

Planning & Real Estate Consultants

December 6, 2022

Zoning Board of Adjustment  
Township of Berkeley Heights  
29 Park Avenue  
Berkeley Heights, NJ 07922

**Re: Planning Review  
Site Plan w/ Variances  
Block 3102, Lot 33 - 713 Plainfield Avenue  
Berkeley Heights 713 Realty LLC**

Dear Chair Sullivan and Board Members:

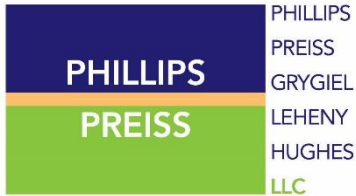
Our office is in receipt of the above referenced application, including the following documents submitted by the applicant:

- Application for Site Plan Approval, dated August 16, 2022.
- Amended Site Plan prepared by Houser Engineering, dated June 27, 2022 (last revised November 21, 2022).

The subject property is a 14,798 square foot lot located at the intersection of Plainfield Avenue and Emerson Lane in the R-20 residential zone. The property is currently improved with a fuel station, which is a pre-existing nonconforming use in this residential neighborhood. The Zoning Board Adjustment granted d(2) variance and site plan approval in 2020 to expand the existing fuel service operation. The applicant is now requesting approvals to expand the hours of operation, add diesel fuel service, sell bags of ice and install an ATM inside the existing building. It is seeking site plan approval, modifications to the conditions of the Board's 2020 approval and a "d(2)" expansion of nonconforming use variance.

#### **Planning Comments**

1. Pursuant to the NJSA 40:55D-70d(2), the Board has the power to grant "d(2)" variances to allow the expansion of a pre-existing nonconforming use "in particular cases and for special reasons." The court in Burbridge v. Mine Hill Board of Adjustment, 117 N.J. 376 (1990) held that special reasons for a "d(2)"



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variance can be most readily found if the proposed expansion would increase the compatibility of the use with the surroundings and minimize the nonconformity. Additionally, the Board must find that the proposed expansion can be granted without substantial detriment to the public good or substantially impairing the intent and purpose of the zone plan and zoning ordinance.

2. Applicant should provide testimony as to how the provision of ATM service and retail sales of ice will make the use more acceptable in its residential setting or otherwise advance the general welfare.
3. Diesel fuel has not been offered for sale at the property previously. The applicant indicates that the proposal to add diesel service “arises from the frequency and abundance of requests of the Applicant’s patrons and the lack of availability of diesel fuel in Berkeley Heights.” The Enrite fuel station at 525 Springfield Avenue offers diesel fuel. The applicant should document the need for additional diesel service in the community.
4. If the Board allows diesel fuel, the applicant should discuss how it will prevent larger vehicles from utilizing the fuel station.

We trust that the above information is responsive to your needs.

Respectfully submitted,

Keenan Hughes, AICP, PP