

Resolution No: 2024-14, USE VARIANCE

**A RESOLUTION OF THE JOINT LAND USE BOARD OF BELLMAWR BOROUGH
GRANTING USE VARIANCE CONDITIONED UPON SITE PLAN APPROVAL
CONCURRENTLY HEARD BUT SEPARATELY VOTED UPON AND
MEMORIALIZED BY A SEPARATE RESOLUTION FOR BARTON CARPETS, INC.,
47 WEST BROWNING ROAD, BLOCK 140, LOTS 1 AND 1.01**

WHEREAS, on August 4, 2024, at the regular meeting of the Bellmawr Joint Land Use Board, consideration was given to two applications filed by Barton Carpets, Inc. for property located at 47 West Browning Road, Block 140, Lots 1 and 1.01. The first application and approval were for a use variance, which is memorialized hereby. The second application was for site plan, which was accomplished by separate vote and will be separately memorialized in another resolution; and

WHEREAS, this resolution memorializes only the action taken upon the use variance approval; and

WHEREAS, the applicant was represented by Kristopher J. Berrs, Esq. of the law firm of Del Duca Lewis and Berr, and the Board heard testimony from John Barton as owner applicant, Brian Cleary, applicant's engineer, and Terrance Combs, applicant's planner. The applicant also produced Ken Swales employee as a witness. The Board heard from Steven Bach, Board Planner and Engineer, and the Board having heard testimony from the public, namely Howard Heller of 312 West Chester Avenue. The Board having reviewed documentation submitted with the application and during the hearing. The Board makes the following factual findings in conditionally approving the subject application for a use variance conditioned upon the separately approved and memorialized preliminary and final site plan approval and related relief:

Submissions

1. The application has been properly noticed and applied for and all conditions precedent to the Board's jurisdiction and action at an open public meeting have been satisfied.
2. The Board had before it the following items:
 - Joint Land Use Board land development application including summary and checklist.

- Agreement to pay professional fees.
- Resolution No. 2010-01 dated March 16, 2020.
- Resolution site plan of variances dated September 13, 2010.
- A site plan in full sized and reduced sizes prepared by the Petit Group Engineers dated May 31, 2024 (8 sheets).
- Full sized and reduced size boundary and topographic survey prepared by Blue Marsh Associates dated 4/3/24.
- Copies of site photos (3 sheets).
- Statement of corporate ownership. As a condition of approval, the applicant is to amend this corporate ownership disclosure to fully delineate the ownerships of the businesses and properties which are being consolidated and to specifically state that John Barton is the 100 percent owner of each.
- The foregoing materials were provided to the Board by a June 12, 2024 transmittal letter by attorney, Kristopher J. Berrs.
- The comprehensive review letter of Steven Bach, dated July 26, 2024, with which the applicant generally agreed to comply as a condition of approval. Appended to the engineer's letter were six site photos.
- During the hearing, three identical exhibits were provided by the applicant: 1) aerial photo showing the surrounding area; 2) The same aerial photo enlarging the portion depicting the subject property and delineating the existing and additional building with footprints and various property improvements, some of which proposed improvements will be modified as stated during the hearing; 3) The architectural elevations proposed by the Petit Group.
- Submitted before the hearing, but not reviewed by the Board, included various administrative submissions, including checks for payment of various application escrow fees, proof of notices of a build, notice of mailing and publication, as well as proof of payment of taxes.

Relief

3. The relief requested in the application referred to above, included a use variance to permit the enlargement of an existing non-conforming use in a zone that does not permit such use, submission waivers, a bulk variance(s) and preliminary and final site plan approval. The submission waivers, bulk variances and preliminary and final site plan approval were dealt with separately by a separate vote and are

separately memorialized. That said, however, the Board heard all testimony on the various items of relief at the same time because the proposed improvements were part of the applicant's case, and properly part of the Board's considerations of the positive and negative criteria for the use variance as required pursuant to the NJSA 40:55D-70(d).

4. In opening comments and in a summary submitted with the application, it was made a matter of record that the applicant operates an existing carpet business at 47 West Browning Road, which has been operated in that location for some 30 years by the present applicant and owner. The applicant proposes to improve the existing building with a new proposed addition totaling 6,545 square feet together with associated site improvements, including a driveway and parking area to be built on an adjacent parcel (lot 1.01) owned by the applicant. By way of background, that is documented by resolutions, in 2010 the applicant appeared before the Board seeking approval for a different approach to the problems leading to the present application, namely warehouse space shortage. That application was approved by the Board pursuant to several resolutions identified in materials submitted above, but the applicant did not ultimately proceed with his proposed addition which called for the retention of an existing, single-family dwelling on the subject property. The applicant also urges the Board to grant any additional variances submission waivers or exceptions deemed to be necessary during the review and argues that the requested NJSA 40:55D-70(d)-1 and (d)-2 use variances are justified and should be granted and stated they will prove so through expert testimony that also would justify the need for bulk variances under NJSA 40:55D-70(d)-2.

Board Engineer Review

5. The Board engineer issued a comprehensive review letter dated July 26, 2024 which provided a project summary that generally confirms the foregoing narrative as well as additional information that includes the proposal to demolish the existing dwelling on adjacent Lot 1.01 in order to construct the additional warehouse space of 6,545 square feet that would be added to the same height.
6. Mr. Bach outlined the submission requirements and in doing so identifies what checklist items of relief were requested. Specifically, Mr. Bach noted that because certain items were not necessary, he supported the submission requirement waivers for Checklist Items No. 29, 30, 31, 52, 56, 58, 65 and 67. Certain other submission items for which a waiver was sought were supported by Mr. Bach only to the extent so as to allow the Board to consider those waivers, and those include Checklist Items 54, 24, 62 and 68. The latter checklist item ultimately elicited testimony that there would be no additional signage and hence technically there would be no waiver where there would be no additional signage.

7. After hearing the testimony, including Mr. Bach's explanations, the Board concludes that the waivers are justified and may be approved. However, Mr. Bach recommended that other necessary waivers not be granted.
8. With respect to Checklist Item No. 59, the waiver was not recommended by Mr. Bach, and the Board received testimony from the applicant that the floor plan to be submitted would merely depict open storage space only, except for a small office area that was strictly related to the receipt of the warehouse materials. That small office area and the entirety of the rest of the addition, shall be denoted as "warehouse only, no retail use permitted".
9. Mr. Bach notes in his report that the properties are located within the Boroughs office "0" Zoning District and that the existing carpet and flooring business is not a permitted use in the zone. The expansion of the business would require a use variance, whether seen as an expansion or a new use on a new lot.
10. Mr. Bach generally describes the uses and zoning surrounding the property which include residential zoning districts, a light industrial zoning district and a mixed-use office and residential property in the office zoning district.
11. The following are the bulk standards applicable to the zone for wherein the property is located.

	Required	Existing	Proposed	Conforms
Min Lot Size (SF)	10,000	31,125	31,125	Yes
Min Lot Width (Ft)	100	150	150	Yes
Min Setbacks (Ft)				
Front (Browning)	10	30	30	Yes
Front (W. Chestnut)	10	11.3	10.2	Yes
Side (Lowell)	10	4.0*	4.0*	No*
Side (Res)	15	5.8*	5.8*	No
Occupied Area %	80	-	57.2	Yes
Max Bldg Ht. (Ft)	<35	<35	<35	Yes

*Indicates existing non-conformance

**Indicates variance required

These variances and the parking variance hereinafter mentioned, and the waiver shall be dealt with at site plan.

12. Mr. Bach's description of the use variance includes testimony required of the applicant to be put before the Board including detailed description of the business,

hours of operation, the number of employees, equipment utilized, deliveries, trash, signs and other matters. As hereinafter memorialized, the testimonies and proofs were received.

13. Mr. Bach's report also makes recommendations that were augmented during the hearing for various modifications or treatments in the site plan phase which should be conditions of the use variance so as to minimize to the maximum extent possible the impacts of the existing and proposed addition to surrounding properties with a view towards bettering existing conditions where possible. These suggestions included screening and landscaping around the perimeter as well as along the frontage of the existing property and an attractive treatment of the front side and rear building elevations for the new structure, as well as consideration to be given to the aesthetics of the existing building, all with a view towards creating a visually appealing view to residential dwellings all near the property.
14. Mr. Bach identified C variances for side yard setbacks, but these were both existing non-conformities that were not being exacerbated and hence did not require relief to continue, pursuant to the MLUL and the advice of the Board solicitor (see zoning grid in paragraph 11).
15. A C variance was however identified as being necessary for parking pursuant to Section 260-85.d, given a proposal of 13, later reduced to 12 parking spaces where the minimum number of parking spaces required would be 33 spaces.
16. With respect to the parking calculations for the variance, Mr. Bach's report identified in detail those requirements. It appears that there would be one additional parking space added as part of the application, in addition to an ADA parking space being added to the existing parking lot.
17. Mr. Bach's report contains review comments in 22 separate paragraphs to which the applicant generally agreed to comply except as is hereinafter noted.

Testimony of Applicant

18. John Barton, the owner operator applicant offered testimony concerning his long tenure at the subject property, which he owns and operates, and also referred to his acquisition of the adjacent property, Lot 1.01, which he had been using for some 15 years to attempt to mitigate the substantial warehousing issues that his ongoing operation have dealt with. He referred to the fact that he undertook a hybrid building addition back in 2010 as memorialized by the approval resolutions for use variance and site plan granted in or around 2010, but he ultimately determined that those measures would be insufficient. He struggled to try and utilize the existing dwelling even as he considered other options which included relocating from the Borough of Bellmawr. Outdoor storage

incrementally increased over the ensuing years such that ultimately the within project was determined to be an absolute necessity if the property was going to be safely and efficiently operated at its present location. He indicated that the entirety of the addition would be dedicated to warehousing, and that there would be no office use relocated from the existing building to the warehouse except for a small office area to service deliveries. There would be absolutely no retail in the addition. He indicated that he would not be adding new employees, and that all the facts and circumstances leading to the original relief granted to him by way of use variances and site plan approval in 2010 continue to obtain. He specifically affirmed conditions as stated by his professionals that the addition would eliminate all outside storage, that it would allow him to eliminate an existing storage trailer and it would allow him to remove a dumpster that was along Lowell Avenue.

19. He indicated that the hours of operation would remain the same as present, which was 9:00 a.m. to 7:00 p.m. Monday through Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 12:00 to 4:00 on Sunday. Likewise, his delivery schedule would remain the same at 10 to 12 deliveries a week with an average of one to three on any given day. Trash pickup from the contents of the two dumpsters, would remain at an everyday pickup. However, upon Board members' directions, he agreed to have these pickups accomplished consistent with Borough ordinances limiting the times of same. He indicated that loading would continue to be off Lowell Avenue using the same garage door, although there may be an additional garage door added to improve the efficiency of the addition. The existing signage would remain the same. No new employees were necessary. His existing employees were approximately ten in number, four or five of whom lived in town. The salesmen did not all work the same hours, but they were four to five in number, and the rest of the workforce were either office staff, warehouse employees, or management. With respect to the parking, he indicated that he did not see that there would be any need for additional parking, although he did agree to a condition of approval that would require all employees to utilize the business parking lot, and not to park on the public street. To that end, he will provide license tag numbers for each of his employees and provide same to the Borough zoning officer. He would likewise issue parking placards to be displayed by the employees while their vehicles were at work. The two company vans must also park in the business lot not on the street. He repeatedly emphasized the fact that it was not business growth that required the addition, but merely a highly chaotic warehouse setup that was unsafe, inefficient, and generally contributed to wasted manpower. The addition would not increase manpower demands in any way, but rather, make it easier for the existing manpower to locate, access, remove, and store the inventory needed to conduct the business.
20. He again indicated that the hours of operation would remain the same, and that he had no reason to expect that having a more organized storage space would generate additional retail customers. He described that five or six retail customers would visit the showroom any given day, spread out throughout the day. He

indicated that the two vans are usually on the road throughout the day on service calls. He indicated that installations are done by independent contractors with approximately eight crews with three installers each who only visited the site when carpeting materials were necessary for an installation.

21. The applicant's background testimony was augmented and confirmed by Brian Cleary, applicant's engineer, who prepared the site plan and other exhibits. He did discuss proposed landscaping and suggested revisions to the same subject to Mr. Bach's review and approval. The applicant agreed to confer with the Board Engineer to come up with the most maximal and efficient provision of landscaping buffers that may be reasonably installed to the benefit of the surrounding community. Various other issues were addressed in detail and resolved the same way. For instance, the sidewalk waiver for one of the streets was withdrawn, and now both Lowell and Chestnut will be fully side walked. He indicated that stormwater management regulations were not applicable here, and Mr. Bach confirmed the same, subject to further review of the submissions. With respect to dumpsters, only the two existing dumpsters may remain subject, however, to a proper and robust gate to hide same from public view with a specification to be reviewed and approved by Mr. Bach. Various issues regarding the architectural elevations and descriptions were addressed generally resulting in an agreement that the existing gray blue color scheme on the existing building shall be repeated on the addition using standing seam metal siding with a skirting that would also be standing seam metal. The applicant further agreed to freshly paint the existing building entirely to make sure that there is a fresh and matching appearance of the existing structure to accomplish aesthetic improvements to the site. After some considerable discussion, the applicant unequivocally affirmed that there would be no use of the warehouse addition except for warehousing and a small desk area for shipping purposes, and that there would be absolutely no other uses, including no retail uses in the addition. The applicant would provide a rudimentary floor plan that would demonstrate this and contain those very statements.
22. Mr. Terrance Combs, applicant's planner testified concerning the positive and negative criteria. Generally, he indicated that the use variance was justified under the statute and case law because, among other things, expansion furthered several of the purposes of the municipal of land use law, and he identified those, including the efficient use of land, the conservation of natural resources by repurposing the adjacent lot so as to avoid the abandonment of the existing facility. Other purposes that were promoted were a desirable visual environment. He indicated that the overall appearance of the subject facility could be improved with proper attention being paid to the exteriors of the building as called for in the proposal, together with maximal and efficient landscaping and buffering as well as improvements to the streetscape, including sidewalks, a grass strip (where there were none), and shade trees (where there was none), as well as other buffering and landscaping all with the certain affect of improving the appearance of the property that had been on the site for many decades. He testified on behalf of the

parking variance, and observed that there was no uptick in business driving the addition, but rather only the necessity of improving safety and efficiency in receiving, organizing, and shipping carpeted materials. Hence, there would not be a necessary uptick in the required parking. Various measures undertaken by the Borough during his testimony would see to that external parking impacts would not ensue by employees or company vans parking on the public streets.

23. Ken Swales was an employee who was called to testify about the fact that many of the employees live in town and several within walking distance such that they don't drive to work.
24. The applicant's representatives acknowledged that the use variance or any subsequent site plan approval shall not be deemed to permit or suffer any business operations utilizing the public roads, and accordingly, any deliveries along Lowell Avenue shall be no longer than absolutely necessary to effect the delivery, which should be a short time interval given the addition which should be laid out in such a way as to allow for the receipt of the materials in an expeditious fashion.
25. Substantial testimony by Mr. Bach was not required given the applicant's concessions to compliance with his extensive 11-page report. Nevertheless, he did make certain observations, and the applicant agreed to address those. These included review comments 1, 2, 3, 4, 6, 7, 8, 9. A handicapped parking stall shall be provided paragraph 11. Regarding drainage modifications (paragraph 12 and 13), Mr. Bach agreed with the applicant's engineer regarding the fact that this subject development is not considered a major development such that stormwater management improvements are not required. The report identified a wide variety of other issues, including the other agency approvals. The applicant agreed to comply with Mr. Bach's report and comments at the hearing as conditions of the use variance. Overriding all these concessions was a necessity of a site plan to be subsequently voted upon and memorialized in a separate resolution.
26. The Board heard from the public, sworn in was Howard Heller of 312 Chester Avenue. His home faces the addition. He indicated he just moved in. He also indicated that he had a business on the other side of him. He knew these businesses were here when he moved in. He did generally appreciate the operational improvements being imposed by the Board as well as the aesthetic improvements being agreed to by the applicant. He complained of parking usage on the streets by the applicant's employees and was happy that the Board imposed conditions concerning employee and van parking. He inquired as to the length of construction and the particular length of time the construction vehicles would be present. The response was that the construction task itself was fairly simple, and that an approximate three months would be the time period during which he could expect to see the presence of construction vehicles.

NOW, THEREFORE BE IT RESOLVED, considering the foregoing facts, and the applicant's acknowledgments of responsibility, the Board concludes that the application for use

variance has substantial merit and should be approved subject, however, to all conditions to be set out in a site plan approval voted upon separately and memorialized in a separate resolution subject, however, to the following additional conditions:

1. The applicant must contact the Joint Land Use Board office to settle any outstanding review escrow accounts prior to the issuance of building permits.
2. Approval of all appropriate reviewing agencies.
3. Compliance with all Borough, County, State and Federal rules, regulations and ordinances.
4. Compliance with the Board Engineer's report and comments at the public hearing.
5. Compliance with all representations made by the applicant at all public hearings, including the testimonies and agreements set out above.
6. Provision of a compliance plan depicting all improvements with subsequent amendments identified by date of approval.
7. Posting any required additional performance and maintenance bonding.
8. Compliance with the conditions of approval set forth in this resolution and the site plan resolution.

The Board further concludes the applicant has satisfied the positive and negative criteria that is the applicant's burden of proof for the use variance under NJSA 40:55D- 70(d), namely a use or principal structure in a district restricted against such use of principle structure, in this case, an expansion of an existing, nonconforming use onto a new lot for the conduct of that same use.

The Board further concludes the applicant has demonstrated special reasons, including the repurposing of an existing structure, the enhancement of the visible environment, and improvement of the decaying infrastructure on the existing lot, together with the substantial buffering and site improvements made for the benefit of the entire community. In short, the Board concludes that the applicant has readily satisfied the positive criteria.

Likewise, the applicant has satisfied his burden of proof as to the negative criteria, and the Board finds that there will be no substantial detriment to the public good, nor substantial impairment of the intent and purpose of the zone plan and zoning ordinance. To the contrary, an existing non-conforming structure that is presently overburdened by a shortfall in warehouse space will be augmented by warehouse space that will make the operation more efficient, organized, and safer while providing very substantial improvements that are available to and perceived by the public for the good of the public. The conditions of approval imposed by the Board above will be more than sufficient to offset any potential negative impacts.

Those Eligible to Vote

Those in Favor

7

Those Opposed

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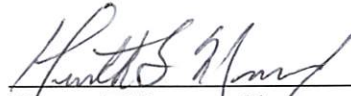
Kenneth Murray
Raymond Staszak
Joshua Haas
Mark DeBerardinis
John Scarborough
Harry Corcoran
Emil Andrae

ATTEST:



Mark DeBerardinis, Secretary

JOINT LAND USE BOARD:



Kenneth Murray, Chairman

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Borough of Bellmawr Joint Land Use Board at a meeting held on the 9th day of September, 2024.



Mark DeBerardinis, Secretary