

**Alexandria Township
Land Use Board
Meeting Minutes June 20, 2019**

Chair Phil Rochelle called the regular scheduled meeting of the Alexandria Township Land Use Board to Order at 7:34pm. The meeting was duly noticed.

MEMBERS PRESENT: Chair Rochelle, Papazian, Fritsche, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey

MEMBERS ABSENT: Mayor Garay, Committeeman Pfefferle, Hahola

OTHERS PRESENT: David Banisch – Planner, Kara Kaczynski – Attorney, Sandy de Groot, Applicant, Nicole Voigt – Applicant Attorney, Jim Kyle – Applicant Planner, --- de Groot – 8:24pm

Approval of the May 16, 2019 Regular Meeting Minutes

A motion to approve the minutes of the May 16, 2019 Regular Meeting was made by **Tucker** and seconded by **Kimsey**. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey. Abstain: Freedman. No Nays. Motion Carried.**

Approval of Bills

A motion was made to approve the bills for the professionals of the Land Use Board by **Papazian** and seconded by **Kimsey**. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey. No Nays. Motion Carried.**

New and Pending Matters

Application 2019-02 – Use Variance
Exoticars USA, LLC, Block 17 Lot 2.01,
636 Frenchtown Road

The LUB Attorney, **Kara Kaczynski**, noted for the record that Class I and Class II members would need to recuse themselves. Neither member was present for this meeting. Nicole Voigt, Attorney for the applicant Exoticars addressed the Board and advised that Exoticars is an existing business that came in previously in 2010 for site plan approval and in 2016 to add a paint spray booth. Ms. Voigt explained that the applicant is looking to add a use to the existing operations. Exoticars restores exotic and vintage cars. The business has a lull in their season, so they are looking to add a use to sell used cars, which requires a used car license from the State. Attorney Voigt explained that there is no requirement in the state for a used car dealership to be franchised. Only new car dealerships need to be franchised. The applicant has asked for an interpretation of the ordinance, reason being that the ordinance allows a used car dealership as a permitted use, however, the way the ordinance is written, it is under interpretation if the used car dealership needs to be franchised. Attorney Voigt is asking for the Board to consider a used car dealership to be a permitted use, with four conditions, some of which the applicant would need relief from. The applicant is also seeking waiver from the site plan approval.

Kaczynski marked into Exhibit A-1, the application's supporting documents, Exhibit A-2, the letter from Attorney Voigt dated June 11, 2019 below, and lastly, Exhibit A-3, notice of Affidavit of Service.



**SHANAHAN
& VOIGT LLC**
ATTORNEYS AT LAW

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June 11, 2019

BY EMAIL AND REGULAR MAIL

Leigh Gronau, Land Use Clerk
Township of Alexandria
242 Little York-Mt. Pleasant Road
Milford, NJ 08848

Re: Exoticars USA, LLC, 363 Milford-Frenchtown Road [Block 17.01, Lot 2.01], Zone IC.

Application requesting N.J.S.A. 40:55D-70(b) interpretation of Art. V, Ord. 115-22(E)(11), Automotive Sales, and if required, a use variance pursuant N.J.S.A. 40:55D-70(d), and Application for bulk variances pursuant to N.J.S.A. 40:55D-70(c)(1 and 2) and as per Art. VII, Ord 115-37(F).

Dear Ms. Gronau:

This office represents Exoticars USA, LLC, the Applicant in the above-referenced Application. I have received the May 30, 2019, Memorandum from David J. Banisch, PP/AICP, regarding the Application (the "Memorandum") and discussed same with the Applicant. In response, please accept this letter as an addendum to the Application.

The Applicant requests Waiver of Site Plan review pursuant to Alexandria Township Code § 115-101, which permits waiver of requirements if the proposed development:

- A. Secured previous site plan approval under the terms of this chapter.
- B. Involves normal maintenance or replacement, such as a new roof, painting, new siding or similar activity.
- C. Does not affect existing circulation, drainage, building arrangements, landscaping, buffering, lighting and other considerations of site plan review.

Enclosed, please find to following:

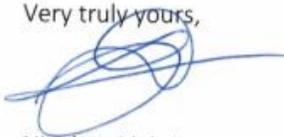
- 1. Alexandria Township Planning Board Resolution dated October 21, 2010.
- 2. Alexandria Township Planning Board Resolution dated November 17, 2016.

These resolutions show the Applicant received Preliminary and Final Site Plan approval in October 2010 to renovate the existing property and the structure and conduct a permitted use business on the property and Minor Site Plan approval in 2016 for the addition of a paint booth to the property.

Exoticars USA, LLC
June 11, 2019
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The Applicant does not propose any addition structures, paving, or lighting as part of the present application. The Applicant will provide an updated plan to indicate the proposed outdoor used care sales area and number of display spaces requested, either at hearing or as a condition of approval. The proposed outdoor and indoor used car sales will not affect existing circulation, drainage, building arrangements, landscaping, buffering, lighting, or other considerations for site plan review. Therefore, the Applicant also requests Waiver of Site Plan Review requirements pursuant to Alexandria Township Code § 115-101(A) and (C).

Thank you for your attention to this matter.

Very truly yours,

Nicole L. Voigt

Enclosures(2) via email
Cc: Exoticars USA, LLC
James T. Kyle, PP/AICP
David J. Banisch, PP/AICP
Michele Bobrowski, Township Clerk

LUB Planner, **Banisch**, advised of completeness comments in Memorandum and Report dated May 30, 2019, copied below. He advised there are some inconsistencies which are addressed in Comment #5, but should not keep the application from being deemed complete. They should be cleaned up and be required as a condition of any approval the Board might grant. **Banisch** advised item 6 in the Report, Zoning Board of Adjustment "Checklist" for waiver of building renderings of existing buildings may be granted. Item 7, No site plan checklist is provided. Comment #8, **Banisch** advised that the Board could require that the applicant address this as a condition of any approval. A motion was made by **Papazian**, and seconded by **Tucker**, to waive for completeness purposes checklist items as identified on Mr. Banisch's letter dated May 30th and to deem application as complete. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey. No Nays. Motion Carried.**

With regards to **Planner Banisch's** Interpretation heading in the Memorandum, he addressed with the Board item #9 with regards to the Board's power to interpret the zoning ordinance. He wanted to advise the Board that once an interpretation is made that it is definitive and binding upon the municipality in the future. He brought to the attention of the Board item numbers 11 and 12. He advised the question for interpretation is if the business is permitted as a stand-alone use or are used car sales permitted only by a franchised new car dealership. **Kaczynski** advised the ordinance as written is confusing because it can be interpreted in a number of different ways due to the wording and

punctuation used in the ordinance. She advised the Board could advise that they are not sure how to interpret and could move forward with the applicant as a D-1 Variance. **Gianonne** said his reaction is that the semi colons there in the ordinance have an impact, but the point is that it repeats after the semi colon regarding used car sales and selling motorcycles. It is not a gray area to him but it is intended to be there for these purposes, other board members agreed. The Board agreed with **Gianonne**. **Tucker** read that used car sales do not need to be franchised. She feels clearly they are separated. . **Giannone** made a motion to deem 1) used car dealers do not need to be franchised in order to be a permitted use and 2) used car sales as a stand-alone are a permitted use, seconded by **Tucker**. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey. No Nays. Motion Carried.**

The Board Attorney advised that next the applicant can proceed to request the C variances and the Site Plan Waiver. **Banisch** advised since the applicant has been in previously for site plan in 2010 & 2016 that Site Plan waiver should be granted. Attorney Voigt advised that the county would like them to update the site plan and the applicant will be submitting this to the County, although a simpler one. Any approval could be conditioned upon the board receiving that site plan if the County so requires. The main concern of the county is the traffic on the county road. **Kaczynski** swore in the applicant Sandra de Groot for testimony. Sandra described the work that is done at Exoticars which is basic service for newer high-end cars such as basic auto repairs, auto restoration, changing fluids, rust remediation and they are licensed with NJ to do collision repair on such cars, as Audi, Porsche, Lamborghini and cars of this class. The seasonality of the business is such that they are slower in the winter when there is salt on the road. With the permitted use they can apply in NJ for a used car license. With the license they can go to restore and fix cars that have been damaged and written off from insurance and be able to sell them. This way they can keep their staff busy during the winter and not have a slow season. A picture was submitted, marked Exhibit A-4, of a picture taken by the applicant of the current layout of the parking areas and building where the cars would be placed for used sales. Sandra de Groot testified that cars are already sold on consignment only on their website, by appointment and word of mouth. They do not generate sales through traffic and would not anticipate additional traffic due to having the used car dealership license. The State may require additional signage for the used car dealership with license number to be displayed outside and visible from the street. The Board asked questions with regards to having two cars outside and three cars inside for sale. **Canavan** asked where the cars would be test driven. The applicant advised that she would keep the interested parties off of the back roads and where to test drive the cars. Some discussion ensued regarding how many cars would be for sale at any one time and the amount of spaces needed. After some discussion, it was determined that the applicant may need additional spaces for the sale of used cars. The applicant advised that she would like to expand the number of cars for sale from five in total to eight. **Chair Rochelle** advised the additional three cars would need to be parked in parking spaces within the business. There were no additional comments from the board or public.

James Kyle, Planner for the applicant was sworn in and gave testimony of qualifications. Kyle passed out a map, marked exhibit A-5, which shows the hardship of the business due to the flood plane and physical limitations. He noted the applicant is seeking variances for the following per **Banisch's** May 30th letter Item#20 a. and e. The addition of the used car sales does increase the parking requirement, currently the calculation would be 29 required, and however 17 are on site. The applicant is requesting relief from the parking requirements. Kyle passed out aerial photograph and FEMA flood zones, prepared by him. He advised that you can see that the flood plane comes right up to the back of the property. The applicant is constrained for parking due to the topography and the flood plane, which clearly establishes a C-1 hardship. From a functional perspective the parking is adequate. This also

would reduce an increase in impervious surface. There is existing buffers from the roadway with boxwoods and they hide the parking spaces. Displayed vehicles will be back from the roadway. Kyle addressed the sign issue; it is a requirement of the state that the sign needs to be displayed in conformance with local requirements. **Chair Rochelle** advised that the sign was approved from 2016 and should be in compliance.

- a. Minimum lot size (§ 115-22(E)(11)(a)): 6-ac. Required vs. 2.48-ac existing/proposed;
- b. Outside lighting – as Required by ordinance vs. as per existing and approved in 2016;
- c. Front yard setbacks for used car use (§ 115-22(E)(11)(c)):
 - i. Building: 100' required vs. 56' existing/proposed; and
 - ii. Storage or display area: 50' required vs. 78' existing /proposed (parking adjacent to Milford-Frenchtown Road; which complies.
- d. Side yard setback (§ 115-22(E)(11)(c)): 25' required vs. 28.61 existing/proposed - **conforms**
- e. Parking:
 - i. Auto body shop (§ 115-22(E)(12)(c)): 29 required
 - ii. Car sales (§ 115-22(E)(11)(d)): 4 required vs. 17 existing/proposed

Banisch brought up that he may have had a calculation error on Comment #19 e. Parking and it should be 62 parking spaces. **Kaczynski** advised the resolution of 2010, that 29 was required before and 17 was provided and approved. **Banisch** advised a miscalculation should grant a variance for the parking. Voigt advised that the testimony that the additional impact of this additional use will not have any traffic related increase. Some discussion ensued regarding an updated gross floor area calculation and the calculations for the building with a 120 sq. ft standard. Voigt advised that amongst the revisions that they will be making as a condition of approval that will be submitted to the county, the site plan will include an updated calculation based upon the two uses. She requests that they be able to separate the sq. footage from the portion of the building that is used for the one use be based on one calculation formula and the calculation for the second use be calculated to the repair formula. They would include that on the site plan and at the same time obtain relief from whatever number that may be to use the existing number of parking for the two combines uses. **Kaczynski** clarified that the existing number is the 17 existing spaces plus 5 additional spaces for the used car sales will be included as additional parking for a total of 22.

Kaczynski swore in Wil de Groot for testimony. He advised that there is no regular repair done there and mainly painting. The actual collision repair is done offsite. **Banisch** advised that auto painting is classified as auto repair.

Kaczynski asked to review the criteria covered for the site plan waiver. Voigt advised that 115-101 (A) and (C) permits the waiver of site plan review where there has been a previous site plan secured which was done in 2010 and 2016. The second criteria are that there is no noticeable change to building, arrangement or other changes. Lighting is irrelevant to this additional proposed use. The applicant is requesting the waiver of site plan review. **Chair Rochelle** asked if there were any additional comments from the Board or Public to which there was none.

Kaczynski and Voigt reviewed all the variance requests. The Board granted that the use is permitted per Board interpretation. The Site Plan waiver was granted due to the attorney proofs, as well as Banisch agreeing that the waiver should be granted. In addition, some variances are necessary, which the applicant planner testified they could be granted under C-1 or C-2, one is for minimum lot size and outside lighting, which was previously granted and there are no additional changes. Front yard setbacks

as outlined in **Banisch's** Report, except that a 12-foot setback is now permitted for sales vehicles that may be displayed in the r.o.w. of parking adjacent to the Milford-Frenchtown Road. Side yard setbacks conform and parking as identified. There will be a variance proposed for parking, which would be to permit parking in the amount of 22 which consists of the existing 17 spaces plus the additional 5 (the two cars parked outside on the patio and the three parked inside the building), as depicted on exhibit A-4, and also a variance to permit two principal permitted uses on the property, which would be the current existing auto body painting use as well as the used car sales use. There are some conditions, should the board decide to grant the relief identified, the conditions are all of the waiver items as outlined in Item #5 of **Banisch's** report in addition to that there would be a condition upon county approval of the site plan or a waiver from the county that approval is not required. A condition that the cars that are being sold must either be located indoor or outdoor as indicated on exhibit a -4 or within the existing 17 parking spaces that are on site, they cannot be displayed anywhere else. Also, there has been representation that signage will be provided according to the state and the local ordinance. If they need to deviate, they will appear back before the board for approval. The other condition is that they will update the parking calculations on the site plan with regard to the two uses as council stated on the record separating the sq footage for each use and calculating the parking requirement for both of those.

Additional conditions are to update the site plan with some minor changes that are the requirements in the waiver items 5, 7 and 8. Voigt asked that since there are no utility easements noted on the plan that they not be required to update those since there is no additional development proposed. **Kaczynski** advised there are two waivers 1) waiver for item 5 (c) with regard to deed restrictions and 2) item 6 submitting building renderings, and that a checklist is no longer required as outlined in item#7, waiving the site plan in general. Attorney Voigt clarified that the conditions the applicant will comply with are 5 a, b, d and e. Setbacks need to be shown on the plan in item 7 of report, as well as the series of comments in Item#18, which addresses some of the items that need to be addressed in the 2016 approval.

Chair Rochelle entertained a motion to approve the variance relief. Motion made by **Giannone** and seconded by **Kimsey**. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Freedman, Giannone, Pauch, Daniello, and Kimsey. No Nays. Motion Carried.**

Memorandum

To: Alexandria Township Land Use Board

From: David J. Banisch, PP/AICP

Date: May 30, 2019

Re: Exoticars USA, LLC
363 Milford-Frenchtown Road
Block 17.01, Lot 2.01
IC – Industrial Commercial Zone
Application for Interpretation of Use Car Sales as Permitted Use in IC Zone;
Application for Use Variance Approval In-lieu of Interpretation as Permitted Use

2. We have reviewed the following information in preparation of this report
 - Alexandria Twp. Board of Adj. Application, dated May 10, 2019;
 - Alexandria Twp. Board of Adj. Check List, dated May 10, 2019 for Block 17.01, Lot 2.01;
 - Letter, from Nicole L. Voigt, Esq., to Leigh Gronau, dated May 10, 2019, Re: Exotic Cars USA, LLC, dated May 10, 2019;
 - Certification That Property Taxes and Assessments are Current, dated 5/11/19, signed by Kris Boxwell, Township Tax Collector; and
 - Minor Site Plan, consisting of one (1) sheet, prepared by Michael Textores, PE of Van Cleef Engineering Associates, signed, sealed and dated August 2016, last revised 01/13/17, with no municipal or County approval signatures.
3. This is an application for used car sales from the existing vintage/classic car auto-body shop located at 363 Milford-Frenchtown Road, the site of Exoticcars USA, LLC. The applicant proposes modest used car sales – perhaps several restored vehicles per year – involving periodic outdoor display of vehicles on a concrete patio located adjacent to a paint booth that was approved by the Board in 2016, and indoor showroom display of used cars within a portion of the existing building.
 - a. The applicant seeks an interpretation as to whether used cars sales are a permitted use.
 - b. In lieu of a favorable interpretation by the Board, the applicant seeks use variance relief to add used car sales to the existing auto body shop.
 - c. We believe that site plan approval is required for the change in use, however, it appears to us that the applicant could request a site plan waiver for reasons set forth below.
4. This report addresses (1) completeness, (2) the requested interpretation, (3) alternatively a requested use variance depending on the Board’s interpretation of the used car sales use; and (4) site plan requirements and variances for the addition of the used car sales use to the existing body shop use.
5. In this application, the Board will be acting under its Board of Adjustment powers in accordance with N.J.S.A. 40:55D-25.c., which provides that:
 - c. (1) In a municipality having a population of 15,000 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

Completeness

6. Generally, the **Application** addresses all of the required information, however, clarifications/corrections are recommended, as follows:
 - a. Section VIII – under “Proposed Use” – it should read *Auto Body Repair and Automotive Sales* because both uses are proposed;
 - b. Section XII – under “Ordinance Section” – it appears that the reference here should be 115-22(e)(11). Note that this Ordinance cite is correct in the applicant’s attorney’s letter to the Board Secretary dated May 10, 2019.
 - c. Section XIV – under “Deed Restrictions” – applicant should clarify whether “road and utility easements” are noted on the plans – the Plan submitted that these were submission

waivers requested in connection with the applicant's 2016 Minor Site Plan approval and are not shown on the Plan.

- d. Section XV – under “Other Approvals” – the applicant requests that Hunterdon County Development Review not be required. We don't believe that the Board can grant this request, rather, the applicant should secure a letter No Interest or equivalent from Hunterdon County;
 - e. Section XVI – under “Statement of Request” – the date of the “cover letter” should be added to the referenced letter from applicant's attorney to Board Secretary Gronau.
7. Zoning Board of Adjustment “**Check List**” – applicant requests a waiver from submitting building renderings of the proposed development. All buildings exist. This waiver may be granted.
8. No Site Plan Checklist is provided. The letter from applicant's attorney describes outdoor sales location and setbacks for used cars, which are not shown the plan submitted. For completeness purposes and given the limited scope of this application, however, we recommend that a checklist and revisions/annotations to the 2016 “Minor Site Plan” can be provided either prior to the hearing or as a condition of any approval that may be granted. For completeness purposes, we recommend that the Board may waive the site plan checklist and plan revisions recommended in comment #18 below.
9. It is our recommendation that the Application and Check List items identified above may be waived for completeness purposes, the site plan checklist and that the plan revisions identified below may be waived for completeness purposes; or the applicant could submit a revised Application, Check List and Plan prior to the hearing; or the Board could require that the applicant address all of this as a condition of any approval that may be granted. On the assumption that the Board agrees, we recommend scheduling this application for a hearing.

Interpretation

10. The applicant seeks an ordinance interpretation from the Board in accordance with N.J.S.A. 40:55D-70.b., which provides that the Board has the power to:
- b. **Hear and decide requests for interpretation of the zoning map or ordinance** or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;
11. An ordinance interpretation under N.J.S.A. 40:55D-70 is definitive and binding upon the municipality in the future. The Board is required by ordinance to render a decision on an application for an interpretation within 120 days of the application being deemed complete. It is not likely that 120 days will be needed by the Board to render an interpretation to this question, however, that's the time limitation for an application for an interpretation. A simple majority vote of the Board is needed on an ordinance interpretation.
12. The interpretation question is about the “E-11 Automotive sales” use found at § 115-22(E)(11) and permitted in the IC Zone. The question is: Are used car sales permitted as a stand-alone use; or are used car sales permitted only by a franchised new car dealership?

13. The “E-11 Automotive sales” use provisions are found at § 115-22(E)(11). The interpretation question pertains to the section of the provision in boldface text below.

(11) E-11 Automotive Sales. Automotive sales include the sale and lease of automobiles by a duly franchised new car, boat or motorcycle dealership; used car, boat or motorcycle sales; or car, truck, trailer, motorcycle and/or boat rentals; farm machinery or travel campers; provided that:

(a) The minimum lot size shall be six acres.

(b) All outside lighting shall be directed in such a way as not to create a nuisance to any adjacent property, and all lighting shall be arranged and shielded so as to protect the street or highway and adjoining property from direct glare or hazardous interference of any kind.

(c) Such use shall be set back from the right-of-way a minimum of 100 feet. Storage and/or display of sale items shall be set back a minimum of 50 feet from the right-of-way and 25 feet from side and rear property lines.

[Amended 8-10-2005 by Amendment 24]

(d) No less than one off-street parking space, for customers and staff, shall be provided for every 200 square feet of gross floor area. All parking shall be screened in accordance with Article VII herein.

[Amended 8-10-2005 by Amendment 24]

14. Clearly, the duly franchised new car dealership is a permitted use, however, it seems somewhat ambiguous to us as to whether the used car sales use is permitted as a free-standing use.

15. If the Board determines that used car sales are permitted only in conjunction with franchised new car sales, then the applicant seeks a use variance in accordance with N.J.S.A. 40:55D-70.d.(1) to add that use to the existing body shop use. The statutory requirements to be addressed for a use variance are provided in comment #22 below.

Site Plan Waiver

16. Site plan approval is required irrespective of the Board’s interpretation on the used car sales use question, as provided at § 115-98, “Application of requirement.”, which provides that “No **development** shall take place within the Township, ... except in accordance with an approval of such development granted pursuant to this chapter unless exempted in accordance with § 115-99.

17. At § 115-4, “Development” is defined as:

DEVELOPMENT The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or of any mining excavation or landfill, **any use or change in the use of any building or other structure, or land or extension of use of land**, for which permission may be required pursuant to the Act.

18. § 115-101, Waiver of [site plan] requirements, provides that:

The Planning Board or its designated subcommittee or administrative officer may waive the requirements if the proposed development:

A. Secured previous site plan approval under the terms of this chapter.

- B. Involves normal maintenance or replacement, such as a new roof, painting, new siding or similar activity.
- C. Does not affect existing circulation, drainage, building arrangements, landscaping, buffering, lighting and other considerations of site plan review.

It appears to us that the application would qualify for a site plan waiver under § 115-101 A. and C. above, as follows:

- A. - The site received Preliminary and Final Site Plan approval in 2010 and Minor Site Plan approval in 2016 for the addition of a paint booth to the existing auto body shop (i.e. prior site plan approval as required by ordinance); and
- C. – The proposed outdoor and indoor used car sales will not affect existing circulation, drainage, building arrangements, landscaping, buffering, lighting and other considerations for site plan review.

19. The plan submitted with this application is the “Minor Site Plan” that was submitted and approved in 2016 for the addition of a paint booth to the body shop use. Recommended corrections/clarifications to the Plan in connection with the site plan waiver are as follows:

- a. Label proposed outdoor used car sales area (patio adjacent to building), including the number of display spaces requested;
- b. Add the proposed setback dimension (approx. 77’) to the proposed outdoor display spaces;
- c. If used car display will occupy parking spaces along Milford-Frenchtown Road – designate this on the plan and identify the setback;
- d. Change the labeling of the proposed Paint Booth to “existing”;
- e. Clarify that the submission waiver’s listed on the plan are for the 2016 Minor Site Plan approval;
- f. Clarify Note #13 – whether the tree was planted as required in the 2016 Minor Site Plan approval – change proposed to existing at the location of the tree on the plan;
- g. Clarify whether lighting was installed as approved on the 2016 and revise the notes accordingly;
- h. Annotate the title block indicating that the site plan waiver information for used car sales is added to the 2016 Minor Site Plan;
- i. Update dates in the revisions block;
- j. If a favorable interpretation for the used car use is received from the Board, reference it and add a note identifying the date the interpretation resolution is adopted – if a use variance is granted, note it on the plan with the date of the resolution; and
- k. Any other notes appropriate to any approval that may be granted by the Board.

20. The applicant seeks the following variances:

- a. Minimum lot size (§ 115-22(E)(11)(a)): 6-ac. Required vs. 2.48-ac existing/proposed;
- b. Outside lighting – as Required by ordinance vs. as per existing and approved in 2016;
- c. Front yard setbacks for used car use (§ 115-22(E)(11)(c)):
 - i. Building: 100’ required vs. 56’ existing/proposed; and
 - ii. Storage or display area: 50’ required vs. ? existing /proposed (parking adjacent to Milford-Frenchtown Road);
- d. Side yard setback (§ 115-22(E)(11)(c)): 25’ required vs. 28.61 existing/proposed - **conforms**
- e. Parking:
 - i. Auto body shop (§ 115-22(E)(12)(c)): 29 required
 - ii. Car sales (§ 115-22(E)(11)(d)): 4 required vs. 17 existing/proposed

21. The bulk variances identified above may be granted in accordance with N.J.S.A. 40:55D-70.c. (1) and (2), which provides that the Board may grant the requested variances, as follows:

(1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant [zoning] would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, [the Board may] grant, ..., a variance from such strict application of such regulation so as to relieve such difficulties or hardship;

Or;

(2) where in an application or appeal relating to a specific piece of property the purposes of this act ..., would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to [zoning].

This is the so-called positive criteria that must be proved by the applicant. In the case of N.J.S.A. 40:55D-70.c.(1) – the so-called “c.(1)” variance, this is addressed through a clear demonstration of a hardship in meeting zoning requirements; in the case of a “c.(2)” variance, the positive criteria is proved through a demonstration that the application advances one or more purposes of zoning (N.J.S.A. 40:55D-2 Purpose of the act is attached).

22. The applicant must provide testimony demonstrating that the so-called negative criteria is satisfied in accordance with the last unlettered paragraph of N.J.S.A. 40:55D-70, which states that:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief 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 zoning ordinance.

23. If the Board determines that the used car use is only permitted as part of a new car franchised dealership, use variance relief in accordance with N.J.S.A. 40:55D-70.d.(1) is required. The Board has the power to grant the so-called “d(1)” use variance in particular cases and for special reasons. The promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons.” Special reasons are generally derived from the purposes of zoning enumerated in the MLUL (attached). The benefit to the general welfare derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed.

The applicant must also address the negative criteria as stated in comment #21 above.

24. The Board should condition any approval granted on application, checklist and plan revisions cited above.

25. The Board should condition any approval granted upon approval by any other agency with jurisdiction.

A motion to adjourn was made by **Tucker at 8:55pm. Vote: Ayes: All Ayes. No Nays. Motion Carried.**

Leigh Gronau, Board Secretary