

## DEVELOPMENT APPLICATION REVIEW | STAFF REPORT

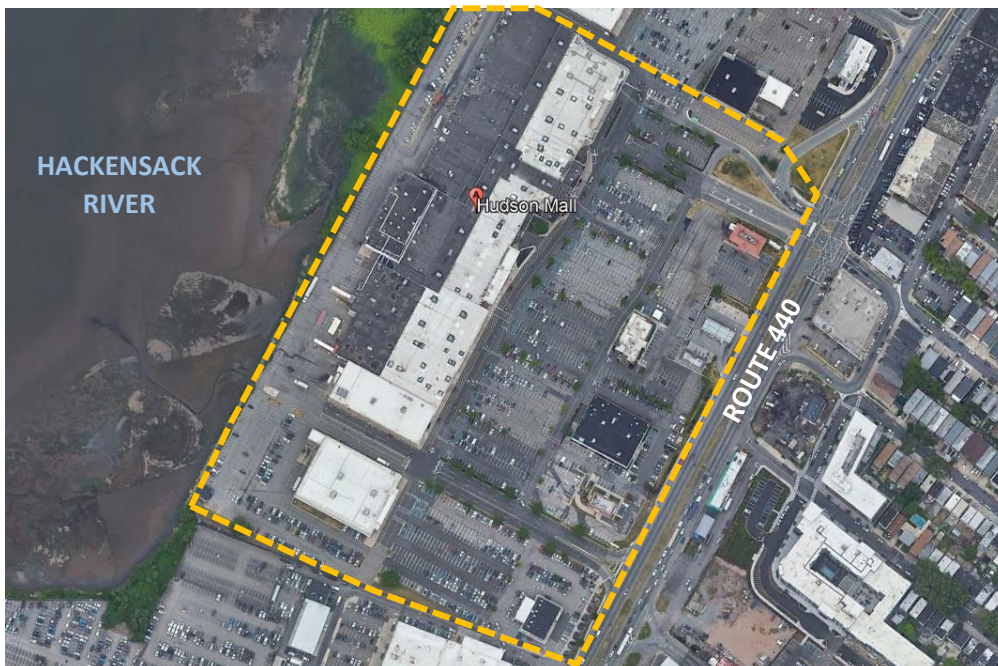
DATE : 10.25.2022  
TO : Zoning Board Commissioners  
FROM : Mallory Clark-Sokolov, PP, AICP, Senior Planner  
Tanya Marione, PP, AICP, Division Director  
CASE : Z22-063  
PROJECT : 617-723 & 725-775 Route 440  
Preliminary + Final Major Site Plan with Variances

### I. DOCUMENTS REVIEWED

- General Development Application Form dated 10.07.22
- Survey by Langan Engineering dated 09.29.21
- Architectural Plan Set by KPA Architects dated 10.10.22
- Civil Plan set by Langan Engineering dated 07.27.22
- Stormwater Management Report by Langan Engineering dated 06.24.22
- Traffic Impact Assessment by Langan Engineering dated 07.19.22
- Principle Points Statement by Langan Engineering dated 08.01.22

### II. APPLICATION BACKGROUND + PROPOSAL

- **Existing Conditions:** The site is a 1,389,502sf property that currently hosts the Hudson Mall, stand-alone retail and restaurant pads, and large surface parking areas. The site is located in the Waterfront Planned Development District, which defers to the zoning standards of the Highway Commercial district for bulk and parking standards. The eastern border of the site fronts Route 440 while the western border of the site abuts the Hackensack River.



- **Proposed Conditions:** The applicant proposes to upgrade and modernize the mall entrance, replace the vacant theater space at the rear of the property with a self-storage facility, and reconfigure a portion of the interior retail tenant space. The proposal also includes new signage along route 440 and new wayfinding signage to accompany several upgrades to the circulation pattern of the site.
- **Variances**
  - **Use**  
Required/Permitted: Retail, high-cube storage/distribution, marinas, offices, townhouses , theaters, restaurants  
Proposed: Self-Storage (partial)
  - **Signage Size**  
Required/Permitted: 1 per center, 150sf, 25ft high, 12" lettering  
Proposed: 4 signs, 1,080sf (largest sign), 45ft high, ~2ft lettering
  - **Green Area Ratio**  
Required/Permitted: 0.5  
Proposed: 0.08

### III. STAFF COMMENTS

- **D(1) Use Variance**
  - The self-storage use, to be located at the rear of the mall, is consistent with the general use patterns of the Route 440 corridor, which include other self-storage facilities within ¼ mile of the site. The fit-out of the existing space for the use does not create a substantial change in the bulk of the overall mall structure, nor does it introduce significant traffic impacts that are inconsistent with the traffic flows generated by the large retail center or the previous movie theater use of the space. The introduction of this use does not impair or alter the primary principal function of the site as a multi-tenant retail center, and additionally keeps in the non-conforming use at the rear of the property in a more back-of-house function/context in terms of aesthetic impact on the retail corridor. Given the increase in density the immediate area has seen and will continue to see through the expansion of the NJCU campus, several approved residential projects along 440, and the upcoming build-out of the Bayfront neighborhood, the use is consistent with the growth patterns of the area while not posing significant need for reconfiguration of the existing mall site. Staff feels the proposed use advances the following purposes of the MLUL:
    - m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
    - g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
  - The proposed use is consistent with the character, demands, and adjacent existing services provided along the Route 440 corridor and capitalizes on an existing, vacant space for efficiency of land use whereas many projects with a similar use involve construction and fit-out of a new structure.

▪ **Signage Variances:**

- The proposed signage, though non-compliant in several attributes, is an overall improvement to the existing signage on site. The proposed design meets the intent of the LDO's Signage Standards by removing several existing (also non-conforming) signs of a variety of inconsistent sizes, design aesthetics, materials, etc, and replacing them with a new series of consistent signs that are more directly related to the overall character of the proposed improvements to the mall entry and general architectural character of new retail spaces. The proposed signs are not of a significantly different scale than what exists today, and their consistent aesthetics make them more directly/intuitively associated with the mall property along a busy, high-speed corridor - therefore improving site wayfinding and overall general welfare and safety in terms of navigability of the property for local and regional drivers and patrons. Staff sees the benefits of the signage variances as outweighing the detriments and sees no disruption to the intent of the zone plan as the signs are typical treatments as to what is seen along multi-tenant retail corridors in Jersey City and Hudson County, such as Route 440.

▪ **Green Area Ratio:**

- Though the proposed changes to the site increase general landscaping and greening measures, they are deficient in meeting the City's required Green Area Ratio. One major aspect of the deficit is the sheer size of the overall property, whereas the scope of the proposed improvements are essentially a fit-out of the existing structure and do not involve a substantial overhaul/reconfiguration of the property. Additionally, the site is governed by the NJDEP for the purposes of a Flood Hazard Area Permit and are therefore subject to thresholds/disturbance limitations as set by NJDEP Watershed & Land Management. The Applicant's experts shall testify to the specifics of these thresholds and how they impact the proposal's ability to meet the GAR set forth by the City's LDO.

**IV. STAFF RECOMMENDED CONDITIONS**

All testimony given by the applicant and their expert witnesses in accordance with this application shall be binding. The staff recommends the following conditions to mitigate the negative criteria:

1. All materials and color selections shall be shown on Final Plans. No change to the facade and site design, including materials as well as any changes that may be required by the Office of Construction Code, shall be permitted without consultation with planning staff and approval by planning board.
2. Any changes to approved plans as required by State DOT or NJDEP shall be submitted to the Division of City Planning for review and approval by staff or referral to the Zoning Board.
3. Applicant shall provide an affidavit from the architect of record representing that the constructed project is consistent with final approved plans.
4. All trees and landscaping improvements shall be installed in accordance with the Jersey City Forestry Standards prior to the issuance of a Certificate of Occupancy (CO) or Temporary Certificate of Occupancy (TCO).
5. The Applicant shall continue to coordinate with the Division of Transportation Planning regarding site entry circulation/treatment and on-site wayfinding, and shall submit a memo from said office to City Planning confirming that any submitted signature sets are compliant and consistent with comments provided by staff.

## APPENDIX : REQUIRED PROOFS FOR VARIANCES

### ▪ D(1) USE VARIANCE (NJSA 40:55D-70D):

#### ▫ Hardship

Prior to the 1948 Land Use Law amendments, a use variance could only be granted if an undue hardship was proven. NJSA 40:55D-70d states that “in particular cases for special reasons.” certain variances may be granted by the Board of Adjustment. These “special reasons” are also often referred to as positive criteria.

- In 1952, Ward v. Scott NJ 117 clarified that “special reasons” was bound by the purposes of general zoning.

#### ▫ Positive Criteria

Medici v BPR, 107 NJ 1 (1987) sets forth the standard for reviewing a use variance, with the positive criteria requiring that the application shows;

1. That the purposes of zoning are advanced, and
2. That the use is particularly suited to the property, and
3. Must also meet the enhanced burden of proof – the Applicant must reconcile why the use is not listed in the permitted or conditional uses for this zone.

#### ▫ Negative Criteria

No relief may ever be granted unless it can be done:

1. without substantial detriment to the public good, and
2. without substantially impairing the intent and purpose of the zone plan and zoning ordinance

#### 1) Substantial detriment to the public good – Balancing Requirement.

The focus of this first prong of the negative criteria is on the variance’s effect on the surrounding properties. The board must weigh the zoning benefits from the variance against the zoning harms. In many instances, conditions of approval address the negative criteria standard and help to mitigate the impact of the variance.

#### 2) Substantial impairment to the intent and purpose of the zone plan and ordinance.

The focus of this second prong of the negative criteria is on the power to zone based on ordinance and not variance

### ▪ ‘C’ VARIANCE

**Required Findings for ‘C’ Variance Standard/Deviations under N.J.S.A. 40:55D-70(c)(2):**

1. The justifications must relate to a specific piece of property;
2. The purposes of the Municipal Land Use Law would be advanced by the deviation from the zoning ordinance requirement;
3. The deviation can be granted without substantial detriment to the public good;
4. The community benefits of the deviation would substantially outweigh any detriment and;
5. The deviation will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

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**2. without substantially impairing the intent and purpose of the zone plan and zoning ordinance**

**1) Substantial detriment to the public good – Balancing Requirement.**

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