

Board of Adjustment

Virtual Meeting

October 20, 2021

Meeting called to order at 7:20pm.

Statement of compliance read by Joel Kenderdine.

Roll Call

Present:

Dr. Harry Allen

Maria Paola Castro

Basil D'Armiento (entered meeting 7:23pm)

Herminio Estrella (entered meeting 7:28pm)

Daniel Battista

Michelle Brown

Chairman Joel Kenderdine

Also present was Board Attorney Brian Schwartz, Borough Engineer Dave Testa, and Planning Consultant Paul Grygiel

Absent:

Roger Graubard

Gary Lewis

Resolutions:

Approve resolution to retain Phillips, Preiss, Grygiel LLC for consulting and rendering advice to the Board relating to the application of 933 Route 22 West LLC.

Motion to approve the resolution by Ms. Castro. Seconded by Mr. Battista.

All in favor.

None opposed.

Approval of Minutes:

August 18, 2021 minutes were approved as submitted with no additions or corrections.

Old Business:

None

New Business:

BA-21-003-933 Route 22 West, LLC. The applicant is proposing a restaurant with a drive thru.

Attorney for the applicant, 933 Route 22 West, LLC, is Joseph Paparo from law firm of Porzio, Bromberg, & Newman. The site is 933 Route 22 West, block 158, lot 9. Currently the site is a construction equipment rental business. They are seeking preliminary and final site plan and variance approvals to develop the site with a Popeyes restaurant with a drive thru. The restaurant is 2,338 square feet and

will have 50 seats inside along with a drive thru and related site improvements, new parking, lighting and landscaping, and signage. The front portion of the site along Route 22 is in the B3 commercial zone and the rear portion of the site is in the R5 residential zone. Restaurants are permitted in the B3 zone, however, restaurants with drive thrus are not so they are seeking a D1 use variance for the drive thru component of the restaurant. The applicant's team was able to design the restaurant with all components in the B3 commercial zone. There are no proposed improvements in the R5 residential zone. Other than the D1 use variance, they are not seeking any other variances from the B3 bulk requirements. The site exceeds the codes for parking. They are seeking sign variances related to the Popeyes branding and logos.

Witnesses:

Kyle McKenna
30 Independence Boulevard
Warren, NJ

Civil Engineer Kyle McKenna from Bohler Engineering sworn in by Attorney Brian Schwartz.

He has a Bachelor's of Science degree in Civil Engineering from Rutgers University. He has worked with Bohler Engineering doing site designing and civil engineering for more than 10 years. He is a licensed professional in the State of NJ. His license is current. He has provided professional testimony before several Planning and Zoning Boards. Mr. McKenna has not appeared before this Board before.

Mr. McKenna was accepted as an expert.

Mr. McKenna showed Aerial Exhibit marked Exhibit A1 dated October 20, 2021. The site is noted as block 158, lot 9. The site is approximately 2.3 acres in size and is split between 2 different zones. The northern part of the site is in the R5 zone and the southern part of the site is in the B3 zone. The site is bordered to the south by Route 22, to the east by a commercial property along the Route 22 frontage with residential properties moving to the north along Jefferson Avenue, residential properties to the north of the site, and to the west there is an existing commercial use. The site currently operates as a rental facility for commercial tools and construction equipment. The existing site is a 6,000 square foot single story building with ancillary parking areas, drive aisles, and exterior storage areas for the rental equipment. There is just under an acre of impervious surface. That improved area encroaches into the R5 zone on the northern end. There is a significant grade differential from Route 22 to the rear of the site. At the entrance on Route 22 the elevation is 100 feet. Towards the rear of the site at the edge of the developed area the elevation is 110 feet. From that point north there is an additional 70 feet of grade change. The average grade in the developed area is 4%, beyond the developed area is about 20%. Currently the site is accessed by a driveway on the southeastern corner. There are 2 driveways. One driveway is the entrance on the eastern corner and the egress driveway is on the western corner. There is currently a sidewalk along the frontage of Route 22. There is no sidewalk to connect the building to the existing sidewalk. Currently there is an encroachment of the existing commercial use into the R5 residential zone.

Mr. McKenna presented a colorized version of sheet C302 submitted as part of the site plan application package, dated October 20, 2021. They are proposing a 2,338 square foot single story building restaurant with 50 seats and a double drive thru with 2 ordering points. The drive thru triggers the use variance being requested. The proposed improvements conform with the bulk criteria as far as

setbacks, building height, etc. Similar to existing conditions they are proposing 2 driveways. The driveway on the southeast corner is an entrance. Vehicles will circulate in a counterclockwise direction and will use the egress driveway on the southwest corner of the property. There is also a one-way drive area permitting re-circulation if needed. There are angled 9x18 parking spaces around the perimeter of the site. They are conforming. The minimum parking criteria of 17 spaces is exceeded. They are proposing 34 spaces, including 2 ADA parking spaces. Parking criteria is calculated based on the number of seats. It's 1 space for 3 seats. Rounded up it's 17 spaces. There is a double drive thru with a stacking of 13 vehicles. Pedestrian access is being improved by reconstructing the sidewalk along Route 22. There will be access for pedestrians to the sidewalk along the front of the site. It will conform with ADA standards. The sidewalks wrap around to conform with ADA standards due to the grade change. Delivery trucks will circulate the site in a similar fashion. A truck turning exhibit was submitted with the application which illustrated WB40 circulating the site which is the largest truck that would deliver to the site. Deliveries would occur about 3 times per week during off hours of 8:00-10:00am. Hours of operation are 10:30am-11:00pm. Refuse pickup would be between 7:00am-10:00am typically twice a week. The trash enclosure is in the northwest corner of the site. It will be screened by an 8 foot block wall that would match and complement the exterior of the building.

Mr. Paparo asked Mr. McKenna to address the comment from the Board's Professionals regarding the 2 different versions of the refuse enclosure gate. Mr. McKenna stated there were 2 options provided in the plans submitted, detail sheet C905. There was a dumpster elevation and dumpster elevation alternative submitted. The alternative, which is a more high-end corrugated metal gate will be provided.

There are a few variances for the signs being proposed. The first sign is a free-standing sign on the southeast corner by the entrance. One free standing sign is permitted and one free standing sign is proposed. The sign conforms with regard to setback, height, and sign area. The first variance is for directional signs. There are 2 directional signs permitted, 1 per entrance drive and 1 per egress drive. They are proposing 4 directional signs. There are 2 for the drive thru, an exit only sign to point customers to the exit, and a thank you sign to thank customers for visiting Popeyes. The variance relates to the number of directional signs. The ordinance allows for 1 directional sign per driveway and they are proposing 2 directional signs per driveway. Mr. McKenna showed sheet C904 which showed the directional signs. The sheet also showed the free standing Popeyes sign which conforms with the ordinance.

The first wall sign is located along the southern facing wall of the building. There are also 2 signs located on either corner on the south side of the building. There is an additional wall sign that says love that chicken on the eastern sign of the building by the entrance. They are requesting variances with regard to the size and number of signs that the applicant's Planner will provide testimony on.

For landscaping, they are significantly reducing impervious cover. They are adding 15,000 square feet of green space. They conform with ordinance criteria regarding landscape. They are proposing landscaping throughout the site with a mixture of shade trees, evergreen trees, evergreen and deciduous shrubs, perennials, and grasses. The focus of the landscaping is along the perimeter of the site to buffer and shield some of the parking. There are also plantings around the building and low-lying plantings around the signage and front entrance area. There are evergreen trees and shrubs planted along the northeast perimeter adjacent to the residential areas. There is an existing 6 foot stockade fence along the property line. There is a retaining wall proposed that varies in height up to 13 feet near the northeastern corner of the parking area. There was a comment in the review letter for the potential

of adding a fence in that area. There is an existing stockade fence along the property line and there will be a row of shrubs and trees planted at the top of the wall. They feel that is sufficient to mitigate anyone from being in that area of the site but if there are concerns they would agree to expand or add fencing to that area. There was also a comment about adding additional shade trees near the grass area in the front of the site. They don't have an objection as long as they can be kept out of the frontage near the highway so site lines and visibility aren't impacted. They have located areas to add 2 trees as long as they are out of sight lines.

Proposed site lighting will include 4 pole mounted LED lights located around the perimeter of the site. All 4 lights have full back light control cut off which will mitigate spilling onto neighboring properties. They conform with the lighting requirement of the ordinance.

There is significant reduction of impervious cover and added green space. Under existing conditions there is little to no storm water infrastructure on site. Storm water runoff goes across the site and onto Route 22. Proposed improvements include catch basins, a storm water collection and conveyance system which will capture storm water runoff from the surface and pipe it to an existing 18 inch storm sewer within the DOT right of way. There are also trench drains proposed at each entrance and exit drive. Sanitary sewer connection will connect to an existing lateral. Remaining utilities will connect to existing services within the DOT right of way.

Mr. McKenna had no objections to complying with requests in the sanitary sewer review from Mott McDonald dated October 14, 2021.

Mr. McKenna already addressed some of the comments regarding the retaining wall and fencing in Engineering report from Grotto Engineering dated October 7, 2021. Mr. McKenna stated he does not have the construction details of the retaining wall as of yet but they will be provided for the building permit construction. They will be designed by an Engineer. There was another comment in the report regarding trash receptacles for patrons. Mr. McKenna stated there is no objection to providing those at the Board's request.

Regarding the Planner's report from an engineering perspective, Mr. McKenna addressed the request for additional shade trees and he will work with the Board's professional on locating an appropriate place for those trees to be planted so they don't impair visibility. The applicant's proposal is to go with the alternate higher end gate design for the refuse enclosure.

The Tax Assessor noted in an October 13, 2021 email that Popeyes would be a substantial improvement over the current site.

The Fire Department in an October 13, 2021 email states they have no comments.

The Police Department commented on October 8, 2021 no police reason to deny the application.

Mr. Testa asked if the lights are on dusk to dawn or if the lighting levels get lower. Mr. McKenna stated the lights are on a timer and are typically on an hour to an hour and a half beyond the hours of operation. Mr. Schwartz stated there is a standard condition that lighting should stay on from 1 hour before opening to 1 hour after closing so it is consistent with that Mr. McKenna is proposing. Mr. McKenna stated there will be no lighting after the lights go off an hour after closing.

Mr. Testa had a concern with the drop off between residential properties on Jefferson Avenue and this property. If a 10-13 foot wall is going to be constructed his concern is that a kid tries to jump off the wall or falls off the wall if there is no additional fencing. Mr. McKenna stated if there is no fence already there, one can be provided. Mr. Testa stated he thinks there is a stockade fence along the adjacent commercial Camp Out property but he doesn't believe it extends behind the residential properties. Mr. McKenna states the applicant would be willing to agree to extend that fence.

Mr. Testa asked Mr. McKenna if the rear of the property could potentially be developed residential in the future if the Popeyes gets built. Mr. McKenna said he has not reviewed that but it would be challenging because it is not ideal for that kind of development.

Mr. Grygiel asked why the better alternative for the trash enclosure wasn't initially proposed. Mr. McKenna stated this is more standard and there is an alternative but he's not sure as to why. The applicant is proposing the alternative. Mr. Grygiel also asked about additional trees. Mr. McKenna stated the applicant was willing to provide additional trees and coordinate with the Board's professionals to locate those trees so they don't hinder site lines and visibility.

Mr. Estrella asked if they are proposing a fence along the back zone lines. Mr. McKenna stated they are not proposing fencing there. It's dense wooded area.

Mr. Kenderdine asked what is going to be done with the small area that's in the R5 zone. Mr. McKenna stated it will be graded, seeded, and lawned.

Mr. Kenderdine asked if the truck will be delivering outside of normal business hours and where it will park. Mr. McKenna stated the truck would block the access aisle and deliveries would be in the rear in off peak hours. There is no designated loading area.

Mr. Kenderdine asked if there are only 2 handicapped spaces and if that is to code. Mr. McKenna stated it is. Mr. Schwartz stated it is because only 17 spaces are required. Mr. McKenna stated it is based on 34 spaces and up to 50 spaces can be accommodated by 2 ADA spaces.

Dr. Allen asked if Popeyes investigated if there was hazardous waste on site. Mr. McKenna stated that is outside his area of expertise. Mr. Paparo stated he will check with the property owner. Mr. McKenna states he believes there was a phase 1 environmental assessment done. He does not know if there was follow up testing.

Mr. Testa asked if the property is being sold or if it's a lease. Mr. Paparo stated it is not being sold.

Mr. Schwartz asked about possible eventual development of the back portion of the lot. Mr. Paparo stated it is all one lot. Mr. McKenna was speaking to the topography and physical conditions of that portion of the property not being suitable for residential. Mr. Schwartz would suggest a condition that the rear portion of the property not be developed inconsistent with the primary use of the property. Mr. Paparo agrees with that. If there are future plans of developing the rear they would have to come back before the Board.

No questions from the public.

Douglas Polyniak
181 West High Street
Somerville, NJ

Douglas Polyniak from Dolan & Dean Consulting Engineers was sworn in by Brian Schwartz.

Mr. Polyniak has a Bachelor's of Science in Civil Engineering from Lehigh University. He received his degree in 1998. Since then he has been working in the field of traffic engineering. He has been licensed in the State of New Jersey as a Professional Engineer for approximately 18 years. He has testified before 90-100 Municipal Planning and Zoning Boards in the State of New Jersey as an expert in traffic. He's worked on fast food restaurants, NJ DOT permitting, site reviews, traffic studies, all matters of traffic engineering. His license is in good standing.

Mr. Polyniak was accepted as an expert by the Board.

Mr. Polyniak's office prepared an August 18, 2021 traffic impact statement to project traffic volumes to determine the impacts and increases associated with the change in use from the equipment rental facility to the restaurant. They also reviewed access, parking supply design, drive thru stacking, and overall circulation. To determine the volume of traffic anticipated from the site, they used the Trip Generation Manual prepared by the Institute of Transportation Engineers. In the manual there is data for fast food restaurants with drive thrus. For this site and a building of this size, they anticipate that the busiest peak hour will occur on Saturday mid-day and they will have approximately 60 customers. During the evening they anticipate about 40-45 customers in the peak hour. The peak hours are rush hour in the evening from 4:00pm-6:00pm or 6:30pm. On the weekends the peak hours are 11:00am-2:00pm. One new customer would access the site each minute during its busiest hour. This does not take into account traffic generated by the existing use so the increases will be slightly less. The Institute of Transportation Engineers has data for pass by traffic. This is traffic drawn from the existing stream of travel and not necessarily new to Route 22 or the site. The Institute of Transportation Engineers says 50% of that traffic mentioned prior during the peak hour would be pass by traffic. There would be a maximum of 30 new vehicles along the adjacent roadway network accessing the site. The other 30 vehicles would be drawn from the stream of traffic on Route 22. The Institute of Transportation Engineers and the DOT consider 100 peak hour trips would be a significant increase and warrant an analysis of the impacts of those volumes. In this case the increase in new trips will not have a substantial impact on off-site conditions along Route 22 and surrounding roadways.

The driveways along Route 22 will be improved with newer curbing, better delineation, and clearly defining the ingress and egress. An access permit is required for the driveway changes and the change in use. An application before the DOT is in and under review. He believes there is nothing that would lead him to believe that the driveways wouldn't be permitted as proposed. There are 34 parking spaces where 17 are required. The largest vehicle for deliveries would be a WB40 vehicle. This site provides substantial stacking for the drive through. They are able to stack 13 vehicles prior to them reaching the pedestrian crosswalk. Another 4-5 spaces are available after the crosswalk. 18 vehicles can be stacked within the lane prior to reaching the highway. The ingress driveway where they could stack in 22 feet wide which allows for a vehicle to stack in the driveway and another vehicle to bypass it to access the site. In comparison to the Popeyes in Plainfield, that site has less than half of the stacking capabilities of this proposed site. He anticipates no overflow stacking onto Route 22.

Mr. Testa's main concern with the stacking. He mentioned the long lines at the Chick Fil-A in Watchung and he is concerned with cars stacking onto Route 22. Board members also mentioned vehicles stacking on the road at the Popeye's on Terrill Road in Plainfield. They have a single order board at that location.

Mr. Kenderdine asked if there were 2 food windows. Mr. Polyniak stated there was one window but 2 order boards to process orders quicker. Board members mentioned McDonald's restaurants in Green Brook, South Plainfield, and Scotch Plains have the double order boards.

Mr. Kenderdine asked if the WB40 truck is the standard delivery vehicle for Popeyes. Mr. Polyniak stated it is.

Mr. Schwartz asked if the vehicles have to merge back together after ordering. Mr. Polyniak stated yes. In his experience there hasn't been problems with merging. Mr. Schwartz asked if the white line that goes around the 2 queuing lines on the color site plan exhibit is a curb. Mr. Polyniak stated no, there is a raised island that separates the angled parking but he believes it's striping. Mr. Schwartz asked if there is a need for signage where the lines merge. Mr. Polyniak stated it works on its own with the ordering process. Mr. Schwartz asked if the location of the ordering board is optimal or if it would be better further back. Mr. Polyniak stated he hasn't seen a problem with it.

Mr. Battista states that during the earlier stages especially, there may be an issue with stacking on the highway. He asked if a sign could be put there stating no parking on the highway or something else. Mr. Polyniak stated maybe there could be something on a temporary basis for that honeymoon period when the restaurant first opens, perhaps temporary signage. Mr. Battista asked if the restaurant will be open for seating now. Mr. Polyniak could not answer that. Board members stated some fast food restaurants are open for seating now.

Mr. Estrella stated the restaurants also handle overflow by having drivers pull to the side to keep the flow of traffic in the drive thru as well. Mr. Polyniak stated at least 18 vehicles can stack prior to Route 22. There are definitely more vehicles going thru the drive thru since the pandemic but he is comfortable with the proposed stacking adequacy. Mr. Kenderdine stated the Board is saying there should be a plan to handle overflow that is reviewed by the Borough Engineer.

Ms. Castro mentioned when Sonic opened there were vehicles on the highway for weeks. Mr. Polyniak stated Sonic was different because it was new to the area.

Ms. Brown stated there should be designated spaces reserved for the drive thru as pull up spots.

Mr. Polyniak stated the applicant would not have a problem designating pull up spaces for the drive thru.

No questions from the public.

Erik Liepins
45 Sussex Avenue
Newark, NJ 07103

Project Architect Erik Liepins, Principal Architect at Zelta Design, sworn in by Brian Schwartz.

Mr. Liepins is a registered Architect in the State of New Jersey. His license is active and in good standing. He graduated from New Jersey Institute of Technology with a Bachelor's of Architecture. He is the Principal Architect of Zelta Design. Mr. Liepins has been before Planning Boards and Boards of Adjustment.

Mr. Liepins was accepted as an expert.

Mr. Liepins presented A1 labeled Equipment Plan which is the general floor plan. It is a 2,338 square foot building. At the widest point, the building is 33 feet by 82 ½ feet. There are 50 seats. There are 2 means of egress, 1 on each side of the building. There is a service door in the rear of the building for employees only to take out trash and accept deliveries. There is 1 pickup window.

Mr. Liepins presented A2, labeled exterior elevations. The south elevation faces Route 22. There are internally illuminated channel letters which reads Popeyes Louisiana Kitchen. The parapet is at 21 feet 10 inches at the highest point. The materials are an EIFS material, a thin brick over the main entry doors and drive thru windows, and a vertical wood siding element on the front. There are various canopies over the windows. The north elevation faces the rear of the property.

Mr. Liepins present A3, also labeled exterior elevations. The west elevation has a drive thru window. There is a thin brick and EIFS. Towards the front of the building there is a circular sign that is internally illuminated. It is 7 square feet. The east elevation has the main entrance with thin brick, the circular sign with the Popeyes bird and lettering, and a non-illuminated love that chicken sign to the right of the entrance, and teal shutters.

The signs are prototypical Popeyes colors, sizes, and positions.

Mr. Grygiel raised one issue in his report that the elevations were labeled incorrectly and he requested they be corrected for the final plans.

Mr. Kenderdine asked about the lighting fixtures that will be lighting the walls and if they will be turned off when the other lights go off. Mr. Liepins stated all lights will go off and hour after closing.

Christine Nazzaro Cofone
125 Half Mile Road Suite 200
Red Bank, NJ 07701

Christine Nazzaro Cofone, Professional Planner was sworn in by Brian Schwartz.

She is testifying as a licensed Professional Planner. She has been testifying in excess of 25 years in the State of New Jersey. She has been qualified as an expert before well over 400 Planning and Zoning Boards. She is an Affordable Housing Special Master serving 30 different locations and she teaches Planning and Zoning courses for the Rutgers Center for Government Services. She does some municipal work. Her firm is the appointed Planner for the Economic Authority in some municipalities but by and large her practice is appearing before Planning and Zoning Boards as an expert witness on behalf of applicants. Her licenses are current and valid.

Ms. Cofone accepted as an expert.

They are seeking a D1 use variance because the property is in a split zone property. The front of the property along Route 22 is in a commercial B3 zoning district. The back of the property is in the R5 district. All of the proposed improvements are in the B3 zoning district. They meet all of the bulk criteria and are not seeking any relief from these standards. The B3 zone allows restaurants and taverns but does not allow a drive thru. This is a very unusual site. It has 4 times the depth as it does width. There is 160 feet of frontage along Route 22. It goes back in depth 550 feet. In order to develop the back of the property, you would need a whole host of variance relief and she does not see that happening because there wouldn't be access to the back of the property, it's not fronting along the street, it's in a different zone, there's environmental features. In her opinion, it renders the property particularly suitable for this restaurant and drive thru. It's a longer and skinnier site that allows for plenty of room for vehicle stacking and it allows for a second drive thru lane. It lends itself very well to the proposed restaurant and drive thru. The shape and size of this property render it particularly suitable for a proposed drive thru.

There are special reasons or purposes in the Municipal Land Use Law that exist in order for the Board to grant the variance relief. It is her opinion that they can advance 4 criteria. Criteria G talks about sufficient space and appropriate locations for a variety of uses. They do not violate any of the bulk criteria. The rear yard setback is in excess of 480 feet where 50 feet is required in the B3 zone. Building coverage is at 2.3% where the B3 zone would allow 30%. She believes the Board can be comfortable that there is sufficient space and it's an appropriate location for this use.

Criteria I talks about a desirable visual environment. The current site lacks curb appeal. The small development of this site is consistent with the Borough's Master Plan and it is an upgrade of the property with the building as well as landscaping.

Criteria M talks about inefficient use of the land and avoiding degradation of the environment. The layout proposed by the applicant is efficient and considers the B3 zoning criteria.

They don't need any other C variances except relating to the signage. They need variances relating to a couple things relating to the signs. The way the ordinance is written, it allows up to 4 building signs if you have entrances. Signage has 3 purposes. They want you to know Popeyes is there so drivers can make appropriate driving decisions to get onto the property. They want to advertise. The signs have an architectural component to make sure they are to scale with the walls they sit on. The front elevation that has the Popeyes Louisiana Kitchen sign represents 10% of the wall area. The medallions on the sides represent 8.4% of the wall area that it sits on. The Love that Chicken sign is 9.4% of the wall. Each sign is at 10% or less of the wall that they sit on.

In Mr. Grygiel's October 11, 2021 review letter recognizes the reduction in impervious surface and additional landscaping represent significant improvements over existing conditions. He asks to increase the number of shade trees and the applicant would be willing to do that.

Negative criteria is made up of 2 components, the impact on the zone plan and the impact on the public good or the properties that surround it. As far as the impact on the public good, she believes the application is a homerun. There will be improvements to the storm water management system where none exist today, the landscaping plan that meets all the buffering requirements to the adjacent residential zones, and the willingness of the applicant to put up a fence on the Jefferson Avenue side. She does not see where the detriment is substantial. The Master Plan has specific goals regarding the commercial area and Route 22. There is a passage in the Master Plan that talks about aging buildings

and depreciated building site conditions. Other generic goals include providing a balanced variety of residential, commercial, recreational, and conservation uses and all other land uses and maintaining a proper balance between land uses that the borough's population is adequately served by a sound employment base and sufficient services. Having drive thru facilities, especially during the pandemic has been beneficial. There is stacking for 18 vehicles which is generous for this use. They believe they substantiate their burden of proof with respect to the D variance for the drive thru facility as well as the C variances for the number and lengths of the façade signs and the number of directional signs. The directional signs are properly located, they address the drive thru facility, they have a proper greeting thanking patrons for coming and the site can support the 4 directional signs with regard to ingress and egress as well as the drive thru. There would be so many variances created for the development of the rear property and is unlikely that it would be developed because of the many obstacles. It is common to see restaurants with drive thrus on State highways. The zone allows for restaurants.

Mr. Grygiel provided a review letter dated October 11, 2021 that outlined the relief that's required and zoning compliance and Ms. Cofone concurred with the variances required and she provided testimony to address all of them, notably the use variance for the drive thru window for the restaurant as well as the signage. It's up to the Board to decide if they think the proofs have been met but she gave substantial testimony as to the positive and negative criteria for the use variance as well as for the C variances for signage. Mr. Grygiel didn't have any outstanding issues in his letter or on the testimony. The application is very thorough and she has addressed all of the required criteria.

Mr. Kenderdine noted the signage isn't so big to distract drivers.

No questions from the public.

Mr. Battista asked what the average lot size is for Popeyes generally. Mr. Liepins has seen different size lots from 10,000 to much larger. Mr. Liepins stated the depth is deeper than average but the usable is right on par with what they have been working on a lot currently.

No statements from the public.

Mr. Paparo stated this is a site for an intense use. It's a construction equipment retail rental business. Larger construction equipment and vehicles are stored there. The applicant's proposal is to develop the site with limiting all disturbance to the front portion, including a robust landscaping plan, the willingness to add additional landscaping, the connectivity with the sidewalk, the various aesthetic improvements the witnesses have discussed with the building and the landscaping. Mr. Polyniak testified regarding circulation and stacking and in his opinion 18 cars is more than you would usually see. The applicant is willing to work with Mr. Testa and other professionals from the Board and possibly the police department if an issue were to arise with vehicles. There is ample parking, double that which is required by ordinance. There are 34 parking spaces and spaces could be used to accommodate a patron that needs to wait longer. These benefits are due to the size of the property and its design to make the site operate efficiently. From an aesthetic point of view, it's an improvement to what is there now. Having a storm water system is a benefit. The applicant is willing to work with the Board and its professionals to address open items such as going with higher end material for the refuse enclosure, providing fencing for the retaining wall if necessary, and working with Mr. Testa for signage or striping to resolve any queuing issues. Mr. Paparo thinks the variances for use for the drive thru can be granted. The signage variances have been justified for the directional signs and the size of the proposed wall signs. They

respectfully ask that the Board approves the application subject to the conditions agreed to throughout the evening.

Mr. Schwartz states this is an unusual D variance because the primary use of a restaurant is a permitted use. The reason for the D variance is because the drive thru is not permitted. The applicant has provided testimony as to why this property is particularly suited for a drive thru in terms of the shape and depth of the lot and other reasons. The Board should be thinking about the drive thru part in terms of the variance. If the Board gets into conditions, one item left open was putting fencing on top of the wall along the northeast area of the property. The applicant said they would be willing to provide that so Mr. Schwartz would be interested what the Board wants to do in that area if they get into conditions.

Motion to approve the application for D variances and C variances subject to conditions made by Mr. D'Armiento. Mr. Estrella seconded the motion.

Discussion by the Board:

Mr. D'Armiento believes they have to talk about the fencing.

Mr. Schwartz mentioned the following conditions that are routine on commercial uses such as this.

1. Deliveries no earlier than 8am.
2. Hours of operation shall not exceed 10am – 11pm. That applicant said they open at 10:30am.
3. Garbage pickup will be no earlier than 7am.
4. Lighting, other than security lighting will be permitted to be on from 1 hr. before opening to 1 hr. after closing.
5. The fencing issue along the wall on the northeast corner.
6. Shade trees will be added in the southeast corner as long as they don't affect sight lines.
7. The applicant will comply with the Grotto report date 10/7 and the Mott McDonald report dated 10/14.
8. The rear portion of the lot will not be developed or built upon without separate approval of the Board of Adjustment.
9. The applicant shall develop a contingency plan to handle overflow of cars lining up to order, including designating several parking spaces for overflow cars.

Mr. Kenderdine is okay with giving Mr. Testa the responsibility to review and approve the fencing. Mr. Schwartz stated they will add that the applicant will add fencing to the northeast corner subject to the approval of the Borough Engineer. It's up to Mr. Testa if he feels that is necessary or not. Mr. D'Armiento is fine with that.

Mr. Kenderdine asked if the southwest corner was going to be addressed with regard to landscaping by Mr. Testa. Mr. Testa stated he thinks the applicant was agreeable to adding some trees along the front area as long as they weren't blocking anyone's vision. Mr. Testa stated they will work out how many trees during the resolution compliance.

10. All exterior lighting will comply with the Borough's lighting ordinance.
11. Revised plans shall be submitted showing all changes required by this resolution.
12. The applicant shall provide and maintain performance and maintenance bonds.
13. They will provide the Borough Engineer with a construction cost estimate of site improvements.

14. All construction improvements comply with all applicable Borough building ordinances and RSIS standards.
15. The applicant will pay all outstanding charges to his escrow account.
16. All conditions shall be satisfied prior to execution of the site plan by the requisite Borough officials except those that are the opinion of the Borough Engineer are required to be satisfied prior to issuance of permits for any site improvements or that are conditions that may be satisfied after completion of construction.
17. Revised site plan drawing in electronic format, digital pdf, and paper form shall be submitted to the satisfaction of the Borough Engineer.
18. The applicant shall obtain all necessary permit approvals for all other municipal, county, regional, state, and if necessary federal agencies.
19. Construction will comply with the site plan submitted with the application subject to any changes required by these conditions.
20. All fees shall be paid as required by the Borough's non-residential development fee ordinance.
21. Revised plans shall be submitted showing all changes required by the resolution.
22. Satisfaction of all conditions shall be subject to the approval of the Borough Engineer and no CO will be issued until all conditions are satisfied.

On behalf of the applicant, Mr. Paparo is satisfied with those items.

Mr. Estrella, Mr. Battista, and Mr. D'Armiento think it is a suitable application for a drive thru.

Roll Call:

Yes, for approval of the application with conditions, no for denial of the application.

Dr. Allen – yes

Ms. Castro – yes

Mr. D'Armiento – yes

Mr. Estrella – yes

Mr. Battista – yes

Ms. Brown – yes

Chairman Kenderdine – yes

The application is approved.

The next meeting will be November 17, 2021 for 15 Jackson Avenue.

Motion to adjourn the meeting by Mr. Battista. Seconded by Ms. Castro.

All in favor.

Meeting adjourned at 9:34pm.