored and their connection with business located within the existing building.
    - i. What are the sizes and types of industrial and vehicle storage?
    - ii. What does it mean for vehicles (cars, vans, trucks, and trailers) to be included as storage? Where would these vehicles come from? How would they be different than industrial and vehicle storage?
    - iii. What construction equipment would be proposed and how does that differ from industrial and vehicle storage?
    - iv. What types of building and infrastructure supplies are proposed for storage?
  - b. Applicant shall provide testimony as to whether storage in areas 1, 2, 3, and 6 will be limited to

one specific type of storage, or whether the proposal is for the storage to change on an on-going basis as businesses come and go.

- c. Storage related to existing uses on-site would not require a use variance, nor would storage related to a contractor's storage yard. However, parking of vehicles no related to either of these uses would require a use variance. Additionally, any new containers not protected by NJSA 40:55D-68 would require use variance relief.

2. Containers

a. History of Containers On-Site

- i. Aerial imagery shows the condition of the site prior to the adoption of Ordinance 3 of 2015 (which prohibited storage of containers) as well as over a variety of years since that time. Key findings based on aerial imagery are listed below:

Area	Condition seen on Google Imagery from October 11, 2014	Condition seen in subsequent imagery (April 22, 2024, unless otherwise noted)
Area 1	Five containers on the south side of the building and a variety of trailers and containers along the south side of the proposed storage area.	It appears that all containers were removed from this location, and that the location was paved based on google earth imagery from April 29, 2022.
Area 2	A variety of containers are shown in this location.	All containers have been removed from this site and instead, the site is being used to park cars.
Area 3	11 containers are shown in this location.	All containers have been removed from this site and instead, the site is being used to park cars.
Area 4	No containers are shown in this area.	No containers are shown in this area.
Area 5	An undetermined number of containers in poor condition are shown in this area.	Only four containers are seen in this area.
Area 6	Four containers are shown in this location.	All containers have been removed.

- ii. Analysis: Based upon aerial imagery, it appears that all but the four containers in Area 5 have been abandoned and are not subject to protections under NJSA 40:55D-68.

b. Proposed containers

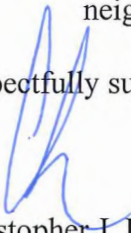
- i. Applicant shall provide testimony as to the containers proposed for the site, including the number, size, and location of containers within each of the designated areas.
- ii. Applicant shall provide testimony as to the purpose of storing containers on-site.
- iii. Applicant shall provide testimony as to why this application meets the Medici criteria for granting a use variance, given that the Township Council took the action to explicitly list storage of containers as prohibited.

3. Parking

- a. Applicant shall provide testimony as to the types of uses within the building and their square footages. Areas used for warehousing are subject to a lower parking requirement (1 space per 5,000 sf) compared to areas used for manufacturing (1 space per 800 sf).
- b. Applicant shall provide testimony as to why such a large parking variance can be justified. In particular, Applicant is not only proposing to reduce the number of parking spaces on-site, but is also proposing to intensify the use of the site.

4. New paving
  - a. Applicant shall provide testimony as to the extent of the paving of Area 1. This area is located within the 100-year flood hazard area and in close proximity to wetlands as shown in NJDEP mapping. The survey show this area as being composed of dirt/gravel.
  - b. Applicant shall provide testimony as to what NJDEP permits were required for the paving of Area 1 and their status.
5. Circulation of storage areas
  - a. Notes 6 on sheet CS101 states, "Storage areas are shown with striping that will not actually be painted but is shown for the purpose of a potential storage layout. Actual storage will vary within the areas based on operator's needs."
  - b. Based on the lack of a formal proposal in terms of the configuration of Areas 1, 2, 3, 5, and 6, it is not possible to determine whether the circulation of these storage areas is sufficient, particularly in the case that there is a fire or other emergency.
  - c. Applicant shall provide testimony regarding minimum dimensions for circulation for emergency vehicles and means to ensure that these minimum dimensions are not reduced during changes in operators of the area.
6. Screening
  - a. Applicant shall provide testimony regarding the existing screening of these areas from neighboring properties and any proposed screening.

Respectfully submitted,



Christopher J. Kok, P.P., A.I.C.P.  
Township Planner