

Memorandum

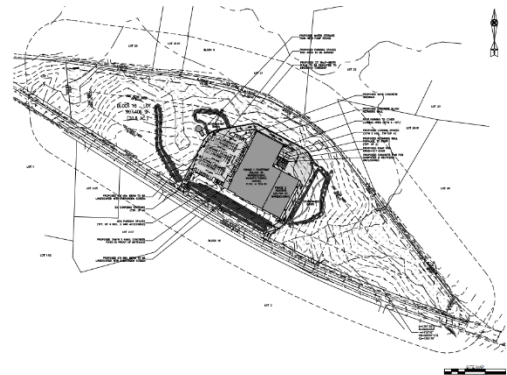
To: Kingwood Township Zoning Board of Adjustment

From: David J. Banisch, PP

Date: May 5, 2024

Re: Blitzen, LLC (Onset Worldwide)
917 Route 12
Block 10 Lot 2
Route 12 Scenic Corridor Overlay (SCO) Zone (Underlying Highway Commercial Zone)
Use & Bulk Variance Application for Manufacturing/Warehousing/Office Use

-
1. We have reviewed the following information in preparing this report:
 - February 7, 2024 letter to Karen Radcliffe from Kara Kaczynski, Esq.
 - Application and Variance checklist
 - Certificate of Ownership
 - Variance and Engineering Plan prepared by Bayer-Risse Engineering, Inc. dated December 22, 2023
 - Architectural plans by Cerminara Architects (5 sheets) dated January 5, 2024
 2. This is a bifurcated application for use and bulk variances for a warehouse/manufacturing/office use on Route 12 within the Scenic Corridor Overlay (SCO) Overlay Zone. If use and bulk variances are obtained, an application for preliminary and final site plan approval will be submitted.
 3. The subject premises are situated between Route 12 and Old Route 12, as seen on the graphic at right. Tax records identify a lot size of 19.91-acres for Lot 2. Plans indicate a lot size of 20.8-acres.
 4. Onset Worldwide is a specialty mill and processing company that currently operates from a location in Frenchtown. This application proposes the 2-phase development of a milling and processing facility for manufacturing and related warehousing with associated offices.



5. According to its website, Onset's Nitro-Milled® bulk seeds, grains, oils, grain-free flour, and keto flour are milled in-house and are commonly used ingredients in products like crackers, snacks, chips, breads, etc. and for specialty diets like grain-free, paleo, keto and low-carb.
6. This application proposes a use that is not permitted in the Scenic Corridor Overlay, where the proposed building and lot coverage is nearly twice what is permitted and the building would be double the permitted height for the SCO
 - a. Lot depth: 600' required vs. 594.5' proposed. (Variance required)
 - b. Lot coverage: 10% permitted vs. 19.38% proposed. (Variance required)
 - c. Building coverage: 5% permitted vs. 8.75% proposed. (Variance required)
 - d. Building height: 25' permitted vs. 50' proposed. (Variance required)
7. Permitted uses in the Scenic Corridor Overlay include the following:
 - (1) Agricultural and farming uses pursuant to § 132-30.
 - (2) Single-family residential uses pursuant to § 132-30, excluding the Class I Minor Subdivision pursuant to § 115-3.
 - (3) Public playgrounds, conservation areas, parks and public purpose uses pursuant to § 132-30.
 - (4) Churches and cemeteries pursuant to § 132-30.
 - (5) Golf courses pursuant to § 132-30.
 - (6) Firehouses, rescue squad facilities and government buildings pursuant to § 132-30.
 - (7) Family day-care homes (as per N.J.S.A. 40:55D-66.5b) pursuant to § 132-30.
 - (8) Nurseries and garden centers.
 - (9) Wholesale feed and grain outlet stores in one or more buildings of 25,000 square feet or less.
 - (10) Wholesale greenhouses.
 - (11) Adaptive reuse of existing nonresidential structures and uses, when such conversions are limited to commercial retail and service uses serving the local and regional consumer retail and consumer services market, not including truck, automotive and motorized heavy equipment retail sales and service uses.
 - (12) Agritourism-based commercial uses, including:
 - (a) "Farm-based recreational activities" as defined by the State Agricultural Development Committee, when conducted by the property owner or immediate family member residing on the farm
 - (b) Inns, hostelries, bed-and-breakfasts.
 - (c) Farm markets with up to 25 concessionaires each with up to 200 sq. ft. of sales area, subject to licensing and site plan review.
 - (13) Brew pub under Restricted Brewery License issued by the State of New Jersey, where ownership is a person or entity that identically owns a Plenary Retail Consumption License which is operated in conjunction with a restaurant regularly and principally used for the purpose of providing meals to its customers and having kitchen and dining facilities, and not exceeding 10,000 sq. ft. in area.
 - (a) Outdoor arts and music concerts between May 1 and October 31 with conditions
 - (14) Auction barn up to 10,000 sq. ft. in area - sales are limited to furniture, antiques, housewares, art, and similar items, not including motorized vehicles but including farm seed and farm equipment sales.

8. Applicant testimony in support of the ‘d-1’ use variance should address the “special reasons” (positive criteria) and the negative criteria. In Medici v. BPR Co., 107 N.J. 1 (1987) the N.J. Supreme Court emphasized that to establish “special reasons” an applicant must find that the site in question is “particularly suitable”, as follows:

*We now reaffirm the holding in Kohl that if the use for which a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use.*¹

Testimony should identify which of the purposes of zoning as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-2 would be advanced by permitting a second residential use on the property (purposes of the law are attached).

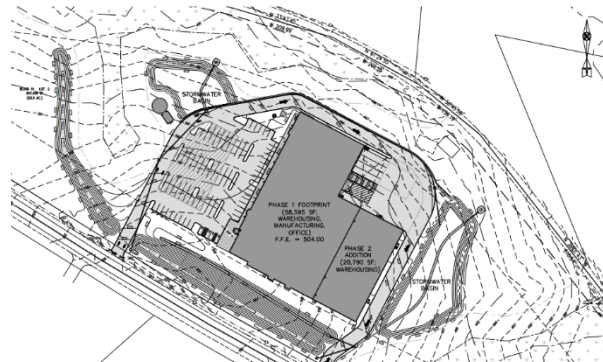
9. In addition, the applicant should address the “enhanced quality of proof” standard as per Medici which is as follows:

*In the use-variance context, we believe this can best be achieved by requiring, in addition to proof of special reasons, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.*²

10. The negative criteria require proof that the variance will not result in a “substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance”. Here, testimony should focus on the impact of the proposal upon the intent of the zoning ordinance with respect to the Scenic Corridor Overlay Zone district.

Review Comments

11. The two-phase development would see a first phase of 58,595 square feet and a second phase of 20,790 square feet for warehouse space.
12. Kingwood Township’s Master Plan values the scenic character of the landscape and recognizes the potential for highway-oriented development to degrade this character. The SCO recognizes Baptistown as a dividing point between the east and west sections of the SCO. Along Route 12, the area of west of Baptistown is characterized by long, sweeping, distant views



¹ Medici v BPR Co. 107 N.J. 1; 4 (1987)
² Medici v BPR Co. 107 N.J. 1; 21 (1987)

prior to the descent from the Hunterdon Plateau to the River corridor. East of Baptistown, the scenic corridor is characterized by a mix of open agricultural views, roadside forested views and more a more developed landscape than lands west of Baptistown.

13. The Master Plan also prioritizes the retention of agriculture and continuing farming use of productive farmland. As seen in the rendering of the proposed milling and processing plant, the design of the building and its façade treatment break up the mass of the large footprint with smaller elements and a varied roofline facing Route 12. The façade also incorporates elements reminiscent of the local agricultural heritage and may suggest a hopeful sense about agriculture in Kingwood’s future.
14. A use variance under N.J.S.A. 40:55D-70.d.(1) may be granted in particular cases and for special reasons. Special reasons are generally derived from the purposes of zoning that essentially promote the general welfare of the citizens of the State and are supported by expert testimony. (N.J.S.A. 40:55D-2 Purpose of the act is attached).
15. The applicant must provide testimony demonstrating that the negative criteria can be satisfied in accordance with N.J.S.A. 40:55D-70, which requires that:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted

- (1) without substantial detriment to the public good and
- (2) without substantial impairment to the intent and the purpose of the zone plan and zoning ordinance.

We trust that these comments will be useful in consideration of this matter.

- c. Karen Radcliffe
Thomas Decker, PE, PP, CME
Matthew Flynn, Esq.
Kara A. Kaczynski, Esq.
Theodore H. Bayer, PE
Sara Morrison (sara@onsetworldwide.com)

ATTACHMENT A - Route 12 Highway Corridor Photos



ATTACHMENT A - Route 12 Highway Corridor Photos

Attachment B – M.L.U.L. Purposes

40:55D-2. Purpose of the act. It is the intent and purpose of this act:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;
- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- 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;
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- k. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial, industrial and recreational development to the particular site;
- l. To encourage senior citizen community housing construction;
- 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;
- n. To promote utilization of renewable energy resources; and
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.
- p. To enable municipalities the flexibility to offer alternatives to traditional development, through the use of equitable and effective planning tools including clustering, transferring development rights, and lot-size averaging in order to concentrate development in areas where growth can best be accommodated and maximized while preserving agricultural lands, open space, and historic sites.