

**RESOLUTION OF THE BOARD OF ADJUSTMENT
TOWNSHIP OF LONG HILL
MORRIS COUNTY, NEW JERSEY**

**PHILIP MASTROMIHALIS
1138-1150 Valley Road
Block 11401, Lot 13
APPLICATION #21-23Z**

**Hearing Date: March 15, 2022
 May 3, 2022
Board Action: May 3, 2022
Memorialization: June 7, 2022**

WHEREAS, PHILIP MASTROMIHALIS (the “Applicant”) is the prospective tenant of property owned by the Stirling Elks Lodge 2392 and located at 1138-1150 Valley Road, Stirling, identified as Block 11401, Lot 13 (the “Property” or the “Site”) on the Long Hill Township Tax Map, in the B-D Downtown Valley Commercial Zone; and

WHEREAS, the Applicant applied to the Board of Adjustment of the Township of Long Hill (the “Board”) with an application requesting preliminary and final major site plan approval, as well as subsection d(1) use and bulk variance and design waiver relief (the “Relief Requested”), as set forth below, in order to re-tenant the one-story brick building on the Site which was the former home of “Mike’s Music” as a Greek take-out restaurant called “Gyro Valley”:

- i. A subsection d(1) use variance for two (2) principal buildings on one (1) lot, whereas same is not permitted in the B-D Downtown Valley Commercial Zone as set forth in Section 103.5 of the Land Use Ordinance of the Township of Long Hill (the “Ordinance”);
- ii. A bulk variance for a proposed side-yard setback of 3 feet, whereas the minimum required side-yard setback in the B-D Downtown Valley Commercial Zone is 20 feet, pursuant to Section 131 of the Ordinance;
- iii. A bulk variance for a proposed retaining wall height of 6.5 feet in a front yard, whereas the maximum permitted fence height in a front yard in the B-D Downtown Valley Commercial Zone is 4 feet, pursuant to Section 131 of the Ordinance; and
- iv. A design waiver for one awning sign and one wall sign, whereas awning signs are permitted, provided the total area of the signs is consistent with the provision for the size of wall signs and further provided that no wall sign is used on the Property, pursuant to Section 155.8.d of the Ordinance; and

WHEREAS, the Applicant submitted the following plans and documents in support of the application, which plans and documents were made a part of the record before the Board, as follows:

- a. Land Development Application with addenda, checklists, checklist waiver forms and zoning tables, dated October 27, 2021;
- b. Site plans prepared by Gary S. Sorkin, PE, of Sorkin Engineering Services PC, dated April 15, 2022, consisting of ten (10) sheets; and
- c. Architectural Plans prepared by Michael Doster, AIA, of Archstone Architecture, LLC, dated October 18, 2021, last revised May 3, 2022, same consisting of four (4) sheets; and

WHEREAS, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application and appeared before the Board on the Hearing Date, as specified above; and

WHEREAS, the Board considered the following reports from its professionals:

- a. Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated March 9, 2022; and
- b. Memorandum from Board Engineer, Samantha Anello, PE, CME, CFM, dated March 8, 2022; and

WHEREAS, during the public hearing on the application on the Hearing Date, the Applicant, represented by Gerald J. Betzner, Esq., was given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to question all witnesses and comment on the application; and

WHEREAS, the Applicant presented testimony from the following individuals:

1. Philip Mastromihalis (the Applicant); and
2. Gary Sorkin, PE, the Applicant's Civil Engineer; and
3. Barbara Ehlen, PP, AICP, the Applicant's Professional Planner; and

WHEREAS, members of the public appeared to ask questions about, and to comment on, the application, as more fully set forth on the record; and

WHEREAS, Mr. Betzner introduced the application and called multiple witnesses to present testimony to the Board, as more fully set forth on the record, as follows:

1. The Property is a ± 6.4 acre lot located at 1138-1150 Valley Road in Stirling. The property is currently improved with the Stirling Elks Lodge 2392 building and a 24-foot by 28-foot, 1.5-story brick building¹ which was most recently tenanted by Mike's Music. The Lodge building is set back approximately ± 34 feet from Valley Road. It is accessed via an asphalt driveway from Valley Road which leads to a gravel parking area used by the Elks Lodge. The 1.5-story brick building is setback ± 0.6 feet from Valley Road. The concrete front porch and steps are located in the Valley Road right-of-way. Valley Road is a County roadway (CR 512). The Site slopes upward from Valley Road to a gravel area used by the Elks Lodge for parking. The one-story brick building is set into the slope. There are also several accessory structures on the Property including a shed, a garage, and a covered deck. The Site survey also identifies a bocce court and horseshoe pit. Much of the lot is unimproved and is characterized by grassy and wooded areas.

2. The Property is located within the B-D Zone and is surrounded by a mix of commercial uses fronting on Valley Road. An Exxon station is directly across the street on Valley Road. A veterinary hospital is located to the west, a former car wash is located to the east which was recently designated an Area in Need of Redevelopment. The Site backs on lands in the C Conservation zone.

3. The Applicant proposes to re-tenant the one-story brick building on the Site which was the former home of "Mike's Music" as a Greek take-out restaurant called "Gyro Valley." The building's interior will be renovated for restaurant use including the addition of a bathroom, walk-in freezer, dry storage, and cooking area. There will also be an ordering counter which will be oriented toward the west. As such, a new main entrance will be added on the western façade. The existing entrance and porch on Valley Road will no

¹ The site survey identifies the structure as one-story. However, the site plans show that the structure currently has stairs which lead to a second floor which will be removed in the proposed renovation. The site plans note that the structure is 1.5 stories.

longer be utilized. A second-story area will be demolished to increase the floor to ceiling height. The existing chimney on the north side of the building is proposed to be demolished.

4. The Applicant also proposes site improvements including a compacted gravel lot consisting of 7 parking spaces in a currently grassy area located to the rear of the building adjacent to parking areas currently used by the Elks Lodge. These parking spaces will be accessed via the existing driveway to the Elks Lodge. Steps and an ADA ramp will connect the parking area to the restaurant. Due to the steep slope between the restaurant and the parking area the ramp will have to be divided into three parallel sections. A patio is proposed along the western and northern facades. The stairs and ADA ramp will connect the parking and patio areas. The stairs, ramp, and patio will be supported by a retaining wall of various heights. There will be a screened trash enclosure in the northeast corner of the parking area.

5. The requested use variance relief is subject to the criteria set forth in N.J.S.A. 40:55D-70(d)(1), and the bulk variance relief is subject to the criteria set forth in N.J.S.A. 40:55D-70(c).

6. The Board Professionals, Elizabeth Leheny, AICP, PP, the Board Planner, and Samantha Anello, PE, CME, CFM, the Board Engineer, were duly sworn according to law.

7. Gerald J. Betzner, Esq., entered his appearance on behalf of the Applicant and provided an overview of the Applicant's proposal, the requested relief, the witnesses to be presented, and the materials submitted as part of the application.

8. Philip Mastromihalis, having an address of 39 Wight Street, Bridgewater, New Jersey, was duly sworn according to law. He introduced into evidence, as **Exhibit A-1**, two (2) photographs of the existing building and as **Exhibit A-2**, a color aerial image of the Site. Mr. Mastromihalis explained his restaurant experience and his plans for the operations of the proposed take-out restaurant. He testified regarding the number of employees (2 cooks, 2 prep, and his 2 daughters will help at the counter), and that the food will be take-out that is prepared on site, but not a fast-food restaurant.

9. Mr. Mastromihalis described his plans for renovating the façade of the 1.5 story building to refresh it and adaptively reuse it. He explained that there will be little noise, odor, or other negative impacts from the operations. Mr. Mastromihalis testified that the hours of operation will be from 11:30am to 8:30pm, and that the entrance will be on the side with an awning and not facing Valley Road. There will be a small patio on the side of the building as well, and 7 parking spaces to the rear.

10. Gary Sorkin, PE, having a business address of 208 Anderson Parkway, Cedar Grove, New Jersey, was duly sworn according to law, provided his qualifications, and was accepted by the Board as an expert in the field of civil engineering. Referencing the Site Plans submitted with the application materials, Mr. Sorkin provided an overview of the project. Mr. Sorkin introduced into evidence:

- **Exhibit A-3**: Six Google images/photographs and two photos of older site plans;
- **Exhibit A-4**: A response letter dated March 15, 2022 from Gary Sorkin, PE;
- **Exhibit A-5**: Architectural floor plans, consisting of one page;
- **Exhibit A-6**: A wetlands/Waters Evaluation report dated February 15, 2022; and
- **Exhibit A-7**: A Morris County preliminary site plan report dated December 1, 2021.

11. Mr. Sorkin described the existing conditions of the Site and the zoning requirements of same. He testified that, prior to 2013, there were 3 principal uses and buildings on the Property. He referenced the environmental constraints on the Site, including the 150 foot wetlands transition buffers. Mr. Sorkin also explained the topography of the Site, including the significant step up from the subject building to the parking lot and the Elks Lodge building.

12. Mr. Sorkin referenced the zoning deviations, including the side-yard setback encroachment and the retaining wall height deviation.

13. On May 3, 2022, Mr. Sorkin testified consistent with, and elaborated on, his April 15, 2022 engineering letter responding to the 14 items that the Board, at the March 15th hearing date, directed the Applicant to address. Specifically,

1. ***Comment:*** Reduce side yard setback due to the emergency access patio stair location.

Response: The plans and zoning table have been updated to reflect that the stair location is 3' (minimum) from the side property line. The patio remains 9' (minimum) from the side property line.

2. ***Comment:*** Add an "Exit only" sign to the emergency access patio stairs, along with a "No Parking" sign to prevent people from parking near this western property line.

Response: These signs have been added to the plans, and will be located on or directly adjacent to the patio stairs.

3. ***Comment:*** Add a canopy over the rear utility door (access into storage areas) and over the patio doorway.

Response: These building mounted canopies have preliminarily been shown on the plans. No footings are required. Further confirmation of sizes/location will be coordinated with the sign application plans, and discussed during the 5/3 hearing.

4. ***Comment:*** Provide further information regarding the material for the handicap parking spot's landing.

Response: Concrete (4" thick) will be used for this ~9'x28' landing, which is shown on the updated plans.

5. ***Comment:*** Provide a zoomed-in view (with dimensions) of the ADA compliant ramp.

Response: The site plan set has been revised to show a zoomed-in view of the ADA ramp. Please see Sheet SP-10, for further dimensions, slopes, etc.

6. ***Comment:*** For the existing access driveway on the County Roadway (Valley Road), contact Morris County to determine if a formal traffic study/review and/or traffic sightline analysis is required.

Response: SES contacted the Morris County Planning Board (Mike DiGiulio, PP, AICP, CFM) to discuss the need for a traffic study/review and the existing sightlines. Per the SES conversations with Mr. DiGiulio (and Mr. DiGiulio's internal conversations with other Morris County Planning Board professionals), Morris County essentially treated this existing driveway as a 4-way light (along with the existing stop sign the driveway). Morris County stated that cars in this driveway essentially utilize the Poplar Drive facing traffic light before safely entering the roadway. Morris County stated that they "are not requiring any additional sight distance analysis or traffic related items." See attached email correspondence with Mr. DiGiulio of the Morris County Planning Board. As this is a Morris County Roadway, Morris County has jurisdiction regarding the traffic control, which was reiterated during the 3/15 hearing. As such, a traffic study at this location has not been

performed. It should be noted that this driveway has been utilized by the Elks Lodge for a long duration (40+ years). Per information provided by the applicant and the Elks Lodge, this driveway has been used for larger gatherings (50+ people) and traffic safety has 'never been an issue.'

7. ***Comment:*** *Provide further detail regarding the proposed HVAC system.*

Response: The plans have been updated to show a wall unit being located on the west side wall. For the small interior space, a wall HVAC unit has been preliminarily selected to heat and cool the space and does not require a separate condenser. This information regarding the initial HVAC design has been reflected on Sheet SP-4. It should be noted that additional ceiling fans are proposed to further help with cooling/ventilation. The heating/cooling wall unit will be confirmed with the mechanical contractor as a final condition of approval as needed. If required, there is space to add a condenser on a small section of the proposed bathroom roof, which could be hidden behind a roof parapet. As such, no HVAC pads on the patio/ground would be required.

8. ***Comment:*** *Confirm the total height of retaining wall, showing the top and bottom of the retained wall and the top of the guardrail.*

Response: The retaining wall plans has been revised to reflect these elevations and the total wall height (retained height + rail height). As shown on Sheet SP-5, the retaining wall will have a maximum retained height of 3' in the front yard, 2.5' along the western stairs/patio, and 5.5' towards the rear of the property (at the ADA ramp). However, a 3.5' barrier railing will be provided on top of these retained heights, increasing the 'wall height' accordingly. As such, a variance regarding the front wall height shall be addressed at the upcoming 5/3 hearing (~6.5' maximum compared to the 4.0' allowed in the front yard). It should be noted that the existing front porch has a front wall height of 5.0' (~1.5' retained soil, 3.5' railing) which would be a pre-existing nonconformity. Related to the retaining wall railing, the plans have been updated to reflect that the guardrail will be concrete at the front patio area and around the rear ADA ramp/parking area. At the 5/3 hearing, further discussions will had regarding whether sections of cast-iron railing may be acceptable at the west side of the rear parking stairs.

9. ***Comment:*** *Present the proposed second sign over the patio door as a variance.*

Response: As one building mounted sign (Valley Road side) is allowed, adding a second building mounted sign (over the patio main entrance door) would be deemed a variance request. The third sign (ground mounted) has been removed. All sign sizes and locations shall meet the Long Hill requirements. The plans have been updated to reflect these edits and the variance request. The sign plans and application to be provided as a condition of approval.

10. ***Comment:*** *Provide Architectural Renderings.*

Response: An initial rendering has been provided with this letter, showing the proposed western patio and landscaping. Additionally, the architectural schematic drawings have been updated which have been attached here as well. Further refinement of this render and the architectural drawings may be provided at the 5/3 hearing as needed.

11. ***Comment:*** *Add a bush/shrub in front of the patio guardrail along Valley Road.*

Response: After communicating with MCPB, a single bush is allowed along the front face of the patio. See attached email correspondence with Mr. DiGiulio of the Morris County Planning Board. The landscaping plan has been updated to reflect this proposed bush. Related - Morris County did provide a formal letter regarding the Valley Road ROW, which has been attached for your reference.

12. **Comment:** *Confirm material for front gate of trash enclosure.*

Response: The front gate material has been provided on the plans. Please see the attached manufacturer's information for the proposed front gate.

13. **Comment:** *Revise drainage system (setup, locations, types of drain areas, etc.).*

Response: The drainage system has been revised to include further area drains for the ADA ramp and a trench drain along the west side of the parking area. The drainage setup has been modified and reflected on the plans, with additional requirements (i.e., soil log and permeability investigation, seepage pit infiltration feasibility study, grading of the rear parking area, etc.) added to the plans. However, the drainage calculations can be further modified to the satisfaction of the Long Hill Engineer as a condition of approval.

14. **Comment:** *Applicant Mastromihalis and Elks Lodge to formalize a contract regarding the shared use of the Elks Lodge parking lot (for employees, overflow).*

Response: Applicant to provide a signed affidavit between these parties at the 5/3 hearing regarding the shared use of the Elks Lodge parking area as needed.

14. Barbara Ehlen, P.P., AICP, was duly sworn, provided her credentials and was accepted as an expert in the field of professional planning. She identified the d(1) use variance and the bulk variances.

15. Ms. Ehlen opined that the Applicant was entitled to a d(1) use variance for the 2 principal buildings on one lot, having satisfied the positive criteria for same on particular site suitability grounds, including that the use is a permitted use, there is shared parking on site, the location is in a commercial corridor, 2 buildings have existed on site for a long time and the lot area is 276,000 square feet whereas only 20,000 square feet of lot area is required. She further opined that the Applicant satisfied the enhanced quality of proof under Medici for the negative criteria, by testifying that the Master Plan anticipates these multiple commercial uses but just not in this exact lot configuration because the subject building was very small and constructed in the 1950s, if not earlier. Ms. Ehlen also opined that there would be no substantial impacts on the neighborhood, since the uses are commercial uses in a commercial corridor, and multiple commercial uses in multiple buildings with a common access drive is a typical commercial configuration.

16. Ms. Ehlen opined that the Applicant was entitled to all of the requested bulk variance relief, on both of the alternative grounds under subsection c(1)/undue hardship criteria and c(2)/benefits substantially greater than the detriments criteria. As to the excessive retaining wall height, same is the product of guardrails that provide safety. As to the canopy signage, dual signage is necessary on both the Valley Road frontage and the side of the building given the orientation of the building on the Lot and the location of the main entrance on the side of the building, and the canopy softens the appearance of the signage thereon.

17. The Board's Planner, Ms. Leheny, concurred with the expert testimony and planning conclusions of Ms. Ehlen.

18. David Schiavi, the Treasurer of the Stirling Elks Lodge #2392, at 1138 Valley Road, Stirling, testified in support of the application and confirmed the agreement between the Elks and the Applicant for the

Elks to permit the Applicant's employees to park their vehicles in a designated area at the rear of the Property, such area being separate and apart from the seven (7) customer parking spaces adjacent to the Applicant's business/building.

19. On discussion, the Applicant stipulated to numerous conditions of approval as set forth below.
20. No other member of the public commented on, or objected to, the application.

DECISION

21. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has demonstrated an entitlement to the requested preliminary and final major site plan approval, the subsection d(1) use and bulk variance relief, and the design waiver sought herein.

The d(1) Use Variance – Positive Criteria:

22. As to the d(1) use variance for the continuation of 2 principal structures on the one lot Property, the Board notes that New Jersey courts recognize three circumstances in which the "special reasons" required for such a variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because "the proposed site is particularly suitable for the proposed use." See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

23. Here, the Board finds that the Applicant has satisfied the positive criteria required for the grant of a d(1) use variance because it has demonstrated that the proposal serves the general welfare and that the Site is particularly suitable for the proposed use as a charging facility. In this regard, the Board adopts the expert planning testimony of the Applicant's planner, Ms. Ehlen, with whom the Board Planner, Ms. Leheny, concurred, that the Applicant was entitled to a d(1) use variance for the 2 principal buildings on one lot, having satisfied the positive criteria for same on particular site suitability grounds, including that the use is a permitted use, there is shared parking on site, the location is in a commercial corridor, 2 buildings have existed on site for a long time and the lot area is 276,000 square feet whereas only 20,000 square feet of lot area is required. As such, the Board concludes that the Applicant has satisfied the positive criteria required for a d(1) use variance.

The d(1) Use Variance – Negative Criteria:

24. As to the negative criteria, the Board recognizes that in d(1) use variance cases the Applicant must demonstrate the negative criteria with "an enhanced quality of proof." Specifically, in Medici v. BPR Co., 107 N.J. 1, 21-22 (1987), the Supreme Court required that an applicant must show:

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. The applicant's proofs and the board's findings must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district.

25. The Board finds that the Applicant has satisfied its burden of proving the negative criteria. In this regard, the Applicant has demonstrated that the requested relief can be granted without substantial detriment to the public good and that the variance relief sought is not inconsistent with the intent and purpose of the Master Plan and the applicable provisions of the Land Development Ordinance. The Board adopts the expert planning testimony of the Applicant's Planner, Ms. Ehlen, with whom the Board's Planner, Ms. Leheny, concurred, that the Applicant satisfied the enhanced quality of proof under Medici for the negative criteria, by testifying that

the Master Plan anticipates these multiple commercial uses but just not in this exact lot configuration because the subject building was very small and constructed in the 1950s, if not earlier. Ms. Ehlen also opined that there would be no substantial impacts on the neighborhood, since the uses are commercial uses in a commercial corridor, and multiple commercial uses in multiple buildings with a common access drive is a typical commercial configuration.

26. Based on the foregoing, the Board finds that the continuation of two principal structures on the Property would not be substantially detrimental to the public good, nor would a grant of the requested variance relief substantially impair the intent and purpose of the zone plan or the Zoning Ordinance.

The Bulk Variances – Positive Criteria:

27. The Board recognizes that an applicant requesting bulk variance under subsection “c” of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria. The positive criteria in bulk variance cases may be established by the Applicant’s showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the subsection c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created.

28. The positive criteria for bulk variance relief may also be established by a showing that the granting of an application for variance relief would advance the purposes of the Municipal Land Use Law (the “MLUL”) and the benefits of the granting such relief would substantially outweigh any detriment associated therewith, in accordance with N.J.S.A. 40:55D-70c(2). Under the subsection c(2) standard, an applicant must prove that the granting of a proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

29. Here, the Board finds that the requested bulk or “c” variance relief may be granted under subsection c(2) of N.J.S.A. 40:55D-70.

30. Pursuant to N.J.S.A. 40:55D-70(c)(2), the Board further finds that granting the requested relief advances the purposes of the MLUL and that the benefits associated with the proposal substantially outweigh the detriment associated therewith. Specifically, the Board finds that the proposal advances the purposes set forth in subsections (a), (c), and (i) of Section 2 of the MLUL, in that it promotes the public health, safety, morals and general welfare; provides adequate light, air and open space, and promotes a desirable visual environment. The Board further finds that the benefits of granting the requested relief substantially outweigh the detriment associated therewith, particularly given the relatively modest nature of the Applicant’s proposal and the stipulated to conditions, which will further mitigate such relatively modest detriment.

31. As to the requested variance relief for the side-yard setback and retaining wall height in a front yard deviations, the Board finds that same will allow the Applicant to improve the functionality and aesthetics of the Property without changing on-site circulation. As to the excessive retaining wall height, same is the product of guardrails that provide safety.

32. As such, the Board finds that the Applicant has demonstrated the positive criteria for all of the requested variance relief under subsection c(2) of Section 70 of the MLUL.

The Bulk Variances – Negative Criteria:

33. In order to satisfy the negative criteria for “c” variance relief, an applicant must prove that the variance 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. The focus of the “substantial detriment” prong of the negative criteria is on the impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

34. As to the “substantial detriment” prong of the negative criteria, the Board finds that the Applicant has demonstrated that the proposal will not result in substantial detriment to the neighborhood or the general welfare, particularly since the appearance of the Property will be improved and the size and location of the second principal structure is not changing from what currently exists. The Board recognizes that no member of the public objected to the Applicant’s proposal, and a representative of the most affected occupant, the Elks Lodge that owns the Property, actually testified in support of the application, further evidencing that the proposal is not substantially out of character with the subject neighborhood. As to the “substantial impairment” prong of the negative criteria, the Board finds that granting the requested relief certainly does not rise to the level of a rezoning of the Property, particularly since the proposed uses as a restaurant and the Elks Lodge are permitted uses in the B-D Downtown Valley Commercial Zone.

35. Based upon the foregoing, the Board finds that the Applicant has satisfied both the positive and negative criteria for the requested bulk variance relief under N.J.S.A. 40:55D-70(c)(2).

The Design Exception:

36. Pursuant to Section 146.4 of the Ordinance, waivers from strict compliance with the major development design standards shall only be granted upon showing that meeting the standards would result in an exceptional hardship on the Applicant or that the benefits to the public good of the deviation from the standards would outweigh any detriments of the deviation.

37. Here, the Board finds that permitting the Applicant to have both an awning sign on the side building façade and a wall sign on the front of the building facing Valley Road, is a safer proposal than permitting only the awning sign and that the strict application of the regulation would result in undue hardship upon the Applicant, as it would limit the Applicant’s ability to facilitate wayfinding and safe and efficient access to the Property. As such, the Board finds that the Applicant has demonstrated an entitlement to the requested design waiver exception relief for the proposed signage.

The Preliminary and Final Major Site Plan Approval:

38. The Board finds that the Applicant has demonstrated good cause and complied with the Preliminary and Final Site Plan provisions set forth in Section 162 of the Ordinance and Article 6 of the MLUL, and that the Applicant is, therefore, entitled to the requested preliminary and final site plan approval.

WHEREAS, the Board took action on this application at its meeting on May 3, 2022, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g).

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Board of Adjustment does hereby GRANT the Relief Requested as noted above, subject to the following:

1. The Applicant is required to comply with the following conditions:

- a. The Applicant shall comply with the Applicant's representations to, and agreements with, the Board during the hearing on this application;
- b. The Applicant shall comply with the requirements and recommendations set forth in the Board Engineer's Memorandum, dated March 8, 2022, to the extent not already satisfied or sufficiently addressed, including, but not limited to, the following:
 - i. The area of steep slope disturbance (750 s.f.) does not appear to include the disturbance required for the drywell to the east of the building. This calculation should be revised. Disturbance appears to still be below the threshold for regulation as per LUB-142.2. The plans should clearly note that the proposed silt fencing/super silt fencing is to be installed prior to any site disturbance, and that it must be installed around the entire approved area of disturbance to ensure that the critical slope disturbance is not exceeded;
 - ii. The limit of Freshwater Wetlands and Freshwater Wetlands Transition areas as delineated by Brian Creamer of CES should be shown on the site plan. The Wetlands Delineation Evaluation letter from CES should be provided in support of this application and referenced on the site plan to support the limit of Freshwater Wetlands and Freshwater Wetlands Transition areas as delineated by Brian Creamer of CES and shown on the property survey on sheet 1 of the plan set;
 - iii. Per the Americans with Disabilities Act, if a building is increased in size, remodeled, or otherwise improved, the owner is expected to guarantee ADA compliance. As such, the construction of the accessible ramp from the parking area to the renovated building is required;
 - iv. An enlarged detail of the proposed ramp (from the parking lot to the building) that specifies all grades and demonstrates ADA compliance must be provided;
 - v. Compliance with the following provisions of Long Hill Township Code Section LU-154.3 Trash and Recycling Storage must be demonstrated, and appropriate details provided on the plans:
 1. The Applicant shall provide estimates of trash and recyclable material generation in terms of cubic feet of storage space required per week per type of material to be stored to demonstrate that the proposed capacity of trash enclosures proposed will be adequate;
 2. Recycling material storage areas shall be roofed. If freestanding, fully enclosed, recycling material storage containers are utilized, the required solid enclosure may be omitted provided the storage area is enclosed by an acceptable landscape screen;
 - vi. It appears that concrete curb stops are proposed within the gravel parking area to designate parking spaces. A detail for the proposed concrete curb stops must be provided;
 - vii. Top and bottom of wall elevations must be added to the grading plan. Retaining walls shall not exceed four feet in height in the front yard or six feet in height in the side and rear yards. If the proposed retaining walls exceed these limitations, additional variances may be required;

- viii. Provide appropriate barrier for fall protection for retaining walls per applicable codes;
- ix. Structural stability calculations should be provided for all retaining walls greater than four (4') feet in height and those supporting structures;
- x. The list of "Approvals required by other agencies" on the cover sheet should be updated per the "approvals" section of this report;
- xi. As-Built Plans must be provided for review and approval prior to a certificate of occupancy being issued. This should be a condition of any favorable resolution;
- xii. The approximate location of all existing utility services (water, sewer, and gas) which are noted as "unverified" must be field verified;
- xiii. The Applicant has calculated that the proposed sanitary sewer volumes generated by the proposed use will be less than the historic use of the Site. Concurrence and approval from New Jersey American Water (NJAW) should be provided in support of this;
- xiv. It should be clarified if it is the Applicant's intent to re-use the existing sanitary sewer connection, or if a new connection is required;
- xv. Soil mapping should be provided to verify the hydrologic soil group designation utilized in the runoff calculations. If it is probable that a shallow groundwater table is present based on mapped soil conditions, a test pit(s) should be conducted to verify the feasibility of the current drywell design. Proper separation between "open" subsurface drainage systems (such as drywells) and seasonal high groundwater should be provided in accordance with NJDEP's Stormwater BMP manual. A closed detention pipe system (or similar) should be considered, if soil conditions dictate;
- xvi. As the noted existing soil conditions (type D) are not conducive to infiltration, the application must provide stormwater management facilities as to result in a zero net runoff as calculated by the Modified Rational Method as per Long Hill Township Code Section LU-146.3.b.2. The calculations provided are not consistent with the modified rational method. Please refer to Appendix A-9 of "The Standards for Soil Erosion and Sediment Control in NJ";
- xvii. The revised modified rational calculations should include drainage area maps to indicate the drainage areas to the proposed seepage pits. Based on the contours provided on the plan, it does not appear that the rear parking lot area will drain to the proposed upper seepage pit. The grading/drainage should be consistent with the drainage area maps to be provided;
- xviii. The Applicant shall revise the notes on the plan regarding retaining wall drains to show that the drains are not connected to the stormwater drainage systems; wall drains should be independent of the patio drains/drywells and should drain to daylight at suitable locations;
- xix. The seepage pit detail shall be revised to include filter fabric in accordance with NJDEP's Stormwater Best Management Practices (BMP) manual;
- xx. All parking areas, driveways, walkways, building entrances, loading areas and similar locations serving nonresidential uses shall be adequately illuminated for safety and

security purposes. The lighting plan should specify the average illumination over these areas to be meet this requirement;

- xxi. All outdoor lighting shall be arranged and shielded so as to minimize undesirable lighting impacts such as glare, driver distraction, unnecessary illumination and nightglow;
- xxii. The Applicant shall install automatic shut-off or dimming devices for all light fixtures after 10:00 p.m., or one-half hour after the closing of any nonresidential use, whichever is earlier;
- xxiii. All pole-mounted fixtures shall be set back at least two feet from the surface of the parking area. This should be dimensioned on the plans, and a note added;
- xxiv. The Applicant shall install traditionally-styled lantern fixtures, subject to the review and approval of the Board Engineer;
- xxv. The lighting plans must note the following requirements of LUB-153:
- xxvi. All lighting plans shall be subject to a post-development lighting inspection by the Township Planner and/or Engineer.
- xxvii. The landscaping plans shall be revised to note the following requirements of LUB-153:
 - 1. All landscape plans shall provide a two-year replacement guarantee for all new plantings and all existing trees and other vegetation to be retained after construction.
 - 2. All landscape plans shall be subject to a post-development inspection by the Township Planner and/or Engineer and a representative of the approving authority.
- xxviii. The Applicant shall provide color architectural renderings which identify proposed building materials and colors;
- xxix. The Applicant shall obtain a Soil Erosion and Sediment Control (SESC) certification from the Morris County Soil Conservation District prior to any land disturbance;
- xxx. The Applicant shall obtain approval from the Morris County Planning Board prior to any land disturbance. Copies of any correspondences (letters and/or e-mails) from the Morris County Planning Board indicating their suggested revision to the plans shall be provided for the Board's review;
- xxxi. The Applicant shall obtain approval from New Jersey American Water for the proposed water service connection, as well as for the review and approval of all water service details, should a new service be required.
- xxxii. The Applicant shall obtain approval from New Jersey American Water for the proposed sewer service connection, as well as for the review and approval of all sewer service details, should a new service be required; and

xxxiii. Should new utility (water, sewer, gas) connections be required, a road opening permit will be required from the County of Morris.

2. The Applicant shall replace the existing stop sign, at the Valley Road intersection with the driveway, with a new stop sign, the location subject to the review and approval of the Board Engineer;

3. The Applicant shall install a stop line/stop bar at the intersection of the driveway and Valley Road, subject to the review and approval of the Board Engineer and the County of Morris;

4. The retaining wall shall be white and shall not contain any signage or writing thereon;

5. The Applicant shall provide drainage calculations to show compliance with the stormwater management standards and may be required to amend same subject to the review and approval of the Board Engineer;

6. The Applicant shall add the HVAC wall unit(s) to the architectural plans;

7. All lighting shall be downward directed and contain back shields so as to prevent light spillage on any adjacent property;

8. The canopy shall not have any lighting;

9. The Applicant shall add one bush at the corner or bend of the retaining wall in front of the subject building;

10. No signage shall be internally illuminated;

11. The Applicant shall provide a copy of a binding lease agreement between the Stirling Elks Lodge 2392 and the Applicant for a minimum of five (5) parking spaces for the Applicant's employees to park their vehicles in a designated area at the rear of the Property, such area to be separate and apart from the seven (7) customer parking spaces adjacent to the Applicant's business/building;

12. The Applicant shall comply with the local and State noise regulations, including, but not limited to, N.J.A.C. 7:29;

13. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, or the requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the Applicant in any approvals, as memorialized in resolutions adopted by the Township of Long Hill Board of Adjustment or Planning Board except as specifically stated in this Resolution;

14. The Applicant shall comply with any and all prior conditions of approval to the extent that same would not be inconsistent with the approval granted herein;

15. The Applicant shall comply with Section 3-15.8 of the Ordinance, which prohibits construction activities between the hours of 8:00 PM and 7:00 AM;

16. The grant of this application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code;

17. All fees and escrows assessed by the Township of Long Hill for this application and the hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property;

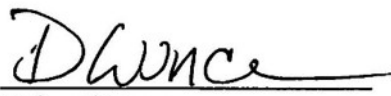
18. Pursuant to LU-172.11, any variance from the terms of this Ordinance hereafter granted by the Board of Adjustment permitting the erection or alteration of any structure or structures or permitting a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance, or unless such permitted use has actually been commenced, within 12 months from the date of entry of the judgment or determination of the Board of Adjustment, except, however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board of Adjustment to the Township Committee or to a court of competent jurisdiction until the termination in any manner of such appeal or proceeding; and

19. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant' securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicant and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent to, or received by, the Applicant.

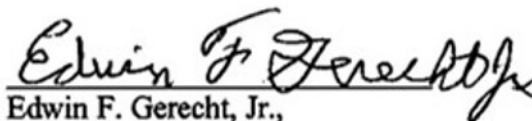
WHEREAS, a Motion was made by Mr. Aroneo and seconded by Mr. Rosenberg to GRANT approval of the Relief Requested as set forth herein.

BE IT FURTHER RESOLVED, that this Resolution, adopted on June 7, 2022, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: YES: Aroneo, Rosenberg, Gianakis, Grosskopf, Hain, Johnson, Gerecht; NO: None; Recused: None; Not Eligible: None; Absent: None.

ATTEST:




Debra Coonce,
Board Secretary



Edwin F. Gerecht, Jr.,
Chairman

VOTE ON RESOLUTION					
MEMBER	YES	NO	NOT ELIGIBLE	ABSTAINED	ABSENT
CHAIRMAN GERECHT					X
VICE CHAIRMAN JOHNSON	X				
ARONEO	M				
GIANAKIS					X
GROSSKOPF					X
HAIN	2nd				
ROSENBERG					X
LINDEMAN – ALT 1			X		
BRENNAN – ALT 2			X		

I hereby certify this to be a true copy of the Resolution adopted on June 7, 2022.


 Debra Coonce,
 Board Secretary

STATE OF NEW JERSEY
MORRIS COUNTY

SS. |

I, Debra Coonce, being of full
age, being duly sworn upon her oath, certifies:
that a notice of which the annexed is a true copy, was
published in the Echoes Sentinel which is a newspaper
published in Morris County, New Jersey,
on the 16th day of June, 2022
in said newspaper.

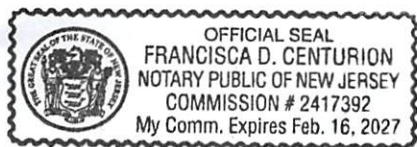


Sworn and subscribed before me this

20TH day of JUNE, 2022



Notary Public of New Jersey



Long Hill Township
PUBLIC NOTICE
NOTICE OF DECISION OF THE TOWNSHIP OF LONG HILL
ZONING BOARD OF ADJUSTMENT

Public notice is hereby given that the following action was taken by the Township of Long Hill Zoning Board of Adjustment at its meeting on June 7, 2022:

Resolution of Approval Memorialized
Use Variance / Minor Site Plan
Block: 11401 / Lot: 13 / Zone: B-D
1138 Valley Road
Application No. 21-23Z
Phillip Mastromihalis

All documents relating to this application may be examined on the website at: <https://longhillnj.gov/BOA/bca-resolutions.html> or by the public by appointment in the Planning & Zoning Office in the Township of Long Hill Municipal Building located at 915 Valley Road, Gillette, NJ. Office Hours are as follows: Monday, Tuesday & Thursday - 8:30 AM to 4:30 PM, Wednesday - 8:30 AM to 6:30 PM and Friday - 8:30 AM to 2:30 PM.

Debra Coonce
Zoning Board of Adjustment Secretary
Planning & Zoning Coordinator
Township of Long Hill

P.F. \$28.05 06/16/21