



**J Caldwell
& Associates, LLC**
Community Planning Consultants

April 1, 2021

MEMORANDUM TO: Wantage Township Land Use Board

FROM: Jessica C. Caldwell, P.P., A.I.C.P., L.E.E.D. – G. A., Land Use Board Planner

SUBJECT: Preliminary Major Site Plan and Use Variance for Charles W. Meissner
L-2021-03
Block 117, Lot 34
Located at Ross' Corner – Sussex Road (Sussex County Route 565)
Wantage Township, Sussex County

Dear Board Members:

The Applicant, Charles W. Meissner is seeking preliminary major site plan and use variance approval for the construction of a commercial topsoil processing operation. The above-referenced property is in the HC - Highway Commercial Zone, where the proposed commercial topsoil processing operation is not a permitted use. A "d(1)" use variance is required pursuant to N.J.S.A. 40:55D-70(d)(1).

1. **Items Submitted:** The Applicant has submitted the following.

- A. Thirteen (13) sheets of Plans entitled, "Preliminary Site Plan, Block 117, Lot 34 Ross' Corner-Sussex Road (CR-565) Township of Wantage Sussex County, New Jersey," prepared by Dykstra Walker Design Group, dated March 26, 2019 and revised March 4, 2020.
- B. One (1) sheet of an As-Built Plan entitled, "Block 117, Lot 34 Ross' Corner-Sussex Road (CR-565) Township of Wantage Sussex County, New Jersey," prepared by Dykstra Walker Design Group, dated February 15, 2021.
- C. Seven (7) sheets of Architectural Plans prepared for Charles W. Meissner LUB Application #L-2019-01.
- D. Stormwater Management Calculations Report for Preliminary Site Plan Block 117, Lot 34 situated in the Township of Wantage Sussex County, New Jersey, prepared by Mark Gimigliano, P.E., dated March 28, 2019 and revised September 18, 2019.
- E. Copy of Site Application, checklist, and supporting documentation.

2. **Existing Site & Use:** The subject property is located at Ross' Corner – Sussex Road (County Route 565), Block 117, Lot 34 in the HC, Highway Commercial Zone. The subject property is 7.436 acres. The lot is partially developed with an area covered with gravel and asphalt millings and several topsoil and material stockpiles. Surrounding land uses consist of auto sales to the north, auto sales and industrial uses to the south, a garden center to the east and two (2) residences to the west.
3. **Proposed Development:** The Applicant is seeking preliminary major site plan and use variance approval for a commercial topsoil processing operation which includes constructing the following improvements: a paved and gravel driveway; a 2,574 square foot commercial building; paved parking area; and gravel storage area for topsoil processing. The proposed commercial topsoil processing operation is not a permitted use in the HC - Highway Commercial Zone. A "d(1)" use variance is required.

Sanitary sewer and water service are proposed to be provided by an on-site well and subsurface sewage disposal system. Stormwater runoff from the proposed development is proposed to be managed by two (2) detention basins located at the center and front of the site.

4. **Area and Bulk Requirements:** The subject site is located in the HC - Highway Commercial Zone. The following table reviews existing and proposed requirements.

HC - Highway Commercial Zone

	Requirements	Proposed
Min. Lot Area	40,000 SF (0.918 Acres)	7.436
Min. Lot Width	150 FT	150 FT
Min. Front Yard	95 FT (1)	441.5 FT
Min. Side Yard	20 FT	20 FT
Min Rear Yard	20 FT	278 FT
Max. Building Height	35 FT (2 Stories)	25 FT ± (1 Story) (2)

(E) = Existing Non-Conforming

(V) = Variance Required

Note:

(1) = Measured from centerline of the roadway

(2) = Building Height – Highest elevation of roof – lowest exposed surface at the base of the building

5. **Review:**

A. **Use:** According to Section 13-9.1, clothing and apparel stores, motor vehicle sales, farm machinery and implement sales, sportswear, department stores, junior department stores, jewelry stores, office supplies, furniture stores, restaurants, drive-in restaurants, paint stores, government buildings, photographer's studios, fraternal organizations, taverns, music dancing studios, radio and television repair; gas stations provided they are not closer than one-half mile from the nearest gas station measured along one side of the road; NC, Neighborhood Commercial permitted uses; soil removal operations; baseball stadiums. The Applicant seeks to continue to use the subject property as a commercial topsoil processing operation in the HC - Highway Commercial Zone, where the use is not permitted. **A "d(1)" use variance is required pursuant to N.J.S.A. 40:55D-70(d)(1).**

B. **Parking:** According to Section 13-19.2, minimum off-street nonresidential parking is as follows:

Item	Required	Provided
Warehouse Storage Building 2 Spaces / 500 SF x 1978 SF = 4 Spaces	7 Spaces	8 Spaces
Office Use 1 Space / 299 SF x 596 SF = 3 Spaces		
Handicap Accessible Spaces: 1 to 25 range	1 Van Accessible Space	1 Van Accessible Space

The Applicant is proposing a total of eight (8) off-street parking spaces where seven (7) spaces are required. This complies with the ordinance.

C. **Loading:** According to Section 13-19.4, in all zones for every building or use requiring the receipt or distribution in vehicles of materials or merchandise, there shall be provided on the same property with such building or use off-street loading spaces in relation to floor area as follows:

Floor Area in Square Feet	Number of Spaces
10,000 or less	1
10,000 to 20,000	2
20,000 to 50,000	3
50,000 to 100,000	4
Each additional 100,000 or part thereof	1

The Applicant is proposing a floor area of 2,574 square feet, therefore, one (1) loading space is required. The Applicant is proposing two (2) loading spaces. This complies with the ordinance.

D. **Refuse:** According to Section 4-5.2, the owner, agent, lessee, tenant, or occupant of every dwelling house or other premises where refuse accumulates shall provide and keep on such premises sufficient and suitable receptacles with tight fitting covers for

receiving and holding the refuse. The Applicant is proposing a dumpster enclosure including a board-on-board fence to contain a refuse receptacle. This complies.

- E. **Fences:** According to Section 13-20, the maximum fence height in the side and rear yards shall be six (6) feet. The Applicant is proposing a board-on-board fence for the proposed dumpster enclosure. The Applicant should provide testimony for the height of the fence.
 - F. **Signs:** According to Section 13-17.9d, only one freestanding or pylon sign advertising the company or brand name, or insignia or emblem, shall be permitted, provided that the sign shall not exceed 40 square feet per side in the area within a maximum of two sides. The bottom of the sign shall not be less than 10 feet from level of the center line of the adjacent road to the bottom of the sign. The Applicant is proposing one (1) freestanding sign along Ross' Corner – Sussex Road (County Route 565). The Applicant should provide a sign detail to show conformance with the ordinance.
 - G. **Lighting and Landscaping:** The Applicant should discuss trees proposed to be retained on the site and if additional landscaping is proposed. Additionally, the Applicant should address lighting for the site. Section 16-4c requires adequate lighting of the site. Sections 16-4d and e require buffering of the site and landscaping of the site, respectively. If lighting and landscaping are not proposed, site plan waivers from these sections would be required.
6. **Criteria for Granting "D(1)" Variances:** The Applicant is requesting a use variance to permit the commercial topsoil processing operation use on the subject property wherein the use is not permitted in the HC- Highway Commercial Zone.
- i. The Board has the power to grant "d(1)" variance to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. The courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." *Medici v. BPR Co.*, 107 N.J. 1 (1987).
 - ii. For non-inherently beneficial uses, the benefit to the general welfare comes from the development of a site in the community that is particularly suited for the proposed use. Providing proofs that the proposed application promotes at least one of the purposes of zoning found in MLUL, Section 40:55D-2, also provides one aspect of the positive criteria for a non-inherently beneficial use application. The Applicant does not have to demonstrate that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013). For this criterion, the Applicant should identify those aspects of the site that render it particularly suitable to the use. Additionally, any proposed mitigation factors for the use should also be discussed.

- iii. The Applicant must also satisfy the "negative criteria." The negative criteria require a two-part proof: (1) that the proposed use can be granted without any substantial detriment to the public and (2) the proposed use will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.
- iv. As to the zone plan and zoning ordinance, the Medici court held that the applicant must prove an "enhanced quality or proof" that there will be no substantial impairment to the zone plan and ordinance. The Applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone.
- v. In this particular case, exterior impacts such as visual appearance, truck traffic, noise and compatibility of the use with other uses existing in the area should be addressed.

Very truly yours,



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cc: Via E-Mail Only

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