

RESOLUTION

JOINT LAND USE BOARD OF THE BOROUGH OF DUMONT

IN THE MATTER OF THE APPLICATION OF:

**BP PRODUCTS NORTH AMERICA
433 WASHINGTON AVENUE
BLOCK 507; LOT 14**

WHEREAS, PMG N.J. II, LLC, (“Owner”) is the owner of certain property located at 433 Washington Avenue, Dumont, New Jersey (Block 507; Lot 14) (“the Property”); and

WHEREAS, BP Products of North America, Inc., (hereinafter, the “Applicant” or “BP”) maintains offices at 30 S. Wacker Drive, Suite 900, Chicago, Illinois, and has filed an Application for various approvals with regard to the Property; and

WHEREAS, the Property contains 31,290 s.f. in area and is located on the corner of Washington Avenue and Grant Avenue. The property is located in the RA (Residential-A) and B-2 (Business – 2-1/2 Story) Zones. The lot currently contains an existing 1,927 s.f. garage building; and

WHEREAS, the Applicant is seeking the construction of a canopy structure and new gas dispensers as well as other various site improvements including the removal of three (3) existing underground fuel tanks and the installation of two (2) new underground fuel tanks. There are also eight (8) parking spaces proposed (the “Development”); and

WHEREAS, the Applicant has sought the following approvals in connection with the Development:

- a. Use – Section 455-7 of the Borough’s Zoning Ordinance does not list gas stations or garages as a permitted use in the RA Zone. Section 455-7 specifically prohibits gas stations and repair garages in the B2 Zone. This Application is an expansion of a non-conforming use and approval is required pursuant to NJSA 40:55D-70(d).
- b. Front Yard Setback – The Applicant is proposing to construct a canopy above the new gas dispensers. The overhang of the canopy would protrude to 3 feet from the

front property line. Section 455-16 of the Borough's Zoning Ordinance requires a 25 foot setback.

- c. Minimum Sidewalk Area – The requirement for the B2 Zoning district for minimum side walk area is 10 feet. The existing sidewalk is approximately 5 feet. The Applicant does not propose to change this condition.
- d. Sign Illumination – Section 350-7(C.) does not allow for illuminated signs in Residential Zoning Districts. The Applicant is proposing internally illuminated signs on the canopy, which would be located within the RA Zone.
- e. Sign Area and Height – Section 350-15 B. (3) (c) requires a total maximum combined sign area of 50 s.f. The Applicant is proposing a total sign area of 40.8 s.f. on the canopy.
- f. Pylon Sign - Section 350-10 permits a gas station pylon identification sign to be a maximum of 35 s.f. and a minimum of 10 feet and a maximum of 20 feet above grade. The Applicant should provide the size and height of the existing pylon sign.
- g. Side Yard Setback – The existing building is located 4.5 feet from the side property line where five (5) feet is required. This is an existing non-conformity.
- h. Minimum Green Area – Section 455-35 of the Borough's Zoning Ordinance requires a minimum green area of 50% in the RA Zone. The existing green area is given as 2.1% in the Zoning table on sheet 3 of the site plans and the Applicant is proposing no change.
- i. Maximum Imperious Coverage – Section 455-35 requires a maximum impervious coverage of 45% in the RA Zone. The existing impervious coverage is given as 97.9% in the Zoning table on sheet 3 of the site plans, and the Applicant is proposing no change.

WHEREAS, the Applicant has also sought a waiver as to various Site Plan Checklist requirements; and

WHEREAS, at the commencement of the application, the Applicant sought the aforesaid Variances and Design Waivers and public hearings were held on April 30, 2019 (the "Hearing", "Public Hearing") wherein sworn testimony was heard and considered on behalf of the Applicant and other interested parties; and

WHEREAS, at said public hearings, the Applicant was represented by counsel, Jennifer M. Knarich, Esq., of the Law Firm of Price, Meese, Shulman & D'Arminio, PC, ("Knarich") who

adduced the testimony of the following individuals:

1. Robert Streker, PE, of Bohler Engineering, Inc., 35 Technology Drive, Warren, New Jersey (hereafter, "Bohler" or "Streker");
2. George Williams, PP, of the Nishuane Group, 105 Grove Street, Montclair, New Jersey (hereafter, "Williams");

WHEREAS, at said public hearings the Applicant presented the following Exhibits:

- A-1 Site Plan, Sheet 1 of 5, prepared by Bohler Engineering, revised through September 7, 2018;
- A-2 Site Plan, Sheet 2 of 5, prepared by Bohler Engineering, revised through September 7, 2018;
- A-3 Site Plan Sheet 3 of 5, prepared by Bohler Engineering, revised through September 7, 2018;
- A-4 Proposed "Canopy Plan", prepared by Big Red Rooster Flow, dated September 7, 2018.

WHEREAS, at public hearing the Board adduced the testimony of the Board Engineer, Dennis Harrington, PE, ("Harrington") of Boswell McClave Engineering; and

WHEREAS, witnesses for the Board presented the following Exhibits:

- B-1 Dennis Harrington, PE, Review Letter dated, April 11, 2019;

WHEREAS, in the preparation of their Review Letter, Harrington reviewed the following documents which were included in the Applicant's Application Package and are deemed part of the within Application:

- a. Borough of Dumont Application Package, prepared by Price, Shulman & D'Arminio, P.C., Forms A, D, F and H, dated November 19, 2018.
- b. Letter of Denial from Paul Renaud, Borough Zoning Officer, dated July 17, 2018.
- c. Proof of taxes paid through the 2nd quarter of 2018.
- d. A list of property owners within 200 feet of the site.
- e. A letter from Bohler Engineering dated November 19, 2018, to the Applicant's Attorney, detailing the waivers from the application checklists being requested.
- f. Commitment for Title Insurance for the subject parcel from Chicago Title Insurance Company.

- g. A five (5) sheet set of engineering site plans entitled, "Preliminary and final Site Plan for BP Products North America, Proposed Canopy and Dispenser Installation, 433 Washington Avenue, Borough of Dumont, Bergen County, New Jersey, Block 507, Lot 14, District RA & B2; Tax Map Sheet #5", prepared by Bohler Engineering, dated June 26, 2018, last revised September 17, 2018.
- h. A survey of the site prepared by LAN Associates dated January 24, 2017.
- i. An eight (8) page set of color photographs of the site (15 photos, including key, from Bohler Engineering, dated July 30, 2018.
- j. A two (2) page set of color renderings of the proposed canopy from Big Red rooster Flow, LLC, dated September 17, 2018.

NOW, THEREFORE BE IT RESOLVED, by the Board that it does hereby make the following findings of fact and conclusions based thereon:

1. That all of the recitals hereinabove set forth are incorporated by reference. That all of the exhibits and documents produced by the Applicant, Members of the Public, or the Board are herein incorporated.
2. The within Resolution is not intended to reiterate the entire record before the Board which is incorporated herein and made a part hereof, it is intended to provide an overview of the record and testimony as well as the decision of the Board and the reasons therefore. The entire record made before the Board is incorporated here and made a part hereof.

EVIDENCE ADDUCED IN THE APPLICATION

3. Knarich provided an introduction to the Application and a broad overview of existing uses and the Applicant's proposal.
4. Streker was qualified as an expert in the field of engineering and provided an overview of the existing conditions and Site Improvements at the Property and the nature and extent of the present Application. He testified as to his familiarity with the Property and with the various design criteria and configurations considered during the design phase. He testified that the Property was formerly a Gulf Station but now contains a BP gasoline service station with 2 pump islands

containing 2 (2-sided) fuel dispensers, a 1,974 square structure consisting of a 3 bay automotive service facility and the accessory sale of automotive goods, a pylon sign and three underground storage tanks. He testified that the general purpose of the Application was to rebrand and modernize the existing gas station.

5. Streker testified that the Property was an irregular lot of 31,290 square feet (.72 acre) and located in both the B-2 and RA Zones. He testified as to the preparation of the Site Plans and referred to the Exhibits set forth above during the course of his testimony.

6. Streker testified that the Applicant sought to remove existing dispensers, tanks, fuel lines. The site presently has various monitoring wells which would remain on the Property and continue in use. The Applicant sought to replace the existing dispenser and island configuration with 2 new pump islands (in the same location as existing pumps), each containing 2-2 sided, fuel dispensers. New tanks and fuel lines are proposed and an 1872 square foot canopy is proposed. The canopy will contain down lighting, illuminated signage and symbols, and an illuminated canopy edge that contains a branding signage stripe. The general traffic flow on the Property would remain as presently exists.

7. Streker testified that the plan proposed 8 parking spaces while there are currently 19 parking spaces on the Property.

8. The station would be in operation Monday through Friday from 6am to 10pm and Saturday and Sunday from 6am to 9pm. It was testified that there would be 4 employees on the property and fuel is delivered 5-6 time per month. The Applicant meets the parking requirements by providing 8 parking spaces and also provided testimony that the parking "worked" in a practical way.

9. Under the canopy, lighting is proposed to illuminate the dispenser areas and the canopy would provide for safe "covered" operation for the safety and comfort of employees. There is potential spillage as a result of the under canopy lighting and the Applicant has proposed that the lighting be examined after 6 months of operation to adjusted per the direction of the Board Engineer.

enhance traffic safety.

20. Williams testified that the improvements would benefit the neighborhood and provide for greater buffering of a “cleaner more modern” site.

21. He testified that, generally, the expansion or intensification of a lawfully created preexisting nonconforming use requires a d(2) variance pursuant to 40:55D-70d(2). In some cases “special reasons” may be found which indicate that the variance, if granted, would tend to minimize the nonconformity of a lawfully created preexisting nonconforming use and make it more acceptable in its particular setting. He referred to *Burbridge v. Mine Hill Tp.*, 117 N.J. 376 (1990), where the Court upheld the grant of a variance to expand a lawfully created preexisting nonconforming junkyard where part of the plan called for relocation of unsightly parts of the business and improved landscaping and screening to improve the visual conformity of the property with surrounding residential uses. He also noted that the modernization of a plant or equipment is generally permissible as long as it entails no enlargement.

22. Our Courts have noted that applications to expand lawfully created preexisting nonconforming uses offer boards opportunities to impose conditions, frequently aesthetic, which will help integrate the use with its surroundings, an especially important consideration for uses which are thriving and therefore not likely to end soon.

23. With reference to these factors, Williams testified as to the proofs required for the (d)(2) variance and the required (c) variances: the Positive and Negative Criteria. For both the (d) variance and the (c) variance, the Applicant has demonstrated that the Application advances the purposes of zoning, including: Section a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; Section i. To create a desirable visual environment.

24. Williams also testified that the Property was “particularly well suited” for the proposed development in that it is pre-existing, it is a prime intersection and it has proximity to 2

major Borough roadways.

25. Williams testified as to the “negative criteria” and observed that Boards are permitted to review the negative criteria with greater liberality for a (d)(2) variance than for a (d)(1) variance. He opined that in the within matter there was no Substantial Detriment to the Public Good or Substantial Impairment to the Zone Plan.

26. As to the (c)(2) variances, Williams testified that the focus should be on the characteristics of the Property (and the proposal) that present an opportunity for better zoning alternatives. He testified that in the within matter such characteristics were demonstrated.

27. As to the Sign Plan, Williams testified that signs must be conspicuous, legible and readability and that sign graphics are designed to assist drivers by demonstrating a brand clearly and quickly. This is necessary for both safety and brand identification.

28. The foregoing is not intended to be a complete record of all testimony presented during the Application and the full record is incorporated herein and made a part hereof.

NOW THEREFORE, be it resolved that the Board hereby grants the requested Site Plan Submission Waivers; Site Plan Approval; a (d)(2) variance for the expansion of the non-conforming service station use and the following new Bulk Variance:

Front Yard Setback – The Applicant is proposing to construct a canopy above the new gas dispensers. The overhang of the canopy would protrude to 3 feet from the front property line. Section 455-16 of the Borough’s Zoning Ordinance requires a 25 foot setback.

NOW THEREFORE, be it resolved that the Board hereby grants the continuation of the following existing Bulk Variances:

Minimum Sidewalk Area – The requirement for the B2 Zoning district for minimum side walk area is 10 feet. The existing sidewalk is approximately 5 feet.

Side Yard Setback – The existing building is located 4.5 feet from the side property line where five (5) feet is required.

Minimum Green Area – Section 455-35 of the Borough’s Zoning Ordinance requires a minimum green area of 50% in the RA Zone. The existing green area is 2.1%.

Maximum Imperious Coverage – Section 455-35 requires a maximum impervious coverage of 45% in the RA Zone. The existing impervious coverage is 97.9%.

NOW THEREFORE, be it resolved that the Board hereby grants the following Bulk Variances as to signage:

Sign Illumination – Section 350-7(C.) does not allow for illuminated signs in Residential Zoning Districts. The Applicant is proposing internally illuminated signs on the canopy in the RA Zone. Sign Area and Height – Section 350-15 B. (3) (c) requires a total maximum combined sign area of 50 s.f. The Applicant proposes a total sign area of 40.8 s.f. on the canopy plus 57 s.f. for the pylon sign and 16 s.f. for the “service” sign. Total signage is 163 s.f.

NOW THEREFORE, be it resolved that the Board hereby grants the continuation of the following Bulk Variances as to signage:

Pylon Sign - Section 350-10 permits a gas station pylon identification sign to be a maximum of 35 s.f. and a minimum of 10 feet and a maximum of 20 feet above grade.

NOW THEREFORE, be it resolved that the Board hereby sets for the reasons for the granting of the variances aforesaid.

- A. The Board finds that all bulk variances are warranted and are granted under the terms of NJSA 40:55D-70(c)(2) in that all of the variances promote the following purposes of the MLUL: The variances advance the purposes of zoning set forth in the testimony and are not substantially detrimental to the purposes of zoning or the zone plan and zoning ordinance.
- B. The Board finds that the expansion of the non-conforming use required to NJSA 40:55D-70(d)(2) is warranted as the Property is particularly well suited for the proposed expansion; the expansion advances the purposes of zoning and the expansion creates no negative impact.
- C. In granting the above approvals, the Board finds that the following conditions are appropriate:
 1. The within Approval is conditioned upon the Applicant obtaining all necessary approvals from all Local, County and State agencies of applicable jurisdiction.
 2. The Applicant shall comply with all comments contained in the Boswell McClave

Engineering Report dated April 11, 2019 submitted in connection with the Application. The Applicant shall comply with the Reports submitted by the municipal Police and Fire Chiefs.

3. The Applicant shall comply with all relevant Affordable Housing Fees if applicable.
4. The within Approval is conditioned upon the Applicant entering into a Developer's Agreement with the Borough if improvements are to be made in the public right of way.
5. The Property shall be utilized for its primary gas station/service station use. It may not be used for vehicle or truck storage for hire.
6. All monitoring wells shall be protected and maintained at all times and the Applicant shall comply with all NJDEP Regulations.
7. The Board Engineer shall monitor the lighting for a period of 6 months. At that time the Applicant shall make such changes in lighting as the Board Engineer shall recommend. This shall include all lighting, including but not limited to: illuminated signage; canopy "down lights"; canopy edge lighting; building lighting and all other lighting.
8. Applicant shall provide for additional plantings across the east property line common to Lot 17. Applicant shall provide for a decorative corner planting.
9. Applicant shall provide for a decorative corner planting.

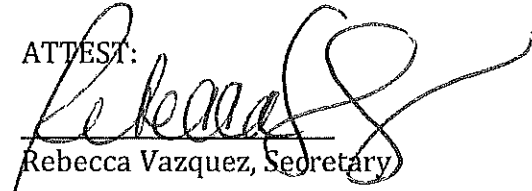
10. Applicant shall replace all damaged sidewalk,

This is to certify that the above and foregoing Resolution was duly adopted by the Joint Land Use Board of the Borough of Dumont on the 28th day of May, 2019.

A copy of this Resolution shall be given to the Tax Assessor, Applicants (through counsel), Borough Clerk, Building Department, Zoning Officer and Borough Engineer.


**A NOTICE OF THE ADOPTION OF THIS RESOLUTION AND THIS DETERMINATION
SHALL IMMEDIATELY BE PUBLISHED IN THE BOROUGH'S NEWSPAPER OF RECORD BY
THE APPLICANT.**

ATTEST:


Rebecca Vazquez, Secretary

Adopted:

SO APPROVED:


William Bochicchio, Chairman