

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

January 5, 2021

PREMISES: BLOCK 83 Lot 7

353 US 46 West

CASE NO.: LUB-069

APPLICANT: LIDL U.S. OPERATIONS, LLC

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS, Lidl U.S. Operations, LLC (“Lidl”) has applied to the Land Use Board of the Borough of Rockaway (the “Board”) for C(1)(2) dimensional variance relief and preliminary and final major site plan to allow the redevelopment and use of the premises as a 28,122 square foot (to be constructed) Lidl Grocery store for together with onsite amenities to support associated parking, internal driveway, shopping cart corrals, and walkways. The property is located in the H-C Highway Commercial District which permits the proposed use.

WHEREAS the variance relief requested includes:

Minimum front Yard Setback (sec. 172: 1) 75’ required - 69.1’ proposed with respect to the building (later modified during the application to accommodate a widened sidewalk (6’) and 64.7’ proposed with respect to the canopy.

Maximum Improved Lot Coverage (sec. 172: 1) 60% permitted – 60.89 proposed, later modified to 61.21% to accommodate the sidewalk widening.

Minimum on-site parking (sec 171-17B) 141 spaces required – 137 proposed.

Maximum sign area (sec 172-41B) 15 SF permitted – 60 SF proposed.

Maximum Area of Wall signage-10% of façade where the building frontage exceeds 100' which equates to 21.97 sf for the East façade wall signage and 12.1 sf for the South facade wall signage. Proposed is 128.44 sf for each of the East and South façade wall signs (two signs combined on each façade)

Maximum sign height (request withdrawn)

Maximum number of building façade signs (sec 172-40B) 1 per tenant allowed – 4 Lidl signs proposed.

Maximum sign projection (sec 172-40A) 12” allowed – 16” proposed.

WAIVERS REQUESTED

Applicant seeks a waiver to permit the continued use of the existing 3.3% driveway grade as opposed to the required 2%.

Additional administrative waivers were requested for completeness:

Preliminary Site Plan: Checklist Items 19, 21, 22, 35.

Final Site Plan: Checklist Items 2, 3, 10A

(the application was deemed complete, waivers granted)

WHEREAS the Board did hold a hearing on said application on December 1, 2020 and January 5, 2021 upon notice to all parties requiring notice of this application, and all such parties being properly noticed and given an opportunity to be heard, and

WHEREAS the Board considered the following documents/exhibits:

1. Land Use Board Application with Attachment A list of variances, waivers and justifications;
2. Administrative Checklist/Schedule “A” Checklist;
3. Schedule “A” Checklist Preliminary Site Plan;
4. Schedule “A” Checklist Final Subdivision/Final Site Plan;
5. Schedule “A” Checklist “C” Variance
6. List of Requested Submittal Waivers and Reasons;
7. Description of Structures and Land Uses Within Surrounding Area;
8. Cover letter to Rockaway River Watershed Cabinet, dated October 12, 2020 from John P. Wyciskala, Esq, Inglesino, Webster, Wyciskala, Taylor, LLC;

9. Calculation of application and escrow fees sheet and copies of checks for same;
10. Copy of First American Title Insurance Commitment to Issue Policy;
11. Certified list of Property Owners, dated August 28, 2020;
12. Certification of payment of taxes through 3rd quarter, dated September 8, 2020;
13. request for Taxpayer ID number and certification; Form W-9 dated February 22, 2018;
14. Submission cover letter from John P. Wyciskala, Esq, Inglesino, Webster, Wyciskala, Taylor, LLC, dated October 1, 2020;
15. Submission cover letter from John P. Wyciskala, Esq, Inglesino, Webster, Wyciskala, Taylor, LLC, dated October 12, 2020;
16. Submission cover letter from John P. Wyciskala, Esq., Inglesino, Webster, Wyciskala, Taylor, LLC dated October 12, 2020.
17. Preliminary & Final Major Site Plan drawings, consisting of nineteen (19) sheets dated September 28, 2020, prepared by Benjamin S. Crowder, PE, Bohler Engineering NJ, LLC, Warren, NJ;
18. ALTA/NSPS Land Title Survey, Block 83, Lot 7, consisting of two (2) sheets dated August 7, 2020, prepared by James D. Sens, PLS, Control Point Associates, Inc., Warren, NJ;
19. Environmental Impact Statement, dated September, 2020, prepared by Michelle Measday, CFM, PWS, Bohler Engineering NJ, LLC.
20. Stormwater Management Report, dated September, 2020, prepared by Benjamin S. Crowder, PE, Bohler Engineering NJ, LLC;
21. Report of Ferriero Engineering dated November 16, 2020.
22. Report of Topology planning dated November 20, 2020.
23. Report of Thomas Trepasso, Fire Marshall.
24. Traffic Impact Analysis, dated September 10, 2020 prepared by John R. Harter, PE and Jerrid M. Dinnen, PE, Atlantic Traffic & Design, Warren, NJ.
25. Report of Geotechnical Investigations, dated March 9, 2020 prepared by Mudar Khantamr, PE and Kevin A. Feath, PE, Whitestone Associates, Inc., Warren NJ;
26. Preliminary Architectural Floor Plan & Elevations, consisting of two (2) sheets, dated September 28, 2020 prepared by Larson Design Group.
23. Morris County Soil Conservation District review letter.

WHEREAS the Land Use Board, after hearing all of the evidence presented by the Applicant, has made the following findings of fact:

1. The applicant is represented in this matter by John P. Wyciskala, Esq of Inglesino, Webster, Wyciskala and Taylor, LLC

2. The property is owned by Tsen Kind Holdings, LLC which has consented to this application.
3. Lidl U.S. Operations, LLC is a grocery store selling primarily items of its own brand however local products will also be offered.
4. Mr. Matthew Sandelands, an officer of the company explained that Lidl has approximately 120 locations on the East Coast, with another four or five actively under construction.
5. Operationally, store hours will be from 8:00 AM to 10:00 PM for the public, however employees will be present during other hours (6:00 AM) to clean, unload deliveries stock shelves, etc. A company manager will be on premises at all times when the store is open.
6. Approximately 50 to 100 employees will hired to staff the location.
7. Deliveries are forecast to be one tractor trailer per day which will be coordinated to occur at off peak hours and at a time so as not to conflict with dumpster pick up.
8. There will be no “cooking” or preparing of food on the premises except for an in store bakery.
9. With respect to the site itself, the same is located in the Highway Commercial zone, fronts on Route 46, and is 3.56 acres in size.
10. Professional Engineer Benjamin Crowder offered an Aerial View, marked as Ex. A-1 which discloses a residential neighborhood to the North and to the East located in the R-2 zone. There exists a retail establishment on Rte. 46 to the East of the subject and a Bowling Alley to the West, also fronting on Rte. 46. Directly across rte. 46 are a large retail facility and an Urgent Care.
11. The immediate past use of the property was as a Farmers Market which included a building of some 23,500 square feet, parking, traffic aisles, and other supporting amenities, all which will be demolished and removed.
12. The front yard setback requires relief from the 75’ ordinance value-proposed will be 69.1’ to the building and 64.7’ to the entrance canopy. To be adjusted slightly to accommodate a sidewalk of six (6) feet in width.
13. The property slopes from North to South and is traversed on the Northerly side by a tributary to the Rockaway River.
14. The proposed improvements include the Lidl supermarket of 28,122 SF, 137 parking spaces (including 9 employee spaces and 5 handicapped spaces), associated aisles, loading dock, signage, storm water management facilities, walkways and a trash collection area. Parking lot illumination and

tree replacement are also proposed. Access will be by way of a single signalized entrance to Rte. 46. (See Ex A-2) a colorized copy of page C-301 of the Site Plan.

15. The access drive is planned to be located in close proximity to the current access. The driveway is located across Rte. 46 from Charles Street and as noted, is controlled by a traffic signal.
16. According to Mr. Crowder the parking models used by the applicant indicate that parking will be sufficient. Lidl is also attempting to negotiate a joint parking agreement and cross access easement with the Bowling Alley for any overflow.
17. The parking lot and building will be illuminated by a number of pole mounted LED lights (25' high) and wall sconces. All lights shall have a color temperature of 4000k. This value represents a LED color temperature reduction in the sconces over what was shown on the site plan at page C-704. The lights will be illuminated from dawn to dusk.
18. The applicant has agreed to enlarge the sidewalk adjacent to the structure to a width of 6' to reconcile shopping cart traffic and any vehicles which may overhang the sidewalk area.
19. The landscape plan reflects 277 shade trees, shrubs and perennials to be added, together with 44 plantings of ornamental grasses. (Sheet C-701)
20. The drainage plan is depicted on sheet C-402. In addition to all DEP requirements, the applicant has agreed to work with the engineer to provide a means of collecting any vehicle fluids or contaminants and separating them from the ground water. A maintenance plan will be provided. Impervious coverage will be reduced to 61.21% from the current 67.59%.
21. Four building mounted signs are requested as shown on sheets C-301 and C-903. One building mounted sign is permitted, additionally the signs will project out 16" where 12" is allowed. The existing free standing sign on the Westerly portion of the property will be replaced by a new free standing sign which complies with sign setback and the height requirement of 15' but will be 60 square feet in area thereby requiring variance relief. An existing free standing sign on the Easterly side of the property will remain but will require a sign easement from the owner of adjoining Lot 5 to maintain this sign.

22. A “Traffic Impact Analysis” was submitted by Atlantic Traffic and Design. The report was amplified by Jerrid M. Dinnen, PE, a principal of the firm. The report reviewed the traffic conditions and the proposed parking.
23. Mr. Dinnen confirmed that the proposed parking of 137 spaces will be sufficient to meet the needs of the development; the Borough standard is one space for every 200 sf of floor space which equates to 141 spaces. The 128 regular stalls plus 9 employee stalls adequately address the requirements and are comparable to national standards.
24. Concerns regarding the loading area were addressed through testimony that Lidl can micro manage deliveries to occur at off peak hours as primarily they are offloading their own products and therefore deliveries can be coordinated with the employee parking slots and further adjusted to not conflict with trash removal.
25. Mr. Dinnen further opined that Rte. 46 is an Urban Principal Arterial and under NJDOT jurisdiction and has an average annual daily traffic volume (AADT) of 20,100 based on 2017 data.
26. Traffic studies were conducted on Saturdays and midweek in November of 2019 and in March of 2020 (prior to the COVID manifestation).
27. Traffic counts identified that weekday morning peak volume occurred from 8:00 AM to 9:00 AM. The evening weekday peak was between 5:00 PM and 6:00 PM. The Saturday midday peak occurred between 11:30 AM and 12:30 PM.
28. A study was conducted to determine the differences in trip generation between the current use and the proposed Lidl use. (The Lidl use is based upon a projection using data published by the NJDOT HAPS or Highway Access Permit System).
29. The weekday morning peak hour additional traffic falls below the DOT definition of “significant” increase which is 100 or more added peak hour trips. The additional weekday evening peak hour trip generation is forecast to increase by 121 per peak hour. The peak hour Saturday trip generation is projected to increase by 139 vehicle trips. The report notes that a “significant portion” of these added trips are “pass by trips” meaning visits by persons already on the highway for other reasons who diver to the location.
30. The ultimate conclusion reached is that there will not be any noticeable negative impact on traffic flow. Informationally, the Charles Street and Rte. 46 intersection will operate at DOT Service Level “D” or better during peak

hours and the right turn only portion of the egress from the site will function at Service Level “C” or better during peak hours. The traffic impacts at Rte. 46 and Franklin Street will see added delays no greater than 5 seconds.

31. The applicant has filed for access approval with the NJDOT.
32. Chelsea Rawson identified herself as the Architect of Record for this application and for several other Lidl locations in New Jersey.
33. The applicant offered through this witness Exhibits A-3 a materials board, A-4 an Architectural Plan, and A-5 a listing of innovative roof top screening methodologies.
34. The proposed structure was described as being essentially similar to many of the existing Lidl supermarkets. The structure will be one story high with a flat roof and will occupy 28,122 square feet. The Easterly elevation is shown with various panels attached to break up the exposure. The Board requested similar treatment for the Westerly side.
35. The applicant offered Mr. John McDonough who was accepted as a professional planner. Mr. McDonough offered Exhibit A-6 to assist with his testimony.
36. The proposed location was selected so as to maximize buffering to the residential neighbors thus creating the need for a modest front yard setback variance. Nearby setbacks of commercial structures are varied and therefore the approximate 6’ of relief will not be a factor.
37. The new building represents good planning and economic development, will benefit the public welfare with a fresh, new look, will create new jobs locally, and will help stabilize the ratable base.
38. The proposed signage was described as representing a simplified and tasteful replacement for the existing signs.
39. From a planning perspective, the project provides for adequate light, air and open space; provides sufficient space in appropriate locations for a commercial use; is consistent with the goals of the Master Plan of the Borough.
40. The use is permitted, the redevelopment is a benefit to the public welfare and there is no perceived or actual impairment to the zone plan or zoning ordinance.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the reasons submitted by the Applicant justify a finding that variances can be granted pursuant to NJSA 40:55D- 70 (c) 1 and (2) with respect to the relief sought, and further finds that applicant has demonstrated that benefits exist justifying relaxation from the zoning ordinance(s) with respect to the variances and the design waivers sought for the following reasons:

1. The site contains an existing outmoded Farmers Market in need of redevelopment.
2. The Borough of Rockaway will realize increased tax revenue from the new facility.
3. Opportunities for employment of local workers will be created including construction trades, maintenance and direct employees.
4. The new market will add to the convenience of the shopping public.
5. The site is uniquely suited for this use given the location and benefits the public welfare.
6. The site is buffered from the surrounding residential uses which therefore enhances its suitability.
7. The use advances purposes A, C, and G, of the MLUL by providing for an appropriate use of lands without detriment to the public health, safety and welfare. Furthermore, allowing the adaptation to this use will provide an appropriate location for a variety of uses to meet the needs of New Jersey citizens.
8. With respect to the “C” variances they in major part, relate to the existing use as well as the proposed use and in some cases, the deviations are reduced through this approval.

WHEREAS, the Land Use Board of the Borough of Rockaway had determined that the Applicant has demonstrated that the relief can be granted without substantial detriment to the public good and has further demonstrated that a grant of the variances

will not substantially impair the intent and purpose of the zone plan and the zoning ordinance of the Borough of Rockaway for the following reasons:

1. The site improvements proposed will result in a new, fresh place of business and shopping venue.
2. The use itself is a permitted use in the H-C zone.
3. The application results in an adaptive re-use of existing an site.
4. The application is in most ways consistent with the Master Plan. The applicant's planner and the Borough Planner found nothing in their review of the Borough Master Plan that would indicate the uses are contrary thereto or would otherwise impair the intent and purpose of the zone plan.
5. The integrity of the nearby uses will not be degraded.
6. The interests of the public welfare will be furthered by a plan which is intended to build a vigorous business community.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the preliminary and final site plan application and variance relief requested by the Applicant is granted in accordance with the application and the plans submitted and as modified herein as follows:

1. The Board does grant the variance and relief site plan relief as specifically identified in this resolution, i.e.:
 - A. Minimum front Yard Setback (sec. 172:Att.1) 75' required - 69.1' proposed (building) and 64.7' proposed (canopy).
 - B. Maximum Improved Lot Coverage (sec. 172:Att.1) 60% permitted – 61.21% proposed.
 - C. Minimum on-site parking (sec 171-17B) 141 spaces required – 137 proposed.
 - D. Maximum sign area (sec 172-41B) 15 SF permitted – 60 SF proposed.
 - E. Maximum number of facade signs (4). East façade: two signs with a combined 128.4 SF (21.97 SF allowed). South façade: two signs with a combined 128.44 SF (12.1 SF allowed). The variance granted allows the facade signs to exceed the 10%/100SF limitations.

2. The following conditions also apply:

1. Additional trees shall be added along the Westerly elevation together with the addition of architectural siding panels to break up the monolithic appearance.
2. The approved freestanding sign shall be reduced to 15' in height and 60 square feet in size.
2. The lighting plan shall be modified to show reduced wattage (color) for the wall sconce lights (reduced to 4000k) and submitted to the Engineer for approval, the height of the lights shall be limited to 25' measured from the ground.
3. The drainage plan shall be modified to provide for a water/contaminant separation device(s) to be designed in concert with the Municipal Engineer.
4. A maintenance plan for the drainage facilities shall be prepared for review and approval by the Engineer.
5. The maintenance shall be incorporated in a recorded deed restriction after approval by the Board Attorney.
6. Curb stops/wheel stops shall be added to the site plan adjacent to the Easterly slope to protect the interface between the parking area and the natural vegetation.
7. Dumpster locations within the loading dock area are to be approved by the engineer and planner.
8. Construction details for the loading dock and associated retaining wall are to be prepared and submitted to the Engineer.
9. The applicant shall revise the plans to show a 6' wide walkway around the building. A scoring patterned type of concrete pour will be considered at the entrance to the building.
10. The applicant shall provide a review and report concerning the existing block wall adjacent to Lot 5 the directions of the Municipal Engineer shall be followed in this regard.
11. In accordance with local ordinance and State Law a 2.5% Developer Fee (New Jersey Statewide Non-Residential Fee) shall be paid to the municipality prior to the issuance of a Certificate of Occupancy.
12. The applicant shall comply with all requirements and conditions in the planning review letter of November 20, 2020, except that remarks

- concerning the new 10 cubic yard dumpster location; building fenestration; speed bump; and light pole height shall be disregarded.
13. The applicant shall comply with all requirements and conditions in the Engineering review letter of November 16, 2020.
 14. All drainage and utility profiles shall be added to the plans.
 15. Drainage satisfactory to the Board Engineer shall be added to the Easterly parking area.
 16. Additional Approvals specifically called out but not limited to the following:
 - A. Morris County Planning Board approval is required.
 - B. Morris County Soil Conservation District Certification is required.
 - C. A Borough Water Allocation Permit in accordance with Chapter 247 Article IV is required together with a water connection permit from the Borough Council.
 - D. A Borough Sanitary Sewer Connection Permit in accordance with Chapter 213 is required.
 - E. Rockaway Valley Regional Sewage Authority approval is required.
 - F. NJDEP Freshwater Wetlands and Flood Hazard approval shall be obtained.
 - G. NJDOT Major Access Permit approval is required.
 - H. As-built site plans should be provided prior to issuance of any Certificate of Occupancy.
 - I. A cost estimate is required to determine the cost of any bonded items as well as to establish the amount of the site inspection escrow.
 - J. Any approval shall require a pre-construction meeting with the Borough Engineer prior to any land disturbance.
 - K. Sewer connection approval from the Rockaway Valley regional Sewerage Authority.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Land Use Board held on January 5, 2020.

Dated January 5, 2020

Colleen Reardon, Secretary