



April 5, 2021

**MEMORANDUM TO:** Vernon Township Land Use Board

**FROM:** Jessica C. Caldwell, P.P., A.I.C.P., L.E.E.D. – G. A., Land Use Board Planner

**SUBJECT:** Preliminary and Final Site Plan and Variances for Christopher Newsom  
LU# 2-21-2  
Block 263, Lot 4  
Located at 93 Lake Wallkill Rd  
Vernon Township, Sussex County

Dear Board Members:

The Applicant, Christopher Newsom, is seeking preliminary and final site plan, use and bulk variance approval for the construction of a 3,200 square foot pole barn for use for parking of commercial vehicles, including two dump trucks. The pole barn is proposed in the front yard of the property, is larger in area and exceeds maximum height for the zone. The above-referenced property is in the R-2 Single Family Residential Zone. Overnight storage of commercial vehicles is not a permitted use, requiring a variance pursuant to N.J.S.A. 40:55D-70(d)(1).

1. **Items Submitted:** The Applicant has submitted the following
  - A. Preliminary and Final Site Plan entitled, "Final Construction Drawings for Block No. 263, Lot 4" located in the Township of Vernon, Sussex County, N.J., prepared by Kenneth A. Wentink & Assoc., dated February 1, 2021 and consisting of five sheets.
  - B. Copy of Site Application and Checklists with supporting documentation
2. **Existing Site & Use:** The subject property is located at 93 Lake Wallkill Road in the R-2 Single Family Residential Zone and is 6.24 acres. The lot is developed with a single-family dwelling that is about 750 feet off of the Lake Wallkill Road right-of-way line. The dwelling is served by a driveway running along an approximately 50 wide strip, similar to a flag lot, from the house to Lake Wallkill Road (Sussex County Route 667).
3. **Highlands Area Designation:** The subject property is located in the Highlands Planning Area.
4. **Proposed Development:** The Applicant is seeking preliminary and final site plan and use and bulk variance approval to construct a 3,200 square foot pole barn on the subject property to house two (2) 80,000-pound GVW dump trucks overnight. A total of two (2) dump trucks, each with a length of 30 feet are proposed to be parked in the proposed pole barn.

5. **Area and Bulk Requirements:** The subject site is located in the R-2 Single Family Residential Zone. The following table reviews existing and proposed requirements.

**R-2 Single Family Residential Zone**

Standard	Required	Existing	Proposed
<b>Principal Building</b>			
Min. Lot Area	3 Acres	6.24 Acres	N/C
Min. Lot Width	200 FT	629 ± FT	N/C
Min. Front Yard Setback	75 FT	79.3 FT	N/C
Min. Side Yard Setback	25 FT	205 FT (west) 308.5 FT (east)	N/C
Min. Rear Yard Setback	75 FT	202.5 FT	N/C
Max. Building Height	35 FT 2 ½ Stories	< 35 FT	N/C
Max. Building Coverage	15%	1.39%	2.56%
Max. Lot Coverage	25%	5.6%	8.7%
<b>Accessory Building &amp; Structure</b>			
Min. Rear Yard Setback	15 FT	N/A	283 FT
Min. Side Yard Setback	15 FT	N/A	53 FT
Max. Building Height	15 FT	N/A	24 FT ± (V)
Distance To:			
Principal Building	10 FT	N/A	94 FT
R.O.W. Line			
Principal Building		490 FT	N/C
Proposed Garage		N/A	458 FT (V)
Footprint Size			
Principal Building		3,779 SF	N/C
Accessory Building	1,000 SF Max.	N/A	3,200 SF (V)

(E) = Existing Non-Conforming  
 N/C = No Change

(V) = Variance Required  
 N/A = Not Applicable

6. **Review:**

- A. **Use:** According to Section 330-191, not more than one commercial vehicle shall be parked on a lot used for residential purposes. Such vehicle shall be owned, leased or regularly operated by a resident of the premises, or if not the resident, then on property that is at least six acres in size, and said vehicle shall be limited to vehicles which are no more than 26 feet in length and have GVW rating of 17,500. The Applicant is proposing to house two (2) dump trucks, each having a length of 30 feet and 80,000 pounds per dump truck. **A "D(1)" use variance per N.J.S.A. 40:55d-70d(1) is required.**

- B. **Height:** According to Section 330-171(A)(1), no accessory building shall exceed a height of 15 feet except for accessory buildings used in connection with farming operations, which shall not exceed a height of 35 feet. The Applicant is proposing a building height of 24 feet where 15 feet is permitted. **A variance pursuant to N.J.S.A. 40:55D-70(c) is required.**
- C. **Accessory Building and Structures:** According to Section 330-171(A)(3), no accessory building shall be located closer to a right-of-way line than the principal building. The Applicant is proposing to construct a pole barn that has a distance of 458 feet from the right-of-way line, which is in front of the existing residential structure on the property. **A variance pursuant to N.J.S.A. 40:55D-70(c) is required.**
- D. According to Section 330-171(A)(9), no accessory building in any district shall have a footprint which is greater than 60% of the footprint of the principal building, except on a farm. The total of the footprint of all accessory structures in a residential district shall not exceed 1,000 square feet or 60% of the footprint of the principal structure, whichever is less, except on a farm. No accessory building in a residential district shall be allowed to be otherwise disproportionate in height, size or area to the building and use to which it is accessory. The Applicant is proposing an accessory building footprint size of 3,200 square feet where a maximum of 1,000 square feet is permitted. **A variance pursuant to N.J.S.A. 40:55D-70(c) is required.** The Applicant should provide testimony on the proposed size of the pole barn relative to the size of the existing house.
- E. **Fences/Walls:** According to Section 330-178(C)(9), walls of masonry or natural stone, such as New England drywalls and rows of fieldstone, shall not exceed a height of four feet. The Applicant is proposing two (2) retaining walls on the subject property. Retaining wall (A) is proposed in the front yard along the proposed gravel/DGA parking area and retaining wall (B) is proposed in the side yard next to the existing single-family dwelling. Both retaining walls have a maximum height of four (4) feet, with a six-inch (6) capstone.
7. **Criteria for Granting "D(1)" Variances:** The Applicant is requesting a use variance to permit two (2) dump trucks on the subject property where only one (1) commercial vehicle is permitted in the R-2 Single Family Residential Zone.
- i. The Board has the power to grant "d(1)" variance to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. The courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." *Medici v. BPR Co.*, 107 N.J. 1 (1987).
  - ii. For non-inherently beneficial uses, the benefit to the general welfare comes from the development of a site in the community that is particularly suited for the proposed use. Providing proofs that the proposed application promotes at least one of the purposes of zoning found in MLUL, Section 40:55D-2, also provides one aspect of the positive criteria for a non-inherently

beneficial use application. The Applicant does not have to demonstrate that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013). For this criterion, the Applicant should identify those aspects of the site that render it particularly suitable to the use. Additionally, any proposed mitigation factors for the use should also be discussed.

- iii. The Applicant must also satisfy the "negative criteria." The negative criteria require a two-part proof: (1) that the proposed use can be granted without any substantial detriment to the public and (2) the proposed use will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.
- iv. As to the zone plan and zoning ordinance, the *Medici* court held that the applicant must prove an "enhanced quality or proof" that there will be no substantial impairment to the zone plan and ordinance. The Applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone.

8. **Criteria for Granting "C" Variances:** Variances can be granted by the Board, pursuant to N.J.S.A. 40:55d-70c where two provisions exist for the granting of bulk variances:

- i. The first provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures lawfully existing thereon.
- ii. The second provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(2) where the Board must find that the application relates to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and that the variance will not substantially impair the zone plan or ordinance. Under c(2), the Applicant should show that the proposal is a better zoning alternative to that which is permitted by the ordinance and provides benefits to the community as a whole, not just the applicant.
- iii. In both cases, the negative criteria must be met, which includes a showing that the proposed variances will not cause a substantial detriment to the public good (the neighborhood) or substantial impairment of the master plan and zoning.

Very truly yours,



Jessica C. Caldwell, P.P., A.I.C.P., L.E.E.D. - G.A.  
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cc: Via E-Mail Only

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