



B U R G I S
A S S O C I A T E S , I N C .

MEMORANDUM

To: Upper Saddle River Planning Board as Board of Adjustment
From: Joe Burgis PP, AICP
Subject: PSI Atlantic USR NJ LLC (Premier Self Storage)
Date: February 8, 2021
BA#: 3787.01

INTRODUCTION

The applicant, PSI Atlantic USR NJ LLC (Premier Self Storage), seeks approval to develop a three story self-storage facility at 117 Route 17 North. The two acre property is located on north-bound Route 17, immediately to the north of the Extended Stay hotel. Most of the site is in the H-1R Zone, with the rear portion of the site in an R-1 Zone. The entire property is also in an Affordable Housing Overlay -3 Zone. The site is identified as Block 1304 Lot 7.01 according to Borough tax records. The proposed developed requires a use variance as well several bulk variances.

At the January 13, 2021 hearing the Board referred this mater to this office for the purpose of addressing some of the specific planning questions that have arisen during testimony. Specifically, as enunciated by the Chair, the following issues should be addressed:

1. The implications of an affordable housing overlay zone designation on this use variance application.
2. Clarify the definitions of such terms as 'mini warehouse', mini storage warehousing' and 'self-storage'.
3. Prepare findings regarding any other pertinent information that was presented during testimony.

As part of my analysis I have reviewed the application and plans presented by the applicant, the transcripts of October 14, 2020, December 9, 2020 and January 13, 2021, the Borough's 2016 Master Plan Reexamination Report and Master Plan Amendment, 2018 Land Use Plan, 2020 Housing Element and fair Share Plan, and the Borough Zoning Ordinance .

REVIEW COMMENTS

1. **Property Description.** The subject site occupies an area of two acres and is rectangular in shape. Its dimensions consist of 106 feet of frontage on Route 17 and a depth of approximately 490 feet. The site is generally much higher in the rear and lower in the front. The lot is vacant.
2. **Proposed Redevelopment.** The applicant proposes to construct a three story 99,651 square foot self storage facility. This includes approximately 76,000 square feet of net rental area. The entire building is in the H-1R zoned portion of the property. Whereas initially the plans called for a number of 'future' parking spaces in the R-1 zoned portion of the lot, this has now been eliminated from the plans, and now only a paved area for circulation is provided within the R-1 zoned portion of the property. Revised plans have increased the open space buffer in the R-1 area to a 65 foot depth and increased the number of parking spaces to 18.

3. **Planning Issues:**

- a. Implications of an affordable housing overlay zone designation on this use variance application.

The Borough Planning Board adopted its Housing Element and Fair Share Plan (HE&FSP) on October 22, 2020, and the Borough recently obtained its judgment of compliance and repose from the court that protects the Borough from affordable housing litigation through mid-2025. The HE&FSP identifies the subject site with an Affordable Housing Overlay, and the Borough adopted Ordinance 13-20 to implement the Plan recommendation. This ordinance allows for a developer to construct multi-family housing on this site at 15 dwelling units per acre, with 20 percent of the units being set-aside for low and moderate income households.

Overlay zones are designed to address what is referred to in the world of affordable housing as 'unmet need. This is the difference between a municipality's 'realistic development potential (RDP) and its Third Round obligation. [A municipality's affordable housing obligation is broken down into three components: a rehabilitation obligation (not applicable to this discussion); a Prior Round Obligation (also not applicable to this matter); and a Third Round or Prospective Obligation. Municipalities like Upper Saddle River (USR), who lack sufficient available developable land to address its entire Third Round obligation are entitled to a lesser obligation based upon the preparation of a Vacant Land Analysis which determines a 'realistic development potential'].

Municipalities are obligated to address the entirety of the RDP, but not the entirety of its unmet need, which is the difference between RDP and the municipality's Third Round Obligation. They must show some effort at addressing some portion of this 'unmet need' through overlay zoning or other means. However, as exemplified by the Court's approval of our Overlay ordinances, all of the overlay ordinances state that the underlying zoning designation (in this case the H-1R zoning) "shall be retained". Additionally, there does not appear to be any case law on this matter that would suggest one cannot seek a use variance simply because there is an affordable housing overlay.

A review of the testimony reveals the issue of the impact of the affordable housing overlay was not addressed within the context of one prong of the Negative Criteria. Consequently, I suggest the Board ask for testimony relative to that prong of the Negative Criteria that requires an applicant to address whether the application imposes a "substantial impairment to the intent and purpose" of the master plan and zoning ordinance.

It is also noteworthy that the applicant would be subject to the Borough's affordable housing development fee ordinance (2.5% of equalized assessed value), and this should be a condition of approval if the Board were to approve this application,

b. Definitions.

The Borough zoning ordinance uses the term 'mini-warehouse' in Section 150-39 where the code lists uses that are prohibited throughout the municipality. This term, as well as 'self-storage' has been utilized during these hearings. Neither are defined by the Borough.

The Harvey Moskowitz book *The Complete Illustrated Book of Development Definitions (2015)*, a well-known source utilized by professional planners, provides a definition of 'Self Storage Facility'. It is defined as "a building or group of buildings containing separate, individual, and private storage spaces of varying sizes available for lease or rent for varying periods of time".

Commentary that accompanies this definition notes: "in the 1970s, when self-storage facilities first became popular, they were often classified as mini-warehouses and limited to industrial and warehouse zone districts. The modern self-storage facility is a multi-story retail service use, located in a commercial corridor and serving individuals and small businesses, usually within a five mile radius."

The commentary also notes that “self-storage facilities are low traffic generators, requiring little permanent parking, often as little as one parking space per fifty to one hundred rental units.”

Under the term ‘mini-warehouse’ the Book refers the reader to ‘Self Storage Facility.

c. Whether Zone Permits Self-Storage

I reviewed the testimony about whether the H-1R zone permits self-storage. My reading of the ordinance indicates it does not. Clearly Section 150-39 prohibits mini-warehouses borough-wide. While there was testimony suggesting that when the ordinance is “quite dated”, that can be juxtaposed against the Moskowitz book that notes this use goes back to the 1970s, suggesting the Borough may have very likely been aware of the use at the time of the ordinance drafting. While it is recognized the use has evolved over time, the Borough has prepared numerous reexamination reports and ordinance updates, but hasn’t sought to address a change to this limitation. Consequently, the applicant properly should be addressing this matter within the context of a D-1 variance relief and as a permitted use.

Furthermore, while it was testified that there is an innate contradiction in the ordinance wherein in one zone it permits warehousing, but in Section 150-39 mini-warehouses are prohibited, I suggest there is a distinction between those two types of warehouse uses, and their occupancies, that warrant different zoning treatment.

d. Medici. The Medici standard, required to be imposed here, calls for the applicant to address if the proposal is inconsistent with the master plan. It appears from the transcript that the sole focus on this point was the ‘dated’ character of the ordinance. I suggest there should be supplemental testimony on this point that addresses the overlay zone and the related findings typical for a Medici analysis.

e. Master Plan

The Borough has adopted three master plan documents that merit attention. These include:

- 1) The 2016 Periodic Re-examination Report and Master Plan Amendment. The reexamination report was undertaken pursuant to the statutory time frames the MLUL has

established for the periodic review of a municipal master plan. Its' recommendations include updating goals and objectives, and recommending a change to the Borough Land Use Plan to reflect a settlement agreement that resolved affordable housing litigation regarding the Pearson Education tract.

The Master Plan Amendment attached to the reexamination report formally amended the master plan to reflect the recommendation contained in the reexamination report to amend the land use designation of the Pearson tract. While there had been testimony implying that this 2016 master plan was a comprehensive update that somehow reflected negatively on the Premier Storage application since it didn't modify the ordinance that prohibited mini-warehousing here, that was not the case. This 2016 master plan amendment was strictly related to the Pearson tract and identifying it as an affordable housing site.

- 2) The Borough also adopted a 2018 Land Use Plan update. This was in fact a comprehensive update of the Borough's previous comprehensive plan that was adopted in 2001. As was testified at the last hearing on the premier application, this document did not make any recommendation concerning self storage uses. This is why, as recommended above, it would be prudent for the applicant to address in greater depth the Medici Test.
- 3) The Borough also adopted a 2020 Housing Element and Fair Share Plan. This is where the Borough called for the establishment of the overlay zones note above. It is this document that also necessitates testimony regarding Medici as well as the Negative Criteria prong pertaining to the site's overlay zoning and the need to assess whether there is a substantial impairment to the intent of the Master Plan and zoning ordinance.

This represents a summary of my response to the Board's request for information. Additional comment may be offered at the hearing to supplement this memorandum.

JHB