

TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY
ZONING BOARD OF ADJUSTMENT

RESOLUTION ZB-22- 12

WHEREAS, BP PRODUCTS NORTH AMERICA (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Washington for Preliminary and Final Minor Site Plan Approval and variance relief from the zoning code to grant the Applicant permission to renovate an existing gas service station with the proposed construction and installation of a gas service station canopy with canopy signage. The Applicant also seeks a “D-2” Use Variance to permit the expansion of a pre-existing non-conforming use. The Applicant is the Lessee of the property located at 615 Washington Avenue and designated as Lot No. 33 in Block 3203, on the Tax Assessment Map of the Township of Washington. The subject property is situated in the “Class B” Residential Zoning District. The property is situated on the southwest corner formed by the intersection of Washington Avenue and Cleveland Avenue and exhibits a total frontage of 270.00 feet with 120.00 feet of said frontage being situated along Washington Avenue and 150.00 feet situated along Cleveland Avenue. The total lot area is 17,552 square feet (0.403 acre). The Applicant seeks bulk Variance approval for the following:

- 1) Maximum Number of Canopy and Building Signs for three (3) canopy signs where none are permitted;
- 2) Maximum Canopy Sign Area of 13.64 square feet (each) with a total area of 40.92

square feet where none is permitted;

- 3) Maximum Freestanding Sign Area of 50.00 square feet where none is permitted;
- 4) Maximum Freestanding Sign Height of 21.6 FT where none is permitted;
- 5) Minimum Front Yard Setback of 14.70 feet from the canopy to Washington Avenue, where a minimum of 20.00 feet is required;
- 6) D-2 Use Variance for the expansion of a non-conforming use (gas service station) which is not permitted in the Class “B” Residential Zoning District as per Code Section 580-21.

The Applicant is represented by Jennifer M. Knarich, Esq., from the Law Firm of Price, Meese, Shulman & D’Arminio, P.C.; and

WHEREAS, the Township of Washington Zoning Board of Adjustment has carefully considered the testimony of the Applicant’s Professional Engineer, Bryan Ehnes, P.E., the Applicant’s Professional Planner George Williams, PP, AICP, the Township Planning Consultant, Stanley C. Slachetka, P.P., FAICP, the Zoning Board’s Engineer, Paul Azzolina, PE, CME and evidence presented by the Applicants and their professionals and Board discussion and comments during the general public hearings held on June 21, 2022 and July 19, 2022 via electronic means and in compliance with the Open Public Meetings Act and related Guidelines for Remote Public Meetings issued by the Division of Local Government Services , prior to which time the Applicant presented proof of notice and publication as required by law, and;

WHEREAS, the Township of Washington Zoning Board of Adjustment has reviewed the following:

- a) Preliminary and Final Minor Site Plan, Demolition Plan, Site Layout Plan, Grading and Drainage Plan, Existing Lighting Plan, Proposed Lighting Plan/Detail Sheet prepared by Bohler Engineering NJ, LLC, dated July 16, 2021 and last revised June 30, 2022 and consisting of seven (7) sheets and C-301 marked into evidence as Exhibit A-1;
- b) Generic Canopy Elevation plan prepared by Big Red Rooster, dated June 21, 2022 and consisting of one (1) sheet and marked into evidence as Exhibit A-2;
- c) Site Specific Elevations plan prepared by Big Red Rooster, dated July 19, 2022 and consisting of one (1) sheet and marked in evidence as Exhibit A-3;
- d) Revised Site Layout Plan (colorized) of C-301, Exhibit A-1 prepared by Bohler Engineering NJ, LLC, dated July 19, 2022 and consisting of one (1) sheet marked into evidence as Exhibit A-4;
- e) Photo Exhibit prepared by Nishuane Group, dated May 17, 2022 and marked into evidence as Exhibit A-5;
- f) The report of the Board Engineer, Paul Azzolina, PE, CME, Azzolina & Feury Engineering, Inc. dated May 11, 2022 and consisting of twelve (12) sheets;
- g) The report of the Township Planning Consultant, Stanley C. Slachetka, P.P., FAICP, T & M Associates, dated June 17, 2022 and consisting of six (6) sheets;

- h) Boundary & Topographic Survey prepared by Control Point Associates, Inc, dated May 7, 2021 and consisting of one (1) sheet;
- i) Canopy Foundation Plan, Roof Plan and Misc. Details, prepared by McGee Corporation, dated May 24, 2021 and consisting of three (3) sheets:
- j) Sign Rendering, prepared by Sign Resource Identity Group, dated January 28, 2022 and consisting of one (1) sheet;
- k) Sign Night Illumination View Rendering and LED Illumination Layout, prepared by Sign Resource Identity Group, dated January 27, 2015 and consisting of one (1) sheet;
- l) LED Illuminated Center Pole Sign, prepared by Sign Resource Identity Group, dated December 18, 2014 and consisting of three (3) sheets;

WHEREAS, the Township of Washington Zoning Board of Adjustment has made the following findings of fact and conclusions of law:

1. The property is designated as Lot No. 33 in Block 3203 and is currently a BP Gas Service Station that is located in the “Class B” Residential Zoning District. The Applicant’s proposed use of the property is a not a permitted use in the ““Class B” Residential Zoning District;

2. At the public hearing held on June 21, 2022 the Applicant’s Attorney, Jennifer M. Knarich, Esq. advised the Board that a gas station has been operating at the site since 1957 as stated in a 1972 Zoning Board of Adjustment resolution. She also advised that BP has been

operating there since 1993. The property is located in a “Class B” Residential Zoning District and the lot is 17,552 square feet. She advised that the Applicant is planning to modernize and upgrade the existing facilities with a new proposed canopy over the gas pumps with new signage. She advised that the Applicant is requesting the following variances:

- a. Maximum Number of Canopy and Building Signs for three (3) canopy signs where none are permitted;
- b. Maximum Canopy Sign Area of 13.64 square feet (each) with a total area of 40.92 square feet where none is permitted;
- c. Maximum Freestanding Sign Area of 50.00 square feet where none is permitted;
- d. Maximum Freestanding Sign Height of 21.6 FT where none is permitted;
- e. Minimum Front Yard Setback of 14.70 feet from the canopy to Washington Avenue, where a minimum of 20.00 feet is required;
- f. D-2 Use Variance for the expansion of a non-conforming use (gas service station) which is not permitted in the Class “B” Residential Zoning District as per Code Section 580-21.

3. The Applicant’s Engineer, Bryan Ehnes, P.E., of Bohler Engineering, was sworn in and accepted by the Board as an expert witness. Mr. Ehnes testified that the property currently has a one (1) story, 1,764 square foot building with three (3) garage bays for mechanical service along the front elevation of the building. He testified that there are four (4) concrete pump islands, two (2) kiosk, six (6) pole mounted area lights with an illuminated free

standing BP logo sign structure with a separate digital price display sign mounted on the same pole, below the logo sign. He testified that the Applicant requests permission to construct a 35'0" (thirty-five feet zero inches) by 49'6" (forty-nine feet six inches) metal canopy structure to cover the entire limits of the existing fuel dispensing facilities. The canopy will be eighteen (18) feet high and has a fascia width of three (3) feet with a fifteen (15) foot clearance. There will be an ADA parking space with appropriate signage added. The total height of the current building is twenty (20) feet. He testified that there will be three (3) 50" BP Helio Signs attached to the north, east and west facades of the canopy. The south side has a green bar that will not be illuminated. Mr. Ehnes testified that there will be eight (8) LED recessed canopy lights. The signs and light bars will be turned off when the gas station is closed. The hours of operation are Monday through Sunday, 7:00a.m to 10:00p.m. He testified that the maximum lighting will be 30.5 footcandles with a minimum of 14.3 footcandles where twenty (20) to thirty (30) foot candles are recommended. He testified that emergency vehicles will have enough room to access the property in the event of an emergency. He testified that the Applicant would like to sell low speed diesel fuel that would only be used by passenger cars, ambulances and landscaping vehicles, not tractor trailers. He testified that there will not be any change to the impervious coverage. He also testified that Bergen County has no issue with the project and issued a letter of no further action needed by the Applicant.

4. Mr. Azzolina requested the diesel dispenser to be labeled on the plans and expressed his concern of the location of the ADA parking space since the path is crossing an active garage and the current sloping curb is not shown on the plan as being reconstructed. Mr. Ehnes agreed that any curb reconstruction will be done, if needed and will revise the plans accordingly prior to the next meeting. Mr. Azzolina also requested the site plans to include the

existing lighting conditions. He also agreed that no rear or side yard variances are required, and the zoning table should be revised.

5. At the July 19, 2022 hearing Mr. Ehnes submitted revised plans which included amongst other things, current lighting conditions, the accessible parking facilities and revised zoning table. Mr. Azzolina suggested an average of twenty (20) footcandles below the canopy as this exists at other local gas stations and is working well. Mr. Ehnes testified that the proposed minimum is under twenty (20) footcandles and the average is twenty-four (24) footcandles. He believes that if they have an average of twenty (20) footcandles it would not meet the lighting industry standard of twenty to thirty (20-30) footcandles and want to stay in that range as it promotes safety. The maximum lighting of thirty (30) footcandles would be over the gas pumps and the lighting on the edges of the canopy would be below twenty (20) footcandles. He testified that the recessed canopy lighting results in less glare for drivers than what currently exists. The Applicant agreed to turn off all lights and signs after the 10:00p.m. closing time. Mr. Ehnes believes he can reduce the canopy lighting from an average of twenty-four (24) footcandles to closer to twenty (20) footcandles as recommended by Mr. Azzolina, but that it most likely will still be above twenty (20) footcandles.

6. Township Planning Consultant, Stanley C. Slachetka, P.P., FAICP advised the Board and Applicant that canopy lighting is a key issue here because it can bring a pre-existing non-conforming condition closer to conformity and more compatible with the surrounding community. Lighting levels impact neighboring residents and the improvement of same is a critical component to justify the Board's approval of the Application.

7. The Applicant's Planner, George Williams, PP, AICP was sworn in and accepted

by the Board as an expert witness. He testified that the Applicant is applying for a D-2 Use Variance in order to modernize a property that has had a long standing, pre-existing, non-conforming use. He testified that similar to the 1972 Zoning Board of Adjustment Resolution and approval for the same property, the Board at that time, approved a modernization plan based upon the fact that the use was not going to be abandoned any time soon and the owner had the right to modernize and improve the sight. In 2013 a higher fence was approved by the Planning Board as well as a major soil movement application in 2014 also approved by the Planning Board. He believes that the C Variances that are included in the Application can be subsumed by the D-2 variance. He testified that Court guidelines allow pre-existing non-conformities to be reviewed with “greater liberality” because they are not a “new” non-conforming use, but rather a use that has existed for an extended period of time. He testified that for many years the trend for gas stations has been to modernize by installing canopies and adding new signage and lighting. He testified that the proposed plan will have several benefits such as a better lighting plan that matches the community’s preferences, a new ADA parking space and increased safety for the attendants and customers should self-service be permitted in the State of New Jersey in the future. The Applicant will also address the Board’s and residents’ concerns about tractor trailers coming to the property for diesel gas, by banning them and having appropriate signage to let drivers know they cannot be served at the station. He advised that N.J.S.A. 40-55-70d(2) permits the Board to hear an Application for an expansion of a pre-existing non-conforming use, especially one that has existed for a long period of time and is not likely to be abandoned anytime soon. He testified that lighting is an appropriate condition of the Board’s Approval, and the Applicant will do their best to satisfy the Board’s concerns. Mr. Williams testified that the Court in Burbridge v. Mine Hill Twp. noted that Boards can impose conditions, which are

frequently aesthetic, to help integrate the use into the surroundings, especially uses that are thriving and not likely to end soon. He suggested that the lighting changes would help harmonize the gas service station with the surrounding area. He testified that a D-2 Variance requires both affirmative (special reasons) and negative criteria. He believes the benefits he mentioned satisfies the Affirmative criteria and the approval of this Application will advance the purpose and goal of the zoning ordinance as this encourages municipal action to guide the appropriate use or development in a manner which promotes the health, safety, moral and general welfare. In his opinion, the Canopy helps accomplish this goal. The conditions suggested by the Board and accepted by the Applicant go to the general welfare as well. He believes they will provide sufficient space for this use to meet the needs of the community and will promote a better visual environment through better civic design. As to the Negative Criteria he believes there will not be a substantial detriment to the public good or master plan and the approval of the application would not harm the character of the neighborhood. In his opinion the modernization is meant to improve the site and character of the neighborhood and would promote one of the master plan's objectives which is the safety of movement of people and goods throughout the community. The safety of movement and maneuvers on the site will be improved. He believes the benefits of modernizing the site outweigh any potential detriments. He also believes that the C Variances can be subsumed in the granting of the D-2 variance as there are no current standards for this use in the zone and by granting the Use the Board is granting the deviations which would be a better zoning alternative with no substantial impairment of the zoning plan. The Applicant's proposed plans are keeping with the industry standard for gas service stations and are appropriate under current planning standards. Current planning standard indicate that signs should be readable, legible, and conspicuous so the site

can be easily identified and to help make intelligent movements and maneuvers possible on the site. Mr. Williams testified that he believes that the applicants sign package achieves that objective. The lighting will be reduced, the size of the freestanding signs will be reduced and adding an ADA parking space all point to an approval in his opinion.

8. Township Planning Consultant, Stanley C. Slachetka, P.P., FAICP advised the Board that he agrees with Mr. Williams that it is reasonable for the Board to request a reduced light level than what is currently present today. It is particularly appropriate based upon the concerns of the Board and the location of a gas service station in a residential area. Mr. Slachetka asked if the addition of the canopy would create any new or other uses such as the sale of other goods or materials, such as drinks or snacks which might be stored under the canopy or any repair services taking place under the canopy. Mr. Williams testified that there will not be any additional sales or service activities taking place under the canopy. Mr. Slachetka also disagreed that the C Variances should be subsumed with the D-2 Variance, rather, he believes they should be evaluated on the own separate from the D-2 Variance and the Board can decide if intertwining the two is appropriate. Mr. Slachetka asked Mr. Williams how introducing new signage, although reducing overall sign area, would not be more intrusive to the community. Mr. Williams testified that good sign packages can help direct traffic to the site and help vehicles maneuver better on the site. The size of canopy requires more signage, and he feels the proposed signage is not intrusive in a negative way and the design is sensitive to the local environment and streetscape. Mr. Slachetka asked, since this is a small station, if the Applicant could reduce the illumination of the canopy signs since they are not measurable by a specific illumination standard. He believes the Board can impose reasonable conditions especially since the canopy signs are being introduced into a neighborhood where signs do not

currently exist. The Applicant agreed to eliminate the illuminated green bar that was to be on three (3) sides and there will just be a decal in its place. The round BP logo signs will be internally illuminated and will turn off at 10:00p.m. Mr. Slachetka believed that this was a big improvement over what was proposed.

9. The Zoning Board's Engineer, Paul Azzolina, PE, CME noted that the height of the free-standing sign will be increased over what is present today. The pole height will remain the same, but the shape of the sign will increase by eighteen (18) inches. Mr. Williams testified that this is true but that the overall sign area will be decreased by twelve and one-half (12 ½) square feet. Mr. Azzolina also advised that there is one (1) additional C variance that needs to be approved for Free-standing Sign Height where existing is 20.1 feet and the proposed is 21.6 feet where none is permitted. The Applicant noted that the Applicant's notice to property owners, which was also published in the local newspaper, did also mention that the Applicant is seeking any and all variances that may be required or deemed necessary by the Board during the hearing process, including which may be generated by way of revised plans. The Applicant also did submit revised plans prior to the July meeting where the additional variance was noted in the zoning table.

WHEREAS, the Zoning Board of Adjustment of the Township of Washington has determined that the Applicant has satisfied the criteria for granting the C(2) Bulk variances for related signage and front yard setback to the canopy and a D(2) Use Variance for the expansion of a pre-existing and non-confirming use and has accepted the testimony of the Applicant and their professionals that that the variances are necessary and the use is inherently beneficial to the community.

WHEREAS, members of the public were invited to ask questions of the Applicant after testimony was given, and all questions offered by members of the public were answered to the satisfaction of the Zoning Board of Adjustment;

WHEREAS, the Zoning Board of Adjustment has determined that the relief requested by the Applicants can be granted without substantial detriment to the public good and without substantially impairing the intent or purpose of the Zoning Ordinance of the Township of Washington. Moreover, the Board finds that the plan represents a better planning alternative with the least impact on the property as a whole, and is not out of character, and is not likely to be a substantial detrimental impact upon any other properties in the neighborhood, and would blend into the surrounding properties;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Washington on this 16th day of August, 2022 that based upon the findings of fact, testimony presented and documents submitted for review as previously set forth, the application of BP PRODUCTS NORTH AMERICA is hereby granted for Preliminary and Final Minor Site Plan approval to allow the installation and construction of a gas service station canopy with canopy signage with requested relief for the following C and D Variances:

- 1) Maximum Number of Canopy and Building Signs for three (3) canopy signs where none are permitted;
- 2) Maximum Canopy Sign Area of 13.64 square feet (each) with a total area of 40.92 square feet where none is permitted;
- 3) Maximum Freestanding Sign Area of 50.00 square feet where none is permitted;

- 4) Minimum Front Yard Setback of 14.70 feet from the canopy to Washington Avenue, where a minimum of 20.00 feet is required;
- 5) Maximum Free Standing Sign Height of 21.6 feet where none is permitted.
- 6) D-2 Use Variance for the expansion of a pre-existing non-conforming use (gas service station) which is not permitted in the Class “B” Residential Zoning District as per Code Section 580-21 of the Township Code;

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the following conditions of Approval;

1. The Applicant will reduce the proposed canopy lighting intensity levels to below what currently exists which is an average of 23.39 footcandles to get as close to an average of 20.00 footcandles as possible.
2. No retail goods, merchandise or materials will be sold or stored under the canopy. The Applicant may sell and store retail goods inside the building, but only those goods which are typically sold at a service station such as motor oil and windshield wiper fluid. The Applicant is not permitted to sell drinks, chips or any types of food or prepackaged goods.
3. The Applicant will eliminate the proposed illuminated green bar on all sides of the canopy. Three sides will have a decals and the circular BP signs on the canopy will have internal illumination only.
4. The Applicant must turn off all lights, including canopy and illuminated signage at

10:00p.m. every night.

5. The Applicant will have the current building's roof inspected and repaired and replaced as necessary.
6. The Applicant must submit updated revised lighting plan for Board Engineer's approval prior to permits being issued.
7. The Applicant is permitted to sell low speed diesel fuel but is not permitted to sell same to tractor trailers and will post appropriate signage to prevent tractor trailers from stopping at the property.

BE IT FURTHER RESOLVED that the Applicant shall comply with all of the stipulations made during the hearing on this Application as set forth herein and on the record before the Board.

BE IT FURTHER RESOLVED the Applicant's failure to comply with conditions set forth in this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of either a building permit and/or Certificate of Occupancy of the premises, subject to reasonable notice and the opportunity to cure.


BE IT FURTHER RESOLVED that pursuant to the Code of the Township of Washington, the variances granted will expire within one (1) year from the date of this Resolution if construction is not commenced, however, this Board reserves the right to grant extensions of time from this Resolution if circumstances warrant the same;

BE IT FURTHER RESOLVED, that the Secretary of the Zoning Board of Adjustment

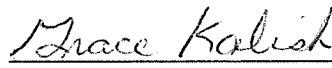
of the Township of Washington is hereby directed to mail a copy of this Resolution to applicant; to furnish a copy to the building department; to file a copy of this Resolution with the Township of Washington Clerk; and to cause a notice of this determination of the Zoning Board of Adjustment to be published in the official newspaper of the Township of Washington within ten (10) days of the date hereof and thereafter published according to law.

BY THE BOARD

Dated: August 16, 2022

BY:  _____
Said Toro, Chairman

Certified to be a true copy of the Resolution adopted by the Zoning Board of Adjustments of the Township of Washington at its meeting on Tuesday, August 16, 2022.

 _____
Grace Kalish, Secretary

BOARD	MOTION	SECOND	AYES	NAYES	ABSTAIN	ABSENT	RECUSE
Callandrillo			X				
Capasso			X				
Hanna		X	X				
LaGratta	X				X		
Mahoney						X	
Roberto						X	
Toro			X				