

Memorandum

To: Kingwood Township Zoning Board of Adjustment

From: David J. Banisch, PP/AICP

Date: August 13, 2024

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

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1. The purpose of this memorandum is to review certain elements and testimony of this application for use, height and bulk variances, and the applicant's efforts to address concerns raised by Board members during the pendency of this application. These comments are offered to assist the Board in making a decision on this variance application for a proposed seed mill processing facility. If use variance approval is granted, the applicant will return to the Board for subsequent site plan approval.
 - a. The use and height variances being sought require a minimum of five (5) affirmative votes by Board members for approval.
 2. As noted in our May 5, 2024 memorandum to the Board, use variance relief may be granted in particular cases and for special reasons. Special reasons are generally derived from the purposes of the Municipal Land Use Law (N.J.S.A.40:55D-2 "Purpose of the act" is attached). The promotion of the general welfare most clearly amplifies the purpose of zoning.
 3. The proposed use is a combination of (1) manufacturing (seed milling and processing), (2) business office (for the proposed use) and warehousing (storage of raw product for milling and processing and milled and processed product for shipping).
 - Warehousing Storage 63,455
 - Manufacturing 8,633
 - Business Office 7,668

Total 79,755
 4. The applicant has testified that the facility is for *this use*, and not a conventional warehousing use. The parking concession to bank roughly ½ of the parking, and the truck traffic testimony are both specific to the use and have been described to the Board in the applicant's testimony as appropriate to the size and needs of the workforce needed for the proposed milling and processing facility. (additional

land banking of parking can be explored either now as part of this application, or subsequently as part of the site plan application if the use is approved)

5. The storage of raw and processed product for the proposed seed mill and processing facility is not a conventional warehousing use because both aspects of the storage use (described in this application as warehousing) are unique to this application and the proposed seed milling and processing operation itself.
 - a. We believe that this is an important distinction because the use variance relief requested is specific to the proposed seed mill and processing facility – as is the warehousing component of the use.
 - b. We recommend that any use variance relief granted by the Board should:
 - i. Limit any use of the facility to only the seed milling and processing use described in this application.
 - ii. Include a prohibition of future use of the building to any form of conventional warehousing or or any other use that is not included in this use variance application.
6. One aspect of the proposed use briefly discussed as part of this application is the fact that the use itself is intrinsically related to agriculture. While the applicant’s testimony indicated that seed and grain used in the operation are purchased from a variety of sources, the same product could be purchased locally if made available by local farms or producers.
 - a. In our view, it is essential that businesses, such as the proposed use, are accommodated to promote the survival of agriculture in the region.
 - b. The applicant testified that an updated, larger facility to remain and to modestly grow in the community – if the use cannot be accommodated locally another location must be found.
 - c. Rather than view this testimony as coercive in any way, our interpretation of the business’ needs is that the seed mill and processing use and the local employment opportunities it provides could be lost if the business is relocated to another community.
 - d. The use itself seems to promote important municipal planning objectives to encourage and preserve agriculture in the community, which we believe should be given due consideration in considering the promotion of the general welfare.
 - e. We note that the promotion of the general welfare is an essential “proof” that the Board must find to grant the use variance relief requested. It is the first purpose listed in zoning (see N.J.S.A. 40:55D-2 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)*
7. Concerns regarding potential impacts to neighboring properties have been discussed and testimony has been provided about improved stormwater management incorporated into site design. Additional concerns related to traffic, lighting, the appearance of the rear of the structure, fire access and buffering have also been discussed and addressed during the hearing. These can and should be further explored either now or during site plan review if the use variance is granted.
 - a. The applicant’s planner’s testimony stated that the variance relief sought may be granted without substantial detriment to the public good and without substantial impairment of the zoning ordinance and zone plan. We agree that the applicant’s efforts to address the concerns

- of the neighbors as part of the use variance application provide assurances that the Board may find that the variances can be granted without substantial detriments;
- b. However, if the Board approves the use, height and bulk variances, the resolution of approval should contain conditions requiring enhanced stormwater management, buffering, and lighting design to minimize impacts to adjacent properties.
 - c. Additionally, a more thorough review of traffic circulation and fire access design options could be explored at the time of site plan review if the variances are granted.
8. Applicant's building design efforts should be recognized in view of the Scenic Corridor Overlay (SCO) design objectives. While the use is not permitted in the SCO, the applicant has been guided by the overall intent of design within the SCO, albeit for a nonpermitted use is the SCO.
- a. If the Board finds that the use, height and bulk variances should be granted, but there remain any architectural design concerns, the Board's resolution of approval should include a condition that enhanced architectural design shall be addressed at the time a site plan application is made.
9. If the Board finds the use variance should be granted, the Board's resolution of approval for use, height and bulk variances should be conditioned upon subsequent site plan approval, which shall be subject to the applicant demonstrating that the site plan remains subject to a finding by the Board that the negative criteria are satisfied.
10. With respect to the vote and the resolution of approval, we have found it is sometimes helpful to the Board to authorize the Board Attorney to prepare a resolution of approval for the Board to consider before actually voting on the application. In this way, the Board has the opportunity to see the resolution of approval prior to a vote so that the Board knows exactly what it is voting to approve. This approach is particularly useful in the "d.(1)" use and "d.(6)" height variance applications where a minimum of five (5) affirmative votes are needed to approve the variance application.

We trust that the Board will find this information useful in its consideration of this matter.

Attachment

- c. Karen Radcliffe
Thomas Decker, PE, PP, CME
Matthew Flynn, Esq.
Kara A. Kaczynski, Esq.
Theodore H. Bayer, PE
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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.