



May 26, 2020

Mr. George A. Castro, II, Chairman  
Commissioners & Members  
City of Elizabeth Planning Board  
50 Winfield Scott Plaza  
Elizabeth, NJ 07201

**Re: Spring Street Development Corp.  
703 & R 703-727 Spring Street  
Application No. Z-05-19  
City of Elizabeth, NJ**

Dear Chairman & Members of the Board:

Our office is in receipt of a revised application by Spring Street Development Corp. for a use variance with preliminary and final site plan and bulk variances approval for the subject property located at 703 and Rear 703-727 Spring Street (Routes 1&9) and contains a total of 4.67 acres. The property has a flag lot configuration with access to Spring Street by way of two driveways. The existing strip mall on the adjoining property to the west separates the subject property from Spring Street. The property presently contains multiple commercial buildings with a total square footage of approximately 64,000 square feet. The application indicates that the property has been previously utilized for auto auction sales. The Applicant has indicated that the existing buildings are vacant.

Based on a site inspection of the property, it was found to have numerous cargo vans parked throughout the property. The vans were identified as Amazon Prime, Enterprise Rental, Budget Rental, U-Haul Rental and vans with no markings. This office is not aware of any previous approvals to allow for the use of the property for parking, storage or rental of vehicles.

The proposed use for the site is for a stand-alone parking lot for an off-site Amazon operation. Based on testimony provided at the previous hearing, the site will be used for storage of delivery vans to be picked-up in the morning and returned at the end of the business day. The drivers will leave their personal vehicles at the site. Also, based on previous testimony there will be no other uses on the site. The plans indicate that approximately 28,000 square feet of the existing building will be removed, leaving a remainder of approximately 36,000 square feet. Based on our site inspection the building has already been removed. The area is proposed to paved and converted to parking.

The application also includes Lot 1299-4, 729-763 Meadow Street, which is a vacant 3.64 acre parcel at the corner of Spring Street and North Avenue. The Applicant is proposing a 28' access drive to North Avenue and is proposing to re-grade the site and install a 3" thick gravel surface. It is not clear if this parcel will be used for any purpose other than the access drive. This property received site plan approval from the Planning Board on 01/08/09 for two hotel buildings, Application No. P-22-07. Also, the existing buildings to remain, containing approximately 14,100 square feet, will be used for indoor parking and will contain 38 spaces.

We have reviewed the plan and application and we offer the following comments:

**Zoning Comments:**

1. The subject property is located in the HC Highway Commercial Zone and the MRC Manufacturing, Research & Commercial Zone. The majority of the property is located in the MRC Zone. Neither stand-alone parking lots, storage of delivery vans or logistic operations are not permitted uses in either zone, therefore a D(1) use variance is being requested.
2. It is no clear if the two properties are to be consolidated. An access driveway is not a permitted principal use on Lot 1299-4. An additional use d.1 variance may be required. No other uses shall be conducted on Lot 1299-4 without Board approval.
3. The following bulk variances are being requested:

**HC Highway Commercial Zone:**

- a. The required lot width is 100', whereas 11.35' is proposed.
- b. The minimum required open space is 20%, whereas 0% is proposed.
- c. The maximum permitted impervious coverage is 80%, whereas 100% is proposed.
- d. The minimum required lot area is 10,000 square feet, whereas 7,091 square feet is proposed.

**MRC Manufacturing, Research & Commercial Zone:**

- a. The required lot frontage is 150', whereas 37.56' is proposed.
  - b. The maximum permitted impervious coverage is 75%, whereas 84% is proposed.
4. The following additional variance is required: under Section 17.36.110.G.1 of the City Code the minimum Floor Area Ratio (FAR) is 11%, whereas a FAR of 0% is proposed for Lot 1299-4, 729-763 Meadow Street.
  5. Under Section 17.36.110.C.6 of the City Code, fences in front yards are to be of a decorative material or obscured by plant material, whereas the fence in the front yard of 1299-4, 729-763 Meadow Street is chain link.
  6. The following variances are required Under Section 17.36.140 - Landscaping of the City Code:  
Section A: Outdoor storage areas shall be enclosed by a solid wall, fence or landscaping sufficient to screen such activity from view.  
Section D: Adjacent parking areas with 10 or more parking spaces shall be delineated by an appropriate landscape strip.

Section E.2 Front yards outside of parking and driveway area shall be landscaped in their entirety.

Section E.4: Parking areas shall be accompanied by landscape areas amounting to 20% of the paved parking and driveway area.

7. The following design waivers are required:
  - a. Under Section 17.32.060.B.2 of the City Code, an inside radius of 15' and an outside radius of 26' is required for vehicles up to 20' in length for driveway aisles and other vehicular circulation areas are required, whereas there are areas with no radii being provided.
  - b. Under Section 17.32.060.C.3 of the City Code, the required setback from a parking area to a side or rear property line is 3', whereas 0' is proposed.
  - c. Under Section 17.32.060.D of the City Code, a ten foot safety island is required between the end of a parking bay and any driveway aisle, whereas no safety islands are proposed.
  - d. Under Section 17.32.E.060.1 of the City Code, poured-in-place concrete curbing shall be used in all off-street parking areas to separate vehicular from non-vehicular areas, whereas as no curbing is proposed.
  - e. Under Section 17.32.060.G of the City Code, asphalt or concrete pavement is required for off-street parking areas, whereas the Geopave gravel parking areas to not comply.
  - f. Under Section 17.32.070.A.1.a.i of the City Code, the minimum illumination level in a parking area is 1.5 foot-candles, whereas less than 1.5 foot-candles is proposed.
  - g. Under Section 17.32.070.A.1.d of the City Code, the minimum illumination level at a driveway is 3 foot-candles, whereas less than 3 foot-candles is proposed.
  - h. Under Section 17.32.080.C of the City Code, deciduous trees shall have a planting height of not less than 7', whereas the height is not specified.
  - i. Under Section 17.32.080.D of the City Code, shrubs shall have a planting height of not less than 24", whereas a height of 18" to 24" is proposed.
  
8. The applicants design team is requesting twelve (12) C bulk variances and nine (9) design waivers. Of the twelve bulk variances, eight are self-created. Items such as zero open space provided where 20% is required, along with 100% impervious where 80% is required, are not something dictated by the site constraints but rather the request from the Client. Almost every one of the eight requested variances ignore the City's Ordinances and appear to be a case of the client desires opposed to the City's needs. It is our opinion that no hardships exist for these variances nor are there any characteristics for a discussion requesting a C(1) or C(2) variance. There is countless New Jersey case law pertaining to self-created hardships and how the positive criteria has not been met when the Board has deemed such variances as self-created.

### **Master Plan Review:**

The City of Elizabeth's Master Plan was completed in 2005 with subsequent re-examinations completed in 2008 and 2015. The City also adopted an updated Land Use Plan Element in 2016. Master Plans not only lay out proposed land use changes and goals and objectives for the municipality, but also serve as the basis of zoning. When evaluating a use variance or a re-zoning application, it is imperative to examine the municipality's Zone Ordinance and Master Plan.

The proposed use in the HC and MRC Zones is inconsistent with the City Master Plan. The MRC Zone pre-dates the 2008 and 2015 Master Plan re-examinations. Despite the periodic reexaminations of the Master Plan in 2008 and 2015, neither make any recommendations with respect to changes in the permitted uses in the MRC Zone, nor do they specifically recommend that permitted uses be expanded to include logistics operations or storage of delivery vehicles.

The 2016 Land Use Plan Element provides that “over the years Elizabeth has managed addressing major land use development planning by means of adopting redevelopment plans and periodic re-examinations of the master plan. This approach has worked to address the immediate land use and development needs of the City” (City of Elizabeth Land Use Plan Element, January 8, 2016, Page 3). More specific to the subject property and the MRC zone, this Element notes that an objective of the City for Industrial land uses was to “continue the modernization of the older warehouse buildings with new state of the art industrial facilities” (City of Elizabeth Land Use Plan Element, January 8, 2016, Page 11). Additionally, under “Redevelopment Goals and Objectives”, the area in which the subject property is located was recommended “the study of the entire Route 1 & 9 corridor as a potential redevelopment area”. In fact, the Meadow Street/Spring Street/North Avenue/Woodruff Lane Redevelopment Area was adopted in May 2018, and includes both Block 8, Lot 1699.A and 1699.D. The City’s stated goals for Industrial uses, in conjunction with the use of Redevelopment as a tool for revitalization specifically on the subject property, are indicative of the City’s focus and concerted efforts in providing opportunities for reinvestment for improved warehousing and industrial uses for this site and its surrounding area.

The proposed use for the site as a parking lot for Amazon would entail the storage of delivery vans to be picked-up in the morning and returned at the end of the business day to be stored overnight, with employee vehicles parked on site during the day, based on testimony provided at previous hearings. As indicated by the demolition and removal of approximately 43% of the existing building on the site, which is proposed to be paved and converted to parking, the proposed use for the site is predominantly as a storage facility for commercial vehicles and personal vehicles throughout the day and night. Despite the City’s focus on revitalization of this site and its surrounding area more generally, the proposed use is neither contemplated in recent Master Plan Re-examinations or the Land Use Plan Element, and with the nature of the use is in opposition with the stated goals of both. In particular, the proposed use does not follow the goal to “continue the modernization of the older warehouse buildings with new state of the art industrial facilities; contrastingly, this Application proposes to reduce the existing warehouse building area to replace it with more surface parking for the storage of vehicles as the defining use of the site.

**General Comments:**

1. The applicant shall provide testimony in support of each variance being requested.
2. The Applicant shall provide testimony as to the operation of the proposed facility, including hours of operation, number of employees, etc.
3. A survey prepared by a licensed land surveyor has been provided.
4. The Applicant shall provide testimony with respect to bathroom facilities. Temporary toilet facilities (porta-johns) are not permitted on a permanent basis.

5. The existing fire hydrant located in the westerly portion of the parking area will not be accessible with vehicles parked in the spaces surrounding the hydrant. The hydrant should be located in a more accessible area, to be coordinated with the City Fire Official.
6. The Applicant shall provide testimony with respect to the handling of refuse and recycling.
7. Landscaping is proposed consisting of 11 shade trees, 27 Abortive evergreens and Boxwood shrubs. The Applicant has added screening along the perimeter of Lot 1299-4 and has indicated that due to the environmental cap required for the site, additional landscaping is not feasible. However, the Applicant should look into above grade planters to provide additional on-site landscaping.
8. The Application indicates that no signs are proposed. Any new signage shall comply with the City Code or the Applicant will be required to return to the Board for additional variances.
9. The Applicants response letter indicates that the purpose of the river stone along the perimeter of the parking area is to create a maintenance free pervious area. The Applicant shall provide testimony as to why this area cannot be landscaped.
10. The Remedial Capping Plan indicates areas of concern (AOC), containing Chromium and PCB's. Based on previous testimony, the remedial work is being performed under the direction of an LSRP in accordance with NJDEP rules and regulations.
11. The existing building is in poor condition. The application indicates that the buildings require total replacement and repairs are not proposed. The application also indicates that total demolition is possible. Further clarification is required.
12. See attached memorandum prepared by HCI, dated May 21, 2020 for stormwater management comments.
13. See attached letter from Hamal Associates, dated October 11 2019, for traffic comments. A truck turning exhibit has been provided which depicts a clear turning for an aerial fire truck. Based on our inspection of the site, there are a large number of cargo vans that are parked in a disorganized fashion, some stacked 3 to 4 vehicles deep. This raises a concern that if the parking plan is not adhered to there will be a fire access issue.
14. Parking is based on lot area in the MRC Zone, however in the case of a use variance request the Applicant must provide sufficient proof that adequate parking is being provided for all uses on the property. The Applicant has indicated that the number of vans to be stored onsite will be approximately 200 and there will be 150-175 delivery employees.
15. The site shall meet the requirements of the American with Disabilities Act and the New Jersey Barrier Free Code.
16. The Applicant shall comply with all directives of the City of Elizabeth Fire Official.
17. The Applicant shall comply with the comments of the City Engineer.

18. The applicant shall file with the Board and Construction Official copies of all necessary agency approvals other than municipal agencies having land use jurisdiction over the application.
19. Prior to issuance of building permits, compliance with all conditions of approval indicated in the resolution shall be verified by the Board Engineer.
20. Subsequent to resolution compliance, an electronic copy of the approved drawings shall be provided to the Board Engineer. The file format may be AutoCAD, PDF, JPEG, or TIF.
21. The Applicant shall arrange a pre-construction meeting with the Board Engineer and Construction Official at least one week prior to start of construction.
22. An engineers estimate for site improvements must be submitted prior to signature by the Board Chairperson.
23. The Applicant must post performance guarantees and inspection fees with the City of Elizabeth prior to beginning of any on-site construction activities.

**Regulatory Approvals:**

The applicant shall file with the Board and Construction Official copies of all necessary agency approvals other than municipal agencies having land use jurisdiction over the application.

1. The following additional approvals may be required
  - a. Union County Planning Board.
  - b. Somerset - Union County Soil Conservation District.
  - c. City Fire Official.
  - d. City Board of Health.
  - e. City Utility Connection & Road Opening Permits.
  - f. All other permits as required by agencies having jurisdiction over project.
2. It is the applicants responsibility to secure all required permits and approvals.

**Summary:**

The Applicant is required to satisfy the positive and negative criteria as outlined in the New Jersey Municipal Land Use Law in support of the required D(1) variance for the proposed “parking lot” to support the Amazon operation at another site. The proposed use, as a parking lot and outdoor storage facility is not a permitted use in either the Highway Commercial Zone (HC) nor the Manufacturing, Research & Commercial Zone (MRC). It has been determined that an additional D(1) variance relief is required for the proposed access driveway as a principal use on Lot 1299-4, therefore the appropriate testimony shall be provided. In support of the request for D variance relief, the Applicant should provide testimony and demonstrate that the proposed use is: (a) not inconsistent with the intent and purpose of the Master Plan and Land Development Ordinance; (b) carries out a general purpose of zoning, especially promotion of the general welfare (special reasons) and will not result in substantial detriment to the public good (negative criteria). Any positive action relative to the request for the D Variances must be predicated on the applicant’s ability to successfully provide testimony in support of the positive criteria and the negative criteria.

Our office has concerns about the overall number of significant variances and design waivers being requested as part of this project. Overall, the project requires and is requesting relief for a D(1) variance, twelve (12) bulk variances, and nine (9) design waivers. The sheer number of variances and design waivers, in addition to the nature of the variances to utilize the site for a use that is predominantly characterized by a surface parking lot for vehicle storage, and to saturate the site with impervious coverage largely without regard for landscaping, screening, or other buffering design techniques promoted by the City Ordinances, points to the fact that the proposed site plan and use more than seek appropriate relief from the prescribed City Ordinances. Rather, when looked at as a whole, the combination of these variances shows a lack of attention to the intent and purpose of the zoning and its required provisions. Coupled with the City's Master Planning and Redevelopment efforts documented in the following section, the proposed non-permitted use and associated variance relief is in direct opposition to the City's goals and objectives related to this zone.

All nine (9) of the design waivers are self-created and could and should have been avoided. The design team has chosen to not meet City Standards and place as many vehicles as possible onto this property. Buffers, safety islands, safety curbing, safety lighting, plus beautification items such as deciduous trees and adequate height landscaping have also been ignored. All the design waivers being requested can be met by the applicant. It appears that this application is choosing to only provide items that they deem necessary and are ignoring the City Code. The Applicant could have easily submitted an application satisfying all nine of the design waiver requests. The simple request and subsequent testimony for a D(1) Use Variance does not subsume all the other C variances and design waivers for this application. The City of Elizabeth Zoning Board must clearly deal with all the specifics of each C variance and why the applicant cannot meet these conditions. The same is true for the design waivers, specific reasons for each design waiver must be requested by the applicant's professionals. Planning reasoning must be established for the granting of any of the design waivers being requested.

As published in New Jersey Zoning and Land Use Administration "Cox". "Medici v. BPR Co. has made it clear that municipalities should make zoning decisions by ordinance rather than by variance. Thus, one of the focal points of this prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board authority. The Court state that the added requirement that boards of adjustment must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance will reinforce the conviction expressed in Ward v. Scott. That the negative criteria constitute an essential safeguard to prevent the improper exercise of the variance power."

It appears that is application is before the City Zoning Board because the applicant Amazon has leased property elsewhere in the City which does not have sufficient parking for their needs. This application is seeking to permit standalone parking as a permitted use in the City. The City of Elizabeth has been very consistent in not permitting parking as a standalone use

### **Documents Reviewed:**

1. Plans entitled "Preliminary and Final Site Plan, 703-727 Spring Street Capping Plan, Tenant: Amazon Logistics, 703-727 Spring Street, City of Elizabeth, Union county, New Jersey, Block 8. Lot 1699.D", prepared by Jarmel Kizel Architects and Engineers Inc., last revised 02/28/20, consisting of 11 sheets.

2. Plans entitled “Spring Street Development Corp., 703-727 Spring Street, Prepared for The Elm Group, December 2018, Block 8, Lots 1699.D, City of Elizabeth, Union County, New Jersey”, prepared by The Elm Group, last revised 02/28/20, consisting of 4 sheets.
3. Report entitled “Spring Street Development Corporation, Former Metal Powder and Chemical Works Site, Block 8, Lot 16899.D, 703-727 Spring Street, Elizabeth, New Jersey, Site and Stormwater Management Analysis, Prepared For:, The ELM Group, Inc., Prepared By: Frey Engineering, LLC”, last revised 02/28/20.
4. Report entitled “Stormwater Management Report for North Avenue Access Road, Submitted In Part With Preliminary and Final Site Plan of 703-727 Spring Street Capping Plan & 729-763 Meadow Street Access Road, Block 8. Lot 1299.A, City of Elizabeth, Union County, New Jersey, prepared by Jarmel Kizel Architects and Engineers Inc., dated 02/28/20.
5. Plan entitled “Truck Turning Exhibit, 703-727 Spring Street Capping Plan & 729-763 Meadow Street Access Road, 703-727 Spring Street, 729-763 Meadow Street, City of Elizabeth, Union county, New Jersey, Block 8, Lots 1299.A & 1699.D”, prepared by Jarmel Kizel Architects and Engineers Inc., dated 02/28/20.
6. Letter dated March 4, 2020 from Jarmel Kizel Architects and Engineers Inc. to City of Elizabeth Zoning Board, in response to HCI letter dated 9/5/19.

The above comments presented in this letter are for the consideration of the Board Members, the Applicant and the Applicants Engineer. If questions arise from these parties, please contact this office for further discussion.

Very truly yours,



Anthony G. Gallerano, PE, PP  
Harbor Consultants, Inc.