

RESOLUTION

CITY OF LINDEN PLANNING BOARD
APPLICATION No. SP-1122-20
LINDEN EDGAR, LLC
1951 E. EDGAR ROAD

WHEREAS, the Applicant, Linden Edgar, LLC, whose address is 4 Caufield Place, Suite 102, Newtown, PA 18940 appeared before the City of Linden Planning Board on December 8th, 2020 to seek amended preliminary and final site plan approval, with bulk "C" variances and design waivers/exception to construct a new 5,051 square foot (previously 5,585 square foot) food convenience store with fuel/gasoline sales and a 7,200 square foot retail store; and

WHEREAS, the regulations contained within the Redevelopment Plan for the Infineum Redevelopment Project govern the use, bulk, and design standards for the site and supersede provisions of the City's Zoning and Land Development Ordinances. Existing engineering standards, definitions, and sections of the Zoning Ordinance and Land Development Ordinance not covered by the Redevelopment Plan still apply; and

WHEREAS, in connection with the application, the Board has reviewed the plans and supporting documentation filed by Linden Edgar, LLC. The site plans were prepared by Maser Consulting and are dated March 20, 2020 consisting of 20 sheets and updated construction details, revised on May 6th, 2020;

WHEREAS, Architectural plans (WaWa) were prepared by Richard Luke undated. The drawings consist of two (2) sheets showing the principal building and canopy, as well as previously approved plans of the Retail Building.

WHEREAS, Architectural plans (Retail Building) were prepared by TK Studio, LLC that are dated 01/18/18. The drawings consist of:

- Building Elevations
- Floor Plan

WHEREAS, the Applicant Linden Edgar, LLC previously filed Application SP1076-2018 with the Linden Planning Board seeking preliminary and final site plan approval, with bulk "C" variances and design waivers/exceptions to construct a 5,585 square foot convenience store with food/fuel sales and a 7,200 square foot retail store which application was granted with conditions on September 11, 2018 and which was adopted by Resolution by the Planning Board at its meeting on October 19, 2018;

WHEREAS, gasoline service stations with a convenience store and retail establishments continue to be permitted land uses in the Redevelopment Plan; and

WHEREAS, it appears that Redevelopment Plan deviations or bulk variances are required to permit a retail building that is setback as close as 9.3 feet from the side lot line where 30 feet is required;

WHEREAS, the subject premises consists of an irregular shaped tract situated at the intersection of West Edgar Road (Route 1/9) and Park Avenue. The subject tract consists of 105,600 square feet (2.42 acres), is known as Block 436, Lot 11.01 on the City of Linden Tax Map and is presently improved with a fuel station, convenience store and car wash. Approximately an acre of the site is unimproved. The site is located in the Infineum Redevelopment District; and

WHEREAS, the development proposal does not comply with all requirements of the Redevelopment Plan and other applicable sections of the City's Zoning Ordinance; and

WHEREAS, the applicant must prove the following positive and negative criteria for Bulk Variance relief; and

(a) Positive Criteria: The applicant must prove either a hardship in developing the site in conformance to the zone standards due to exceptional narrowness, shallowness or shape of the property; or due to an extraordinary and exceptional situation affecting the property or its lawful existing structures. Alternatively, the applicant may satisfy the positive criteria by demonstrating that the variance relief will promote a public purpose as set forth in the Municipal Land Use Law (N.J.S.A. 40:55D-2) and thereby provide improved community planning that benefits the public and the benefits the public and the benefits of the variance substantially outweigh any detriment.

(b) Negative Criteria: The applicant must also show that the bulk variances can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan. This requires consideration of the impact of the proposed variances on surrounding properties and a determination as to whether or not the variance would cause such damage to the character of the neighborhood as to constitute a substantial detriment to the public good; and

WHEREAS, the Applicant was represented by Duncan M. Prime, Esq., of the Law Firm of Prime and Tuvel, who appeared on behalf of the Applicant and presented testimony from Michael Gallagher of Maser Consulting, a licensed site professional engineer of the State of New Jersey, Michelle Briehof, a licensed Traffic Engineer of the State of New Jersey and Keenan Hughes a licensed Professional Planner of New Jersey; and

WHEREAS, all findings and conditions of said approval of SP1076-2018 which are not inconsistent herein shall be on file with the City and are made a part of this Resolution; and

WHEREAS, this Resolution incorporates, by reference all discussion, presentation and stipulations made at a meeting on December 8th, 2018, as though same were set forth herein at length; and

WHEREAS, the Planning Board finds the following facts:

1. Gasoline service stations with a convenience store and retail establishments are permitted land uses.

2. Redevelopment plan deviations and/or bulk variances are required to permit a retail building that is setback as close as 14.69 feet from the side lot line where 30 feet is required and to permit the accessory trash enclosure structure 5 feet from the rear lot line where 25 feet is required were previously approved by the Planning Board on October 19, 2018.

3. As part of the 2020 approval, the Applicant is seeking the following bulk "C" variances associated with site signage:

- § 31-25.10(b)(1) - The ordinance permits a maximum freestanding sign height of eighteen (18) feet; where twenty-five feet is proposed.
- § 31-25.10(b)(3) - The ordinance requires a minimum setback from the curbline of twenty (20) feet; where 14.1 feet is proposed along Park Avenue.
- § 31-25.10(b)(3) - The ordinance requires a minimum setback from the rear property line of twenty (2) feet; where 1.6 feet is proposed.
- Several design waivers are required.

Regarding the side yard setback variance, the side yard adjoins undevelopable green space associated with the larger adjoining commercial property.

4. Access to the site is proposed via two driveways, one from Route 1/9 and one from Park Avenue. Route 1/9 is under the jurisdiction of NJDOT while Park Avenue is under the jurisdiction of the City of Linden. The location of the proposed driveways meets the City requirement for the minimum separation from an intersection (31-27.9).

5. The Applicant proposes 48 parking spaces adjacent to the proposed convenience store and 41 spaces adjacent to the proposed 7,200 square foot retail building. The on-site parking exceeds the parking requirements for the site (61 parking spaces).

6. The Applicant entered into a Redevelopment Agreement in May, 2018 regarding the project located at Block 436, Lot 11.01 specifying the rights and responsibilities of the Applicant/Developer.

7. The County of Union has reviewed the application and associated plans and has determined that there is no significant impact to the County roads or drainage facilities as set forth in its' letter of May 5th, 2020.

8. The Redevelopment Plan requires all signage to be approved by the Planning Board.

9. Building Mounted signs. The Applicant proposes front and rear building mounted signs for the convenience store, which appear to meet ordinance requirements.

10. On the northern portion of the site will be located a WaWa - 24-hour convenience store and a fueling area with a canopy with eight (8) multi product dispensers and sixteen (16) fueling positions within the fueling area. There will be three (3) underground storage tanks for fuel which meet or exceed all State requirements which will include an automatic volume detection system and diesel low flow nozzles to discourage tractor trailers and large trucks. Signs shall be posted stating "No Tractor/Trailer Fueling shall be posted at all site driveways".

11. The Applicant will employ a total of forty (40) to fifty (50) full and part time employees to operate both the Convenience Store and the fueling areas, divided between three (3) shifts; and the maximum of 12 employees at the peak shift at the Convenience store and fueling pumps.

12. An underground detention basin will now be built for Stormwater management which meets water quality requirements and water quantity reduction requirements for the 2, 10 and 100 year storms.

13. The Applicant called three witnesses in support of its application. The first witness was Michael Gallagher of Maser Consulting, a licensed Site Professional Engineer of the State of New Jersey whose expertise was recognized by the Board. Mr. Gallagher during his testimony referred to the following exhibits which were previously received by the Board:

A-1 - Site Plan approved in connection with SP 1076-2018.

A-2 - Site Plan showing the current proposal before the Board.

- A-3 - Architectural drawings of the WaWa building previously approved.
- A-4 - Updated proposed architectural drawing.
- A-5 - Updated proposed architectural drawing.

Mr. Gallagher testified that subsequent to the 2018 Site Plan approval , the Applicant was advised that there was a Department of Transportation and Port Authority Goethals Bridge Interchange Ramp Project which required the Applicant to redesign the site because a partial taking of their property along the frontage reducing the square footage from 5,585 square feet to 5,051 square feet requiring among other things a widening of Route 1 and reconstructing the curbing and Applicant's driveway, as well as reducing the size and configuration of the WaWa, it's entrances, detention basin and other changes shown on the amended site plans. Mr. Gallagher further testified regarding the three proposed signs along Route 1 and Park Avenue for WaWa and the proposed retain tenant and advised that Keenan Hughes, the Applicant's planner would testify as to the signs requested, as well as the variances.

14. The Applicant's second witness, Michelle Briehof, a licensed Traffic Engineer of New Jersey, whose expertise was recognized by the Board testified regarding her prior expert testimony on the 2018 Site plan Approval, the improvements to Route 1 as a result of the Goethals Bridge interchange Ramp Project forcing the widening to impact the Applicant's frontage and site access. She further testified regarding the right-in, right-out access along Route 1 and the alternative access along Park Avenue, block-the-box striping along Park Avenue and also ultimately agreed that the prior condition no. 4 set forth in Resolution SP 1076-18 regarding a left turn being temporarily permitted onto Park Avenue

for a period of six (6) months and reviewable thereafter to determine whether the Planning Board continues to allow same was acceptable to the Applicant.

15. The Applicant's third witness Keenan Hughes, a Professional Planner of New Jersey, whose expertise was also recognized by the Board testified that the variances requested regarding minimum setback requirements were similar to the prior approval, but needed due to the further reduction of the property at no fault of the Applicant. The Board was satisfied with those requests but took issue with certain requested variances for the number of free standing signs along Rte. 1 & 9 and the height of the free standing signs. After a lengthy discussion including comments by the Board's Professional Planner, Engineer, Traffic Engineer and Board Members, as well as the Applicant conferring with its Attorney, Engineer and Planner, it was conditionally agreed that if the two proposed signs on Rte. 1 & 9 were combined into one larger sign no more than thirty (30') feet high with the ability to sufficiently notify the motorists of the WaWa gasoline station and the retail store, subject to submission of same by the Applicant of the height and width dimensions and the proposed size of the actual wording to the Board Planner, Engineer and Traffic Consultant, the Board would then approve same. The Board would then find that these sign variances requested, as amended, can also be justified on a C-2 basis, that the benefits substantially outweigh the detriments and that the purpose of the Municipal Land Use Law will be advanced.

16. The construction on site will be built in two phases (if necessary); the first the WaWa convenience store and fuel area and the retail store when a retail tenant is secured.'

17. Reports from the following were incorporated into the record:

- a. Ricci Planning, City Planning Consultant dated December 3, 2020.
- b. Nicholas J. Pantina, City Engineer dated December 1, 2020.
- c. Klein Traffic Consulting LLC dated April 6, 2020.
- d. Lawrence J. Kolesa, Deputy Chief & Fire Official, dated September 30, 2020
- e. Kamal Saleh, Supervising Planner, County of Union Dept. of Economic Development dated May 5, 2020.
- f. Pennoni Stormwater Report dated May 28, 2020.

18. Jeff Tandul a member of the public commented on the application.

WHEREAS, this Resolution incorporates, by reference all discussion, presentation, testimony and stipulations taken at the meeting on December 8, 2020, as though same were set forth herein at length; and

WHEREAS, after presentation, discussion and careful consideration of the facts as set forth in the application and the plans submitted, it is recited in this Resolution that the Planning Board of the City of Linden approves this application subject to any and all conditions set forth herein below; and

CONCLUSIONS

1. The relief sought can be granted without substantial impairment to the intent of the Municipal Land Use Act as set forth in N.J.S.A. 40:55D-1 et seq. and the Zoning Ordinances and Zone Plan of the City of Linden.

2. The relief sought can be granted without detriment to the public good.

NOW, THEREFORE, BE IT RESOLVED, that the present application for preliminary and final major site plan approval, with bulk "C" variances and design waivers/exceptions is hereby granted along with certain conditional approvals and subject to the following conditions:

1. The proposed driveway access along the State ROW may be temporary in nature, until such time when NJDOT's Goethals Bridge Interchange Ramp Project is constructed. At that point in time, the existing NJDOT ROW line, will shift 25 feet in a westerly direction, where the NJDOT will remove all improvements that the Applicant is currently proposing (within the existing ROW) and replace in kind as shown on Sheet 3.

2. The City's Standard driveway opening prohibits radius curbing. Therefore for the Park Avenue access only, continuous Sidewalks with Depressed Curb Design shall be implemented. Driveway Curb Opening must be dimensioned.

3. Detectable Warning Surface Pads shall be delineated, on the drawings, where flush curb is proposed within the site at the edges of painted crosswalks: One at Park Avenue Curb Opening and one at the handicap Parking Space adjacent to the Retail Building.

4. Architectural drawings for proposed Retail Building will be required prior to any application being approved.

5. The Applicant must provide an inspection escrow fee, performance guarantee and maintenance bond in accordance with City Ordinances.

6. The Board will approve the removal of the two existing driveways on Park Avenue and replace them with one driveway 150 feet further from the intersection with Route 1/9 ,

as shown on the Applicant's latest site plan, provided it installs "Don't Block The Box" cross-hatching striping and signage on Park Avenue roadway before the traffic light at its intersection with Route 1/9; and that signs stating "Do Not Block the Box" shall be posted at the site driveways for eastbound Park Avenue traffic to the satisfaction of the Board Traffic Consultant.

7. The Applicant shall widen the drive aisle of the park Avenue driveway to provide a "Shoulder Stripe" along the western border of the drive aisle to create an area that can be used by customers with oversized vehicles.

8. Vehicles shall be temporarily permitted to turn left onto Park Avenue to allow full movement from the new driveway for a trial period of six (6) months at which time the Applicant will meet with the Linden Police Department and the City's Traffic Engineer to evaluate the stacking of vehicles at Park Avenue's intersection with Route 1/9 to determine whether the Board continues to allow full movement, modify or eliminate same.

9. The Applicant shall request that the NJDOT optimize the signal timing directive at said intersection and provide proof of such request.

10. Because the Applicant does not have a tenant for the 7,200 square foot Retail building, the architectural plans prepared by TK Studios dated 11/18/18, shall be conditioned upon them being updated; and further any approval of the Amended Site Plans are further conditioned upon architectural drawings of the building, including lighting improvements are submitted to the satisfaction of the Planning Board or alternatively another Amended Application must be submitted to the Board regarding the construction, design and improvements of the 7,200 retail store.

11. Truck turning circulation movements for tractor/trailers traveling to and from the north on Park Avenue shall be delineated on the Amended Plans to the satisfaction of the Board Traffic Consultant and Linden Fire Prevention Bureau.

12. Construction details for HDPE Storm Pipe Bedding Detail and PVC Sanitary Pipe Bedding Detail shall be replaced with City's Standards: Hot Mix Asphalt Pavement Trench Restoration Detail.

13. The Applicant shall submit hard copies of Exhibits 1 through 5 to the City Engineer.

14. The second Amended Site plans shall also show where the bicycle racks will be placed.

15. In the event the Applicant installs electric charging stations for the WaWa station, bagged ice or LP Tank Exchange outside the Convenience Store, it must be included in the second Amended Site Plan or it must file another Amended Site Plan or Minor Site Plan Application to the Planning Board.

16. As a condition to the approval of the Amended Preliminary and Final Site Plan approval, the Applicant shall submit detailed revised plans depicting one (1) freestanding sign along the property's Route 1/9 frontage having a height that is no greater than twenty-five (25) feet and having the same footprint as the previously proposed freestanding signage. The landscaping plan shall also be revised to accommodate these changes, all of which must meet the final approval of the Planning Board and its Professionals,

17. The Applicant's Engineer shall identify on the Construction Detail Drawings, how the proposed Sanitary Services will be connected into the City/State Sanitary System.

18. Road Opening Permits, Curb and Sidewalks Permit, must be obtained through the NJDOT for utility and sanitary sewer connections and concrete improvements within the R.O.W. of NJDOT Rtes. 1 & 9.

19. Sidewalk and Curb Permits must also be obtained through the Linden Engineering Division for improvements along Park Avenue.

20. General deliveries to the WaWa convenience store, not including fuel deliveries, shall be delivered per day during off peak traffic conditions.

21. The Applicant shall install low flow nozzles on the diesel fuel pumps to discourage use by tractor trailers and large trucks with signage stating "No Tractor/Trailer Fueling".

22. Applicant shall obtain all permits required by the NJDEP and any other State, Federal or Local permits required and submit same to the Planning Board for compliance purposes.

23. Approval of the stormwater calculations submitted by the Applicant are subject to approval by the City Engineer and Stormwater Consultant.

24. The Applicant shall comply with the comments, recommendations and directives contained in the City Fire Official's report dated September 30, 2020, to the reasonable satisfaction of the City Fire Official.

25. The Applicant shall comply with all comments, recommendations and directives set forth in the City Engineer's report dated December 1, 2020, as modified or otherwise addressed in the record, as well as those recommendations which were stipulated on the record, to the reasonable satisfaction of the City Engineer.

26. The Applicant shall comply with all comments, recommendations and directives set forth in the City Traffic Engineer's report dated April 6th, 2020, as modified or otherwise addressed in the record, as well as those recommendations which were stipulated on the record, to the reasonable satisfaction of the City's Traffic Engineer Consultant.

27. The Applicant shall comply with all comments, recommendations and directives set forth in the Planning Board Planner's report dated December 3, 2020, as modified or otherwise addressed in the record, as well as those recommendations which were stipulated on the record, to the reasonable satisfaction of the Planning Board Planner.

28. Upon the review of the City Engineer, Board Planner, Traffic Engineer and Planning Board Attorney, revisions and/or modifications of all amendments to the site plan and other supporting plans and documents, they may be required to be added to be in compliance with the record. Upon receipt and review of said revisions in compliance with any Resolutions, final plans will be endorsed by the Planning Board.

29. The Applicant shall continue to be responsible for all requirements set forth in the "Infinium Point Road Redevelopment Plan" was approved by Linden Planning Board and adopted by Linden City Council on May, 2020 as amended.

30. If applicable, the Applicant shall apply for a Land Disturbance Permit and provide an inspection escrow fee, and any applicable performance guarantees and maintenance bonds in accordance with City Ordinances, the Development Agreement and applicable law.

31. Payment of all current and past due property taxes must be paid prior to any work being done on the project.

32. All necessary approvals, if any, including, but not limited to, the following:

- a) Linden/Roselle Sewerage Authority requirements;
- b) Fire/Safety Department requirements;
- c) Municipal Utilities' requirements;
- d) State Agencies' requirements;
- e) Somerset/Union Soil Conservation District requirements;
- f) Compliance with Residential Site Improvements Standard Act.

33. Compliance with all municipal, county, state and federal rules, regulations and statutes.


34. The Applicant shall post sufficient funds with the City to satisfy any deficiencies in its developer's escrow account.

I hereby certify that the above Resolution was duly adopted by the Planning Board of the City of Linden at its meeting on January 12, 2021.

Motion was by: Joseph LaPlaca
Seconded by: Barry Javick
Ayes: 8
Nays: 0
Abstentions: 0



Dorota Kotowski, Secretary


Joseph La Placca Chairman