

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

October 5, 2021

PREMISES: BLOCK 33 LOT 6.02

202 Route 46

CASE NO.: LUB #072

APPLICANT: SGD Fuel 202, LLC

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS SGD FUEL 202, LLC (the “applicant”) has applied to the Land Use Board of the Borough of Rockaway (the “Board”) for conditional use variance relief (d 3), bulk variances and Major Site Plan approval to allow the demolition of an existing gasoline service station and retail sales component and the replacement of the existing facility with a modern, up to date gasoline station and convenience store at the present location on the corner of Route 46 East and Franklin Avenue, and

WHEREAS the Board did hold a hearing on said application on September 7, 2021 upon notice to all parties requiring notice of this application, all parties being given an opportunity to be heard, and

WHEREAS the Board considered the following documents/exhibits

1. Completed Borough of Rockaway Application for the Land Use Board filed February 25, 2021, signed by Michael S. Selvaggi, Esq including Addendum to Variance Relief Statement
2. Site Inspection Authorization Form, signed and dated February 22, 2021;

3. Affidavit of Ownership, signed and dated February 22, 2021;
4. Certificate of Paid Taxes, signed and dated February 10, 2021;
5. Ownership Disclosure Statement
6. Administrative Checklist;
7. Schedule "A" Checklist for Preliminary Site Plan;
8. Schedule "A" Checklist for Final Subdivision/Final Site Plan;
9. Letter regarding "Wetlands Investigation, Block 33, Lot 6.02, US Route 46 West/Franklin Avenue Rockaway Borough, NJ" prepared by Matthew Popin, Project Scientist of Engineering & Land Planning Associates, Inc., dated August 26, 2020
10. Letter regarding "NJDOT Letter of No Interest, Convenience Market with Gas Pumps, Route: 46 EB MP: 40.92, Block: 33, Lots: 6.02 Rockaway Borough, Morris County" prepared by Kenneth Spiegle, Project Engineer, New Jersey Department of Transportation, Office of Major Access Permits dated December 15, 2020.
11. Engineering plan set entitled "Preliminary & Final Major Site Plan Shell Service Station & EVO Market, 2020 US Route 46, Block 33, Lot 6.02, Borough of Rockaway, Morris County, NJ" prepared by John E. Hansen, PE of Engineering & Land Planning Associates, Inc. dated February 8, 2021 with revisions dated June 22, 2021 consisting of ten (10) sheets. Architectural plan set entitled "Proposed Convenience Store, 202 Route 46, Rockaway, NJ" prepared by William P. Byrne, Architect of Byrne Design Associates, LLC dated April 9, 2021 with revisions dated June 6, 2021 and consisting of four (4) sheets.
12. Variance Application Statement regarding "Variance Application, Completeness Review Resubmission, 202 Route 46 West, Block 33, Lot 6.02, Rockaway Borough, Morris County" from John Hansen, PE of Engineering & Land Planning Associates, Inc. dated April 14, 2021
13. Letter regarding "LUB #72, 202 Route 46, Block 33 Lot 6.02" prepared by William P. Byrne, Architect of Byrne Design Associates, LLC dated June 22, 2021.

WHEREAS the Board has made the following factual findings:

- A. The applicant is represented in these proceedings by Mr. Michael S. Selvaggi, Esq. of the firm of Lavery, Selvaggi, Abromitis & Cohen.
- B. The property is identified as Block 33 Lot 6.02 located at 202 Route 46 at the corner of Route 46 and Franklin Avenue. The zone is Highway Commercial which permits gasoline stations as a conditional use.

- C. One of the principals of SDG testified as to the operative facts. The property is owned by SGD Fuel 202 LLC. The owner/applicant acquired the property about two years ago as an existing gasoline retail station having eight fueling positions and no diesel.
- D. The applicant seeks conditional use approval to demolish the existing facility and construct a new gasoline retail facility, canopy covered, with five fuel dispensers and ten fueling positions, which will include two fueling positions for diesel.
- E. The existing underground storage tanks will be replaced with two (2) fifteen thousand (15,000) gallon tanks using the latest technology.
- F. The existing frame building of some 580 square feet will also be removed and replaced with a 1,875 square foot convenience store which will include public use rest rooms. The store will offer coffee, soda, milk, tobacco, prepackaged hot and cold foods, and similar convenience store items. There shall be no outside sale of items.
- G. Mr. John Hansen, PE and PP of Engineering and Land Planning was accepted as a professional Land Planner and engineer. He explained that:
The Site is a corner lot accessed via one curb cut on Franklin Avenue and two curb cuts along US-46. The Site is paved for vehicular circulation and there are seven existing parking spaces. The Site is located near the Borough's southern border from Denville and is adjacent to other highway commercial uses along US-46. Across the Franklin Avenue/US- 46 intersection is a strip-mall development and another gas station. To the east is a 7-Eleven convenience store and commercial uses. To the south is a residential building and the Laurel Manor Apartments.
- H. The new facility will four gasoline have pump stations, 1 diesel pump station, a kiosk, and a canopy, ten parking spaces, including five parallel spaces and one ADA space, together with the associated 15,000-gallon underground storage tanks (USTs).
- I. Signs: one freestanding and one monument sign along Franklin Avenue are proposed in addition to a façade signage.
- J. A refuse enclosure and air pump/vacuum station along the eastern/side yard are proposed. A concrete retaining wall along the southern/rear property line and a 6' white vinyl fence along the eastern/side property line together with other improvements such as landscaping, lighting, site circulation arrows, signage, the refuse enclosure, and pavement improvements.
- K. Use, Bulk and Design Waivers. The application is for a conditional use and although the station is currently existing (preexisting non-conforming) some of the parameters will further violate the conditions associated with the use, therefore a "d 3" use variance is required (Sec 172-86 and 87).

- L. The US Route 46 setback for the Canopy requires relief (56.25 feet required) 26.5' proposed; the front yard setback from Franklin Avenue also requires relief (75' required) Building 49.5' and Canopy 42.2'; the Southerly side yard setback is a violation (20' required) Building 6.5' proposed; the East side rear yard setback requires relief (40' required) Building 30.1' proposed; the improvements violate the impervious coverage limitations at 90% to 91% where 60% is permitted. The Board notes that the existing facility already violates the same zoning requirements but the new improvements will slightly increase the encroachments.
- M. The plans propose no loading space and a design waiver is required as only smaller trucks will make deliveries to the store and the fuel delivery tanker trucks would not use a loading space.
- N. Signs: The one existing free standing sign and proposed replacement free standing sign exceed the maximum permissible height 15' permitted as opposed to 23' proposed and violate the distance and clearance requirements. The proposed monument sign exceeds the maximum permitted sign area. Sec 172-18 B. Variance relief is also needed for the directional lettering sign and the fuel dispenser lettering area. Sec 172-48 C and D. Note: Applicant will comply with the fuel dispenser lettering area requirement.
- O. Miscellaneous. The refuse enclosure as proposed will violate the accessory structure side yard setback (20' required and 10' proposed).
- P. With regard to the Conditional use variance relief, the following violations are noted: the property is within 300' another gasoline station; multiple use on the property with the convenience store; entrance and exit driveways do not comply; although the number of parking spaces is conforming the location of those spaces is noncompliant; the proposed landscape buffering is not in accordance with the ordinance; the need for yard and setback variance relief renders the application noncompliant with the conditional use requirements.
- Q. Exhibits A-1 and A-2 were marked into evidence consisting of a site survey date 1-20-2011 and a colorized Site Rendering dated 9-2-21.
- R. It was explained to the Board that there will be four pole mounted lights 20' in height and 56 canopy lights. Four wall lights are proposed for the store. All lights will extinguish one half hour after closing except that some security lighting will remain on.
- S. The new canopy will have clearance of 17' and while containing a greater number of lights, the overall canopy size is smaller.
- T. John Harter, PE was qualified and accepted as the applicant's traffic engineer. He explained that since the traffic volume at the site was not expected to exceed certain threshold levels, the Department of Transportation has issued a letter of "no interest".

- U. The DOT recites that 75 peak hour trips are permitted and the site is generating between 53 and 62 peak hour trips. (DOT letter dated December 15, 2020)
- V. The Franklin Avenue access is vital to the function of the site and must be retained as it is less dangerous than crossing Route 46 to gain access to the facility. (West bound traffic) Additionally, restricting left turnouts on Franklin would render the site dysfunctional.
- W. Mr. Harter stated that his study showed that 50% of the customers would be interested in the store and fuel: 25% would be fuel only and 25% store only.
- X. The site circulation pattern remains as it was before.
- Y. William P. Byrne was accepted as the applicant's architect. Exhibit A-3, a rendering prepared by Byrne Design Associates was accepted into evidence.
- Z. Mr. Byrne discussed the proposed signage with the Board. It was agreed that the Franklin Avenue monument sign will be reduced to 24 square feet.
- AA. The Board had additional concerns regarding the site signage that were not yet addressed.
- BB. The Planning testimony established that the d 3 relief standards are less onerous than those for D1 variance relief since the use itself is permitted. The site has hosted the service station use for many years and remains appropriate for that use and the application represents a proposal for renovation and slight expansion of a preexisting nonconforming use.
- CC. The public welfare is advanced through the availability of motor vehicle fuel and convenience items. Site suitability was also demonstrated.
- DD. The use advances several of the purposes of zoning and is not a detriment to the public good. The bulk variances meet the c2 standard of relief by virtue of the benefit (replacement of an outdated and dilapidated structure) with a new modern facility with improved landscape and buffering.
- EE. The Master Plan speaks of the desirability of enhanced landscaping along Route 46 as well as gateway Access to the municipality, which items will be addressed in the plan.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the reasons submitted by the Applicant support a finding that variances can be granted pursuant to NJSA 40:55D- 70 (d) 3 for the following reasons:

1. The purposes of zoning are advanced.

2. The site is unique with frontages on two very busy roads.
3. Special reasons support the relief.
4. The site is a suitable location for the use.
5. The public welfare will be advanced through the distribution of the products which are offered.
6. The site will be organized and cleaned up, landscaping and buffering will be installed.

WHEREAS, The Land Use Board has determined that design waivers are appropriate as the applicant has convinced the Board that a Loading Space is not necessary, and

WHEREAS, a number of preexisting non-conforming conditions exist as to which the Board grants variance relief: front yard setback from US Route 46, minimum side yards, impervious lot coverage, and height of the free standing sign (16 feet vs. 15 feet allowed) as to which the Board finds these to be preexisting and otherwise justified pursuant to a N.J.S.A. 40 :55D-70 (c) (2) analysis, and

WHEREAS, the Land Use Board has determined the relief can be granted without detriment to the public good and without impairment to the intent and purpose of the zone plan for the following reasons:

1. The use is consistent with and promotes several goals of the Master Plan.
2. The public welfare will not be negatively impacted as the use is one that has existed for a number of years and the application is primarily one to clean up and freshen the site and its appearance.
3. The site will benefit from improvements by the owner in anticipation of this use.
4. New landscaping and a fence will be installed.


NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the

variance relief requested by the Applicant is granted subject to the following conditions:

1. The Board grants a d 3 use variance to allow the applicant to demolish and reconstruct the gasoline station and convenience store for its business enterprise in accordance with the plans as presented and as modified herein.
2. The applicant shall obtain any and all approvals required by the construction official.
3. The landscape and buffering plan shall be presented to the engineer and planner for approval and shall be implemented.
4. Sound deadening shall be installed around the emergency generator.
5. A sidewalk shall be constructed by the Applicant along Franklin Avenue from the property line with Lot 8 to the existing sidewalk/curb ramp located at the Franklin Avenue/Route 46 Intersection. The Applicant shall obtain a permit from the New Jersey Department of Transportation (NJDOT) for this sidewalk extension. The Application will be supported and endorsed by the Borough as needed.
6. The proposed new monument sign shall be no greater than 24 square feet in size.
7. The proposed replacement free standing sign shall be no higher than nine (9) feet and the applicant shall incorporate the planner's suggestions regarding construction and final finish.
8. The proposed cornice signs, "Evo Market" as shown on the plans and on the left and right sides of the front edifice are eliminated.
9. The sign structures will be coated or constructed of material satisfactory to the engineer and planner.
10. The door framing will be of a dark metal.
11. The Primary Sign "EVO MARKET" will be illuminated via angle backlit lighting.
12. The location of the grease trap shall be added to the plans.
13. Foot Candle lighting under the canopy shall be reduced in consultation with the Board Professionals.
14. Applicant shall use best efforts to add a "do not block the box" striping on Franklin Avenue, of allowed by the NJDOT.
15. Applicant shall pay all non-residential developer fees in accordance Ordinance 169-64 E.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board of Adjustment held on June 1, 2021.



Colleen Reardon, Secretary