

MINUTES
REGULAR MEETING OF THE BUTLER PLANNING BOARD
NOVEMBER 14, 2024

Chairman Nargiso brought the regular meeting of the Butler Planning Board to order for November 14, 2024. The Chairman stated this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

ROLL CALL:

Present: Hough, Veneziano, Finelli, Brown, Vath, Hammaker, Nargiso

Absent: Roche, Reger, Piccirillo, Martinez (all excused)

Also present: Richard Briigliodoro, Attorney; Tom Boorady, Engineer; Tom Behrens, Planner; Gary Anderson, Traffic Engineer

CORRESPONDENCE: Chairman Nargiso notified the Board by way of a letter that his term expires the end of this year and he will not be seeking reappointment after 36 years serving on the Planning Board.

CASES TO BE HEARD:

SP22-83	QQR, LLC	Site Plan
B.O.A.	1558 Route 23	Carried from October 17, 2024
	Block: 201 Lot: 2.04	

Carl Kempf, Esq. representing the applicant summarized the details of the project, which requires a D1 variance for 2 principle uses on one property and D3 variances for the conditional use related to:

- A. Minimum lot area
- B. Minimum building setback
- C. Parking requirements and Paved Area setbacks
- D. A self-service or coin operated system not permitted.
- H. All provisions and standards applying to the HC zone shall apply to the car wash.

John Kaplan, Esq representing the objector summarized the opposition to the application.

Mr. Brown offered the following motion:

I make a motion to deny the approval of application SP22- 83, presently before the Board. If I get a second, I call for a discussion and, I will elaborate a number of the reasons for my resolution of denial. The reasons are representative and are not all-encompassing.

My denial is based upon the applicants multiple submittals provided, testimony given and the **NJ MLUL 40:550**, and additional testimony provided by the opposition.

The New Jersey State Law delegates substantial power to local planning boards in the planning and regulation of local land use. The Borough of Butler has utilized Master Plans, beginning in 1958, to revise the Borough Land Use code, presently section 143 of the Butler Municipal Code to reflect the suburban character of the Borough.

Our land use reflects the character and environment expected of the various development projects proposed throughout thisBorough.

New Jersey **MLUL 40:55D-3** under Definitions, that for terms SHALL and MAY; state "For purposes of this act, unless the context clearly indicates a different meaning:

The term "shall" indicates a mandatory requirement, and term "may" indicates a permissive action."

This application does not represent a development project in keeping with our Municipal Code.

- Many of the REQUIRED submittals' for entry into the Butler Approval Process have not been provided; these are required as proofs that the application can move ahead in the process. Examples are:

- ◇ The Morris County approval is for a Car Wash and Coffee Shop
 - ◇ The Tax authentication is from 2022
- Neither of the two buildings/uses has been designated, with proofs, as THE principal building or use.
- Additional reasons are:
- There is no proven relationship between the Service provider and Product supplier. They are two different businesses with two different business plans.
- The two businesses are not configured in a single building. Thus cannot be considered a Shopping Center, allowing multiple various uses.
- Neither of the proposed uses is customarily incidental or subordinate to the other and so has to be seen as an impermissible second principal use.
- The property in question is shown to have a total area of 86,802 square feet. The Car Wash conditional use alone requires two (2) acres or 87,120 square feet. The lot is undersized the Car Wash alone, although this may be de minimis. The Retail Sales building requires 30,000 square feet. The proposal is to add an additional Retail Sales use into an already undersized property.
- The property is not proposed to be subdivided but is double counting the same area for both uses. This is a "red flag" as to the over use of the property.
- No explanation has been provided as to how the designated use areas are defined. Nor how the areas will be legally identified.
- The total REQUIRED area for the two uses is 117,120 square feet. The proposal area presented is only 3/4 of the required area. This has not been addressed and is another marker identifying this as an over developed site.
- The multiple re-submitted of plans, with substantial revisions, supports trying to make the over developed proposal function correctly.
- Multiple dozens of variances are being requested because of the over development. The many variances supporting the over development are in obvious contradiction to the character and Code of the Borough.
- Any variance requested must have been provided with a description of the original and the variance. Plus the difference between the required and the proposed. Each variance requires a justification for approval.
- There is no proof presented to find that the Retail Sales business is comparable to a Car Wash Service business.
- The Board is awaiting approvals, of the proposed development, from multiple utilities with Right of Way passage upon the property. The City of Newark Aqueduct runs diagonally thru the site. The pipe is well over 100 years old and the pipes have been shown to shatter upon impacts, principally due to construction. I find their approval important due to the potential impact of damage to the water supply.
- The MLUL defines a conditional use, in this case the Car Wash, as "a use permitted in a particular zoning district only upon a showing that such use in aspecified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance". A conditional use is "suitable to a zoning district but not to every location within that district." The Municipal Planning Act did not specifically authorize variances from special-exception-use standards. Case law under that Act, however, suggested that a variance from a special-exception-use standard "would amount to a use variance which requires the existence of 'special reasons' as well as meeting the negative criteria. Not too unlike the familiar criteria required under "Medici". Therefore the variance(s) requested altering the conditions within the ordinance MAY NOT be approved.
- Several of the bulk variances are difficult to understand. An example is the landscaping. Testimony by the applicants Planner praised the introduction of the planting and fence along the R- 3/HC property line. The planting presented is identified as Mountain Laurel. They are shown as having a six (6) foot diameter. This is very strange, to have a plant 11/2 feet high and 6 feet in diameter. Mountain Laurel is typically slow growing, of about 5 inches a year. There will be two 2 foot Mountain Laurels, per ten feet of border. The 1 ½ to 2 foot height border is below the average automobile headlight stance.

When current submitted drawings, C 3 and C 10, are laid over each other the opaque 6 foot high vinyl fence is shown on the site side of the plantings and the fence is incredibly close to, if not in, the right queue lane.

- Butler Master Plan brings to light that Butler should take advantage of the Route 23 corridor to attract consumers by creating an aesthetically pleasing "face" to the highway and create design standards to provide attractive and inviting shopping. Uses and site aesthetics found along Route 23 provide the first impressions of the Borough and to the general traveling public. The Butler Land Use code does not allow business operations to be done outside of a building. In this case, many unenclosed vacuuming stations are located in the Car Wash building exterior, both in the front and side yard areas. These are contrary to providing attractive and inviting impressions of the Borough as recommended in the Master Plan.
- Our Borough Code requires identifying and protecting mature trees for preservation but the landscaping plan presents a clear-cutting of the site from border to border.
- The procedure of snow removal is not described. Areas for depositing of snow are not identified. Nor how snow deposition areas will not affect lines of sight or parking space availability.
- Testimony stated that the proposal is a "development of the future". It is in disregard of the Borough Master Plans and the Butler Land Use Code.

To repeat, these reasons for denial are meant to be representative and are not all-encompassing.

Motion to deny the application: Mr. Brown Second: Mr. Vath

Ayes: Veneziano, Brown, Finelli, Vath, Hough

Abstain: Nargiso

RESOLUTIONS: None

APPROVAL OF MINUTES: October 17, 2024

Motion to approve: Brown Second: Finelli

Ayes: Veneziano, Brown, Finelli, Hough, Nargiso

APPROVAL OF VOUCHER: Voucher 24-11

Motion to approve: Veneziano Second: Brown

Ayes: Veneziano, Finelli, Hough, Brown, Hammaker, Nargiso

ADJOURNMENT: 8:15 PM

Motion: Brown

Second: Finelli

All in favor

Next Special Meeting December 12, 2024 at 7:30 PM


Chairman