

A regular meeting of the Board of Adjustment of the Township of Roxbury was held on Monday, October 2, 2023 at **7:00 p.m.** in the Municipal Building at 1715 Route 46, Ledgewood, NJ, after a salute to the flag, Dr. Kennedy, Chairman read the “Open Public Meetings Act”.

BOARD MEMBERS PRESENT

Mr. Summers, Ms. Dawson, Mr. Klein, Mr. Overman, Ms. Dargel and Dr. Kennedy

ABSENT: Ms. Robortaccio

PROFESSIONAL STAFF

Ms. Alyse Hubbard, Esq.

A moment of silence was held in honor of the passing of Mark Denisiuk of Ferriero Engineering who was the engineer for the Zoning Board of Adjustment for many years.

MINUTES:

Ms. Dargel made a motion to approve the minutes of the September 11, 2023 meeting.

Mr. Klein seconded.

Roll call: Ms. Dargel, yes; Mr. Klein, yes; Ms. Dawson, yes; Mr. Overman, yes; and Dr. Kennedy, yes.

RESOLUTIONS:

ZBA-23-010 301 KINGSLAND RD, LLC. Bulk Variances for property located at 301 Kingsland Road, Landing, Block 11001, Lot 14 in an R-3 zone.

Ms. Dargel made a motion to memorialize the resolution. Mr. Klein seconded.

Roll call: Ms. Dargel, yes; Mr. Klein, yes; Ms. Dawson, yes; Mr. Overman, yes; and Dr. Kennedy, yes.

In the matter of 301 Kingsland, LLC
Case No. ZBA-23-010

**RESOLUTION OF FINDINGS AND CONCLUSIONS
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
RESOLUTION**

Approved: September 11, 2023
Memorialized: October 2, 2023

WHEREAS, 301 Kingsland, LLC has applied to the Zoning Board of Adjustment of the Township of Roxbury seeking variance relief to construct a single-family home on premises located at 301 Kingsland Road and known as Block 11001, Lots 14 on the Tax Map of the Township of Roxbury which premises are in a “R-3” Residential Zone; said proposal required relief from Sections 13-7.818G.2, 13-7.1301D.7, 13-7.1301D.5 and 13-8.612E of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

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1. James Burke, Esq. represented the Applicant.
2. The Applicant is the owner of the subject property and is proposing to construct a single-family home.
3. The application is under the jurisdiction of the Zoning Board as the application requires a bulk variance, pursuant to N.J.S.A. 40:55D-70(c) to construct a single-family home on the property, requiring the following relief from the Township's Zoning Ordinances:
 - a. Section 13-7.818G.2 – Steep Slopes Disturbance:
 - i. Slope Range of 15%-19.9%: 35% permitted, 93% proposed.
 - ii. Slope Range of 20%-24.9%: 15% permitted, 82% proposed.
 - iii. Slope Range of 25% or more & ridge line: 3% permitted, 11% proposed.
 - b. Section 13-7.1301D.7 – Maximum Building Height: 35 feet permitted; 38 feet proposed.
 - c. Section 13-7.1301D.5(a) – Minimum Rear Yard Setback: 35 feet permitted, 37.3 feet existing, 32 feet proposed.
4. The Applicant submitted the following documents were submitted with the Land Development Application:
 - a. Site Plan and Soil Erosion and Sediment Control Plan at 301 Kingsland Road, prepared by Kent Rigg Engineering and Land Surveying, LLC, dated June 27, 2022, revised through April 17, 2023, consisting of three (3) sheets.
 - b. Site Plan and Soil Erosion and Sediment Control Plan at 301 Kingsland Road, prepared by Kent Rigg Engineering and Land Surveying, LLC, dated June 27, 2022, revised through April 17, 2023, consisting of three (3) sheets.
 - c. New Residence at 301 Kingsland Road, Architectural Plans, prepared by John E. Giammarino, Architect, dated March 24, 2022, revised through April 12, 2023, consisting of seven (7) sheets.
 - d. Zoning Denial, issued by Michael Haggerty, dated July 28, 2023.
 - e. Letter from Kent Rigg Engineering and Land Surveying, LLC, dated September 5, 2023.
5. The Board received the following memorandums:
 - a. Melanie Michetti, P.E., C.M.E., Township Engineer, dated August 14, 2023, and September 8, 2023.
 - b. H. Ronald Smith, Chairman, Lake Hopatcong Commission, dated August 11, 2023.
6. The following documents were marked for identification:

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- a. A-1 – Colorized Site Plan, sheet 1 of 3, prepared by Kent Rigg Engineering and Land Surveying, LLC, dated June 27, 2022, and revised April 17, 2023.
 - b. A-2 – Colorized Site Plan, sheet 3 of 3, prepared by Kent Rigg Engineering and Land Surveying, LLC, dated June 27, 2022, and revised April 17, 2023.
7. Duly noticed public meetings were held on August 14, 2023, and September 11, 2023, at which time Frank Mariconda, on behalf of the Applicant and Kent Rigg, PE, PLS, who was accepted as an expert engineer, presented sworn testimony in support of the subject application. The subject property is an irregularly shaped lot, with 150 feet of frontage on Kingsland Road, that is 103.33 feet deep on the northerly border, 73.30 feet deep on the southerly border and 99.26 feet along the western boundary line. The property was previously developed with a single-family home, that has since been demolished. There are remnants of the foundation and the chimney, as well as the driveway existing on the lot.
 8. The Applicants are proposing to construct a single-family home, with an attached garage, related driveway, and walkway. The grade of the home is similar around the perimeter, the garage is constructed below grade, in the basement, which also contains a bathroom, utilities, a laundry room and common area. The highest point of the structure is the peak of the shed roof, which requires a variance for building height.
 9. Frank Mariconda testified to the layout and design of the home, which is uniquely shaped to complement the oddly shaped lot. The first floor has a large family room, with a kitchen/dining room, a mud room and a powder room. The second floor contains three bedrooms, one of which is a Master Suite and another full bathroom. The witness noted that the third floor contained some utilities and storage, but primarily will be used as access to the balcony. The rear yard setback variance is related to the decks and stairs that provide access to the back yard and not the home itself.
 10. The proposed development does not impact the existing retaining wall. The home was designed within the building envelope and does not disturb any new areas that were not previously disturbed. The lawn area will remain the same and a seepage pit is proposed to address the roof runoff. The front yard is tiered and will be re-graded to construct the driveway. The proposed home will be served by the existing well on the property.
 11. During the hearing on August 14, 2023, Craig Bitten, who is the Vice President of the Kingsland Board, raised some concerns he has with proposed construction. Namely, there are currently drainage issues, the

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existing retaining wall along Kingsland Road is in disrepair and within the right-of-way, the rock wall along the southern side of the property encroaches onto the adjacent lot, and the wood fence on the northern side of the property encroaches onto the other adjacent lot. Additionally, the Board had some concerns about the engineering and design of the site and determined that input from the Township Engineer was necessary.

12. The Applicant carried the application and returned to the Board on September 11, 2023, to address the concerns raised by the Board and the objector. At which time, Mr. Rigg reviewed the comments contained in the report from Ms. Michetti, dated September 8, 2023. The Applicant will comply with the comments from the Lake Hopatcong Commission and the Township Engineer's letter.
13. An in-depth discussion ensued regarding the slope of the driveway, for which a waiver is required. Section 13-8.612E requires that the maximum residential driveway grades shall not exceed six (6) percent within twenty-five (25) feet of the right-of-way line and fifteen (15) percent elsewhere. As proposed, the driveway has a slope of 15.6% as it approaches the house from Kingsland Road, but levels out at the top by the entrance to the garage. Mr. Rigg testified that the proposed driveway was based on the current conditions on the site and that an ideal slope was not possible on this property.
14. The grinder pump will be relocated so that it is not located within the walls of the house and is in line with the existing sewer connections.
15. To further address the drainage concerns, a trench drain will be constructed along the driveway and the seepage pit would either be enlarged, or another pit would be constructed. The Applicant shall record a Deed Restriction for the operation and maintenance of the drainage system.
16. The deteriorating wall along Kingsland Road will be replaced and moved out of the right-of-way. The Applicant is proposing to address the encroaching wall on the southern side of the property by removing the top level of rocks and filling in the area within the property and add landscaping. Design calculations will be reviewed by the Township's Engineer.
17. No one from the public spoke at the meeting on September 11, 2023.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

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1. The Board found the witness testimony to be competent and credible. Relief can be granted pursuant to N.J.S.A. 40:55D-70(c) from the following Sections of the municipal zoning ordinance:
 - a. Section 13-7.818G.2 – Steep Slopes Disturbance:
 - i. Slope Range of 15%-19.9%: 35% permitted, 93% approved.
 - ii. Slope Range of 20%-24.9%: 15% permitted, 82% approved.
 - iii. Slope Range of more than 25%: 3% permitted, 11% approved.
 - b. Section 13-7.1301D.7 – Maximum Building Height: 35 feet permitted; 38 feet approved.
 - c. Section 13-7.1301D.5 – Minimum Rear Yard Setback: 35 feet permitted, 37.3 feet existing, 32 feet approved.
2. N.J.S.A. 40:55D-70(c)(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the (c)(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.
3. The property is an oddly shaped lot that was previously developed, and the existing steep slopes were disturbed as part of the prior development. The Applicant made significant efforts to work within the disturbed and buildable area on the property. Although the areas were previously disturbed, relief is still required from the Township’s Ordinance. The home itself is within the building envelope, but the decks and related stairs to access the rear yard are within the rear yard setback. The height of the structure is a result of the grade of the property, compliance with the building height would create a hardship for the Applicant, resulting in the construction of retaining walls to lower the level of the home.
4. The benefits of permitting construction of the home with the necessary relief outweigh the detriments that may result from denying the requested relief. The Applicant has worked within the constraints of the property to develop a vacant lot. The existing deteriorating stairs will be improved, and the encroachments will be removed. The existing drainage issues will be addressed as part of the construction on the lot. The project will be a benefit to the neighborhood.

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5. It was determined that there would be little impact to the surrounding area, as the lot was previously developed with a single-family home. The variances are related to the unique characteristics of the property. Accordingly, the relief can be granted without substantially impairing the zoning scheme or Master Plan.
6. Applicant requires relief from Section 13-8.612E of the Township's Ordinances as the maximum residential driveway grades shall not exceed six (6) percent within twenty-five (25) feet of the right-of-way line and fifteen (15) percent elsewhere. As approved, the driveway has a slope of 15.6%. Waivers can be granted pursuant to N.J.S.A 40:55D-51 if they are reasonable and within the general purposes and intent of the provisions for construction of a single-family home. The literal enforcement of the provisions of the ordinance is impracticable and will create an undue hardship because of peculiar conditions pertaining to the land in question, namely the driveway currently exists on the lot and it would be a hardship for the Applicant to comply with the driveway grade requirements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 11th day of September 2023 that the approval of the within application be granted subject, however, to the following conditions:

1. Payment of all fees, sureties, and escrows required by ordinance.
2. The Applicant shall construct the home in a manner that is consistent with the plans submitted to the Board and the representations made at the public hearing.
3. The Applicant shall record a Deed Restriction with reference to an Operations and Maintenance Manual for the Stormwater Management System, according to the "New Jersey Stormwater Best Management Practices Manual," Chapter 9.3 Dry Wells, to prevent its neglect, adverse alteration or removal, subject to review and approval by the Board's Engineer and Attorney.
4. The location and relocation of the on-site sanitary sewer system shall be reviewed and approved by the Engineering and Sewer Departments prior to the relocation or alteration of the facilities.
5. The on-site sanitary sewer system shall be constructed pursuant to the specifications set forth in the Interoffice Memo from Melanie Michetti, P.E., C.M.E., dated September 8, 2023, and the plans shall be updated with the notes specified in the Interoffice Memo.
6. A driveway pavement detail shall be provided on the plans, subject to the review and approval of the Township's Engineer.

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7. A trench drain shall be installed across the driveway, west of the existing well and tied into the proposed seepage pit. The details shall be provided on the plans.
8. The Applicant shall conduct permeability tests in the area of the seepage pit, prior to construction, subject to review and approval by the Township Engineer.
9. Design calculations for the proposed drywells/seepage pit shall be provided, subject to the review and approval of the Township Engineer, the details shall be revised according to the comments from the Township Engineer.
10. Overflow grates shall be provided on the drywells.
11. The masonry wall along the frontage of the property shall be replaced.
12. Engineering design calculations shall be provided for the reconstruction or design of any retaining wall on the property, subject to the review and approval of the Township Engineer.
13. Top and bottom wall elevations shall be provided for the stone wall, which shall not exceed 3 feet in height.
14. The Applicant shall obtain all necessary outside agency approval, including, but not limited to, the Roxbury Township Sewer Department, the Roxbury Township Construction Department, the Roxbury Township Engineering Department.
15. The Applicant shall obtain a Soil Relocation Permit from the Engineering Department prior to the start of construction.
16. Note 11 of the plans shall be revised to indicate that the property is serviced by a well, and not public water.
17. The “WV” water valves shown on the plans shall be verified and revised accordingly.
18. All work associated with the grinder pump shall be coordinated with the Sewer Department. Any work related to the pump chamber, shut-off valve, control panel, alarm box, discharge pipe and all appurtenances shall be confirmed by a representative of the Sewer Department.
19. All required permits shall be obtained for the electrical and plumbing work on the grinder pump system.
20. An alarm box shall be installed by the Applicant and shall be visible from the pump chamber.
21. The pipe discharging from the house to the grinder pump facility shall be the homeowner’s responsibility and a plumbing permit from the Construction Department shall be obtained prior to construction.
22. Soil erosion and sediment control details, including the silt fence detail, shall be provided on the plans.

23. Should the excavation of Kingsland Road be required, the Applicant shall contact the Kingsland Road Homeowner's Association, as Kingsland Road is a private road under its jurisdiction.
24. Applicant shall utilize native plant species for landscaping, as recommended by the Lake Hopatcong Commission in the letter dated August 11, 2023.

AMENDED RESOLUTION:

ZBA-22-041 SPARK CAR WASH, LLC, Preliminary Major Site Plan, Use Variance, and Bulk Variance relief for property located at 1441 Route 46, Ledgewood, Block 8602, Lot 42 in a B-2 zone.

Mr. Klein made a motion to memorialize the resolution. Ms. Dargel seconded.
Roll call: Mr. Klein, yes; Ms. Dargel, yes; Ms. Dawson, yes; Mr. Overman, yes; and Dr. Kennedy, yes.

In the matter of Spark Car Wash, LLC
Case No. ZBA-22-041

RESOLUTION OF FINDINGS AND CONCLUSIONS
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
AMENDED RESOLUTION

Approved: June 26, 2023
Memorialized: October 2, 2023

WHEREAS, Spark Car Wash, LLC has applied to the Zoning Board of Adjustment of the Township of Roxbury seeking a Use Variance, Preliminary Major Site Plan and related bulk variance and waiver approval for premises located at 1441 Route 46 and known as Block 8602, Lot 42 on the Tax Map of the Township of Roxbury which premises are in a "LI/OR" Light Industrial/Office Research Zone; said proposal required relief from Section 13-7.3402, 13-7.3507F, 13-7.3507G, 13-7.3507I, 13-7.2502D7, 13-7.2502D10, 13-7.810.1B, 13-8.602A, 13-8.608A, 13-8.610, 13-8.702A, 13-8.702F, 13-8.702H, 13-8.703A, 13-8.705B, 13-8.904A, 13-8.916D3, 13-8.905B, 13-8.916D1, 13-8.905D, 13-8.910E, 13-8.705B, 13-8.804A, 13-8.807A, 13-8.807M of the Roxbury Township Land Use Ordinance; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and having conducted a public hearing has made the following factual findings:

1. John Wyciskala, Esquire, of Inglesino, Webster, Wyciskala, Taylor, LLC, represented the Applicant.
2. The application is under the jurisdiction of the Zoning Board as the application requires a "D-2" use variance for expansion of a nonconforming use, as a car wash is not permitted in the LI/OR Zone. Additionally, the application requires a "D-3" use variance for site plan requirements for vehicle service stations that are not in compliance with the conditional use standards.

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3. The Applicant submitted the following documents:
 - a. “Preliminary and Final Major Site Plan for Spark Car Wash,” prepared by Stonefield Engineering & Design, dated September 29, 2022, revised through June 7, 2023, consisting of twenty (20) sheets.
 - b. “Existing and Proposed Floor Plans,” prepared by Gary Kliesch and Associate Architects, dated October 4, 2022, last revised on April 28, 2023 consisting of four (4) sheets.
 - c. “Vacuum Equipment Directional Signs and Monument Signs,” prepared by Gary Kliesch and Associate Architects, dated June 6, 2023.
 - d. “Pay Station Menu Board, XPT, Fast Pass Reader and Colored Elevations,” prepared by Gary Kliesch and Associate Architects, dated June 7, 2023.
 - e. “Mat Washer Details and Wire Basket Signs,” prepared by Gary Kliesch and Associate Architects, dated June 26, 2023, marked as A-14 at the hearings.
 - f. “Proposed Site Rendering,” prepared by Gary Kliesch and Associate Architects, dated June 26, 2023, consisting of three (3) sheets.
 - g. Stormwater Management Statement, prepared by Stonefield Engineering & Design, dated April 27, 2023.
 - h. ALTA/NSPS Land Title Survey, prepared by Stonefield Engineering & Design, dated May 6, 2022, revised through December 19, 2022.
 - i. Letter to the Planning Board from Stonefield Engineering & Design, dated June 14, 2023.
 - j. Letter to Mark Kataryniak, Board Engineer, from Stonefield Engineering & Design, dated April 28, 2023.
 - k. Board of Adjustment Meeting Minutes from March 2, 1966.
4. In addition, Applicant submitted the following documents at the hearing, that were marked for identification:
 - a. A-1 – “Site Plan Rendering Exhibit,” prepared by Stonefield Engineering & Design, dated April 6, 2023
 - b. A-2 – Car Queueing Exhibit, prepared by Stonefield Engineering & Design
 - c. A-3 – “Existing Site Image and” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023

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- d. A-4 – “Proposed Site Rendering” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - e. A-5 - “Existing Site Image and” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - f. A-6 – “Proposed Site Rendering” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - g. A-7– “Existing Site Image and” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - h. A-8– “Proposed Site Rendering” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - i. A-9 – “Rendered Elevations,” prepared by Gary Kliesch and Associate Architects, dated May 8, 2023
 - j. A-10 – Rendering of signs and elevations of kiosks and menu boards (previously marked A-1 on May 8, 2023)
 - k. A-11- Color rendering of the elevations of the signs (previously marked A-2 on May 8, 2023)
 - l. A-12 – Aerial Exhibit of the property dated April 6, 2023
 - m. A-13 – Site Plan Rendering dated June 23, 2023
 - n. A-14 – “Mat Washer Details and Wire Basket Signs,” prepared by Gary Kliesch and Associate Architects, dated June 26, 2023
 - o. A-15 – Planning Exhibits for Spark Car Wash, LLC, prepared by John McDonough Associates, on April 4, 2023
 - p. A-16 – Details for pay station menu board, fast pass reader, and colored elevations
 - q. B-1 – Board Exhibit containing six (6) photos of another Spark Car Wash location.
5. The Board received the following memorandums:
- a. Russell Stern, Township Planner, dated April 6, 2023, May 8, 2023, and June 22, 2023
 - b. Mark Kataryniak, Board Engineer, dated April 4, 2023 and June 22, 2023
 - c. Melanie Michetti, Township Engineer, dated January 25, 2023
 - d. Abby Montgomery, Health Department, dated April 6, 2023
 - e. Matthew Holland, Police Department, dated April 5, 2023

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6. Applicant needs relief from the following variances and waivers:
- a. Variances pursuant to N.J.S.A. 40:55D-70d:
 - i. Section 13-7.3402, for the expansion of a nonconforming use as a car wash is not a permitted or conditional use allowed in the LI/OR Zone.
 - ii. Section 13-7.3507F, which requires a minimum setback of 40 feet from the road right-of-way for all buildings, structures, canopies, fuel pumps, air pumps, tanks or other service appliances, including vacuums.
 - 1. Route 46: Five (5) ground mounted vacuums with overhead arm, garbage cans, mat cleaners and illumination are located within the required setback.
 - 2. Route 46 Jughandle: Two (2) pay stations with canopies and two (2) automatic gates are proposed within the setback.
 - 3. Kings Parkway: One (1) trash enclosure is proposed within the setback.
 - iii. Section 13-7.3507G, which requires a minimum side/rear yard building setback of no less than 25 feet. The existing building is located 10.1 feet from adjoining Lot 43 and 14.5 feet from Lot 45.
 - iv. Section 13-7.3507I, which requires a minimum twenty (20) feet wide landscape strip across the entire frontage, which includes a hedge consisting of two rows of shrubs and shade trees. There is a non-compliance landscaping along the frontage of Kings Parkway and the Route 46 jughandle.
 - b. Variances pursuant to N.J.S.A. 40:55D-70c:
 - i. Section 13-7.2502D7: a maximum building height of 28 feet is required, 31 feet is proposed for the tower.
 - ii. Section 13-7.2502D10: a minimum 10 feet aisle/driveway/parking setback from the front building elevation and 5 feet from the side and rear elevations is required: existing/proposed site improvements have paving flush with the front elevation and 3 feet from the side.
 - iii. Section 13-7.810.1B: no accessory buildings shall be permitted in the front yard, the proposed attendant's pay stations are located in the front yard associated with Route 46 jughandle.

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- c. Waiver – A waiver is necessary from the following Sections:
- i. Section 13-8.602A: local roads shall have a 50 feet wide right-of-way and 30 feet wide cartway, the existing right-of-way is 33 feet wide and cartway is 12.1-24 feet wide on Kings Highway.
 - ii. Section 13-8.608A: curbs shall be required on both side of all street, partial curbing proposed along Kings Parkway.
 - iii. Section 13-8.605E2: all roads shall be paved from curb to curb, partial asphalt proposed.
 - iv. Section 13-8.610: sidewalks shall be provided on both side of all streets, no sidewalks are proposed
 - v. Section 13-8.702A: parking spaces shall be 9 feet wide, 10 feet width is proposed for the stalls associated with the vacuums.
 - vi. Section 13-8.702F: a 20 feet wide parking/ traffic aisle/driveway setback from Route 46 is required:
 1. Route 46 jughandle has a 3.4 feet setback from the traffic aisle, 14.7 feet to the gate and 12.7 feet setback to the pay station canopy are proposed
 2. Kings Parkway has a 5.5± feet setback from the parking spaces.
 - vii. Section 13-8.702H: minimum setback of parking areas to any building, a 3 feet setback is proposed.
 - viii. Section 13-8.703A: every building requiring the receipt of materials shall have a 15' x 60' loading/unloading space, no loading space is proposed.
 - ix. Section 13-8.705B: all non-residential uses shall have one location for trash/recycling enclosure in the side or rear yard, enclosure is proposed within the Kings Parkway front yard.
 - x. Section 13-8.804A&B: all site plans require street trees planted 40 feet on center within the road rights-of-ways. Partial compliance is provided. Additional street tree(s) to be provided by lot 45, adjacent to the Kings Parkway right-of-way.
 - xi. Section 13-8.807A: a minimum 3' high screen planting between the parking area and street lines required, partial compliance provided.

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- xii. Section 13-8.807M: landscaping shall be required to accent of driveway openings, partial compliance provided. Low growing perennial plantings will be provided on both sides of the drive-thru entrance off of Route 46.
 - xiii. Sections 13-8.904A and 13-8.916D3: only one freestanding sign is permitted per lot, one (1) monument sign, two (2) pay station signs, and three signs on each of the 15 vacuums are proposed.
 - xiv. Sections 13-8.905B and 13-8.916D: only one (1) façade sign is permitted, four (4) are proposed on the building. With multiple road frontages, a maximum of two façade signs are permitted (Section 13-8.905B), five (5) signs are proposed on the Pay Station.
 - xv. Section 13-8.905D: the maximum façade sign shall not exceed 5 feet, two 7'-5" high Spark Car Wash and logo signs are proposed on the building tower.
 - xvi. Section 13-8.910E: advertising on traffic control/directional signs is prohibited, eight (8) traffic control/directional signs with illuminated logos are proposed.
7. Duly noticed public meetings were held on April 10, 2023, May 8, 2023, and a Special Meeting was held on June 26, 2023. During the course of the public meetings, sworn testimony was given by Matt Canale, the Director of Real Estate for Spark Car Wash, Paul Mutch, PE, of Stonefield Engineering & Design, LLC, the site and traffic engineer, Gary Kliesch, AIA, NCARB, NJCID and Oliver Young, AIA, NCARB, LEED AP, of Gary Kliesch and Associate Architects, PC, and John McDonough, PP, of John McDonough Associates, the planner, who were accepted as experts in their respective fields.
8. The subject property is 1.1 acres in size and has been developed as a car wash for over 50 years. It is a split zoned parcel with the front half located in the B-2 Highway Business District and the rear in the LI/OR Light Industrial/Office Research District. The property has frontage on westbound US Route 46, which is its primary ingress/egress. It also has frontage on Kings Parkway which serves as a secondary ingress/egress. Frontage is also on the US Route 46 jughandle, but with no vehicle access. Kings Parkway is a lightly travelled, unsigned private right-of-way.
9. To the west along Route 46 the property adjoins the Towne Toyota Service Center, which is situated in the B-2 District. Along Kings Parkway the site adjoins a single-family residence located in the LI/OR zone. Across Kings Parkway to the northeast is Kenvil Weldery and Machine in the LI/ OR zone.

10. The Applicant is proposing interior modifications to the car wash tunnel, façade alterations, new signage, new lighting, new landscaping, and redevelopment of the existing parking lot and drive aisles. The Applicant also proposes sixteen (16) new exterior freestanding vacuums with overhead illuminated arms located within the parking lot and 20' feet to Route 46 right-of-way. The building footprint will be slightly decreased, and impervious coverage will be reduced from 57.5% to 49.5%. This is not a major development from a stormwater management perspective, the stormwater will continue to sheet flow off the site with the installation of curbing and inlets.
11. Roxbury Car Wash operated on the site until approximately a year ago and the site has not been maintained and is an eyesore. It was purchased by Spark Car Wash who proposes to rebrand, renovate, and modernize the building and operation. A computerized operation and a highly trained staff will improve the overall experience.
12. Site remediation was necessary for the removal of a septic system, pursuant to New Jersey Department of Environmental Protection, with the possibility of future monitoring and environmental testing. The car wash utilizes 100% biodegradable soap and 80-90% of the water is recycled through an underground reclamation system. Approximately 15% of the water that is not recycled will flow into the public sewer system.
13. The on-site stormwater management system replicates existing conditions with overland sheet flow discharging to Ledgewood Brook and the adjacent landscape areas, and the elimination of the piped conveyance system.
14. There will be 3-4 employees monitoring the business, at the vacuums, the loading tunnel and pay stations. The hours of operation are 8:00 am to 8:00 pm daily, with a shift change at 2:00 pm. Garbage collection occurs once a week between 7:00 am and 8:00 am. Delivery of supplies occurs approximately every other week with a Sprinter Van directly into the building. Chemicals and cleaning agents are delivered in 10-gallon containers and stored in the equipment room, there are no hazardous material on site. All employees, deliveries, and garbage removal vehicles will access the site from Kings Parkway.
15. Customers access the site from Route 46 through an ingress driveway, travel through the carwash and exit back onto Route 46 through an egress driveway. There are two access lanes with menu boards and pay stations, one for the general public and one for customers with memberships. License plate recognition technology will be utilized for membership customers. The computerized system controls the flow of

vehicles entering the car wash tunnel, allowing one vehicle to enter at a time. Approximately 18 vehicles can queue before the pay stations and another six (6) between the pay stations and the car wash tunnel, which is consistent with the Institute of Transportation Engineer trip generation for automated carwashes. Vehicles are in the tunnel for approximately two (2) minutes. There is one (1) made ready electric vehicle charging station, proposed along the Kings Parkway building elevation.

16. Mr. Canale testified that vacuums are a popular feature and an integral part of the business model. All vacuums are self-serve, for no cost. Each vacuum station contains two (2) “arms” with the vacuum attached. There are cleaning agents and cloths at each vacuum for customer use, as well as trash receptacles. The stations are illuminated with downward facing LED lights. The vacuums are connected via an above-ground piping system, powered by turbines that are contained in a black aluminum, picket fence enclosure. All other pipes are below ground. The above-ground piping system will be Spark Blue and must be accessible for maintenance purposes.
17. The parking lot behind the building will contain five (5) employee parking stalls, and a stall that is compliant with the Americans with Disabilities Act. A masonry trash enclosure is proposed with similar architecture to the building.
18. A minor renovation is proposed in the front of the building to remove an angled overhead door and “square-off” the building, which results in a decrease in square footage from 6457 square feet to 6346 square feet. The existing roof is 15’2” and the proposed elevation is 15’7”. The rooftop mechanical equipment will be screened with an 18’8” parapet on the north side and an 18’4” parapet on the south side. There is a wedge tower, which is an architectural element, near Route 46 that tops at 31’ and includes Spark Signage. The southern façade will consist of storefront framing and glazing with corrugated metal panels. A mat wash and dry system with shelving is proposed on the eastern corner of the southern elevation. The façade is a sleek, modern design, with grey, blue, and white finish.
19. Vehicles will enter the tunnel from the eastern side of the building and exit on the western side. A new conveyor trench is proposed along the southern side of the building. The northern side of the building will be renovated to remove the existing corridor and create an office, a public accessible restroom, a break area, storage/utility closet, an equipment room and an electrical room, which has an exterior door.
20. There is a lighting plan that proposes to upgrade to full LED fixtures. There are four (4) LED pole mounted, light fixtures along the driveway and parking lots. The footcandles at the property line to the

north will be 0, but there will be some spillage onto Route 46. The tower element has LED lighting. There are recessed LED lights along the exit and entrance to the tunnel and decorative sconces on the southern and western façade. Site lighting will be reduced to security lighting at 9:00 pm.

21. The proposed signage is custom designed, with Spark Blue and Spark Orange and the logo. Eight directional signs are proposed, which are internally lit. The monument sign is back lit with the letters extruding from the sign. The sign on the wedge is 60.27 square feet, and consists of the logo and “Spark Car Wash.” The menu boards are mounted on the kiosks, with suspended signs over the pay stations that read “Bar at Clearance Level” for the full-service lane and “Welcome Back” over the membership lane with channel letters mounted on the overhead beam that read “Member Lane Only.” The mat cleaning station is indicated with channel letters mounted on the façade of the building that read “Spark Park Hub” and the company logo.
22. After hearing comments from the Board and its professionals, the Applicant increased the proposed landscaping and enhanced the buffers on the site. The proposed landscaping plan includes 16 deciduous and ornamental trees that will be along the driveway and parking lots. Twelve evergreen trees are proposed behind the building to provide screening to the adjacent residential lot. More than 150 shrubs will be planted along the driveways and parking areas to enhance the visual appearance of the site. Lawn areas will be resodded and an irrigation system will be installed for maintenance of the landscaping. A maintenance company will be utilized as well.
23. The Applicant’s Planner testified that the Applicant is making a significant investment to revitalize the existing site, which will enhance the image and identity of the community. The enhanced landscaping plan and buffer will improve the aesthetic appearance of the site. The business model will improve the efficiency of the site, including the queuing of vehicles and the elimination of individuals hand drying vehicles in the front of the building. There will be limited construction impacts, as this is an adaptive reuse of the property and an efficient use of land.
24. Mr. McDonough opined that the criteria for relief for an expansion of a non-conforming use, pursuant to N.J.S.A. 40:55D-70d(2), has been satisfied. The site will be improved by the modernized operational use of the property. The architecture, better site organization and definition of space will result in an improved visual environment.

25. The following purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2) are advanced by this application:
- a. Purpose A – to encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals and general welfare: the application proposes an adaptive reuse of the property with operations that are environmentally conscious, utilizing biodegradable products and recycling the water through a reclamation system.
 - b. Purpose G – to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens: the application proposes an adaptive reuse of the property in a commercial corridor.
 - c. Purpose I – to promote a desirable visual environment through created development techniques and good civic design arrangements: the proposed architectural improvements, site organization and landscaping will create an appealing visual environment.
 - d. Purpose M – to encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land: the reuse of an existing car wash facility limits the required construction costs and impact to the area.
26. The proposal will not have a substantial impact on the surrounding area. The proposed improvements will allow the site to flow, function, and operate in a safe, efficient manner. There was an interactive process between the Applicant and the Board to make a good plan for the property better. The proposal is consistent with the Master Plan by utilizing the site for a viable commercial use and not rezoning the property.
27. The criteria for conditional use relief, pursuant to N.J.S.A. 40:55D-70d(3), have also been met. The justifications for the expansion of a non-conforming use will carry forward and the deviations from Section 13-7.3507 will not have a substantial impact on the surrounding area.

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- a. Section 13-7.3507F – Minimum setback from the roadway of 40 feet – landscaping will provide screening of the vacuums and pay stations that are in the front yard setback to minimize the visual impact.
 - b. Section 13-7.3507G - Minimum rear/side yard building setback of 25 feet – the building within the front yard setback is an existing condition.
 - c. Section 13-7.3507I – Minimum 20 wide landscape strip across the entire frontage, including a hedge consisting of 2 rows of shrubs and shade trees – sufficient buffer and screening provided with stable and seasonal plants to minimize the impact.
28. Finally, the Applicant’s Planner presented testimony to satisfy the criteria to grant relief, pursuant to N.J.S.A. 40:55D-70c. The site is developed with non-conforming conditions, the Applicant is reusing the property within the existing constraints. The height variance required is limited in area to the tower, which is consistent with the branding for Spark Car Wash. The setback and parking variances will facilitate operational efficiency. Although sidewalks are not proposed, there are no sidewalks to connect to. The area is autocentric and the proposed use is consistent with the surrounding uses. Ultimately, the completed site will be an improvement over the existing conditions.
29. Mr. McDonough opined that the proposed signage is tasteful and not an overbranding of the site. The signs are informative and directional and integrate into the overall efficiency of the site. Although numerous waivers are required for the design of the site, he noted that the analysis should be qualitative, not quantitative, focusing on the end result.
30. There was no one from the public present at the hearings.

WHEREAS, the Board has determined that the relief requested by the Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Roxbury for the following reasons:

1. The Board found the witness testimony to be competent and credible. The Applicant’s professionals worked with the Board’s professionals and presented an improved plan that addressed the concerns of the Board.
2. The Board determined the relief can be granted pursuant to N.J.S.A. 40:55D-70d(2) from Section 13-7.3402 of the municipal zoning ordinance, to permit the expansion of a nonconforming use, to allow for the improvements to the existing car wash which is not permitted in the LI/OR Zone. It was further

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determined that the Applicant is entitled to relief, pursuant to N.J.S.A. 40:55D-70d(2) from Section 13-7.3507, as the following conditional use standards have not been met:

- a. Section 13-7.3507F - a minimum setback of 40 feet from the road right-of-way for all buildings, structures, canopies, fuel pumps, air pumps, tanks or other service appliances, including vacuums:
 1. Route 46 - Five (5) ground mounted vacuums with overhead arm, garbage cans, mat cleaners and illumination are approved within the required setback.
 2. Route 46 Jughandle - Two (2) pay stations with canopies and two (2) automatic gates are approved within the setback, 14.7 feet to the gate and 12.7 foot setback to the pay station canopy are proposed.
 3. Kings Parkway - One (1) trash enclosure is approved within the setback, 32 feet from the right-of-way.
 - b. Section 13-7.3507G - a minimum side/rear yard building setback of no less than 25 feet: existing building is located 10.1 feet from adjoining Lot 43 and 14.5 feet from Lot 45.
 - c. Section 13-7.3507I - a minimum twenty (20) feet wide landscape strip across the entire frontage, which includes a hedge consisting of two rows of shrubs and shade tree, is required: the landscaping plan is approved with less than 20-foot-wide buffer along Kings Parkway and Route 46 jughandle.
3. The Applicant's Planner was able to establish that the proposed expansion is not inconsistent with the Master Plan and promotes the goals of the Municipal Land Use Law (N.J.S.A. 40:55D-2), specifically, improving site circulation and traffic flow, enhanced landscaping and architectural design will improve the overall site functionality and appearance in the Route 46 commercial corridor.
 4. The witness further established that there would not be a substantial detriment to the public. The application is an adaptive reuse of the site with minimal construction. The Applicant proposes to use environmentally safe products and recycle the water on site. There will be no impact to the surrounding area and the site can accommodate the use and the proposed expansion. It follows that relief can be granted without substantially impairing the zoning scheme or Master Plan.
 5. Relief can be granted pursuant to N.J.S.A. 40:55D-70c from the following Sections of the municipal zoning ordinance:

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- a. Section 13-7.2502D7: a maximum building height of 28 feet permitted, 31 feet is approved for the tower.
 - b. Section 13-7.2502D10: a minimum 10 feet aisle/driveway/parking setback from the front building elevation and five (5) feet from the side and rear elevations required: site improvements that are paving flush with the front elevation and three (3) feet setback from the side yard approved.
 - c. Section 13-7.810.1B: no accessory buildings shall be permitted in the front yard, the proposed attendant's pay stations are approved in the front yard associated with the Route 46 jughandle.
6. N.J.S.A. 40:55D-70c(1) indicates that a variance may be granted under its "hardship" provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the c(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.
7. The site is developed with a non-conforming building and the Applicant is working within the confines of the site, resulting in the need for bulk variance relief. The tower element is consistent with the branding of Spark Car Wash and the height variance is required for the tower only. The benefits of permitting the proposed improvements outweigh the detriments that may result from denying the requested relief, as the site is vacant and unsightly. The Applicant will revitalize the site and improve the Route 46 corridor. Based on the reasons set forth herein, it was determined that there would be little impact to the surrounding area and the relief can be granted without substantially impairing the zoning scheme or Master Plan.
8. The requested waivers can be granted pursuant to N.J.S.A 40:55D-51, as they are reasonable and within the general purposes and intent of the provisions for site plan approval. The literal enforcement of the provisions of the ordinance is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question.
- a. Section 13-8.602A: local roads shall have a 50 feet wide right-of-way and 30 feet wide cartway, the existing right-of-way is 33 feet wide and cartway is 12.1-24 feet wide on Kings Highway.

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- b. Section 13-8.608A: curbs shall be required on both sides of all streets, the application is approved with partial curbing along Kings Parkway.
- c. Section 13-8.605E2: all roads shall be paved from curb to curb, the application is approved with partial asphalt on Kings Parkway.
- d. Section 13-8.610: sidewalks shall be provided on both sides of all streets, the application is approved with no sidewalks.
- e. Section 13-8.702A: parking spaces shall be 9 feet wide, 10-foot width is approved for the stalls associated with the vacuums.
- f. Section 13-8.702F: a 20 feet wide parking/ traffic aisle/driveway setback from Route 46 is required:
 - 1. Route 46 jughandle has a 3.4 feet setback from the traffic aisle, 14.7 feet to the gate and 12.7 feet setback to the pay station canopy are approved.
 - 2. Kings Parkway has a 5.5± feet setback from the parking spaces.
- g. Section 13-8.702H: minimum setback of parking areas to any building, a 3 feet setback is approved.
- h. Section 13-8.703A: every building requiring the receipt of materials shall have a 15' x 60' loading/unloading space, application is approved without a loading space.
- i. Section 13-8.705B: all non-residential uses shall have one location for trash/recycling enclosure in the side or rear yard, enclosure is approved within the Kings Parkway front yard.
- j. Section 13-8.804A&B: all site plans require street trees planted 40 feet on center within the road rights-of-ways. An additional street/shade tree will be provided by lot 45, adjacent to the Kings Parkway right-of-way.
- k. Section 13-8.807A: a minimum 3' high screen planting between the parking area and street lines required. Relief is granted.
- l. Section 13-8.807M: landscaping shall be required to accent of driveway openings, low growing perennial plantings shall be provided on both sides of the drive-thru entrance off of Route 46.
- m. Sections 13-8.904A and 13-8.916D3: only one freestanding sign is permitted per lot, one (1) monument sign, two (2) pay station signs, and three signs on each of the 15 vacuums are approved.

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- n. Sections 13-8.905B and 13-8.916D: only one (1) façade sign is permitted, four (4) are approved on the building. With multiple road frontages, a maximum of two façade signs are permitted (Section 13-8.905B), five (5) signs are approved on the Pay Station.
- o. Section 13-8.905D: the maximum façade sign shall not exceed 5 feet, two 7'-5" high Spark Car Wash and logo signs are approved on the building tower.
- p. Section 13-8.910E: advertising on traffic control/directional signs is prohibited, eight (8) traffic control/directional signs with illuminated logos are approved.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township Roxbury on the 26th day of June 2023 that the approval of the within application be granted subject, however, to the following conditions:

- 1. Payment of all fees, sureties, and escrows required by ordinance.
- 2. Applicant shall install Belgium Block curbing in the front of the site and concrete curbing in the rear, subject to the review and approval of the Board Engineer and Planner.
- 3. Applicant shall comply with Section 13-7.812 regarding communication antennas/satellite dish antennas.
- 4. Painting of curbs is prohibited.
- 5. Applicant shall comply with Section 13-7.814 regarding loudspeakers.
- 6. Applicant shall obtain sewer capacity authorization from the Governing Body if an increase in allocation is required (Section 13-8.501E).
- 7. Applicant shall pay their fair share of off-tract and off-site improvements as determined by the Township Engineer (Section 13-4.6 and 13-4.7).
- 8. Applicant shall pay a development fee, if applicable, in accordance with Section 13-7.829.
- 9. Applicant is required to make an application and obtain final site plan approval from the Board.
- 10. Applicant shall provide a color version of the vacuum color chart detail on Sheet C-16. Colors shall consist of blue, red, yellow and green.
- 11. The vacuum color chart detail on Sheet C-16 that graphically depicts four (4) towel/equipment baskets shall be revised to depict two baskets per vacuum.
- 12. Applicant shall provide a color material sample of the open weave fabric depicted on Sheet C-16.

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13. Updated architectural plans that depict consistent details for the Vacuum Arch and Footing Detail the Arch Final Assembly Detail, which includes the vacuum, mat holder and garbage can shall be submitted for review and approval by the Board Planner.
14. All garbage cans shall be located on the asphalt and indicated on the Site Plan, subject to review and approval by the Board Planner.
15. Decorative trash receptacles shall be provided near the drive-thru entrance, exit and vacuum area (Section 17.3507U). A color detail shall be provided, subject to review and approval by the Board Planner.
16. Traffic aisle striping shall be provided to differentiate the two stacking lanes, subject to review and approval by the Board Engineer).
17. The Applicant shall address compliance with EV parking space requirements. The site plans shall be revised to provide for the timing for the installation of EV chargers.
18. Parking calculations must also be provided at 5 stalls plus 1 per each peak shift employee (This standard requires 5 stalls plus 4 stalls for peak hour employees for a total of 9 spaces). Five employee spaces are proposed in accordance with the per bay calculation at the rear of the building. There are an additional 13 parking spaces available for customers in the vacuum park area which complies with the Township Code requirements. Plans shall be amended to clarify same.
19. Architectural and engineering drawings shall note that rooftop mechanical equipment shall be architecturally screened in a manner compatible with the building architecture.
20. The dimensions of the menu board sign (Sheets C-13 and EX-A1) should be reduced (72" height proposed). The sign shall be mounted on the kiosk wall.
21. Details for the Mat wash equipment area and the direction signage shall be submitted to the Board.
22. Color manufacturer directional sign details shall be provided.
23. The proposed chain link fence trash enclosure gate shall be replaced with a Trex or PVC type board gate to complement the structure. The Reference to wolmanized wood gate shall be removed.
24. Scrolling text and graphics on the menu board signs are prohibited.
25. Unauthorized adjustable floodlights mounted on the Route 46 utility pole shall be noted for removal on the Lighting Plan (Section 13-8.707I).
26. The lights on the vacuums shall only be illuminated during business hours.

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27. Plans shall identify the illumination proposed for the vacuum equipment. Details of the vacuum light and color photos shall be included in the vacuum detail.
28. Illumination on the vacuum lights shall be turned off or intensity reduced if notified by the Zoning Officer or Police for excessive glare/intensity of illumination.
29. Exterior lighting shall be turned off no later than 11:00 PM. Freestanding sign illumination shall be extinguished no later than 10:00 PM (Section 13-8.908D).
30. Light color temperature shall be reduced as directed by the Board's Engineer.
31. A revised landscape plan shall be submitted and subject to the review and approval of the Township Planner.
32. The light pole installation detail shall provide a base plate/bolt cover.
33. Trash enclosure detail shall specify a smooth face block with a color matching the principal façade.
34. All plant material shall be guaranteed by the landscape contractor for a minimum period of one year to replace dead or dying/marginal plants.
35. Towel drying outside of the car wash building, except for customers utilizing the towels available in the vacuum park, is prohibited.
36. Signage and striping shall be upgraded/added at the egress driveway at Route 46 to restrict the entrance movements and to direct all existing traffic to turn right. A "Right Only" sign below the Stop Sign shall be indicated on the plan, and a right turn arrow shall be marked on the pavement at the egress driveway.
37. Channelizing lane striping shall be added along the entrance driveway between Route 46 and the pay station to provide two queuing lanes for vehicle staging and separation at the approach to the island at the pay station.
38. The interior plumbing drawings submitted for building permits shall contain sufficient floor drains to contain the water generated by the wash system within the building's footprint/water reclamation system.
39. The width of the flush curb opening at the rip rap apron shall be indicated on the plans.
40. Details for the two rip rap pads, indicating the stone size and pad thickness shall be provided.
41. Electric conduits/lines between the building and the vacuum units shall be shown on the plan.
42. Applicant shall obtain a certification from the Morris County Soil Conservation District and any plan changes required for the certification shall be reflected on the final site plans.
43. Details for the directional signs shall be submitted for review and approval by the Board Engineer.

44. Applicant shall obtain approval or confirm, to the satisfaction of the Township Engineer, that no submission is required as the development will comply with the permit-by-rule parameters from the New Jersey Department of Environmental Protection for the proposed surface discharge within the Riparian Area of the Ledgebrook Brook.
45. The water discharged from the car wash shall comply with Chapter 12.6 of the Township's Revised General Ordinances.
46. All water discharged into the sewer system shall be metered.
47. The residual grits, oils and grease shall be collected in the oil/grease separator prior to discharging into the sanitary sewer system and properly disposed of.

EXTENSION:

ZBA-23-018 MONTILLA & BONOFACIO INVESTORS, LLC, property located at 145 Main Street, Succasunna, Block 5103, Lot 1, in a PO/R zone.

Mr. Patrick Dwyer, Esq. stepped forward on behalf of the applicant Montilla & Bonofacio Investors, LLC. Mr. Dwyer stated that his applicant is seeking an extension of the preliminary approval granted by Board of Adjustment back in 2018 for an assisted living facility to be operated by the Merry Heart Group due to a number of factors including COVID, and inflation.

Ms. Dargel asked if the applicant still intends to go through with the project. Mr. Dwyer replied, yes, that is the plan.

Ms. Dargel then asked if there is any time frame. Mr. Dwyer replied that it is difficult to say because the costs right now are overwhelming whereas inflation and interest rate hikes have made it really hard.

Mr. Dwyer then requested a one-year extension to September 7th, 2024.

Motion was made to open to the public for comments - none were made.
Motion was made to close to the public.

Motion was made to open to the public for questions – none were made.
Motion was made to close to the public.

Ms. Dargel made a motion to approve the application. Dr. Kennedy seconded.
Roll call: Ms. Dargel; yes, Dr. Kennedy, yes; Mr. Summers, yes; Ms. Dawson, yes; Mr. Klein, yes; and Mr. Overman, yes.

APPLICATIONS:

ZBA-23-011 BAHAMONDE, Bulk Variances for property located at 38 Mohican Avenue, Landing, Block 12106, Lot 4.01 in a R-3 zone. (*Request to be carried to the November 13, 2023 meeting with no further notification required.*)

ZBA-23-004 GUZMAN-HERNANDEZ. Bulk Variance for property located at 72 Kenvil Avenue, Succasunna, Block 3901, Lot 36 in a R-3 zone. *(Request to be carried to the November 13, 2023 meeting with no further notification required.)*

ZBA-23-014 POLANIA. Bulk Variances for property located at 26 Gregory Drive, Kenvil, Block 2501, Lot 24 in a R-4 zone. *(Request to be carried to the November 13, 2023 meeting with no further notification required.)*

ZBA-23-013 RAASTAD. Certificate of Non-Conforming Use for property located at 100 Mooney Road, Ledgewood, Block 9002, Lot 6 in an RR-5 zone.

Ms. Hubbard swore in Ms. Kay Linda Mooney Raastad of 100 Mooney Road, Flanders, and Ms. Nancy Parkins of 319 West Windsor Road, Saylorsburg, PA.

Ms. Raastad testified that her father built her and her siblings a playhouse when they were younger over the course of years family or friends would reside in it for periods of time and there also was a time that it was used for storage. Ms. Raastad then stated that she then started renting the playhouse out, but did not know that she needed a certificate of occupancy.

Ms. Hubbard explained to the Board that this isn't a variance application and that this is a certification of a pre-existing non-conforming use under section 68 of the Municipal Land Use Law, making this a factual application, where the burden is to establish that this use was a permitted use and then the zone changed which made it a non-permitted use and the applicant is here to get a certification that their permitted use predated the zone change.

Ms. Parkins stepped forward and read Ver Batum, a document that was included in the Board application. It read as follows "My brother and I were born in 1941 and 1944 and we frequently played with our cousin, who lived just up the road from us at 90 Mooney Road, and she had a fabulous playhouse which was about 10 feet by 15 feet and we were really envious. We begged our father for one like hers and he built us a huge one. Neither my brother nor I remember the exact date that it was built, but it had to be in the late 40s or early 50s as our dad sadly passed away in December of 1950. Growing up, we love playing in our playhouse, hosting sleepovers for many cousins and friends, and even holding 4H and Girl Scout Club meetings there. My brother and I had six children, and they also loved playing and sleeping over in grandma's playhouse. Over the years, many family and friends have temporarily stayed in it as they've had a transition in life, some even renting it if their stay became a little longer than anticipated, and it was occasionally used for store. When my mother passed away in 1986, I inherited her acre, which included her house and the cottage or playhouse, and I continued using the cottage as she had, not knowing that I needed the certificate of occupancy to keep everything legal".

Ms. Hubbard stated that there are a couple of things that come into play here, a certificate of occupancy is different than a zoning permit. So you would have had to establish at the point where the use was permitted and because you never saw the certificate of occupancy, we don't have a starting point as to when the property became a rental property.

Ms. Hubbard then stated that the building itself isn't the issue, the issue is that you rent it out.

Ms. Hubbard then asked if Ms. Raastad had any receipts going back to the point in time when you were renting it.

Ms. Parkins replied, no, we don't because it mainly family, friends, or church members.

Ms. Hubbard asked what's the current status and do you currently have a lease with someone who is in there temporarily, permanently, or short term.

Ms. Raastad replied that a friend is there because he just he lost his home and he's just staying there until he gets his affairs in order.

Ms. Hubbard asked if it is being rented or is he just staying there because he needs a place to stay.

Ms. Raastad replied that he is paying for the utilities.

Ms. Hubbard asked if he was being charged rent.

Ms. Raastad explained that she is not using the playhouse as a rental just to help out her friend.

Ms. Hubbard stated that when looking at the tax record, the town doesn't recognize that there is even a kitchen in it, which may or may not hurt the applicant, noting that if it's not a true apartment, noting that you need a kitchen and a bedroom with egress windows.

Ms. Hubbard asked if there was a full kitchen and does the bedroom have a door that locks, noting from the floor plans provided that it looked like an open loft area.

Ms. Hubbard also asked what was the longest that someone had lived there?

Ms. Raastad replied that her daughter lived there for a length of time.

Ms. Hubbard then swore in Ms. Raastad's daughter Linda Sharon McCabe of 316 Eyland Avenue, Succasunna, NJ.

Ms. McCabe went on to testify that she lived there on and off for five years, from 1988 to the early 1990s, and then was back around 2000 for about three years.

Ms. McCabe testified that she used a microwave to cook that had a convection oven to bake and she also had a two-burner hot plate.

Ms. Hubbard asked if the playhouse had a shower or bathtub.

Ms. McCabe replied yes, there is a shower.

Ms. Hubbard asked what the difference between this building and a detached garage was, noting that she is not sure that there is.

Ms. Hubbard explained that the town isn't recognizing your kitchen, but that might be outside of our jurisdiction other than if you were to be granted an approval going back and getting permits for everything that they have in this building would be a condition of approval.

Ms. Hubbard stated that when you look at the definition of a of a of an apartment, the playhouse is not meeting it due to the fact that the playhouse doesn't have a true kitchen, and there is a loft.

Ms. Hubbard asked if there are windows upstairs in the bedroom area and if there is a closet.

Ms. Hubbard then read the definition of an apartment to Ms. Raastad stat that “A single family dwelling shall mean a building occupied or intended for occupancy exclusively for one family or one household with direct access from the outside and further providing cooking, sleeping and sanitary facilities for the exclusive use of the occupants in the unit. A single family dwelling may accommodate no more than one roomer and there shall be no physical changes to the dwelling”.

Dr. Kennedy stated that there is a lot of regulations that come into play when you have a rental unit, things that you need to comply with like inspections from the Construction Department and Fire Prevention.

Dr. Kennedy asked what triggered an application submittal for this property.

Ms. Raastad replied that she had a tenant who was renting the playhouse who would not vacate and during the eviction process, then the Township got involved and did an inspection showing that it was a rental unit.

Dr. Kennedy suggested to the applicant that they may want to step back and think about it and maybe confer with maybe a Council as the situation may require a use variance where escrow fee and additional application fees will be involved. The other option would be to seek assistance by a Planner and or an Engineer.

Ms. Raastad agreed and requested the application be carried to the December 11, 2023 hearing

Motion was made to open to the public for comments - none were made.
Motion was made to close to the public.

Motion was made to open to the public for questions – none were made.
Motion was made to close to the public.

DISCUSSION: None

NEW BUSINESS: Mr. Brian Overman announced that he would be stepping down from the Zoning Board to spend more time with his family.

OLD BUSINESS: None

Motion to adjourn at 9:30 pm

ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF ROXBURY
Tracy Osetec, Board Secretary
October 2, 2023