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April 20, 2021

**MEMORANDUM TO:** Andover Township Land Use Board

**FROM:** Matthew J. Morris, L.L.A., P.P., LEED G.A., Harold Pellow and Associates, Inc.

**SUBJECT:** PLANNING REVIEW

Preliminary/Final Site Plan Application for BHT Properties Group  
Property Located at 248 Stickle Pond Road  
Block 151 Lot 21  
Andover Township, Sussex County  
HPA No. 19-324

Dear Board Members:

The above referenced Applicant has provided additional item in support of their application for Preliminary & Final Site Plan for the development of a construction equipment and material storage facility and a 12,860 square foot building on the Block 151 Lot 21 property located at 248 Stickle Pond Road. The project proposes the disturbance of approximately 66 acres of the 100-acre property that was formally known as the Newton Airport. This report will supersede my previous report dated March 31, 2021. Based on a review of the newly submitted information, I offer the following comments:

1. The plans and documents submitted in support of this application included:
  - a. Plans entitled “Preliminary and Final Major Site Plan, BHT Properties, Block 151 Lot 21, Andover Township, Sussex County, New Jersey”, prepared by Engineering & Land Planning Associates, Inc., consisting of twenty-seven (27) sheets, dated December 12, 2019 and last revised January 26, 2021.
  - b. Stormwater Management Report prepared by Engineering & Land Planning Associates, Inc., dated November 25, 2019 and revised November 1, 2020.
  - c. Stormwater Management Maintenance Manual prepared by Engineering & Land Planning Associates, Inc..
  - d. Environmental Impact Statement prepared by Engineering & Land Planning Associates, Inc. dated December 12, 2019 and last revised January 26, 2021.

- e. Freshwater Wetlands Report & General Permit 6 and Transition Area Waiver prepared by Engineering & Land Planning Associates; Inc. dated January 20, 2020.
- f. Flood Hazard Area Verification Report prepared by Engineering & Land Planning Associates, Inc. dated January 20, 2020.
- g. Architectural drawings entitled CoPart Inc., Macon Facility, 7661 Houston Road, Byron Georgia, prepared by Studio Kremer Architects, dated April 17, 2017 and consisting of seventeen (17) sheets.
- h. ALTA/ACSM Land Title Survey entitled “Acquisition Parcel from RRL Group, Public Service Electric & Gas Company, . . . .”, prepared by Carroll Engineering, dated December 19, 2012 and consisting of two (2) sheets.
- i. Traffic Impact Study for Proposed Construction Equipment & Material Storage Facility prepared by Dynamic Traffic, revised February 4, 2021.
- j. Document entitled, “Construction Business Office and Construction Equipment and Material Storage”
- k. Architectural drawings prepared by The Hill Architectural Firm last revised February 5, 2021.
- l. Land Development Application, checklists, and other supporting documents.

2. **Zoning Comments:**

- a. The Applicant originally submitted plans for a proposed outdoor storage facility of used, operable and inoperable automobiles, trucks, watercraft, trailers, industrial and construction equipment for online auction. The Applicant has now submitted plans proposing construction business office and construction equipment and material storage. The site plan shows the following proposed improvements:
  - i. A 12,860 sf building with an associated parking lot of 62 spaces.
  - ii. Approximately 42 acres of construction equipment storage.
  - iii. Eight-foot-tall fencing around the perimeter of the site.
  - iv. Stormwater management above ground storage.
  - v. Lighting, landscaping, signage and other associated improvements.

- b. The Block 151 Lot 21 property is located in the C/I, Commercial Industrial Zone. A review of the proposed bulk requirements in the C/I, commercial Industrial Zone District are as follows:

<b>Item</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Variance</b>
Min. Lot Area	130,000 sf.	4,393,897.2 sf	No Change	No
Min. Lot Width	250 ft.	3,908 ft.	No Change	No
Min. Front Yard Setback	70/100 ft. Min. <sup>(1)</sup>	17.9 ft <sup>(2)</sup> House	215.53 ft. Commercial Building	No
Min. Rear Yard Setback	50 ft.	1.556 ft +/-	413.93 ft.	No
Min. Side Yard Setback	30 ft.	450 ft. +/-	386 ft.	No
Max. Structure Lot Coverage	25%	0.3%	0.3%	No
Max. Impervious Coverage	60%	4.4% %	19.84%	No
Max. Building Height	2 ½ Stories/ 35 ft.	1 story/ <35 ft.	1 story <35 ft.	No

<sup>(1)</sup> Where parking is provided in the front yard, one-hundred-foot building setback is required. Without front yard parking, a seventy-foot setback is required for industry.

<sup>(2)</sup> Existing, Non-Conforming

- c. The project as presented will require a number of design waivers and variances related to parking lot stall size, parking lot paving, parking lot curbing, loading spaces needed, fence height and sign size. The Board Engineer mentions all of these design waivers and variances in detail in his letter to the Board dated March 31, 2021. At this time, I have no additional comments regarding the project site improvements or the design waivers required for this project.

3. **Proposed Construction Business Office and Construction Equipment and Material Storage Use:**

- a. Per Section 190-34 of the Andover Township Code - Table 2, Uses Permitted in Nonresidential Zones, “Construction business office and construction equipment and material storage” is permitted in the Commercial/Industrial zone. The Code does not provide a description or purpose clause for the Industrial zone district nor does the code elaborate on any parameters or restrictions for the above use.

Based on a review of the history of the Andover Township Master Plan and its amendments, the Block 151 Lot 21 parcel has been located in the Industrial Zone for some time. Industrial zones throughout the Township were established in the original Township Land Development plan of the late 1950’s. Prior to 2010, the parcel in question was designated in the I/A-2 zone and was one of seven (7) Industrial zoned areas in the Township.

The document entitled, “Periodic Reexamination Report of the Master Plan and Development Regulations” dated March 15, 2011, recommended evaluating industrial-zoned lands to determine if rezoning was appropriate in consideration of the applicable land characteristics and surrounding development patterns. The Master Plan Reexamination recommends that the Industrial/Airport 2 zone, in which the subject parcel resides, be changed to a new Commercial/Industrial zone.

Subsequently, Ordinance No. 2011-01 was adopted and specifically stated in the preamble: “Whereas, the Andover Township Land Use Board has determined that certain areas currently situated in the I – Industrial zone district should be modified to also permit a range of commercial uses and should likewise modify the I/A-2 [Industrial/Airport-2] zone district in order to provide a broader range of goods and services to the residents of Andover Township and to the general public and to provide opportunities to revitalize the areas in question.” The intent of this ordinance was to create a C/I zone to provide a broader range of uses that would both serve and be complimentary to the residential uses in close proximity to the site and the broader area.

With the minimal information provided in the Site Plan Application I believe that “construction business office and construction equipment and material storage” is a permitted use in the zone. However, the Applicant should provide planning testimony to prove that the proposed use meets the intent of the master plan and the purpose of the zone as described above.

4. **Outdoor Storage**

- a. Section 190-21 of the Township Code establishes parameters for outdoor storage and read thus:

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In the business, commercial and industrial zones, except for concrete and asphalt product and production facilities within the General Industrial Zone district in accordance with the standards set forth in § 190-55.2, no article or material shall be kept or stored, except articles for sale, outside the confines of a building unless it is so screened by special planting or a fence, as approved by the Land Use Board, so that it is not visible from any adjacent residential zone or public street, except such storage is as normal and incidental thereto. This shall not be construed to prohibit the storage or display of shrubbery grown on the premises. Outdoor storage as permitted and regulated in this section is only permitted in the side and rear yards. Seasonal farm produce grown on the premises is a specifically permitted outdoor use and may be displayed in the front yard of any lot without being screened. All outdoor storage of materials, equipment, and vehicles (including tractor trailers, mason dump trucks, roll-off containers, shipping containers, etc.) is prohibited unless the principal structure or use is functional and not vacant for more than three consecutive months.

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- b. It can be interpreted that the proposed use of construction equipment and material storage, if not expressly intended for sale related to the primary business, is expressly prohibited. The Applicant must provide additional information regarding the use and all aspects of the proposed business.
- c. All outdoor storage is required to be fully screened from all adjacent residential zones and public streets. The Applicant should provide testimony regarding these screening requirements and show so that adequate screening can be provided.
- d. All outdoor storage is only permitted in the side and rear yard. The definition of Front Yard, as stated in the Township code, is an area extending across the full width of a lot and lying between the abutting street right-of-way line and the nearest part of the principal structure on the lot. The Applicant is proposing approximately 6 acres of storage in the front yard.
- e. With the above being stated, it is my opinion that if the proposed conditions listed under Section 190-21 cannot be met to the satisfaction of the Board, a use variance will be required to permit outdoor storage. The Applicant will need to provide testimony and additional information to prove that the use meets the requirements of this section of the Township Code.

5. **The D(1) Variance Requirements:**

- a. As presented, the application may require a D-1 Use Variance for outdoor storage.
- b. Under the Municipal Land Use Law (MLUL) the Board of Adjustment has the power to grant a variance to allow departure from zoning requirements as long as statutory requirements are met. These requirements are known as the positive and negative criteria.

Positive Criteria: In order to address the positive criteria, the Applicant must show that the variance should be permitted for “special reasons” which takes its definition from the purposes of zoning as defined under N.J.S.A. 40:55D-2. Additionally, *Medici v. BPR, Co.* 107 NJ (1987) requires the Applicant to demonstrate that the special reasons are satisfied by ensuring that: (1) the project “inherently serves the public good,” (2) the proposed site would “promote the general well fair as it is particularly suited for the proposed use,” or (3) the denial of the variance would result in a “undue hardship”.

Negative Criteria: To address the negative criteria the Applicant must show that the relief can be granted without detriment to the public good (neighborhood) and granting the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. *Medici* establishes an “enhanced quality of proof” regarding the negative criteria and states, “. . .that the grant of a use variance

is not inconsistent with the intent and purpose of the master plan and zoning ordinance.”

Very truly yours,



Matthew J. Morris, L.L.A., P.P., LEED G.A.  
**HAROLD E. PELLOW & ASSOCIATES, INC.**  
Consulting Engineers, Planners and Land Surveyors

MJM:mjm

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cc: Via Email

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