

STATEMENT OF APPEAL

SB NEWINGTON 433, LLC

March 20, 2020

SB Newington 433, LLC (“SBN”) seeks four variances in connection with an existing auto-related use on property known as 2897 Berlin Turnpike (“Property”). The Property, approximately one acre and zoned Planned Development (P-D), is currently improved with a Firestone Complete Auto Care Center (“CACC”).

Background:

From late 2012 through early 2013, SBN’s predecessor in interest obtained land use approvals from the Conservation Commission and the Town Plan and Zoning Commission (“Commission”) for the construction of the CACC (“2013 Approval”). Approximately one month after the 2013 Approval, the adjacent property at 2116 Main Street was rezoned to R-20 (Residential-20), creating a non-conformity. While those applications were pending, certain automotive business owners appealed amendments to the zoning regulations governing automotive uses (“2012 Appeal”). Additionally, during the pendency of the CACC construction, those owners and a group of neighboring property owners initiated a nuisance and private zoning enforcement lawsuit against SBN, the Commission, and the Town of Newington (“Bielitz Litigation”) in late 2014.

In the Bielitz Litigation, the court ruled that the 2013 Approval was invalid because of the outcome of the 2012 Appeal. It ordered that the CACC be shut down pending the receipt of new land use approvals. The requested variances, along with simultaneous special permit, site plan and location approval applications, are intended to legalize the CACC in accordance with the Court’s order and in resolution of the Bielitz Litigation.

Current Application:

The site and building itself are unchanged from the plans set forth in the 2013 Approval. As a result of the re-zoning of 2116 Main Street, the CACC is now directly adjacent to a residential zone, with the property boundary serving as the zone boundary between the P-D and R-20 zones.

SBN seeks the following variances arising from the CACC’s and the Property’s proximity to a residential zone. These include the following:

- § 3.18.4: mandating that parking be no less than 25 feet from a residential zone boundary; the existing parking spaces adjacent to the residential zone are located 5 feet from the boundary per § 6.1.1.H (variance to allow 5 feet where 25 feet required)
- § 3.18.4: mandating that no business structure be located closer than 100 feet from the residential zone boundary; the CACC building is 59 feet from the property line (variance to allow 59 feet where 100 feet required)

- § 6.1.2.B: requiring that any off-street loading space be no closer than 50 feet from any lot in any residential zone; the existing loading space is 49 feet from the property line (variance to allow 49 feet where 50 feet required)
- § 6.11.5: prohibiting any portion of a motor vehicle use within 100 feet of a residential zone; the Property directly abuts the residential zone (variance to allow 0 feet where 100 feet required)

Each of these variances seeks to legalize the existing CACC operations; no expansion or modification of the site is proposed as part of these applications. As depicted on the site plan and zoning summary chart, all other bulk requirements governing the P-D zone are satisfied.

The legal hardship with respect to this Property and the CACC is the court-ordered changes to the Zoning Regulations in the 2012 Appeal, which in turn served as the basis of the invalidation of the 2013 Approvals, combined with the rezoning of the adjacent Main Street property. The rezoning of the adjacent Main Street property would have rendered the Property legally non-conforming even if the 2013 Approvals were deemed valid. The confluence of the subsequently amended Zoning Regulations, the outcomes of the 2012 Appeal and Bielitz Litigation, and the rezoning of 2116 Main Street create the hardship, one that is unique to this Property and not self-created. The requested variances are the minimum necessary to achieve productive use of the Property.