

**RESOLUTION
BOROUGH OF BUTLER
PLANNING BOARD
IN THE MATTER OF QQR, LLC
DECIDED ON NOVEMBER 14, 2024
MEMORIALIZED ON DECEMBER 19, 2024
APPLICATION NO. SP22-83
DENIAL OF D(1) USE VARIANCE, D(3) CONDITIONAL USE VARIANCE
AND PRELIMINARY SITE PLAN AND "c" VARIANCE
FOR A CARWASH AND AUTO ZONE SITE**

WHEREAS, QQR, LLC (hereinafter “QQR” or the “Applicant”) is the Applicant for property known and designated as Block 201, Lot 2.04 on the Tax Assessment Map of the Borough of Butler which premises are located at 1558 Route 23 North, Butler, New Jersey in the Highway Commercial Zone District (hereinafter “HC Zone”); and

WHEREAS, the Applicant has filed an application with the Borough of Butler Planning Board (“Board” or “Planning Board”) seeking d(1) use variance approval, d(3) conditional use variance approval, preliminary site plan approval and “c” variance relief to permit two (2) separate uses to be located on one (1) lot inclusive of a carwash and auto parts store; and

WHEREAS, public hearings were held on May 16, 2024, June 20, 2024, August 15, 2024, September 19, 2024, October 17, 2024 and November 14, 2024, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Carleton R. Kempf, Esq.; and

WHEREAS, John Kaplan, Esq. represented an objector, Echelon Carwash Ventures, LLC.

NOW, THEREFORE, the Planning Board makes the following findings of fact based on evidence presented during the course of the public hearing process, at which time a record was made.

The application before the Board is a request for d(1) use variance approval, d(3) conditional use variance approval, preliminary site plan approval and “c” variance relief in order to

permit a Sparks Carwash and an Auto Zone retail facility to be operated on property known and designated as Block 201, Lot 2.04 on the Tax Assessment Map of the Borough of Butler which premises are located at 1558 Route 23 North, Butler, New Jersey in the HC Zone.

The following Exhibits were introduced into evidence during the course of the public hearing:

1. Exhibit A-1 Aerial exhibit dated April 17, 2024;
2. Exhibit A-2 Colorized version of site plan with landscaping dated April 16, 2024;
3. Exhibit A-3 Aerial exhibit study Sicklerville, New Jersey site dated May 17, 2024;
4. Exhibit A-4 Drone operations exhibit dated April 26, 2024 Sicklerville, New Jersey site (4 photos);
5. Exhibit A-5 Drone operations exhibit (4 photos) Saturday, April 27, 2024;
6. Exhibit A-6 Architectural rendering Sheet R-1 colorized elevations;
7. Exhibit A-7 Site plan rendering prepared by Stonefield Engineering dated August 12, 2024;
8. Exhibit A-8 Site imaging dated August 15, 2024 prepared by GKA Architects;
9. Exhibit A-9 Queuing exhibit prepared by Stonefield Engineering dated August 14, 2024;
10. Exhibit A-10 Planning exhibits for QQR, LLC-1558 Route 23, Borough of Butler, New Jersey prepared by John McDonough Associates dated April 17, 2024 consisting of five (5) sheets.

The following Exhibits were introduced into evidence on behalf of the Objector, Echelon Carwash Ventures, LLC:

1. Exhibit O-1 ITE Land Use: 948 Automated Carwash consisting of six (6) sheets;
2. Exhibit O-2 Figure 1 Land Use prepared by Preferred Planning Group, LLC (Donna Holmqvist, P.P.);
3. Exhibit O-3 Figure 2 Zoning prepared by Preferred Planning Group, LLC (Donna Holmqvist, P.P.); and

4. Exhibit O-4 Figure 3 Adverse impacts prepared by Preferred Planning Group, LLC (Donna Holmqvist, P.P.).

The May 16, 2024 Hearing

Carleton R. Kempf, Esq., attorney for the Applicant provided an overview of the project. Mr. Kempf confirmed that the Applicant was seeking approval in order to have two (2) principal uses, a Sparks Carwash and an AutoZone retail store located on the 1.9 acre site. Mr. Kempf also identified the approvals sought in connection with the land development application.

Engineering Testimony

Testifying on behalf of the Applicant was Paul Mutch, P.E., a licensed professional engineer in the State of New Jersey. Mr. Mutch is employed by Stonefield Engineering. Mr. Mutch was accepted as an expert witness as a civil engineer. Mr. Mutch testified that the property measures 1.99 acres in area. He stated it is the former location of a Hess gas station with a convenience store. Mr. Mutch also testified that two (2) Easements bisect the property. He identified the area of the site which is bisected by the Easements as generally being the center portion of the site. There are also Easements in favor of Butler Borough along the northerly property line for the sanitary sewer line and for a water main.

Mr. Mutch identified existing land uses in the vicinity of the site including, but not limited to, a Goodyear store, a public school, an animal hospital, a Mavis Auto Parts store as well as Route 23 Nissan. Mr. Mutch testified that the Applicant seeks to locate two (2) principal uses on the site. He stated the Applicant seeks to operate a carwash with outdoor vacuum spaces. He further stated there will generally be three (3) employees on site. He further confirmed that there will be one (1) central access location that both Sparks Carwash and AutoZone will utilize to gain access to the site.

Mr. Mutch testified that the carwash is located on the west side of the site. He characterized the carwash as being a state-of-the-art carwash with approximately three (3) to four (4) employees

per shift. Mr. Mutch explained the process by which vehicles seeking a carwash would pay for the carwash by utilizing the non-member pay stations or the membership pay station with license plate reading technology for individuals who have a membership to the carwash.

Mr. Mutch addressed the issue of queue capacity and represented that the queue would not exceed 26 vehicles. He further represented that there is sufficient queue space on site to accommodate the proposed number of vehicles on the site. Mr. Mutch also stated that there is one (1) “escape valve” located at the tunnel entrance just in case there is a problem. He characterized the tunnel as being open, airy and bright. Mr. Mutch testified that it is anticipated that approximately 60 percent (60%) of the customers would be members of the carwash. He characterized the carwash as being a state-of-the-art carwash with a state of the art system for reclaiming water. Mr. Mutch testified there would be three (3) 2,000-gallon tanks to treat water. He stated the water would be recycled and continuously used in the carwash.

Next, in regard to the AutoZone portion of the site, Mr. Mutch testified that the AutoZone would be located on the southeast portion of the site in a 6,826 square foot building. He characterized the AutoZone use as a retail business. Mr. Mutch also stated that there are 31 parking spaces available for the AutoZone use.

Mr. Mutch next addressed the issue of landscaping and stated that the Applicant is offering a variety of plantings, shrubs and trees. He stated it is the Applicant’s goal to screen the property and to reestablish a good buffer between this site and the Board of Education property.

Mr. Mutch stated the Applicant would comply with stormwater management requirements. Mr. Mutch also testified that the Applicant would utilize green infrastructure.

Mr. Mutch addressed lighting and testified that the Applicant is going to use LED lights, and the Kelvins would be reduced to 3,5000 Kelvins. He also confirmed that lights would shine directly down, and the lighting would be on a timer.

Mr. Mutch also testified that gas, water and electric to service the site are all publicly available.

Mr. Mutch admitted that under the Borough of Butler Ordinances, a carwash is a conditionally permitted use and requires a minimum lot area of 2 acres. In this instance, the site is slightly less than 2 acres and there is an additional principal use proposed on the property that being an AutoZone Auto Parts store.

Mr. Mutch testified that there will be no oil changes as part of the carwash operation. Further, the Sparks Carwash operates with a limited number of workers. The express carwash functions differently than a typical carwash. The express carwash operates without having workers drying cars. Therefore, the Applicant only needs a minimum number of employees on site.

Mr. Mutch characterized putting two (2) principal uses on one (1) lot as being a unique blend of two (2) principal uses. He stated that both uses service and maintain vehicles.

Mr. Mutch confirmed that the AutoZone store has a setback of only 10.5 feet from Route 23 where the front yard setback in the HC Zone is a minimum of 50 feet. The Board expressed its opinion that from a safety perspective the Board was concerned about the lack of an appropriate setback to Route 23 for the AutoZone store.

Mr. Mutch testified that the hours of operation of the carwash are primarily 8:00 a.m. to 8:00 p.m. Mr. Mutch also confirmed that once the carwash closes, the vacuums which are outdoor would not be operational after the close of business.

Public Portion

The meeting was opened up to members of the public and the Board was addressed by John Kaplan, Esq., attorney for Echelon Carwash Ventures, LLC. Mr. Kaplan questioned Mr. Mutch and Mr. Mutch admitted that the Applicant is proposing two (2) principal uses on one (1) lot consisting of the Sparks Carwash and the AutoZone retail store. Mr. Mutch also admitted that the

carwash is a conditionally permitted use and the carwash does not conform to the conditional use standards for a carwash in the HC Zone. Mr. Mutch also admitted that the Applicant could develop the site for one (1) permitted principal use.

Mr. Mutch reiterated that the Aqueduct Easements and the Butler Water and Sewer Easements encumber the property. Mr. Mutch also testified that there is no evidence of wetlands on the property nor is the site encumbered by steep slopes.

Mr. Kaplan questioned Mr. Mutch in regard to the operation of the car wash. Mr. Mutch testified that in order for any motorist to use the vacuums on site, the motorist would have to go through the carwash tunnel. Mr. Mutch further testified that the Applicant is proposing 21 vacuums stalls. Mr. Mutch also stated that the number of vacuums arrived at based upon feedback from the carwash operator. Mr. Mutch next testified that the drive-thru lanes are located centrally on the site. He also identified the location on the site where the three (3) or four (4) employees would park.

Mr. Mutch testified that the Applicant has not requested or received a Letter of Interpretation (“LOI”) from the New Jersey Department of Environmental Protection (“NJDEP”) because there was no indication that it was necessary based upon the characteristics of the site.

Mr. Mutch testified that the Applicant would be providing stormwater management as well as detention and recharge in accordance with the State regulations.

Mr. Mutch admitted that the Applicant did have a Phase I Environmental Impact Assessment prepared, but the assessment was never submitted to the Planning Board.

Mr. Mutch testified that the AutoZone has a side yard setback of 7.7 feet and the carwash has a side yard setback of 14.6 feet where a minimum of 25 feet is required. Mr. Mutch also testified that the Applicant would provide 22 trees at a height of between 4 to 5 feet at the time of planting and 12 trees between 6 to 8 feet in height at the time of planting. Mr. Mutch also

represented that the Applicant would provide an irrigation plan for the trees. Mr. Mutch also represented that the Applicant would install a fence and add buffering along the common property line with the Board of Education.

Mr. Mutch addressed lighting and indicated that certain lights will remain illuminated for security purposes. Mr. Mutch also represented that the Applicant would work with the Board Engineer to lower the intensity of the lighting.

Mr. Mutch represented that the Applicant would be disturbing more than 1 acre of land. The Applicant is required to comply with NJDEP requirements regarding stormwater management and green infrastructure.

Mr. Mutch testified that a soil erosion and sediment control plan has been submitted and is currently under review. He characterized the water reclamation system as being state of the art. Mr. Mutch also confirmed that the 21 vacuum parking spaces can also be used for parking vehicles.

John Donnelly, a resident of Butler, had questions in regard to sound levels at the property line and whether or not the site could accommodate snow storage on the site.

The Director of Real Estate and Site Acquisition for Sparks Carwash Testimony

Matt Canale testified before the Planning Board. Mr. Canale identified himself as the Director of Real Estate and Site Acquisitions for Sparks Carwash. Mr. Canale testified that he has been employed in that capacity for the past two (2) years. He stated prior to the two (2) years that he has been employed by Sparks Carwash; he had a similar type of experience.

Mr. Canale stated that Sparks Carwash is a modern express carwash which seeks to create an environment of employee retention and service. He also confirmed that the business model is a membership-based model. He represented that members would pay one (1) flat fee per month. Mr. Canale stated that the business model is designed for efficiency.

Mr. Canale testified that there will be three (3) or four (4) customer service representatives on site with each representative having a specific role. He stated the site would have directional signage that would lead motorists to stacking lanes and pay stations. Mr. Canale stated the Applicant will have a kiosk with a touchscreen. Customer service representatives would also be available to assist customers. Mr. Canale confirmed that motorists coming to the site would either have a membership and they would go through the lane for members, or they would just be a paying customer and they would proceed through the non-member lane. He stated the customer stays in the car and he further estimated that four (4) or five (5) cars could be in the car wash tunnel at any one time. Mr. Canale also confirmed that there is no manual labor to dry cars once they exit the carwash. He stated the cars are dried by equipment at the end of the tunnel. The next step would be for the customer to use the vacuum if they desire to do so or a customer can just exit the site. Mr. Canale stated that it is their experience that 50 percent (50%) of customers will utilize the vacuum. Mr. Canale also stated that one (1) customer representative would be assigned to help facilitate customers finding a vacuum. He confirmed that there would be 21 vacuum stalls. He also admitted that the vacuum stalls are a very important amenity on most days.

Mr. Canale characterized the Sparks Carwash as an eco-friendly operation with a state-of-the-art reclamation system for water used in the carwash. Mr. Canale also testified that there will be three (3) 2,000-gallon tanks for the reclaimed water. He stated the tanks are cleaned with a cleaning agent which he characterized as being kitchen-grade.

Mr. Canale represented that the hours of operation are 8:00 a.m. to 8:00 p.m. He stated deliveries are on a bi-weekly basis and the products are contained in plastic canisters and are brought to the site by sprinter vans. The old canisters are picked up when the new canisters are delivered. Mr. Canale represented that deliveries occur between 7:00 a.m. and 8:00 a.m. before the

car wash is opened to the public. He also confirmed that garbage collection occurs one (1) time per week and will occur before 8:00 a.m. when the business is opened to customers.

Mr. Canale stated that each vacuum station has a trash receptacle. He further stated that the customer service representatives will continuously monitor the trash receptacles to make sure that they do not overflow.

Mr. Canale identified other locations where a Sparks Carwash is in operation inclusive of Woodland Park, Ledgewood/Roxbury and Sicklerville. He stated the Ledgewood/Roxbury facility has been opened to the public for approximately three (3) months. The Sicklerville business has been in operation for four (4) to five (5) years. He also confirmed that there will be no retail sales on the premises. Mr. Canale also confirmed that Sparks Carwash operates five (5) additional carwashes.

Mr. Canale stated during peak hours Sparks Carwash could accommodate approximately 70 to 75 cars per hour. Mr. Canale also represented that in peak times there would be approximately five (5) cars in the tunnel at any one time. Thus, he estimated that one (1) car could go through the carwash tunnel every 90 seconds.

Although the Butler Code establishes a minimum lot area of 2 acres for carwash use, Mr. Canale testified that the ideal lot size for a carwash is 1 acre. Thus, he represented that even with the proposed AutoZone use on the property, the lot area to be occupied by the carwash is appropriate for the proposed use.

Mr. Canale also gave an example of an additional dual-use site in Sicklerville where a carwash shares the site with McDonalds.

Mr. Canale stated that wide based trucks cannot go through the carwash but, for example, a Ford F-150 and a Dodge Ram truck can go through the carwash without any issues.

Public Portion

John Kaplan, Esq. cross-examined Mr. Canale. Mr. Canale confirmed that the customers would remain in the car and the car is pulled through the tunnel. Mr. Canale also stated that in addition to the car wash, some customers would also clean their windows, clean the wheels, clean the floor mats in addition to vacuuming their car. He also confirmed that due to the size of the tunnel it is possible to process up to 100 cars per hour.

Mr. Canale confirmed that if there is a delay in using a vacuum, a motorist would get a voucher for a free carwash and would have to come back at a later date.

Mr. Canale also represented that 21 vacuums works perfectly and the peak hours of the carwash during the weekday are generally 11:00 a.m. to 3:00 or 4:00 p.m. and on a weekend from 1:00 p.m. to 4:00 or 5:00 p.m.

John Donnelly, a member of the public, had questions in regard to the process by which the reclaim tanks are cleaned.

The public hearing was continued to June 20, 2024.

The June 20, 2024 Hearing

Continuation of Applicant's Engineer's Testimony

Paul Mutch, P.E., continued to provide engineering testimony in regard to this application. Mr. Mutch attempted to address the comments in the Board's Engineer's Review Report dated April 15, 2024. Mr. Mutch represented that the Applicant would provide a point-by-point response to the April 15, 2024 Report of the Board Engineer.

AutoZone Testimony

Edison Quezada testified before the Planning Board. Mr. Quezada identified himself as being a district manager with AutoZone. He stated that he has been employed in that capacity for the past four (4) years. Mr. Quezada also confirmed that he has experience with AutoZone in their Wayne and Franklin stores. He stated the hours of operation are 7:30 a.m. to 9:00 p.m. The facility

is expected to have between 12 to 15 employees. There would be approximately four (4) to five (5) employees per shift.

Mr. Quezada testified that the product is delivered approximately one (1) time per week. Deliveries occur between 8:00 a.m. and noon. The deliveries also occur on a Tuesday or Thursday. A typical delivery time is approximately one-half hour in duration. Deliveries are made via a tractor trailer. Mr. Quezada represented that AutoZone has other local stores from which AutoZone can also obtain parts if necessary.

Mr. Quezada testified that in addition to selling auto parts, AutoZone employees will perform minimal work on vehicles which are limited to installing wiper blades and new batteries. He also stated that AutoZone collects batteries for recycling. AutoZone also collects oil for recycling and cardboard for recycling. He stated oil is picked up approximately once every two (2) weeks. Mr. Quezada testified that trash is picked up one (1) time per week.

Mr. Quezada also represented that AutoZone anticipates adding approximately three (3) employees within six (6) months to one (1) year of operation. He stated AutoZone anticipates hiring two (2) drivers and one (1) person inside the store to handle phone calls. He stated deliveries to outside companies would be between the hours of 8:00 a.m. and 6:00 p.m. He also confirmed that two (2) pick-up trucks would park outside of the building overnight.

Mr. Quezada testified that the busiest days of operation for AutoZone are Friday, Saturday and Sunday. On a typical Friday, the busiest hours are after 1:00 p.m. and on Saturday and Sunday, the busiest hours are between 9:00 a.m. and 3:00 p.m. Mr. Quezada testified that employees would park on the side of the building.

Mr. Quezada represented that during peak hours of operation AutoZone anticipates approximately 30 customers during this peak time period. He also estimated that would translate to approximately 30 cars inclusive of employee parking during peak hours of operation. Mr. Quezada

also represented that the average length of time a customer is in the store is approximately 10 minutes. Mr. Quezada also confirmed that 31 parking spaces provides sufficient parking for customers of the AutoZone store during peak hours of operation inclusive of both customer and employee parking. Mr. Quezada also testified that the Wayne store has 20 customer parking spaces and the Wayne store has never experienced any parking issues. Thus, he felt that 31 parking spaces is sufficient for the proposed use.

Public Portion

The meeting was opened up to members of the public and the Board was addressed by John Kaplan, Esq., attorney for Echelon Carwash Ventures, LLC. Mr. Quezada testified that recyclables are stored inside the store. Mr. Quezada also confirmed that the peak hours of operation are approximately 4:00 p.m. to 7:00 p.m. on Friday and 9:00 a.m. to 3:00 p.m. on Saturday and Sunday. Mr. Quezada also confirmed that a typical length of a transaction from when a customer enters the store to when a customer exits the store is approximately 10 minutes.

Traffic Testimony

Testifying on behalf of the Applicant was Matthew Seckler, P.E., a licensed professional engineer in the State of New Jersey. Mr. Seckler is employed by Stonefield Engineering who prepared a traffic and parking assessment study with revisions through June 7, 2024. Mr. Seckler was accepted as an expert witness in the field of traffic engineering.

Mr. Seckler testified that the Applicant performed traffic studies on May 2, 2024, a Thursday, between the hours of 4:00 p.m. and 7:00 p.m. In addition, Mr. Seckler represented that traffic studies were performed on May 4, 2024, a Saturday between the hours of 11:00 a.m. and 2:00 p.m. Mr. Seckler testified that the times for the traffic study coincide with the peak usage of

the proposed uses. He stated that these figures capture retail peak hours of traffic on the northbound side of Route 23.

Mr. Seckler testified that the access driveway to the site is located in the center of the site and the access way provides for a right turn in and a right turn out only. Mr. Seckler represented that there is a distance of approximately a quarter of a mile between two (2) signalized intersections. Mr. Seckler also testified that the location of the site between two (2) signalized intersections creates gaps in traffic.

Mr. Seckler also testified that he utilized the New Jersey Department of Transportation (“NJDOT”) growth rate factors in regard to traffic volumes. He stated traffic volumes were compounded with a 2 percent (2%) increase through 2026. He further represented that he utilized data from the Institute of Transportation Engineers (“ITE”) Manual 11th Edition for future traffic. He used this analysis to project new traffic for a carwash. He stated every customer counts as two (2) trips with one (1) trip entering into the site and one (1) trip exiting the site. Therefore, during the evening peak hour, 55 customers would translate to 111 trips. Furthermore, during the peak hour on Saturday 113 customers would translate to 226 trips.

Mr. Seckler testified that retail stores such as QuickChek and Wawa generate more traffic than what is expected on this site with AutoZone and Sparks Carwash.

Mr. Seckler testified that since the property has frontage and access from New Jersey State Highway Route 23, the NJDOT exercises jurisdiction. He confirmed that in December 2023 the Applicant received a letter from the NJDOT, wherein the NJDOT indicated it had a concern regarding stormwater management.

Mr. Seckler testified that based on his analysis, during the evening rush hour and on Saturday during the peak hour, even with the Sparks Carwash and the AutoZone uses on the site, these uses would not present any traffic issues.

Mr. Seckler testified that a motorist upon entering the site would have the option of turning right to go to the AutoZone store or proceed straight ahead and to the left to go through the carwash.

Mr. Seckler also testified that a carwash member can go through the license plate reader lane in 11 seconds or less. Next, in regard to non-members, Mr. Seckler testified that the transaction time would take about 40 seconds or less. He also stated it is the goal of Sparks Carwash to register more members.

Mr. Seckler estimated that approximately 100 to 120 customers could be processed in one (1) hour through the carwash.

Mr. Seckler reviewed with the Planning Board Exhibits A-3, A-4 and A-5, regarding the Sparks Carwash in Sicklerville. Since the Sicklerville site is in operation, it was used for comparative purposes with the proposed Butler site. Mr. Seckler testified in regard to on-site circulation and design for the Butler site. He confirmed that Butler has a queue capacity for 18 vehicles. Mr. Seckler testified that the Applicant is providing 21 vacuum spaces plus employee parking and, therefore, on-site parking is sufficient for the Sparks Carwash.

In addition, he reviewed the ITE Parking Generation Manual in regard to an auto parts store including employee and customer parking. He stated there are 31 parking spaces on site which is sufficient for the AutoZone. He thus concluded there is sufficient parking on-site for the two (2) proposed uses. He also confirmed that there is safe and efficient circulation and parking and access to the site. Mr. Seckler also testified that Sparks Carwash is characterized as an express carwash and, therefore, there is not a lot of queueing of vehicles on the site. He stated customers move more quickly through the carwash because no one is drying cars manually.

Mr. Seckler testified that in his opinion, the NJDOT would react favorably to minor signal retiming at the intersection of New Jersey State Highway Route 23 and Center Court during the

weekday evening peak hour to accommodate additional U-turn movements on New Jersey State Highway Route 23 generated by the site.

Public Portion

The meeting was opened up to members of the public and the Board was addressed by John Kaplan, Esq. Mr. Kaplan cross-examined Mr. Seckler in regard to the Sicklerville Carwash analysis performed by Mr. Seckler's office. Mr. Seckler admitted that he was not aware of daily volumes of traffic in Sicklerville. Mr. Seckler testified that the average car is in the carwash tunnel for about 2 to 2½ minutes. Mr. Seckler also testified that 50 percent (50%) of the motorists that go through the carwash use vacuums. He also confirmed that if no vacuums are available then that car would have to leave the site. Mr. Seckler also stated that based on ITE guidelines for the AutoZone, 21 parking spaces would be required.

In regard to the Sparks Carwash, Mr. Seckler testified that 21 vacuums is sufficient and the Applicant is proposing the correct number of handicap spaces. Mr. Seckler also confirmed that the Applicant has not received any comments from the NJDOT regarding the entrance and exit to the site. Mr. Seckler also testified that in regard to Exhibit A-3 Sicklerville has a shared access with a fast food restaurant that adjoins it such that both principal uses use the same access point.

Mr. Seckler testified that he utilized ITE-948 Land Use Code for an automated carwash which is most similar to an express carwash. He further testified that ITE has two (2) categories of carwash which are a hand carwash or an automated carwash.

Architectural Testimony for Sparks Carwash

Testifying on behalf of the Applicant was Oliver Young, R.A., a registered architect in the State of New Jersey. Mr. Young was accepted as an expert witness in the field of architecture. Mr. Young testified that the Sparks Carwash is 4,841 square feet in size. The building has a width of 36 feet and a tunnel length of 135 feet. Mr. Young reviewed Exhibit A-5 in regard to the building

height with the parapet. He also represented that in regard to the tower element, it measures 33 feet on the high side and 30 feet on the low side.

Mr. Young also reviewed the construction materials and the color pallet to be utilized in connection with the proposed development of the carwash.

Mr. Young also reviewed the proposed signage. Mr. Young represented that in regard to the Sparks Carwash, the south elevation contains two (2) signs with a total sign area of 82.3 square feet. The west elevation contains a Sparks logo sign with a sign area of 15.8 square feet. The north elevation contains two (2) signs with a total sign area of 117.8 square feet. There are no signs on the east elevation. Therefore, there is a total of five (5) building signs which measure 215.9 square feet of sign area in total.

The Applicant is also proposing a free-standing pylon sign with two (2) sign faces with a total sign area of 75 square feet. The free-standing pylon sign is providing one (1) sign face for the Sparks Carwash and one (1) additional sign face identified as a tenant sign.

Sparks Carwash is also proposing six (6) directional signs at 3 square feet each for a total of 18 square feet. Thus, the non-building signs total 93 square feet.

Mr. Young testified that the proposed signage is necessary to enable motorists on Route 23 to see the Sparks Carwash. He confirmed that all signs are necessary for identification.

Public Portion

The meeting was opened up to members of the public and John Kaplan, Esq. appeared and continued his cross-examination of witnesses. Mr. Young in response to questioning from Mr. Kaplan represented that the Sparks Carwash and AutoZone constitute a good fit for this highway commercial site located on Route 23.

Architectural Testimony for AutoZone

Testifying on behalf of the Applicant was Jose Santos, R.A., a licensed professional architect in the State of New Jersey. Mr. Santos was accepted as an expert witness in the field of architecture. Mr. Santos reviewed the architectural plans for the AutoZone. Mr. Santos confirmed the building height on the northwest elevation as being 21 feet plus a 4 foot parapet. He also confirmed that there would be two (2) HVAC units located on the roof and the units would be shielded from public view by the parapet. He stated there would be very minimal lighting on the building.

Mr. Santos testified in regard to the proposed construction materials. He stated the Applicant is proposing split-faced block that will be painted. Mr. Santos next addressed the proposed signage for the AutoZone store. The Applicant is proposing a front elevation sign on the northwest side of the building at 117 square feet. AutoZone is also proposing on the right side elevation southwest facing Route 23 a sign at 60.5 square feet and in regard to the rear elevation on the southeast AutoZone is proposing a sign at 60.5 square feet.

Mr. Santos confirmed that the proposed setback of the AutoZone store at the north corner of the building would be 11 feet where a minimum setback of 50 feet is proposed.

Public Portion

The meeting was opened up to members of the public and John Kaplan, Esq. cross-examined Mr. Santos. Mr. Santos testified that the AutoZone will continue to maintain the same footprint, but the building would be pushed back to create a greater setback.

The public hearing was continued to the August 15, 2024 meeting of the Planning Board.

The August 15, 2024 Hearing

Paul Mutch, P.E., Applicant's Engineer Continued Testimony

Mr. Mutch highlighted changes to the site plan. Mr. Mutch testified that the Applicant has addressed the minimum front yard setback requirement relative to the AutoZone building where a

setback of 10.5 feet was originally proposed and the building has now been moved back to provide a setback of 19.7 feet which is still less than the minimum required front yard setback of 50 feet. Further, the Applicant has modified the minimum side yard setback for the Sparks Carwash where 14.6 feet was proposed and has now been increased to 17.1 feet where a minimum side yard setback of 25 feet is required. The Applicant has also increased the minimum rear yard setback in regard to the Sparks Carwash where 43.4 feet was proposed which has now been increased to 69.5 feet but where the minimum rear yard setback requirement is 100 feet. The Applicant has also increased the side setback for a minimum accessory structure where 15 feet is required 3.8 feet was proposed for the AutoZone which has now been increased to 14.1 feet.

The Applicant has also addressed the minimum parking setbacks and buffer widths from the street right-of-way where 25 feet is required, and 11.4 feet is proposed for the Sparks Carwash and 11.9 feet is proposed for the AutoZone. The Applicant has also improved the minimum parking setbacks and buffer widths from residential districts where 50 feet is required, and 10 feet is proposed for the Sparks Carwash. Furthermore, in regard to the minimum parking setback and buffer widths where 50 feet is required, the Applicant has slightly improved the setback in regard to Sparks Carwash from 5.5 feet to 11.4 feet and in regard to the AutoZone from 2.9 feet to 11.9 feet but still remains well below the minimum 50-foot buffer. Mr. Mutch also testified that the Applicant has now shifted the location of the trash enclosure.

Mr. Mutch testified in regard to the Sparks Carwash and indicated that the turning movements were very tight, which the Applicant looked to address with the plan revisions. The car wash tunnel has been reduced to a length of 100 feet. As a result, Mr. Mutch testified that having more condensed space improved circulation, resulted in a larger buffer to the Board of Education building all of which were designed to ensure that customers can safely circulate the site.

Mr. Mutch characterized the plan revisions as promoting safety and efficiency.

Mr. Mutch addressed the buffer in regard to the Board of Education property. He stated the Applicant will look to replace the chain link fence with more of an opaque fence.

He further indicated that the Applicant would reduce the size and scale of the pay stations from a three (3) lane pay station to a two (2) lane pay station. Mr. Mutch confirmed that the length of the tunnel was decreased from 135 feet to 100 feet.

Mr. Mutch testified that the Applicant sought to improve the rear yard setback in regard to Sparks Carwash where a minimum of 100 feet is required 43.4 feet was previously provided which is being increased to 69.5 feet.

Mr. Mutch addressed the issue of the vacuums. He stated that the vacuums are an important aspect of the overall operation of the carwash. He also stated that one (1) of the three (3) to four (4) employees would be responsible for making sure the vacuum area is functioning as well as constantly monitoring the trash receptacles in order to keep the area clean.

Mr. Mutch confirmed that by locating a carwash on the site along with the AutoZone store, there would be two (2) principal buildings on one (1) lot.

Mr. Mutch testified that the Applicant agreed to provide a tree removal plan that would be prepared by a licensed landscape architect which Mr. Mutch requested be a condition of approval.

Mr. Mutch testified that it is anticipated that it will take a customer 30 seconds to proceed through the pay station and an additional 90 seconds to get through the tunnel.

Mr. Mutch also confirmed that there are 18 physical vacuum arms and four (4) employee spaces for a total of 22 parking spaces. He further confirmed that an EV space and an ADA space will each count as a vacuum space.

Mr. Mutch addressed the issue of snow storage on site. He stated there is enough green space on site to move snow around on the site. He stated snow will not be pushed through the tunnel.

The Board Engineer issued a Report dated August 12, 2024 and in item # 15 of the Site Plan section of the Report, the Board Engineer states:

“substantial information is missing from the survey of existing conditions which hinders review of the proposed improvements. Of particular importance is the absence of details of underground utilities. This information is critical to be provided now so that we can fully report on the feasibility of the proposed improvements.”

Public Portion

The meeting was opened up the members of the public and the Board was addressed by John Kaplan, Esq. Mr. Mutch admitted that even with the proposed revisions, the Applicant was not able to satisfy any more conditions of the Conditional Use Ordinance in relation to the carwash component of the proposed development.

Mr. Mutch admitted that the Applicant has not provided an Environmental Impact Statement nor has the Applicant provided a Letter of Interpretation from the NJDEP to the Planning Board. Mr. Mutch also admitted that he believed a Phase I environmental assessment was done but that it was not submitted to the Planning Board. He also admitted that the Applicant has not submitted a tree inventory to the Planning Board.

Mr. Mutch testified that the stormwater management system is compliant with NJDEP requirements. However, he also admitted that no failure analysis was provided.

The public hearing was continued to the September 19, 2024 meeting of the Planning Board.

The September 19, 2024 Hearing

Planning Testimony

Testifying on behalf of the Applicant was John McDonough, P.P., a licensed professional planner in the State of New Jersey. Mr. McDonough was accepted as an expert witness in the field of land use planning. Mr. McDonough provided an overview of the site and the surrounding area.

Mr. McDonough introduced into evidence Exhibit A-10 consisting of five (5) sheets of aerial drone views of the subject site with views from the north, south, east, west, as well as a bird's eye view of the site from above. Mr. McDonough represented that there is an aqueduct on the site which creates some hardship and practical difficulties in regard to development of the site. Mr. McDonough also testified that the property is located along Route 23 in the Highway Commercial Zone and that the Applicant is proposing two (2) commercial uses in the Highway Commercial Zone.

Mr. McDonough also testified that the AutoZone retail store is a permitted use in the HC Zone and that the proposed Sparks Carwash is a permitted conditional use in the HC Zone. Mr. McDonough further explained that the Applicant requires variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(3) because the Sparks Carwash does not meet all of the conditions of the Conditional Use Ordinance. Furthermore, the Applicant requires variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1) by providing two (2) separate principal uses on one (1) lot. He stated that the Applicant has oriented the improvements on the site such that the AutoZone is in the front part of the site and the carwash is in the rear part of the site. Mr. McDonough also stated that in combination, one (1) use does not interfere with the other use from a parking and traffic circulation standpoint.

Mr. McDonough referenced the Medici v. BPR. Co., 107 N.J. 1 (1987) case and stated that in a d(1) use variance case, a Board needs to look at the physical characteristics of the land. The Board also has to examine the particular suitability of the site for the proposed use. In this instance, he stated the lot is very large and can serve two (2) very compatible uses. He stated the Applicant is proposing a single driveway with access off of Route 23 to service both the carwash and the AutoZone retail store. Mr. McDonough further represented that the property is located on Route 23 which is a multi-lane highway. He stated that the proposed uses are compatible with other auto

centric uses in the area. For example, he stated there is a car dealership in the area, a Mavis auto repair and tire shop as well as another carwash on Route 23.

Mr. McDonough then addressed the purposes of zoning under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2 which would be advanced by the approval of this application. He stated that 2.a. would be advanced by promoting the general welfare with an auto parts store and a carwash located on the property. He stated that 2.g. would be advanced which is to promote a variety of uses in a safe manner with convenient access to Route 23. Mr. McDonough also stated that 2.i. would be advanced which is promoting a desirable visual environment by eliminating an eye sore and reinvesting in the property to beautify the site with the proposed development and additional landscaping. Next, he stated that 2.m. would be advanced which is to promote the efficient use of land. He stated that the two (2) uses on one (1) site consisting of the carwash and the AutoZone retail store are compatible with one another and would promote the efficient use of land with compatible uses located on the property.

Mr. McDonough also examined the existing uses along the Route 23 corridor and testified that the proposed development on the subject property is consistent and compatible with the existing land uses on Route 23.

Mr. McDonough represented that there was previously located on the site a gas station which has been removed. The prior use of a gas station is now being replaced with a modern express, eco-friendly carwash which he characterized as being state of the art. He also stated that the proposed uses are autocentric and compatible with one another.

Mr. McDonough stated that the departures from the Ordinance are not substantial and the approval of this application would not be substantially detrimental to the intent and purpose of the zone plan and zoning ordinance. He also represented that the approval of this application would not be substantially detrimental to the public good. He stated this approval would reverse

stagnation and avoid potential development of an undesirable strip center with separate uses on the property.

Mr. McDonough reviewed the 2015 Master Plan Reexamination Report and he stated that the report encourages viable development along the Route 23 corridor. He stated the 2015 Master Plan Reexamination Report also called for shared access to sites in order to reduce congestion along the Route 23 corridor. For all of these reasons, he stated there would be no substantial impairment of the zone plan and zoning ordinance.

Mr. McDonough next addressed the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(3) in regard to conditional use approval for the carwash. He stated the Applicant must satisfy the proofs under Coventry Square Inc. v. Westwood Bd of Adjustment, 138 N.J. 285 (1994).

Mr. McDonough stated that the Applicant is proposing an ultramodern carwash which he stated benefits the public by having clean cars which promotes the visibility and long life of the vehicle which promotes public safety.

Mr. McDonough also highlighted differences between the proposed Sparks Carwash and a carwash-type facility located on the opposite side of the highway on Route 23. The personal touch auto detailing facility is located across the highway from this site. Mr. McDonough characterized that facility as a small shop primarily involved in auto detailing with polishing and waxing of vehicles. Furthermore, there is only one (1) bay which is not automated. That facility is also located behind a rental car facility.

Mr. McDonough also testified that there is a carwash competitor located about 2.8 miles away from this site and located on the opposite side of a divided highway and in another municipality.

Mr. McDonough addressed the issue of lot area and stated that even though the site does not meet the 2-acre minimum lot area requirement, the lot size is more than sufficient to accommodate the two (2) proposed uses on the site.

Mr. McDonough addressed the setback variances that were required in connection with this development application.

Mr. McDonough also testified that there will be a minimum of only four (4) employees on site. There is sufficient queue capacity for vehicles on the site. The only external operation would be in regard to vacuuming of vehicles by the vehicle owner. Mr. McDonough confirmed that there would be no outside washing or drying of vehicles on the site. He also stated this is not a self-service carwash except that the operator of the vehicle would be able to vacuum the car prior to leaving the site.

Mr. McDonough addressed the issue of “c” variances. He stated the lower level “c” variance relief are satisfied under the flexible “c” balancing test whereby the benefits of the application as a whole substantially outweigh any detriments. He stated this is in conformance with Pullen v. Tp of South Plainfield, 291 N.J. Super. 1, 8 (App. Div. 1996).

Mr. McDonough also stated that the “c” variance relief has minimal impacts on the public good. He stated the approval of this application would continue to provide light, air and open space as there is sufficient separation on the site between the AutoZone retail store and the Sparks Carwash. Mr. McDonough also highlighted how the extent of variance relief was improved from when the application was first submitted. The minimum front yard setback was improved from 10.5 feet to 19.7 feet in regard to the AutoZone store. The side yard setback was improved from 7.7 feet to 17.1 feet for the Sparks Carwash, the minimum rear yard setback was improved from 43.4 feet to 69.5 feet regarding the Sparks Carwash, the minimum accessory side yard setback was improved from 3.8 feet to 14.1 feet for the AutoZone.

Mr. McDonough addressed the parking supply and stated that the AutoZone retail store is only short one (1) parking space where 31 parking spaces are required, and 30 spaces are provided. Furthermore, he stated that 68 parking spaces in total are required for both the carwash and AutoZone store and 52 parking spaces are provided. He stated even though there is a parking space deficiency, 52 parking spaces is sufficient to meet the actual demand based upon the testimony of the witnesses in this application.

Mr. McDonough also testified that there is sufficient space on site to address queueing of vehicles on the site. Mr. McDonough also testified that the request for variance relief is largely driven by the proposed development of two (2) uses on a site which is close to 2 acres in area. He stated it would be reasonable to subdivide the lot and from a massing standpoint, you would have the same uses on two (2) separate lots. He stated this would represent a very similar development pattern to what is actually proposed. Mr. McDonough finally stated that the New Jersey Department of Transportation is currently reviewing a request for a major access permit.

Public Portion

The meeting was opened up the members of the public and the Board was addressed by John Kaplan, Esq., attorney for Echelon Carwash. Mr. McDonough admitted that a carwash is a conditionally permitted use and one of the conditions of the conditional use is that a carwash be located on a site 2 acres in area. While here the Applicant is proposing two (2) separate uses on a lot which is just slightly less than 2 acres in area.

Mr. McDonough in response to questioning from Mr. Kaplan stated that he utilized the qualitative analysis that approval of this project would represent a substantial improvement over what is there now and mitigate the impacts for the relief that the Applicant is seeking.

There were no other members of the public present who expressed an interest in the application.

The public hearing was continued to the October 17, 2024 meeting of the Planning Board.

The October 17, 2024 Hearing

Objector, Echelon Carwash Witnesses

Testifying on behalf of the objector, Echelon Carwash, was Scott Freund. Mr. Freund testified that he has 31 years experience as an owner and operator in the carwash business. He stated the last 25 years he has been a business carwash broker. He also testified that he is a licensed realtor in New Jersey and he is a marketing professional. Mr. Freund also testified that from 2000-2009 he was a consultant in the carwash industry. He also testified that he is a member of professional associations involving carwashes and more specifically he is a member of the carwash operators in New Jersey, Union Township, Marlboro and Greenwich.

Mr. Freund testified in regard to the difference between an express carwash, a full-service model carwash and an exterior model carwash. Mr. Freund testified that the express carwash model is approximately 15 years old. He stated that in approximately the last seven (7) to eight (8) years 95 percent (95%) of the patrons of an express carwash utilize both the carwash and the vacuuming component.

Mr. Freund next identified a full-service model car wash as a car wash whereby the driver exits the car and the carwash washes the exterior of the car, cleans the interior of the car, cleans the mats and cleans the tires.

Mr. Freund next reviewed what he characterized as being an exterior model carwash and he stated the driver will stay in the car, the car will be pulled through the carwash and the car will exit the site.

Mr. Freund also testified that an express carwash has approximately two (2) times the volume of the two (2) other types of carwashes. He stated that a traditional carwash would have sales in the range of 80,000 to 100,000 sales per year. In regard to an express carwash, he stated a

successful express carwash would have sales in the range from 170,000 to 200,000 cars per year. Thus, he stated that the Institute of Transportation Engineers numbers for volume at carwashes do not adequately reflect what the true volume is. He stated there is significantly more volume in an express carwash with a volume of approximately 100 to 120 cars per hour which results in one (1) carwash every 30 to 35 seconds.

Mr. Freund testified that all express models have exterior vacuuming by the driver and here the Applicant is offering a towel to dry the car. Mr. Freund stated this is necessary because you cannot get all the water off your car in an express carwash. He also stated that in addition to the exterior carwash, a driver could avail himself of vacuuming the interior of the car by utilizing compressed air to dry the car, using the floormat machines and also cleaning the windows.

Mr. Freund testified that 50 percent (50%) of the customers will use the amenities of a carwash. He stated that every vehicle has to come out of the tunnel and everyone has to pause and make a decision to either leave the site or wait for a vacuum. He stated this has a tendency to cause congestion at that point where cars are exiting the tunnel and then the driver has to look to see if there is vacuum space available.

Mr. Freund also testified that if there is a backup, the operator can stop the carwash but then the carwash has to be turned back on which could also result in a backup. He stated carwash operators prefer to have between 25-30 vacuum stalls. He would prefer to have vacuums inside the building and not on the exterior of the building. Mr. Freund confirmed that if the tunnel stops, there will be no cars entering the tunnel which could create gridlock within the parking lot as well as the vacuum area. This course of events could inhibit one's ability to exit the site. In order to restart the tunnel after it stops, Mr. Freund stated you need an operator to restart the tunnel. Therefore, the workers on site have to have some skill in that regard.

Mr. Freund testified that he has familiarity with the Sicklerville car site. He stated that Sicklerville represents a fair comparison to the proposed site on Route 23. He characterized the Sicklerville site as being a busy site. He also stated that another carwash operator opened two (2) carwashes in close proximity to the Sicklerville site.

Mr. Freund testified that memberships at an express or Sparks Carwash could result in significant volumes. He estimated memberships could range from 3,000 to 5,000 members.

Mr. Freund also testified that three (3) pay stations are ideal. He stated that he was surprised that in this application the Applicant reduced the number of pay stations to two (2) pay stations. Mr. Freund also testified that generally an owner of an express carwash wants to increase the number of vacuums and not decrease the number of vacuums as what the Applicant has proposed in this application. He stated that demand is there for this type of carwash model with an unlimited number of carwashes for a fixed membership price.

Mr. Freund testified in regard to his concerns about the flow of traffic on the site which he stated would be counter productive to the successful operation of the carwash. He outlined his concerns as being the number of vacuums on site, the number of cars in the queue on site, the size of the tunnel which was reduced to a length of 100 feet and he recommends that generally the tunnel be longer. Thus, he stated that based on these issues he is concerned about the potential for traffic to back up onto Route 23.

Mr. Freund calculated that the carwash would do about two (2) carwashes a minute and about 7 minutes are needed just for vacuuming. Thus, he estimated it would take 12 to 15 minutes for two (2) cars to go through the carwash and be vacuumed on site. He also felt that having vacuums inside the building represents better control of the environment.

Mr. Freund also stated that the optimum area of a lot for which a carwash would be located would be between 1½ acres to 2 acres. He said this site is just short of 2 acres, but there is another proposed tenant the AutoZone store located on the site.

Traffic Testimony Provided on Behalf of Objector, Echelon Carwash

The next witness to testify in the hearing was Lee D. Klein, P.E., a licensed professional engineer in the State of New Jersey, with expertise in traffic-related matters. Mr. Klein was accepted as an expert witness in the field of traffic engineering. Mr. Klein reviewed with the Board Exhibit O-1 Land Use: 948 Automated Carwash which he stated was from the Institute of Transportation Engineers 11th Edition for automated carwashes. Mr. Klein testified that the data is flawed or stale because its from the 1990s. He stated that typically the ITE data must be between 7 to 15 years old and anything beyond that in his opinion is flawed or stale.

Mr. Klein testified that he went to Sparks Carwash in Ledgewood on Saturday, September 14, 2024 between 12:00 noon and 1:30 p.m. He observed 117 cars coming into the site and 95 cars exiting the site. He characterized the 1½ hour time period on Saturday, September 14, 2024 as not being a particularly busy time.

He stated that approximately 57 percent (57%) of the patrons at the carwash in Ledgewood were members. He also stated that 50 percent (50%) utilized the vacuum station and individuals using the vacuum station averaged approximately 20 minutes to clean their car. Thus, he calculated that you would have a turnover of three (3) cars in one (1) hour. He stated one of the other issues with the site is you could get congestion with a chokepoint upon exiting the tunnel. Mr. Klein characterized Ledgewood as a relatively new site. He stated it was formerly a carwash and now has been converted to an express carwash.

He also stated the Easement for the Aqueduct causes the problem with the way the site has to be designed. He stated he anticipates the queue will back up to the point where vehicles are exiting the tunnel and the vacuum area.

Planning Testimony

Testifying on behalf of the Applicant was Donna Holmqvist, P.P., a licensed professional planner in the State of New Jersey. Ms. Holmqvist was accepted as an expert witness in the field of land use planning. Ms. Holmqvist provided an overview of the area surrounding the property. Ms. Holmqvist introduced into evidence Exhibit O-2 which was identified as Figure 1 Land Use. Ms. Holmqvist testified that there are approximately 188 dwelling units on the west side of the property. There are also 238 dwelling units located in the Cambridge Heights development. Ms. Holmqvist also testified that the site is in close proximity to the Aaron Decker School which is a pre-k through grade 4 school with approximately 370-380 students.

Ms. Holmqvist also testified that the lot line of the subject property to the nearest residential dwelling is only about 86 feet. Ms. Holmqvist also stated that there is a paved path along Sunset which traverses around the edge of the subject property to the parking lot of the Aaron Decker School.

Ms. Holmqvist identified very negative impacts on the neighboring properties as a result of removal of vegetation. She also highlighted that the approval of this project would result in extensive queueing of vehicles and idling of vehicles on site. Ms. Holmqvist also stated that the Applicant requires d(1) and d(3) variance relief. She also highlighted the fact that the Applicant is requesting variance relief for an excessive number of signs on the site.

Ms. Holmqvist also introduced into evidence Exhibit O-3 which was identified as Figure 2 Zoning. She stated the Aaron Decker School is located in a residential zone and there are residential neighborhoods in the area.

Ms. Holmqvist also highlighted Section 143-119K. of the Butler Borough Code which states that individual buildings on individual lots represent one of the major purposes of the Highway Commercial Zone.

Ms. Holmqvist stated that the development of this site should be sensitive to the residential neighbors located nearby. She stated that the lot is undersized for a carwash. Other concerns that Ms. Holmqvist had were identified as conflicting maneuvers involving vehicles accessing the site for either the carwash or the AutoZone retail store. She had other concerns in regard to overflow parking and congestion which are directly related to providing two (2) uses on one (1) lot. Further, she stated that Section 143-136 of the Butler Code only permits one (1) principal building on a lot and here the Applicant is proposing two (2) separate principal buildings with two (2) separate principal uses thus requiring d(1) variance relief. Ms. Holmqvist also stated that the Planning Board should also consider vacuums as an additional principal use.

Ms. Holmqvist identified what she believes to be a chokepoint with cars exiting the carwash tunnel and then looking for a vacuum space and trying to exit the site.

Ms. Holmqvist also represented to the Planning Board that under Butler Borough Code Section 143-148A, the Highway Commercial District standards are not met regarding setback requirements of less than 10 feet from the building while the vacuums are located in the front yard. Ms. Holmqvist also identified what she considered to be substantial negative impacts with regard to this application. Ms. Holmqvist provided an overview of the conditional use standards for a carwash which are not met by this Applicant. She stated the Applicant does not meet the minimum lot area requirement of 2 acres for a carwash where the site is approximately 1.99 acres but the Applicant is proposing two (2) separate and distinct principal uses on the property. She further stated that there are a number of setback requirements including side and rear yard setbacks which are not met. Ms. Holmqvist also testified that the Applicant requires variance relief for the number

of on-site parking spaces. Ms. Holmqvist also testified about her concerns of conflicts and queueing of vehicles on the site. She also expressed her concern that a significant amount of the activity on the site involving the carwash will take place outside of the carwash tunnel. Ms. Holmqvist also testified that the Conditional Use Ordinance for a carwash does not permit a self-service carwash. Ms. Holmqvist stated that all carwash activity should be kept within the building while here the vacuum stations and mat cleaning are all located outside of the building and are self-serviced by the automobile operator. Thus, she represented that many bulk standards in the HC Zone are not met in this application.

Ms. Holmqvist also introduced into evidence Exhibit O-4 which was characterized as being adverse impacts from the proposed development. Ms. Holmqvist reviewed Exhibit O-4 and highlighted how the Applicant's proposed development of the site does not conform to the Conditional Use Ordinance for a carwash, nor does it comply with the bulk standards in the Highway Commercial Zone. Exhibit O-4 provides that the HC Zone purpose is to permit individual buildings on individual lots and this project proposed two (2) principal uses on one (1) lot. There is excessive signage proposed. There are conflicting movements with accessing the site and exiting the site from the two (2) uses of a carwash and an AutoZone retail store. There is also parking within the front yard setback in violation of the Ordinance. The HC Zone prohibits two (2) principal buildings on one (1) lot. There are deficient setbacks with respect to the proposed location of the AutoZone building. The refuse collection area is at a dead-end aisle which is located behind the proposed AutoZone building. Refuse faces the road in regard to the Sparks Carwash. Ms. Holmqvist was also concerned about queue noise and fumes negatively impacting the adjoining playground. She also stated that the tree removal was an issue as well as the fact that there would be an insufficient buffer. She was also concerned about light spillage onto adjoining properties. She stated that all of this is in close proximity to a path which leads to a residential area.

Ms. Holmqvist stated the Applicant requires eight (8) variances in relation to buffer requirements. She also stated that the vacuums which are located in the front yard do not meet the setback requirements. Ms. Holmqvist also stated that under Butler Code Section 143-47F two (2) accessory structures are permitted and here there are over 20 vacuum spaces. Ms. Holmqvist also testified that the AutoZone requires several variances as well.

Ms. Holmqvist testified that in accordance with the Borough of Butler Master Plan, applications for development are supposed to enhance and maintain stability and compatibility with the uses within the zone district within which they are located. She stated that this site is very inappropriate for this level of intensity of development especially because it is in close proximity to the Aaron Decker School. She also stated that this application does not respect the environment.

Ms. Holmqvist reviewed various purposes of the Municipal Land Use Law that the approval of this project would be inconsistent with those purposes.

In regard to N.J.S.A. 40:55D-2.a., Ms. Holmqvist stated that the approval of this application would not promote the general welfare in particular because of its close proximity to the Aaron Decker School and the walking path that schoolchildren walk along to get to school. Next, she stated 2.h. would not be advanced because the approval of this application would result in facilitating traffic congestion. Ms. Holmqvist also testified that 2.i. would not be advanced due to the proliferation of signs, the lack of an adequate buffer, inadequate landscaping and the visual impact from vacuums being located in the front yard. In addition, the vacuums are located outdoors and not indoors.

Ms. Holmqvist also stated that the denial of this application will not create a hardship for this property. She stated this site can be used and developed for a permitted use. Ms. Holmqvist highlighted the fact that the proximity of the Aaron Decker School to the site as well as the close proximity of the residential neighborhoods together result in the proposed development of this site

for a Sparks Carwash with an AutoZone retail store as being not in character with the residential neighborhood.

Ms. Holmqvist addressed the negative criteria and once again summarized the reasons why the application should not be approved. She referenced the substantial negative impacts on the surrounding area. She reiterated that there is only a distance of 86 feet from lot line to lot line in regard to the proposed development and the nearest residential dwelling. She also stated that developing the site with 21 vacuums outdoors was not in keeping with the Ordinance of not having machinery outdoors. Ms. Holmqvist also stated that the proposed uses are not inherently beneficial in regard to serving the public good. She also stated that the negative impacts are substantial which include, but are not limited to, the queueing of vehicles on site, noise, particulates for idling vehicles. Further, she stated it is not advisable to have the proposed development next to a recreational area for school children.

The Applicant's Planner Resumes His Testimony

John McDonough, P.E., testified in response to the testimony of Ms. Holmqvist. Mr. McDonough testified that the community will benefit from the application as proposed. He also stated that in his view there was no objection offered to the proposed development in regard to the AutoZone portion of the application. He stated that this application offers residents a choice to either utilize the services provided on this site or not. He stated the market will decide. Mr. McDonough also testified that the objector's operational expert did not counter what the Applicant presented.

Mr. McDonough offered some comparisons in regard to what is being proposed on this site and the objector, Echelon Carwash's site which is located in another municipality. He stated there are five (5) different uses on the objector's site and the objector's site only has a queue capacity of seven (7) cars.

Mr. McDonough testified in regard to this personal experience being a member of the carwash in Ledgewood. Mr. McDonough stated that he has not experienced congestion at the Ledgewood facility and that a typical carwash is approximately 1½ minutes in duration.

Mr. McDonough testified that in his opinion there would be no impacts on the school and there is no empirical data of any environmental impact on the community if this project were to be approved. Next, in regard to the close proximity of the proposed site to the Aaron Decker School, Mr. McDonough represented that the school was a noticed party and did not appear in opposition to this project.

Mr. McDonough stated that the Easement runs through the site and creates a hardship. He also characterized the site as being irregularly shaped. Mr. McDonough also stated that a Board should not deny an application due to the number of variances. Mr. McDonough also stated that the Master Plan encourages autocentric uses and in his opinion the approval of this application would promote the general welfare.

Mr. McDonough pointed out that the d(1) use variance is only because the Applicant is proposing two (2) uses on the property of which one (1) use, the AutoZone is a permitted use and the other use, the carwash is a conditionally permitted use. He stated that all variances that are being requested are reasonable in nature and that the Board should grant the variances.

Public Portion

The meeting was opened up the members of the public and the Board was addressed by John Kaplan, Esq., attorney for Echelon Carwash. Mr. Kaplan questioned Mr. McDonough on the conditions of the Conditional Use Ordinance relative to a carwash which were not being met by the Applicant.

There were no other members of the public present who expressed an interest in the application.

The public hearing was continued to the November 14, 2024 meeting of the Planning Board and the hearing was closed to public comment.

The November 14, 2024 Hearing

Mr. Kempf and Mr. Kaplan were given an opportunity to provide a summation of their cases to the Planning Board. The hearing was then closed.

NOW, THEREFORE, the Planning Board makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Planning Board is a request for d(1) use variance approval, d(3) conditional use variance approval, preliminary site plan approval and “c” variance relief for multiple "c" variances in order to permit a Sparks Carwash and an AutoZone retail facility to be operated on property known and designated as Block 201, Lot 2.04 on the Tax Assessment Map of the Borough of Butler which premises are located at 1558 Route 23 South, Butler, New Jersey in the HC Zone.

d(1) Use Variance Relief

The Applicant requires variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1) in order to permit the Applicant to construct two (2) principal buildings on one (1) lot. The Applicant seeks to operate a Sparks Carwash as well as an AutoZone retail store on the subject property.

Under the Municipal Land Use Law, a Planning Board acting as a Board of Adjustment, when considering a “d” variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board’s responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. The courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criterion upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any of the purposes of zoning as set forth in N.J.S.A. 40:55D-2. However, in the last analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest, as distinguished from the purely private interests of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, the applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

The Board has reviewed the Borough of Butler Code Section 143-136 Principal Building. This Section of the Butler Code provides:

Only one principal building may be erected on a lot except for related buildings forming one principal use in the same ownership and limited to the following:

- A. Public or institutional building complexes.
- B. Research, industrial, manufacturing, office or retail shopping complexes.

- C. Multifamily dwelling complexes.
- D. Unless otherwise regulated in this Part, no principal building shall be located closer to another building than the height of the taller building.

Section 143-119K of the Butler Borough Code states as follows:

The Highway Commercial Districts are designed to permit retail uses and commercial services which are appropriate to a high-traffic artery, such as Route 23, and which complement other commercial areas while being sensitive to the needs of the Borough and the impacts on surrounding areas, especially on residential neighborhoods. The design standards for these districts are intended to permit individual buildings on individual lots, in an effort to promote safe and efficient development in the difficult-to-control strip-type zone. The site planning and building design occurring in these districts must be completed in a manner compatible with an overall development plan which coordinates traffic flow, parking needs, building orientation, landscaping, drainage and similar factors related to development, especially when implementation occurs cumulatively over a period of years.

The Board finds that although the proposed AutoZone retail store is a permitted use in the HC Zone and the proposed carwash is a conditionally permitted use in the HC Zone, the combination of both uses on the subject property results in too intense development of the site and one that stands in stark contradiction to Section 143-119K which has been designed to permit individual buildings on individual lots as a means to promote safe and efficient development in what has been characterized to be “the difficult-to-control strip-type zone”. The two (2) proposed businesses are not configured in a single building. Thus, the two (2) businesses cannot be considered a shopping center, wherein multiple various uses are permitted. Further, neither of the proposed uses is customarily incidental or subordinate to the other use and thus there are clearly two (2) distinct principal uses in separate buildings on one (1) lot.

Furthermore, Section 143-119K provides that the HC Zone is designed to permit retail uses which complement other commercial areas “while being sensitive to the needs of the Borough and the impacts on surrounding areas especially on residential neighborhoods.” The Board accepts the

representations of the objector's planner, Donna Holmqvist, P.P., who testified that there are approximately 188 dwelling units on the west side of the property and there are approximately 238 dwelling units located in the Cambridge Heights development. Moreover, the site is in close proximity to the Aaron Decker School which is a pre-k through grade 4 school with approximately 370-380 students. Further, Ms. Holmqvist testified that the lot line of the subject property to the nearest residential dwelling is a distance of approximately 86 feet apart. These factors and other factors inclusive of the Applicant providing inadequate landscaping as well as an insufficient buffer between the subject property and the nearby surrounding properties is substantially detrimental to the public good.

The Board also accepts the representations of Ms. Holmqvist that there are numerous bulk variances required in regard to this development application resulting from attempting to construct two (2) principal buildings with two (2) separate and distinct principal uses on one (1) lot. The Board also recognizes that the site is encumbered by Easements relative to the aqueduct under the property as well as Utility Easements for the Borough of Butler. These Easements constitute factors which in this case clearly militate against having two (2) separate and distinct principal buildings on this property. In addition, the Applicant proposes a front set back of only 19.7 feet for the AutoZone store where 50 feet is required. The Board finds this to be a substantial negative detriment. The location of the AutoZone building on the lot is in substantial violation of the front yard setback requirement and is not in keeping with the character of the existing pattern of development on Route 23 as depicted on the Applicant's Exhibit A-10.

The Board also finds that the procedure for snow removal has not been adequately described or delineated on the plans. Further, no proof has been provided to address if snow accumulation on the site will impact sight lines or parking space availability.

The Board further accepts the testimony of Ms. Holmqvist relative to various purposes of the Municipal Land Use Law that would not be advanced by the approval of this application. The Board further finds that the Applicant has not sustained its burden of proof under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1). The approval of this application would not promote the general welfare in particular because of its close proximity to the Aaron Decker School and the walking path that schoolchildren walk along to get to school. The Board fails to see how permitting two (2) separate and distinct principal uses in two (2) separate buildings along with the other proposed site improvements together with the number of setback encroachments satisfies N.J.S.A. 40:55D-2c which is to provide adequate light, air and open space. Moreover, N.J.S.A. 40:55D-2.h. would not be advanced because the approval of this application would result in facilitating traffic congestion. N.J.S.A. 40:55D-2.i. would not be advanced due to the proliferation of signs, the lack of an adequate buffer, inadequate landscaping, and the visual impact from vacuums being located in the front yard. The Board is also concerned about traffic backing up onto Route 23. Further, the vacuums are located outside of the building which will generate noise which is not better for the environment. The Board finds that the car wash activities should be kept within the building. The Board also finds that protecting and preserving mature trees is a goal of the Master Plan, but in this case the Applicant is removing trees.

The Board also finds that the denial of this application would not create a hardship for the property. The site can be used and developed for a permitted use in the HC Zone. The Board finds that the proposed development of this site for a Sparks Carwash with an AutoZone retail store is too intense a development of the site which negatively impacts the surrounding areas especially the nearby residential neighborhoods. The Board also finds that there is insufficient on-site parking where 68 parking spaces are required and 53 parking spaces are provided.

The Board recognizes that based on all of the proofs presented in this case, and in particular the testimony of the objector's witnesses, Scott Freund, who has over 31 years experience as an owner and operator in the carwash business, as well as from Mr. Lee Klein, P.E., a licensed professional traffic engineer, there are substantial negative detriments to approving this application. Mr. Klein identified issues with queues of traffic backing up to the point where vehicles are exiting the tunnel and the vacuum area resulting in traffic conflicts and chokepoints on the site in particular as a result of the tunnel being reduced in length to 100 feet, as well as the fact that both uses utilize the same accessway for entrance to the site.

Furthermore, the Board accepts the representations of Mr. Freund that the optimum area of a lot for a carwash is between 1½ acres to 2 acres and in this instance, the site is slightly less than 2 acres and is impacted by the Acqueduct and Utility Easements and the Applicant also proposing two (2) principal uses in two (2) separate principal buildings on the lot. The Board finds that the proposed development with an express car wash and an AutoZone retail store is too intense a development on a site which is encumbered by an Acqueduct and Butler Easements for water and sanitary sewer. As a result, the Board finds that the Applicant has not satisfied the statutory criteria for the granting of d(1) variance relief. The Board finds that the site is not particularly suited for the proposed dual use of a Sparks Carwash and an AutoZone retail store. The Board further finds that d(1) variance relief cannot be granted without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance.

d(3) Conditional Use Variance Pursuant to the Municipal Land Use Law

A conditional use is defined under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-3. Conditional use means a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the Zoning Ordinance and upon the issuance of an

authorization therefore by the Planning Board. Jurisdiction is vested in the Planning Board pursuant to N.J.S.A. 40:55D-67 when all of the conditions of the conditional use ordinance have been complied with by the Applicant.

If the Applicant is unable to comply with all of the conditions of the conditional use ordinance, jurisdiction vests in the Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70d(3). The Butler Planning Board as a combined board exercises the powers and duties of a board of Adjustment.

A d(3) conditional use variance has a lesser burden of proof than a d(1) prohibited use variance in the zone. It is because the municipality has determined that the use is allowable in the zoning district but has imposed conditions that must be satisfied. Therefore, the proofs necessary to support a conditional use variance need only justify the municipality's continued permission for a use notwithstanding a deviation from one or more conditions of the Ordinance. The standard of proof in a conditional use case was established by the New Jersey Supreme Court in 1994 in the case of Coventry Square Inc. v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994). The standard of proof of special reasons to support a variance from one or more conditions imposed on a conditional use should be relevant to the nature of the deviation from the ordinance. Proofs to support a conditional use variance need only justify the municipality's continued permission for a use notwithstanding a deviation from one or more conditions of the ordinance.

That standard of proof will focus both the applicant's and the Board's attention on the specific deviation from conditions imposed by the ordinance and will permit the Board to find special reasons to support the variance only if it is persuaded that the non-compliance with conditions does not affect the suitability of the site for the conditional use. Thus, a d(3) conditional use variance applicant must show that the site will accommodate the problems associated with the

use even though the proposal does not comply with the conditions the ordinance established to address those problems. Coventry Square, *supra*. 138 N.J. at 298, 299.

With respect to the negative criteria, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good, N.J.S.A 40:55D-70(d). The focus is on the effect on surrounding properties of the grant of the variance for the specific deviations from the conditions imposed by ordinance. The Board of Adjustment must evaluate the impact of the proposed “conditional” use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute substantial detriment to the public good.

In addition, the applicant must also prove that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance, N.J.S.A. 40:55D-70(d). The Board of Adjustment must be satisfied that the grant of the conditional use variance for the specific project at the designated site is reconcilable with the municipality’s legislative determination that the condition should be imposed on all conditional uses in that zoning district. Coventry Square, *supra*. 138 N.J. at 299.

This application is governed by the Borough of Butler Code Section 143-161 Car Washes as follows:

- A. Minimum lot size shall be two acres and shall meet the minimum lot dimensions to those required in the HC Highway Commercial Districts.
- B. Minimum building setback from the front street line, side lines and rear line shall conform to those required in the HC Highway Commercial Districts.
- C. Parking and paved area setbacks shall be those established for the HC Highway Commercial Districts.
- D. The following parking shall be provided and satisfactorily maintained by the owner of the property:

- (1) Entrance lanes: 12 spaces per lane for each lane at the entrance to the car wash structures.
 - (2) Exit lanes: four spaces per lane for each lane at the exit of the car wash structures.
 - (3) Employees: one space for each employee.
 - (4) Special services: one space for each waxing, upholstery, cleaning or similar specialized service area.
- E. All operations, including but not limited to washing and drying, shall be conducted within the structure; provided, however, that the lining up and waiting of vehicles may take place outside said structure, but only within the confines of the proposed site.
- F. All car washes shall tie directly into a municipal sanitary or storm sewer and must first receive approval of the health officer and any agency of the state or county having jurisdiction over the treatment of the effluents created by the car washes.
- G. This use shall not include a self-service or coin-operated car wash area in any form.
- H. All provisions, standards and requirements for the HC Highway Commercial District, except as herein modified, shall apply to car washes.

The Board has carefully reviewed this application in connection with Coventry Square, Inc. v. Westwood Zoning Bd. of Adjustment, 138 N.J. Super. 285 (1994). In that opinion, the Court held:

“generally a conditional use is ‘suitable to a zoning district but not to every location within that district.’...citations omitted. Conditional uses are ‘uses ordinarily requiring special standards relating to traffic patterns, street access, parking and the like in order to assure their functional and physical compatibility with the district as a whole and their appropriate integration into the district.’” Citations omitted. Id. at 294.

In applying the analysis set forth in Coventry Square, Inc., the Board finds that a conditional use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems.

The Board notes that the Applicant fails to comply with numerous conditions in the Conditional Use Ordinance under Section 143-161 of the Butler Code relative to carwashes. More specifically, the Board finds that the Applicant has not satisfied Section 143-161A which requires a minimum lot size of 2 acres and here the site is 1.99 acres but there are two (2) proposed principal uses in separate buildings on the lot. The Board also accepts the representations of Mr. Freund that the optimum area of a lot for which a carwash would be located would be between 1½ acres to 2 acres and the Applicant does not meet the optimal minimum lot area because two (2) uses are proposed.

The Applicant does not meet the conditions set forth in Section 143-161B which requires a minimum building setback from the front street line, side lines and rear line which shall conform to those required in the HC Highway Commercial Districts and the Applicant does not meet the minimum side yard setback of 25 feet nor the minimum rear yard setback of 100 feet. The Applicant does not meet the requirements of Section 143-161C parking and paved area setbacks which shall be those established for the Highway Commercial District and the Applicant requires variance relief for a setback of 11.4 feet for the Sparks Carwash. The Applicant does not comply with Section 143-161G which provides the use shall not include a self-service or coin operated carwash area in any form. In this instance, the Applicant proposes self-use vacuums outside of the carwash tunnel as well as an area to clean floormats. The Applicant also fails to comply with Section 143-161H which requires all provisions, standards and requirements for the Highway Commercial District, except as herein modified, shall apply to carwashes and the Applicant requires numerous variances as previously set forth herein.

More specifically, the Butler Land Use Code does not allow business operations to be performed outside of a building. In this case, many unenclosed vacuuming stations are located outside of the carwash building and are located in both the front and side yard areas. The Applicant

by providing 21 vacuum stations along with mat cleaning stations outside of the building are not permitted under the Conditional Use Ordinance for a carwash and further are contrary to providing attractive and inviting impressions of the Borough as recommended in the Master Plan. These factors have a detrimental visual impact on the site. Rather, the Board finds that the governing body has imposed conditions for a car wash use in order to protect the public and to promote the public safety and general welfare by imposing these conditions.

The Board finds that it has evaluated the impact of the development of the site with a carwash use as well as an AutoZone retail store and the cumulative effect on the surrounding properties and has determined that approval of this application will constitute a substantial detriment to the public good. Further, the Board finds that the variances cannot be granted without substantial impairment of the zone plan and zoning ordinance. The Board concludes that the grant of a d(3) conditional use variance to permit an express carwash at this location is not appropriate. The Board further finds that the grant of a d(3) variance is not reconcilable with Butler's legislative determination that a carwash comply with numerous conditions set forth in the Conditional Use Ordinance under Section 143-161 of the Butler Code. The Board finds that granting d(3) variance relief is not appropriate and these conditions should continue to be imposed on the carwash use. The Board further finds that the Applicant has not met its proofs in order to demonstrate that variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(3) is warranted can be granted in satisfaction of the requirements of the Municipal Land Use Law and cases interpreting same relative to granting d(3) conditional use variance relief.

Ancillary "c" Variance Relief

The Municipal Land Use Law at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

In connection with the proposed development, the Applicant requires the following variance relief:

1. Minimum lot depth where 200 feet is required, and 185.1 feet is existing and proposed.
2. Minimum front yard setback where 50 feet is required, and 19.7 feet is proposed for the AutoZone store.
3. Minimum side yard setback where 25 feet is required, and 17.1 feet is proposed for the Sparks Carwash and 7.7 feet is proposed for the AutoZone store.
4. Minimum rear yard setback of 100 feet where 67.1 feet is proposed for the AutoZone store and 69.5 feet is proposed for the Sparks Carwash.
5. Minimum accessory side yard setback of 15 feet where 14.1 feet is proposed for the AutoZone store.
6. Minimum parking setbacks and buffer widths:
 - a. From the front of the building where 10 feet is required, and 7 feet is proposed for the Sparks Carwash and 8 feet is proposed for the AutoZone.
 - b. From the street right-of-way 25 feet required and 11.4 feet to the Sparks Carwash and 11.9 feet to the AutoZone store is proposed.
 - c. From property lines 10 feet (0 feet if combined with adjacent property parking) and 10 feet is proposed for Sparks Carwash and 11.9 feet for the AutoZone store.
 - d. From residential districts 50 feet and 10.0 feet is proposed for the Sparks Carwash and 11.5 feet is proposed for the AutoZone store.
 - e. Buffer width 50 feet and 11.4 feet is proposed for the Sparks Carwash and 11.9 feet is proposed for the AutoZone store,
7. Required retail store parking: Retail store (non-food sales) 35 parking spaces are required, and 30 spaces are proposed.
8. Total required parking spaces 68 parking spaces are required 52 parking spaces are proposed.
9. Properties containing a conditional use shall be separated by a minimum of 1,000 feet measured in a straight line from the nearest property line of the same conditional use and the Applicant is separated by a carwash-type facility by 70 feet.
10. One (1) attached sign that shall not exceed 5 percent (5%) of the building front or 50 square feet whichever is less, and the Applicant is proposing five (5) attached signs for the Sparks Carwash and three (3) attached signs for the AutoZone. The

Applicant proposes 215.9 square feet of building façade signs for the Sparks Carwash and 238 square feet for the AutoZone signage.

The Board finds that variance relief cannot be granted without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance. The Board further finds that the benefits of the deviation would not substantially outweigh the detriments, and thus, “c” variance relief is denied.

Preliminary Site Plan Approval

The Board finds that with the denial of variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1) (3) and N.J.S.A. 40:55D-70c, the application as to preliminary site plan approval has been rendered moot.

Conclusion

Upon consideration of the plans, testimony and application, the Board determines that the request for d(1) variance relief, d(3) conditional use variance relief and “c” variance relief has not met the minimum requirements of the Municipal Land Use Law, case law and Borough Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested. The Board further finds that the granting of this application will adversely impact or impair the use and enjoyment of adjacent properties and would substantially impair the zone plan and zoning ordinance. Thus, the Board concludes that it is appropriate to deny the request for d(1), d(3) conditional use variance relief and “c” variance relief relative to permitting a Sparks Carwash and an AutoZone retail store to be operated at premises located at 1558 Route 23 North, Butler, New Jersey.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board that the application of QQR, LLC in regard to property known and designated as Block 201, Lot 2.04 on the Tax Assessment Map of the Borough of Butler which premises are located at 1558 Route 23 North, Butler, New Jersey in the HC Zone District, requesting land use relief is determined as follows:

- (1) d(1) variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(1) is hereby denied;
- (2) d(3) conditional use variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70d(3) is hereby denied;
- (3) Ancillary “c” variance relief under Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2) is hereby denied;
- (4) Preliminary site plan approval under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-46 is hereby rendered moot as a result of the denial of d(1) variance, d(3) conditional use variance and “c” variance relief.

VOTE TO DENY APPLICATION
NOVEMBER 14, 2024

Motion Introduced By:

Seconded By:

In Favor:

Opposed:

VOTE TO APPROVE RESOLUTION
DECEMBER 19, 2024

Motion Introduced By:

Motion Seconded By:

In Favor

Opposed

Butler Planning Board

William Budesheim, Board Secretary

James Nargiso, Chairman

The undersigned secretary certifies that the within Resolution was adopted by the Butler Planning Board on November 14, 2024 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on December 19, 2024.

William Budesheim, Board Secretary

5168357.1 BUTPB-011E QQR, LLC Resolution of Denial for d(1) Use Variance, d(3) Conditional Use Variance and Preliminary & Final Site Plan 12.19.24