

TOWNSHIP OF BRICK

OCEAN COUNTY, NEW JERSEY
401 CHAMBERS BRIDGE ROAD, BRICK, N.J. 08723

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BA-3534-PSP-FSP—C-D 11/2024
Stavola Asphalt Co.
Block 755.07, Lot 1
429 Chambers Bridge Road
Brick, NJ 08723

Dear Board Members:

The Applicant, Stavola Industries, LLC., is seeking a Use Variance and Preliminary & Final Major Site Plan to allow the re-development of an asphalt plant in the R-R-1 Zone. The current site is an operational asphalt plant on a 17.109-acre tract with frontage along Cedar Bridge Avenue, located next to Town Hall on the East, the Garden State Parkway to the West and approximately 1,000 feet upstream of the Brick Municipal Utility Authority drinking water intake on the Metedeconk River to the North. The Applicant proposes to remove the current plant and structures and replace them with upgraded facilities.

We have reviewed the above referenced application for a Use Variance and Preliminary & Final Major Site Plan and offer the following information and comments for your consideration:

I. Variations/Waivers Requested:

- A. The applicant is requesting a Use Variance d (1) to allow the re-development of an antiquated asphalt plant in the R-R-1 Rural Residential Zone. Or a d (2) Variance to permit the expansion of the non-conforming structure.
- B. A height variance d (6) is also required as the existing height of the asphalt loading tower is 50.5 ft and is proposed to be changed to 75 ft. high.

II. Background Information and History of the Site:

In 2005, the Board of Adjustment heard and rendered a decision of denial for the proposal to replace and upgrade the existing plant under a d (1) variance that was upheld by subsequent higher courts. The proposal was heard over many hearings and heard testimony from the applicant professionals and objectors' professionals regarding issues relative to the proposed plants impact, including: water quality, traffic, stormwater management, landscaping, air quality,

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hours of operation, etc. Ultimately, the Board found that the applicant's proposal did not meet the standards for granting the d (1) use variance and denied the application via a Resolution dated January 18, 2026. The Applicant appealed to the Superior Court, Law Division, where it was affirmed and then appealed the affirmation of the denial to the Appellate Division which affirmed the Law Divisions decision. The Applicant did not appeal the Appellate Division's decision and the site has continued to operate as it had prior to the application in 2005.

The Applicant has filed an application again to replace and upgrade the existing plant facility. An objecting attorney, Edward. F. Liston, Jr, issued a letter dated November 12, 2025 requesting the Board conduct a hearing to determine whether a non-conforming structure or use existed prior to the adoption of an ordinance that prohibited that use or structure. Mr. Liston has also raised the question of Res Judicata and Laches. He contends that the Applicant is not entitled to apply for a similar application that had been denied by the same body. I defer to the Board Attorney to provide legal counsel to the Board regarding how the Board shall proceed with the requests of the objector's attorney regarding the request for a decision on the non-conforming use and on the issue of Res Judicata and Laches.

III. Planning Analysis:

The Applicant has applied for a d (1) Use variance and a d (2) Expansion of a pre-existing non-conforming use and a d (6) for a 75' high plant stack for this proposal. The Applicant included the following justification in their application for the variances: (c1 or c2) *"The variance relief may be granted under NJSA 40:55 D-70(c)(2) because the benefits of granting the relief far outweigh any detriments, of which there are none. The design represents a good civic design with adequate air, light and open space on the property, and it provides an aesthetic upgrade to the property. The relief sought may be granted without substantial detriment to the Master Plan or the Zoning ordinance. And under (d) The site is particularly suited for an asphalt plan which has been operating in this location since the 1950's. The proposed improvements will make the plant more efficient, will provide better safeguards for the environment and will promote the purposes of the MLUL and the benefits substantially outweigh any detriments."* The Applicant shall provide testimony to substantiate these statements.

I offer the following information regarding the planning analysis required to be employed when deliberating on cases where a d (1) and/or a d (2) and d (6) is proposed:

- i. **Use Variance d (2) -.** A Variance to Permit Expansion of a Non-Conforming Use under N.J.S.A. 40:55D-70 d (2) can only be considered when an existing use pre-dates new zoning ordinance. If an existing use pre-dates a new zoning ordinance, it is called a "non-conforming use" and are "grandfathered." Non-conforming uses run with the land, not with the land owner. The goal of local zoning is to eventually bring non-conforming uses into conformance with contemporary zoning schemes – allowing the nonconformities to "die on the vine." This has to be enacted, however, without negatively impacting property rights and due process of the law.

As a result, non-conforming uses may not be expanded or extended or changed without a variance – d (2). New uses may only be allowed if they are the same or as or substantially similar to the existing on-conforming use. Any expansion of a non-conforming uses will be permitted to continue only if its continuance is substantially the same kind of use that to which the site was operating at the time of the passage of the zoning ordinance that made it non-conforming.

The question the board is charged with resolving in this case is whether the asphalt plant legally existed prior to the adoption of the Township of Brick's Zoning Ordinance and therefore – is it “grandfathered.” The applicant attorney and objecting attorney have provided chronological information with regard to this topic and should provide testimony so that the board can decide as to the legal pre-existence of the use prior to the zoning that was enacted to make the existing use and proposed expansion a non-conforming use in the Township of Brick.

If the Board determines that the use existed as a permitted use prior to the zoning ordinance, the planning analysis then would focus on the expansion of the non-conforming use and use the standard analysis of weighing the positive criteria against the negative criteria. The Applicant shall provide testimony regarding the use's impact on the “promotion of the general welfare” with regard to the purposes of zoning. The Applicant must demonstrate that the proposed development and expansion thereof, will not substantially impair the intent and purpose of the zone plan and zoning ordinance and without substantial detriment to the public good.

- ii. **Use Variance – d (1)** - If the Board determines after testimony, that the asphalt plant has never existed legally and has been allowed to continue operating as not a pre-existing non-conforming use, the Applicant will be required to provide planning testimony to justify the granting of a d (1) Use Variance.

The Applicant should provide testimony that the proposal “lessens” the non-conformity.

The applicant is requesting a Use Variance to allow the re-development of an antiquated asphalt plant in the R-R-1 Rural Residential Zone. Industrial uses are not permitted in the R-R-1 Zone.

The Applicant should provide testimony relative to the need for the increased production capacity and storage of the asphalt production facility due to the increase from 2-ton capacity to 5-ton capacity machines. The Applicant should provide the special reasons for the expansion of the plant relative to the increase in capacity. The Applicant shall provide testimony regarding the “enhanced quality of proof” regarding the proposed expansion. Specifically, does the public good benefit by the expansion of the site and the increase in production capacity? Please address.

- iii. **Use Variance – d (6)** -A height variance d (6) is also required as the proposed height of the asphalt loading tower is 75 ft.

A. When a height deviation reaches a level of nonconformity, the resulting structure arguably could be seen as something out of character with the structures permitted in the zone and thus should be reviewed under the enhanced standards. The applicant shall provide testimony to justify the grant of the d (6) "height" variance. A d (6) variance must show (1) "Special Reasons," or how the site meets the positive criteria; and (2) that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and ordinance or the negative criteria. A balance test must be provided.

B. When addressing the positive criteria, the applicant shall provide proofs that the proposed height would not offend the purposes of the height restriction in this zone. Therefore, the Applicant should provide testimony in support of why the proposed height of this structure (75 feet) does not offend the required R-R-1 height limitation (38.5 feet). It should be noted, that the proposed height is nearly **twice** (+39.5 ft.) the allowable height.

C. The Applicant shall discuss how and if the proposed height is consistent with the surrounding neighborhood. The Zoning Board of Adjustment is obligated to consider the impact that the structure would have on more than the municipality itself or the immediate vicinity of the structure.

D. The Applicant should address if this site could accommodate a conforming or reduced height. Can this site reasonably accommodate a structure that conforms to, or only slightly exceeds the height permitted by the ordinance? Does the height ordinance prohibit utilization of the property for a conforming structure?

E. Relative to the d (6) variance for height, the Applicant must show that the site will accommodate the problems associated with a proposed use. Would the site accommodate the additional production the stack can produce from the added height? Is the height relative to production? Is the height of the stack relative to air quality permitting requirements? The negative criteria must be provided so the Board can weigh the positive aspects versus the negative aspects of the proposal.

F. A zoning analysis of the proposed height should be performed for the purpose of the height restrictions and the land use problems that could be caused if the variance were granted. Please address the following and indicate how this site is designed to address each item:

1. The relationship between height restrictions and the public welfare is directly related to the fact that the height of a building could impact traffic congestion, fire hazards, public health, adequate air, light, open space and population density.
2. Height restrictions like restrictions on density, bulk or building size have also been used in zoning ordinances as a technique for limiting the intensity of a property's use. Is the height of the stack relative to the intensity of the use? Do plants with lower production have lower stacks?
3. Height restrictions are designed to promote a desirable visual environment, preserve skylines and trees, avoid the appearance of overcrowding, preserving property values and to protect views.

- iv. Relative to the variances required, the Applicant should present acceptable testimony to the Board that the strict application of the Township's Zoning Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue

hardship upon the developer or subject property and/or as the application relates to a specific piece of property, that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would substantially outweigh any detriment.

The application must also prove that the variances can be granted without substantial detriment to the public good, nor the substantial impairment of the intent and purpose of the Township's Master Plan and Zoning Ordinance.

The Applicant should also address the inherent benefits of the proposed use, if any, how the site and location are particularly suited for the proposed use and the special reasons for granting the use variances.

- A. Positive Criteria: The Applicant must establish *special reasons*, for the board to grant a variance to allow departure from zoning regulations and to permit d (1), a use or principal structure in a district restricted against such use or principal structure. "Special Reasons" are generally described as the purposes of the zoning set forth in the NJ Municipal Land Use Law – Please identify which purposes of the zoning are promoted by the application.
- B. Negative Criteria: The Applicant must discuss if the proposal can be granted; a.
 - a. Without substantial detriment to the public good
 - b. It will not substantially impair the intent and purpose do the zone plan and zoning ordinance.
- C. The Applicant shall provide testimony supporting that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning requirements and that the benefits of the deviation would *substantially* outweigh any detriment.
- D. Please provide a balance test and specifically enumerate the negative aspects of the application and the positive aspects as they relate to the proposed development so that the Board can weigh the negative factors against the beneficial aspects to determine if the grant of the variances is appropriate.
- E. 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.
- F. The applicant should provide testimony regarding an "enhanced quality of proof" that the variance will not substantially impair the intent and purpose of the zone plan and the zoning ordinance.
- G. The Applicant should make effort to establish if an allowed Use in the Zone can be developed on this parcel, and, if so, what are the practical difficulties in developing it as a conforming use.
- H. The Applicant shall provide testimony regarding how grant of these variances affects the zone plan, master plan and the surrounding uses.
- I. Please discuss how the proposal before the Board would be a better design from what is permitted and existing and how/if it promotes a better zoning and meets the intent of the Master Plan.
- J. The Applicant should also provide planning testimony in support of how the use and proposed expansion of the development is consistent with other planning regimes and regulations in the State of New Jersey including:

- a. the State of New Jersey Landscape Project relative to critical habitats and threatened and endangered species,
- b. NJ State Plan,
- c. NJ Municipal Stormwater Management Regulations,
- d. CAFRA,
- e. Waterfront Development,
- f. Floodplain Management Regulations (FEMA) and
- g. the NJ and BTMUA Water Quality Supply Master Plan.

IV. Comments:

- A. The Applicant shall discuss the nature and history of the site and changes proposed by this application.
- B. It should be noted that the scale house is proposed to be changed including the elevation and renovation of the building. The applicant appeared before the Architectural Review Committee and provided elevations that were found to be acceptable.
- C. The Applicant shall identify any and all state permits held for the operation of this facility such as an air quality emissions permit.
- D. The Applicant shall testify to compliance record with regard to air quality regulations.
- E. The Applicant shall discuss the types of materials handled on-site, testing of these materials for contaminants and storage of these materials.
- F. The Applicant shall provide testimony relative to vehicle maintenance.
- G. The Applicant should provide testimony relative to the increased production capacity and storage of the asphalt production facility due to the increase capacity of the new plant and if this will result in any increased traffic impacts on the site. We defer to the Board's Traffic Engineer to evaluate the traffic impacts from this proposal.
- H. The Applicant should discuss security on-site and in the proposed parking facilities such as security cameras or personnel.
- I. The Applicant should describe ingress and egress to the re-developed facility.
- J. The Applicant shall address the site changes relative to the relocation of current equipment, materials and the overall rearrangement of the property.
- K. The Applicant shall address the location of materials and storage of aggregate that has historically encroached upon the Township's property to the south and the jug-handle area. It is recommended that the storage of aggregate materials be held to the 25' setback standard.
- L. A robust stormwater management and landscaping plan has been submitted utilizing non-structural and structural BMP's. Please discuss the proposed plans and indicate if they are compliant with the NJ Municipal Stormwater Management regulations.
- M. The Applicant shall provide testimony relative to;
 1. the proposed detention facility design in a high pollutant loading area,
 2. the proposed filling of wetland areas,
 3. distance and buffering to the South Branch of the Metedeconk River,
 4. stormwater runoff from uncontained piles of asphalt materials,
 5. impacts on water quality
 6. clearing of forested and vegetated areas
- N. The Applicant shall address all of these issues and discuss the status of any applications to NJDEP for the filling of wetlands and to CAFRA.
- O. The implication of the required buffer for a C-1 waterbody includes any use of the property within the 300' buffer area including storage of aggregate materials. These materials would have to be removed from the buffer area and the area would have to be restored.

- P. The Applicant should discuss potential impacts to the BTMUA Surface Water Intake located approximately ¼ mile downstream of this facility. This office has serious concerns regarding the current operation of the facility and its impact upon the quality of water supplied through this intake and any potential negative impacts as a result of this re-development. The Applicant shall provide factual environmental analysis describing proper controls and policies to be implemented to protect the Township of Brick's drinking water source.
- Q. During previous reviews of this site, there a request for the Applicant to perform re-vegetation and restoration of the 300-foot buffer area and historical encroachment of the adjacent Ocean County property. Pleas provide an update regarding the previous restoration plan with the County, Township, and Brick Township Utility Authority. It is recommended that if the restoration has not been performed, that a restoration plan be evaluated and assessed a fee per acreage of improvement/restoration for bonding or escrow. At such time that the area is deemed to be "restored", the township engineering department should make inspection reports and release the balance of any bonds or escrow accounts. The NearMap aerial photo below dated July 5, 2025 shows the site and property lines of the Ocean County lands. There are encroachments onto the Ocean County property that are recommended to be restored.



- R. An Environmental Impact Statement, prepared by Dynamic Engineering was provided for review. On page 2 of the EIS, a statement was made that upon review of NJ GEOWeb, it appears that wetlands are present on site. Please indicate if a wetland delineation has been prepared and submit for review. It is important that the board know if any encroachment of wetlands exist or are proposed as part of this site plan. The Applicant shall provide all documentation relative to the cleaning of these areas to the Board along with any "no further action" letters or Remedial Action Order and correspondence with the NJDEP. The previous application submitted to the Board had a Phase I Environmental Study and a Site Investigation Report that identified a number of Areas of Concern. Please indicate if this level of environmental review has been completed for this submission, or if the site has been remediated based on those previous studies.

- S. The North-Eastern portion of the site is in a Special Flood Hazard Area. Please indicate conformance with the Township of Brick Floodplain Management Plan. It is a concern that unprotected materials could drain or be washed into the Metedeconk River in major flood events if the water rises to levels where stockpiles are maintained. Please discuss any emergency management plans in place to prevent this.

I will be present at that time to answer questions and provide additional information.

Very truly yours,



Tara B. Paxton, MPA, PP, AICP
Division of Land Use & Planning