

ORDINANCE O-23-30

ORDINANCE AUTHORIZING TRAFFIC ENFORCEMENT UPON REAL PROPERTY KNOWN AS BLOCK 71, LOT 15 IN ACCORDANCE WITH THE REQUEST OF THE PROPERTY OWNER

WHEREAS, the Howell Zoning Board of Adjustment (“Zoning Board”) has given preliminary and final site plan and use variance approval for 6520 LLC (“the Property Owners”) to change the use of an existing retail building and warehouse building and for construction of site improvements on Block 71, Lot 15 (“the Property”); and

WHEREAS, the resolution of the Zoning Board approving the Property Owners for final site plan included a condition requiring the Property Owners to apply to the Township of Howell for Title 39 jurisdiction over the Property (attached as Exhibit A); and

WHEREAS, the Property Owners filed a written request with the Town Manager of Howell Township pursuant to N.J.S.A. 39:5A-1, that the provisions of Title 39 of the New Jersey Revised Statutes be made applicable to the Property (attached as Exhibit B); and

WHEREAS, traffic and safety officials concur with the request in order to regulate traffic from the Property.

NOW THEREFORE BE IT ORDAINED by the Township Council of the Township of Howell, County of Monmouth, and State of New Jersey, as follows:

NOTE: All additions are underlined. All other sections of the code will remain unchanged unless otherwise stated.

SECTION 1. Chapter 7 of the Howell Township code shall be amended with the following addition:

§ 7-23 Traffic Regulations for Block 71, Lot 15

Pursuant to the authority vested in the Township of Howell by N.J.S.A. 39:5A-1 and pursuant to a request by 6520 LLC, all state motor vehicles statutes are hereby made applicable to the roadways, driveways, parking areas and other areas used for vehicular traffic on the property at Block 71, Lot 15 at 6520 Route 9 South in Howell Township.

SECTION 2. INCONSISTENT ORDINANCES

All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

SECTION 3. SEVERABILITY

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect upon its passage and publication according to law.

NOTICE

The Ordinance published herewith was introduced and passed on first reading by the Township Council of the Township of Howell on August 15, 2023 and will be further considered for final passage and adoption at the Township Municipal Building on 4567 Route 9 North, Howell, New Jersey on September 12, 2023 at 7:00 p.m. or as soon thereafter as the matter can be reached on the Agenda, at which time and place all persons interested therein shall be given an opportunity to be heard and during the week prior thereto, and up to, and including, the date of such meeting, copies of said Ordinance will be available at the Clerk’s Office in the Township of Howell Municipal Building to the members of the general public who shall request same.

Introduction:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Fischer</i>		X	X			
<i>Councilman Gasior</i>			X			
<i>Councilman Nadel</i>	X		X			
<i>Deputy Mayor O'Donnell</i>			X			
<i>Mayor Berger</i>			X			

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held August 15, 2023. WITNESS my hand this 16th day of June 2023.

Diane Festino

DIANE FESTINO, Municipal Clerk

This is to certify that the foregoing Ordinance was adopted by the Township Council at a regular meeting of the Township of Howell held on September 12, 2023.

Adoption:

COUNCIL	MOTION	2ND	AYES	NAYS	ABSTAIN	ABSENT
<i>Councilwoman Fischer</i>		X	X			
<i>Councilman Gasior</i>	X		X			
<i>Councilman Nadel</i>			X			
<i>Deputy Mayor O'Donnell</i>			X			
<i>Mayor Berger</i>						X

I, Diane Festino, Municipal Clerk of the Township of Howell, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Mayor and Township Council, at its Meeting held September 12, 2023. WITNESS my hand this 13th day of September 2023.

Diane Festino

DIANE FESTINO, Municipal Clerk

Exhibit A

Resolution of Howell Township Zoning Board of Adjustment Granting Final Site
Approval for 6520 LLC

**TOWNSHIP OF HOWELL
ZONING BOARD OF ADJUSTMENT**

**RESOLUTION GRANTING
SITE PLAN**

RESOLUTION NO.: 2023-2
CASE NO.: BA19-17F
APPLICANT: 6520 LLC
PROPERTY: 6520 Highway 9 South
Block 71, Lot 15
MEETING DATE: December 12, 2022
RESOLUTION DATE: February 13, 2023

WHEREAS, pursuant to the applicable provisions of the Township Code (herein defined as Howell Township Land Use Ordinance, Chapter 188 et seq.), an application has been submitted to the Township of Howell Zoning Board of Adjustment (the "Board") 6520 LLC (the "Applicant") for Final Site Plan Approval to change the use of an existing retail building and warehouse building and for construction of site improvements on the Property where a Use Variance, Bulk Variance and Preliminary Site Plan approval were previously obtained from the Board. The property is identified as Block 71, Lot 15, located at 6520 Highway 9 south in the Township of Howell and situated in the HD-1 Highway Development 1 Zone District (the "Property"); and

WHEREAS, the Application reviewed by the Board consisted of the following plans, documents, and reports:

<u>EXHIBIT/DOCUMENT NO.</u>	<u>DESCRIPTION</u>
A-1	Development application
A-2	Application Checklist
A-3	Resolution granting Use Variance Preliminary Site Plan case no. 19-17 dated 12/07/2020
A-4	Stormwater Management Report revised 8/20/2021
A-5	Site Plans dated 7/23/2019
A-6	FSCD Certification letter dated 9/2/2020
A-7	Stormwater Management Report Revised 8/20/2021
A-8	Site Plans dated 7/23/2019, last revised 8/20/2021
A-9	Natural Resource Inventory Report dated 7/23/2019
<u>INTEROFFICE REPORTS</u>	
B-1	Fire Bureau Review dated 10/13/2022
B-2	Shade Tree Review dated 10/19/2022

- B-3 2000 ft. Downstream Analysis Report dated 7/23/2019
- B-4 Farmers Advisory Review dated 10/27/2022
- B-5 Board Engineer's Completeness Review dated 11/9/2022
- B-6 Monmouth County Board of Health Review 11/14/2022
- B-7 Natural Resource Inventory dated 7/23/2019; and

WHEREAS, the Board held public hearings with regard to this application, at its regularly scheduled meetings, on December 12, 2022, and the Applicant provided notice of the public hearing pursuant to and in full satisfaction of *N.J.S.A. 40:55D-12*; and

WHEREAS, the Applicant received approval for Use Variance, Bulk Variances and Waivers in Board Resolution (case No. 19-17) dated December 7, 2020 and this application is for Final Site Plan approval as required by the conditions of that approval, there are no new variances proposed; and

WHEREAS, the Board took action on this application at its meeting of December 12, 2022 and this Resolution constitutes a memorialization of that action in accordance with *N.J.S.A. 40:55D-10(g)*; and

WHEREAS, the Board, after reviewing the evidence presented, as well as considering the testimony of the Applicant's witnesses and the Board's professionals makes the following findings of fact:

FINDINGS OF FACT

1. Mr. Jared Pape, Esq. represented the Applicant, and introduced the application. The property received approval in 2020 for a use variance and preliminary site plan was also granted then. The Applicant is back now for final site plan approval only.

2. Mr. Peter Strong, PE was sworn and qualified as Professional Engineer. He testified to the limited revisions that have been made to the plans approved at preliminary site plan. Mr. Strong testified that the Applicant needed a revised wetlands line approval (Letter of Interpretation – Line Verification), and the new wetlands line was in a slightly different location than the old line. This allowed them to move the discharge point for the stormwater basin and locate it outside of the wetlands buffer. Therefore, the DEP permit for the discharge location is no longer needed. Also, at the front of the property there is a limited buffer and existing structures and driveway there so there is no space for the required 50 ft buffer, but they have

added landscaping where possible and a fence in that area to provide some buffering to the neighbor to the north. He testified that those are the only two changes to the plan from the preliminary approval. He testified that the Applicant has received the Planning, Engineering and LTE reports and will comply with the requests.

3. Mr. Strong also reviewed the status of the outside agency approvals. They have Monmouth County Board of Health and Freehold Soil Conservation approvals. They applied for Howell Municipal Utilities approval and the Property is already connected to Manasquan Regional Sewer Main as well as NJ American Water. Monmouth County Planning Board issued a letter of no interest. The fire official provided a 2019 letter with no objections and the revised LOI from DEP was provided to the Board. A Highway occupancy permit was received from NJDOT to put in the sidewalk along Route 9, that permit needs to be extended, it expired in September and that will be done. A soil moving permit will also be applied for, they will move 3,500 cubic yards of soil, so that permit is needed and will be applied for.

4. Mr. Pape confirmed that the Applicant intends to comply with architecture design requirements for articulation of the building and the Architect, Mr. Radosti, will work with the Board Planner to design that to the Board Planner's satisfaction.

5. Ms. Beahm, the Board's Planner, asked if the sidewalk from Route 9 will be brought into the property. Mr. Strong testified that it will not be connected. There is no need and it will just add impervious coverage. The Applicant agreed to add a bike rack to the streetscape to comply with the requirement.

6. The Application included the following breakdown of uses at the building. Multi-Tenant Retail Use: Book Store 7,100 SF, Flower Shop 2,200 SF, Weight Loss Center 920 SF, Dress Shop 1,400 SF, Security Supply Store 1,075 SF, Vacant 1,075 SF, Vacant 1,275 SF, and the Total is 15,045 SF. If food service uses are ever proposed the food use will require additional approvals.

7. Mr. Cunliffe, the Board's Engineer reviewed the history of the approvals at the site. He confirmed that the final site plan is primarily missing outside agency approvals. They also agreed to limit the size of vehicles on site to SU40 trucks or smaller. The Board is requesting a copy of the updated status of compliance as to the old well on site. The Operations and Maintenance Manual and a Deed of Easement for access to the stormwater basin by the

Township must be recorded. The Applicant agreed to apply for Title 39 enforcement by the Township and that application needs to be made to the Governing Body. The tree count also needs to be updated to determine compliance.

8. The Boards asked if the front of the store, where the cars park along the building, had bollards to prevent cars from going into the store. It is a new ordinance requirement in Howell, and protective measures are required where parking abuts the building. The Applicant agreed to work with Board professionals to add a protective measure and that this would be a condition of approval.

9. The hearing was opened to the public, but no one appeared. The Board discussed the application and voted to approve the final site plan subject to the conditions discussed at the hearing.

CONCLUSIONS OF LAW

NOW, THEREFORE, BE IT RESOLVED that the Township of Howell Zoning Board of Adjustment, based upon the above findings of fact, makes the following conclusions:

1. The Board finds and concludes that the Applicant has satisfied its burden as to the application for Final Site Plan Approval as the plan is in substantial compliance with the ordinances of the Township and the revisions to the plan from the preliminary approval are minor and constitute improvements to the conditions proposed. Further the Applicant has agreed to address all of the outstanding technical comments of the Board's professionals and to add protective measures to the parking area to address the new safety standards in the ordinance. The Final Site Plan can be granted under N.J.S.A. 40:55D-50 subject to continuing compliance with the conditions of preliminary approval and the conditions agreed to at this hearing and listed below.

NOW, THEREFORE, BE IT RESOLVED by the Township of Howell Zoning Board of Adjustment this 13th day of February 2023, that the Board hereby memorializes, by the adoption of this Resolution, the action taken by the Board on December 12, 2022 granting the Applicant's request for Final Site Plan Approval, as more particularly set forth above, subject however to the following conditions:

Conditions of Approval

1. The Applicant shall construct the improvements in compliance with the testimony provided at the hearing. The construction of improvements at the Property must also comply with all other applicable Ordinances of the Township, and all building department requirements.

2. The Applicant shall comply with all of the comments in the reports of the Board Engineer dated November 9, 2022 and the conditions agreed to at the hearing, including but not limited to following:

a. The Applicant shall submit proof of filing of the Operations and Maintenance Manual, establishing the owner/operator as the responsible party for operating and maintain the stormwater system, and an Access Easement to the stormwater facilities in favor of the Township should the Township need to access the facilities to perform repairs. Both shall be reviewed to the satisfaction of the Board's Engineer and Attorney and filed with the Monmouth County Clerk's Office Real Property Records.

b. The Applicant shall work with Board's professionals to add a protective measure along the front and back of the store where parking abuts the building to prevent cars from entering the building in compliance with the ordinance, the protective measure shall be designed and installed to the satisfaction of the Board's Engineer and Planner.

c. The Applicant shall add the details for a bike rack to the plans in order to comply with the Township's streetscape ordinance, the details shall be reviewed to the satisfaction of the Board's Engineer and Planner.

d. The Applicant shall revise the Landscape Plan to include the final tree count to the satisfaction of the Board's Licensed Tree Expert.

e. The Applicant shall provide the updated NJDOT permit for the sidewalk to the Board Administrator.

f. This application did not approve any food service businesses, if any food service uses are added in the future they will require additional approvals from the Township and Monmouth County Board of Health.

g. The Applicant shall provide the Board Engineer, and Board Administrator, with the updated status of the well on the Property and shall ensure that the well is in compliance with all applicable requirements. It shall either be abandoned in accordance with MCBOH requirements, or if to be utilized for irrigation purposes, must obtain a Licensed Well Driller Permit from MCBOH.

h. The Applicant shall request Title 39 jurisdiction from the Township Governing Body to permit Township police to enforce traffic regulations on the site.

i. No vehicles larger than an SU 40 trucks shall be permitted on the site, this condition was agreed to at the use variance hearing and is a continuing condition of approval.

j. The Applicant shall comply with all of the conditions of approval of the Monmouth County Planning Board, NJDOT, NJDEP (FWW and FHA), and Freehold Soil Conservation District, Monmouth County Board of Health, Howell Township Municipal Utilities Department, Manasquan River Regional Sewer Authority, NJ American Water, and shall submit proof of same to the Board Administrator.

k. The Applicant shall make all additional changes requested by the Board's Professionals in their review letters except where explicitly modified in this resolution and shall update all plans to reflect same.

3. The Applicant shall pay all taxes, fees, required escrow deposits, and inspection fees that may be due and owing prior to the issuance of any building permits.

4. The Applicant shall be required to obtain any and all other approvals, licenses and permits required by any other board, agency or entity having jurisdiction over the application or over the Property.

5. The Applicant shall publish notice of this decision, in one of the official newspapers of the Board, within 10 days of the date of the Applicant's receipt of a certified copy of this resolution and provide proof of publication to the Board Administrator.

6. The Applicant shall record a certified copy of this resolution with the Monmouth County Clerk's Office Real Property Records within 30 days of the date the Applicant closes on

the purchase of the Property and shall provide proof of such recording to the Board Administrator within forty-five (45) days, in no event shall building permits for this project be issued before the resolution is recorded.

BE IT FURTHER RESOLVED, that the protections provided by this Final Major Site Plan approval shall expire on February 13, 2025, two years from the date of this resolution, if construction has not commenced or an extension is not granted by the Board as provided for in N.J.S.A. 40:55D-52d.

BE IT FURTHER RESOLVED, that all representations, commitments, and agreements made by the Applicant or his/her representatives at the hearing in this matter or contained in any document, plat, sketch or submission submitted to the Board at any time prior to this approval, including notes contained in original or revised submissions, are hereby incorporated into this Resolution by reference.

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Board are authorized to sign any and all documents necessary to effectuate the purposes of this resolution, provided there is compliance by the Applicant with the conditions identified herein.

BE IT FURTHER RESOLVED, that in the event any condition herein is held to be invalid, unenforceable, or unlawful, the variances/waivers/exceptions, if any, and all other approvals herein shall be void. It is the intent of the Board that this approval be subject to fulfillment of all conditions, and that the conditions are not severable from any variances/waivers or other relief granted herein; and

BE IT FURTHER RESOLVED, that the Board reserves the right to require an amended or revised application in the event that federal, state or county permits or approvals require any significant revision in approved plans.

BE IT FURTHER RESOLVED, that the Board Administrator shall provide a certified copy of this resolution to the Township Construction official, Township Engineer, Township Clerk, Zoning Board Engineer, Township Manager, Township Assessor, Township Water and Sewer Department, Township Attorney, and the Applicant within 10 days of the date of this resolution.

December 12, 2022 Vote for Approval

Motion: Hughes

Second: Orozco

Yes: Cantor, Orozco, Mertens, Hughes, Wrubel, Parisi

No:

Abstain:

February 13, 2023 Vote for Memorialization

Motion: Mr. Hughes

Second: Mr. Cantor

Yes: Mr. Cantor, Mr. Hughes, Mr. Orozco and Mr. Wrubel

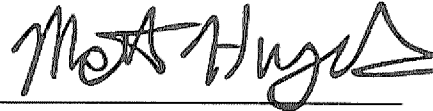
No:

Abstain:

Absent: Mr. Mertens

Certification

I hereby certify that the above Resolution is a true copy of the memorializing Resolution adopted by the Zoning Board of Adjustment of the Township of Howell on February 13, 2023



Matthew Hughes
Zoning Board Secretary

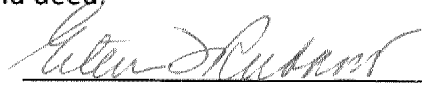
State of New Jersey:

SS:

County of Monmouth:

I hereby certify that on February 13, 2023 2023 MATTHEW HUGHES personally came before me and acknowledged under oath, to my satisfaction that this person:

- (a) Is the Secretary of the Howell Township Zoning Board of Adjustment; and
- (b) signed this Resolution as his own act and deed.



Eileen Rubano
Notary Public of New Jersey
My Commission Expires 12/14/2024
2392030

Exhibit B

Request for Title 39 Enforcement by 6520 LLC

KENNETH L. PAPE
PETER H. KLOUSER
JARED M. PAPE



COUNSELLORS AT LAW

516 HIGHWAY 33
MILLSTONE TOWNSHIP, NJ 08535

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March 8, 2023

OF COUNSEL
JONATHAN M. HEILBRUNN
STEVEN KROPF

VIA REGULAR MAIL AND E-MAIL: jclark@twp.howell.nj.us
Joseph Clark, Business Administrator
Township of Howell
4567 US Highway 9 North
Howell, NJ 07731

Re: 6520, LLC
6520 Route 9 South, Howell Township, NJ
Block 71, Lot 15 (the "Property")
Case No: BA19-17F
Resolution 2023-2 dated February 13, 2023 (the "Resolution")
TITLE 39 REQUEST

Dear Mr. Clark:

Please be advised that our office continues to represent the interests of 6520 LLC, the owner and applicant of the above-referenced property.

On February 13, 2023, the Howell Township Zoning Board of Adjustment granted Final Site Plan Approval to change the use of an existing retail building and warehouse building and for the construction of site improvements on the Property. A copy of the Resolution is enclosed herewith for your ready-reference.

As a condition of approval, the Howell Township Zoning Board of Adjustment directed the Applicant to request Title 39 enforcement from the Township governing body to permit Township police to enforce traffic regulations on the Property.

Please consider this letter to be a request for the Howell Township governing body to adopt a resolution authorizing Title 39 enforcement on The Property, consistent with the requirements of the Howell Township Zoning Board.

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads 'Jared Pape'.

Jared M. Pape
For the Firm

Enc.

cc: John Storrow, Chief of Police (via e-mail: jstorrow@howellpolice.org)
Eileen Rubano, Board Secretary (via e-mail: erubano@twp.howell.us.nj)
Charles Cunliffe, PE (via e-mail: ccunliffe@tandmassociates.com)
6520, LLC

Explanatory Statement: Authorizes Traffic Enforcement Upon Real Property Known as Block 71, Lot 15 as a Condition of the Zoning Board.