

RESOLUTION
Borough of Union Beach
In the Matter of Manzo Doren Organization
Application No. 4013
1500 Union Avenue
Decided on August 28, 2024
Memorialized on October 30, 2024
(D)(1) Use Variance, Bulk Variances, Design Waivers, Preliminary and Final Site Plan
Approval

WHEREAS, Manzo Doren Organization (hereinafter the “Applicant”) has made an application to the Borough of Union Beach for a (d)(1) use variance, bulk variances, design waivers, and preliminary and final site plan approval to demolish an empty bank building and construct a Starbucks with a drive-thru, Property Tax Map Block 179, Lot 1 in the B-2 Zone; and

WHEREAS, a public hearing was held on August 28, 2024, after the Board determined it had jurisdiction to hear this application; and said hearing was conducted in person in accordance with DCA/DLGS rules and the Open Public Meetings Act for conducting public meetings and providing for public participation; and

WHEREAS, the Applicant was represented by John Jackson, Esq.; and

NOW THEREFORE, the Board makes the following findings of fact, based upon evidence presented at its public hearing on August 28, 2024, at which a record was made. The subject property is located in the B-2 Zone. The drive-thru is not listed as a permitted use or accessory use; Therefore, a (d)(1) use variance is needed. A drive-thru and drive-in restaurant have different definitions in Ordinance Section 13-10.5a.5. The Board had before it for its consideration a report from T & M Associates. The report is incorporated into this Resolution by reference.

The following bulk variances are required:

- a. A minimum lot width of 300 feet is required, whereas a lot width of 184.7 feet is provided. While this can be considered an existing non-conformity as no change to the existing lot width is proposed, a "c" variance is required due to the proposed change of use.
- b. A minimum front yard setback of 35 feet is required, whereas a front yard setback of 34.4 feet is provided from the proposed canopy structure attached to the principal building to the NJ Route 36 right-of-way line. A "c" variance is required.
- c. A maximum lot coverage of 50% is permitted, whereas a lot coverage of 64.4% is proposed. A "c" variance is required.
- d. A minimum screening buffer width of 5 feet is required for properties along the NJ Route 36 right-of-way. The proposed buffer area along NJ Route 36 provides a minimum width of approximately 13.5 feet, however only grass plantings are proposed in this area, with no screening such as additional evergreen plantings or fencing proposed. A "c" variance is required.

The Applicant is requesting the following design waiver (a) for lack of parking, when a minimum of 50 off-street spaces are required and 16 are being proposed as per Section 13-8.19 and 13-8.20 of Borough Ordinance.

Pursuant to Section 13-10.6.c.2., signage requirements for the B-2 Highway Business zone are deferred to Section 13-8.26 – General Standards; Signs; the following design waivers are needed:

- a. In accordance with Section 13-8.26.a.3. the maximum height permitted for freestanding or projecting signs is 12 feet. whereas a maximum height of 30 feet is provided for the proposed freestanding pylon sign adjacent to the intersection of NJ Route 36 and Union Avenue.
- b. Section 13-8.26.a.4 requires that freestanding signs be set back a minimum of 10 feet from a right of way line, whereas a setback of 6.2 feet is provided from the NJ Route 36 right-of-way line for the proposed freestanding pylon sign.
- c. 6.3. Pursuant to Sections 13-8.26.e.1 13-8.26.e.4, a maximum of two (2) wall signs are permitted where a commercial structure is located at the intersection of two streets or a street and a parking lot. A total of four (4) wall signs are proposed.
- d. In accordance with Section 13-8.26.e.7, directional signage may not exceed 6 SF in area. whereas two (2) proposed directional signs measure 6.11 SF in area.
- e. Section 13-8.26.e.11.a permits of maximum projection of 38 inches for fixed awning and canopies and canopies attached to buildings, whereas a projection of 51 inches is provided for the proposed drive-through canopy.

Introductory comments were offered by John Jackson, counsel for the Applicant. He proceeded to describe the proposed corporate store to be located on the property with the long empty commercial bank establishment. He said the property would be ground leased to Starbucks. He said he can testify that the property would be heavily landscaped and would also address any issues regarding the need to waterproof the building to meet the new flood hazard regulations.

The next witness on behalf of the Applicant was Mr. Dan Conti, Store Developer with the corporate office of Starbucks. He testified that there would be a high quality operation on a 7 day a week basis from 5:00 a.m. to 11:00 p.m. The drive thru would function 7 days a week as well. He testified that the drive thru setup would allow seven (7) cars to get past the board to pick up their order. They would also provide mobile order pay to help move traffic in the drive thru lane. He noted that drive thru traffic had picked up since the outbreak of the COVID pandemic. He stated that there would be roughly 20 to 25 seats in the restaurant. There would be approximately 25 to 30 full and part-time employees at the establishment. In response to question from the Board, he said that the speaker on the ordering board will have the volume adjusted downward at night, so it didn't adversely impact neighboring homeowners. He said some employees would either car pool or use bicycles to get to the establishment.

At this point, Ms. Kelly of 707 Aumack got up and expressed general concerns regarding the application. She was advised that the peak period is from 8:30 a.m. to 10:00 a.m. Mr. Joseph Savi also expressed concerns regarding the amount of traffic backing up on Route 36. Ms. Susan Brown of Shore Road expressed concerns regarding the noise from the establishment, noting that they put up with noise from the bank and the ATM machine. The witness said that this can be adjusted as necessary.

The next witness on behalf of the Applicant was their architect Nicole Gabbert, who was sworn in and qualified as a Professional Architect. She noted that the entrance ways to the building will all be ADA accessible. She described the 1 story, 25 foot high, 2500 square foot building with height of approximately 18 feet. She testified that the HVAC was located on the roof and would be screened. She said there was no kitchen since there was no real food

prepping done on the premises. She testified as to the location of the proposed signs and the overall dimensions and the design waivers needed.

At this point members of the public raised questions regarding the management of stormwater. The next witness on behalf of the Applicant was Mr. Aaron Chan, Professional Engineer with Stonefield, who was also a certified municipal engineer whose credentials were accepted as an experienced engineer. Mr. Chan proceeded to describe the overall layout and compared it to the existing bank, which has been vacant for a number of years. He testified the building would be approximately 2500 square feet in size. He testified as to the location of the menu board for ordering. He said the car lane could handle 12 vehicles and had a bypass lane as necessary for use. He noted the flow of traffic would be counterclockwise going into the drive thru. He testified that the parking spaces would be 10 feet by 20 feet and one of them would be ADA dedicated. He then went on to describe the flood barrier system being done as part of the design of the building. He knows the building would have a small clock tower on it as part of the overall enhancement of the design of the building. He noted the building would be moved to meet the 35-foot setback to reduce the amount of bulk variance relief. He then testified regarding the amount of impervious coverage, which was being cut from 76% to 64%. By moving this a little bit, it would allow for the elimination of the bulk variance. He noted that the NJ DOT had issued a letter of no interest to the Applicant. He said the driveway from Route 36 would be in the same approximate location as the existing bank entrance.

With regard to flood hazard management, this project would be classified as a minor development under NJDEP regulations. He noted that there would be a reduction in volume, as well as a reduction in total. He said the recharge would go into the local groundwater and assist with providing water for the landscaping. He testified regarding the landscaping noting it would

be a dramatic and significant improvement over the existing landscaping. He noted that nature of the esthetic improvements with the amount of planting being done. He testified that trash would be coordinated to be picked up at the rear of the building on dates and times that were not peak times for customers patronizing the establishment. He noted that flood proof material would be utilized. Regarding lighting, it will be photometric; The fixtures would be used and there would be timers to make sure it went off after hours. These designs would also be shielded so as to prevent bleed off of lighting on an adjacent property.

He then proceeded to testify regarding the sign package for the property. He described the nature and extent of the signage and its height and percentage of the overall building façade and the design waivers. He noted that there would be no sign located facing Washington Avenue. He said the sign had originally been proposed for 30 feet high, and the pylon would be loaded to 16 feet, although the ordinance is set at 12, thus still triggering the need for design waivers. He said there would be some directional signs throughout the parking area and around the building.

He then proceeded to describe T & M Associates letter and discussed various engineering points. He stated that the Applicant had no problem satisfying the civil engineering concerns and conditions set forth in the report from T & M Associates. He testified that the sidewalk would be added to the Route 36 frontage but could possibly require NJDOT to sign off. He said they will look into adding irrigation for the landscape.

The next witness on behalf of the Applicant was Mr. John Corak, Licensed Professional Engineer with expertise in traffic management. He was sworn in and accepted as an expert in his field. He proceeded to describe the traffic study that had been performed. He noted the exits on Washington Avenue and on the highway which is full movement in/out terms. In the

entrance way on Route 36 was a one-way exit. He noted that the amount of traffic was comparable to other Starbucks in this area of the State.

He said the busiest time of the day at the drive thru window would be the peak morning time. He said the Starbucks would have different flow of traffic compared to Dunkin' Donuts, North on Route 36. He testified that this facility would have more vehicle stacking and capability. He testified that 12 vehicles in the drive thru lane is considered the industry standard. He noted that there would be a cleaning out of all stormwater outlets and storm water basins in the area around Washington Ave., Union Ave. and State Highway 36. He felt that 12 vehicles could navigate the drive-thru lane site. The sign has been reduced. The typical standard in pre pandemic era have 50 to 60 seats, this one only has 25. He said lots of people now prefer to consume what they buy in the car for lunch or dinner rather than going into the establishment.

The last witness on behalf of the Applicant was Mr. TJ Ricci, Licensed Professional Planner was sworn in qualified as an expert in his field. He testified that the proposed facility on this property will be part of the revitalization of Route 36 along this frontage for Union Beach. Referring to the Medici he proceeded to lay out the proof necessary to demonstrate that the Applicant meets the positive and negative criteria so as to allow the Board to grant this type of variance relief. He then proceeded to testify regarding the bulk variance relief and design waiver that was being sought by the Applicant.

The floor was set open to the public and several residents expressed concerns specifically regarding the amount of traffic in the area and the likelihood of backups. They also expressed concerns regarding the sign size and the overall sign package.

At this point, several members of the Board expressed their general favor of the application. They felt that it was a good location given the type of use.

NOW, THEREFORE, the Board makes the following conclusions of law, based upon the foregoing findings of fact under the Municipal Land Use Law, a Board, when considering a typical (d) variance, cannot grant relief unless sufficient special reasons are shown, there is no substantial detriment to the public good and there is no substantial impairment of the intent and purpose of the zone scheme and zoning ordinance. The burden of proof is on the Applicant to establish that these criteria have been met. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the Applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law, and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept the showing of extreme hardship as sufficient to constitute a special reason. Courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criteria upon which the Board can grant a variance. In addition, special reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2. However, in the final analysis, a variance should only be granted if the Board, on the basis of the evidence presented before it, feels that the public interest as distinguished from the purely private interest of the Applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the zone or the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the Applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the impact of the proposal on the public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect

would be substantial. Furthermore, in most (d) variance cases, the Applicant must satisfy an enhanced quality of proof and support by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the Applicant to establish the above criteria.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and that the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the (c)(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by allowing a deviation from the Zoning Ordinance requirements and that the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted pursuant to the Zoning Ordinance. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant for these variances must also show that the proposed relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in these instances when the

applicant has satisfied both these tests, that a Board, acting pursuant to the Act and case law, can grant relief. The burden of proof is upon the applicant to establish that these criteria have been met.

Based upon the application, plans, reports and testimony placed before the Board, the Board finds that the Applicant has met the requirements of the Municipal Land Use Law, case law and Borough ordinances so as to grant the relief requested. The use variance relief can be granted in this particular case based upon the evidence put before the Board. More specifically, under the Municipal Land Use Law, a Board must consider the Applicant's burden of proof is to demonstrate why it should grant a (d)(1) variance to violate a standard that is not allowed in the zone. The proofs put before the Board satisfy this burden. The applicant requesting use and bulk variance relief has shown that the site is suited for the proposed use to provide a drive thru convenience use. The same is true for the design waivers. The site can accommodate the proposed use.

T & M Associates, as noted in their report, have raised questions which have been addressed and resolved to the Board's, subject to certain conditions as set out in the T & M report and this resolution. The Board finds that, based upon the record before it, it can grant the relief being sought by the Applicant in this particular instance.

NOW, THEREFORE, BE IT RESOLVED, by the Board of the Borough of that the application of Manzo Doren Organization, for property located at State Highway 36, Union Avenue (Washington Avenue) requesting (d)(1) use variance, bulk variances, design waivers and preliminary and final site plan approval is determined as follows:

1. (d)(1) use variance for the proposed use of this building is granted pursuant to N.J.S.A. 40:55D-70(d)(1); and

2. Bulk variances as described herein are approved pursuant to N.J.S.A. 40:55D-70(c)(2); and
3. The design waivers as described herein are approved as per N.J.S.A. 40:55D-51; and
4. Preliminary and final site plan approval is granted pursuant to N.J.S.A. 40:55D-46 and 50.

IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The development of this parcel shall be implemented strictly in accordance with the plans submitted as:
 - a. A submitted Union Beach Planning Board Application for Preliminary and Final Major Site Plan approval. consisting of twenty (20) pages signed by Thomas Manzo (Applicant), of Manzo Doren Organization of Union Beach, LLC. on April 22, 2024;
 - b. Review Letter of Zoning/Floodplain Development Application No. 4013, Block 179, Loi 1 (subject property) prepared by Dennis M. Dayback, CFM, of T & M Associates, consisting of two (2) pages, dated May 28, 2024;
 - c. Traffic Impact Study, prepared by John R. Corak, PE and Mathew J. Seckler, PE, PP, PTOE of Stonefield Engineering and Design, dated April 18, 2024;
 - d. Stormwater Management Statement prepared by Aaron Chan, PE, CME, of Stonefield Engineering and Design, dated April 18, 2024;
 - e. Plans entitled 'Preliminary and Final Major Site Plan for Manzo Doren Organization of Union Beach, LLC Proposed Starbucks with Drive-Thru' Block

179, Lot 1. Borough of Union Beach, Monmouth County, New Jersey prepared by Aaron Chan, PE, CME, of Stonefield Engineering and Design, consisting of twelve (12) sheets, dated May 9 2024 (no revisions):

- f. Architectural Plans entitled “Manzo/Doren Starbucks, Union Ave. Union Beach, New Jersey” prepared by Michael V. Testa II, R.A., consisting of two (2) sheets, dated April 18, 2024; and
- g. "Architectural Plans prepared by Hi ton Displays, consisting of seventeen (17), dated April 14, 2024.

2. The Applicant shall comply with all requirements of the T & M Associates report of August 15, 2024 and reports from Borough Departments, except as specifically modified at the public hearing, as set forth herein; these reports are incorporated herein by reference.

3. Once all permits have been obtained a preconstruction meeting shall be held at least one week prior to the start of any construction work on the property. No construction work can be done until updated final site plans are submitted and approved; demolition work is allowed to proceed under this resolution.

4. Payment of all fees, costs and escrow due or to become due. Any monies are to be paid within 20 days of said request by the Board Secretary. This is a continuing obligation. Failure to maintain escrow funds will result in permits being withheld or suspended.

5. Certification of taxes and escrow fees have been paid; This is a continuing obligation.

6. Monmouth County Planning Board approval, if required.

7. Monmouth County Soil Conservation District approval. (If required)

8. Municipal Board of Health approval.

9. Any permits required by Monmouth County, the NJDEP or the NJDOT pursuant to their authority.

10. Once all permits have been secured, prior to the issuance of any construction permit, the Applicant shall file with the Borough Construction Official, an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.

11. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Union Beach, County of Monmouth, State of New Jersey or any other jurisdiction.

12. The undersigned secretary certifies the within decision was adopted by this Board on August 28, 2024 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 25, 2024.


LAURETTE WADE, BOARD SECRETARY

FOR: Wells, Hoadley, Sweeney, Hallam, Murray

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote: (6)

 Wells Devino Coffey Hallam Hoadley Sweeney
 Murray Conners Dwyer Roche Andreuzzi