



State of New Jersey

DEPARTMENT OF TRANSPORTATION

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January 24, 2022

Anthony F. DellaPelle, Esq., CRE
McKirdy, Riskin, Olson & DellaPelle, P.C.
201 Littleton Road, Suite 135
Morris Plains, NJ 07950

Re: Route 18 Drainage & Pavement Rehabilitation, Driveway Modification Appeal,
Block 32, Lot 10, East Brunswick, Middlesex County (NDK Realty LLC, Nicholas
Kambitsis)

Dear Mr. DellaPelle:

This is the final agency decision for an appeal of a determination of the Office of Access Design ("OAD") of the New Jersey Department of Transportation ("NJDOT"), modifying access between State Highway Route 18 ("Route 18") and a property owned by NDK Realty LLC, Nicholas Kambitsis ("Owner") located at 371 Route 18 in East Brunswick, Middlesex County, New Jersey ("Property"). The Property is identified as Block 32, Lot 10 in the local tax map.

On December 27, 2019, the OAD sent a letter informing the Owner of a modification of driveways plan that would affect the Property. On January 31, 2020, the Owner's representative attended an informational meeting with the OAD to discuss the Owner's objections to the proposed plan. Following the meeting, the OAD sent a letter dated March 5, 2020, advising of its determination to modify the driveways as proposed. The Owner requested this appeal on March 19, 2020, and a formal hearing was held on September 24, 2021 and November 19, 2021, pursuant to N.J.A.C. 16:47-11.3(f).¹

I presided over the formal hearing and considered the pre-hearing submissions, testimony, documents presented, and arguments proffered by the parties, which were both represented by counsel. At the conclusion of the hearing, I announced that I would hold the record open pending the receipt of the transcripts and written closing arguments. The administrative record was closed

¹ The delayed hearing was due to the COVID-19 pandemic and the Owner's retention of counsel.

on December 14, 2021, rendering this decision timely pursuant to N.J.A.C. 16:47-11.3(g). My findings on the basis of the record are as follows.

The modification of driveway at issue is being undertaken in conjunction with an NJDOT project to rehabilitate Route 18's drainage and pavement. Route 18 is a six-lane highway that runs past the Property, which apparently was used as a gas station prior to 2016. The Property required environmental remediation and the underground gas tanks were removed and decommissioned; the aboveground gas pumps were removed as well. 1T28:11-21; 1T31:17-32:8; 1T51:13-20; 1T77:17-78:6; 1T109:24-110:1; 1T129:8-130:7.² The Property currently features an overhead canopy (above where the gas pumps used to be) and a one-story concrete building with two repair bays. 1T32:9-13; 1T32:25-33:4; 1T52:15-53:6; NDK-1. A freestanding price sign demarcates the Property from adjoining lot 9 to the north ("Lot 9"). NDK-1. The OAD considers the Property vacant because the Property is not being used (as a gas station or for another purpose) and the OAD has never received a plan of any potential future use. 1T28:22-29:3; 1T31:17-32:8.

There is no shoulder or deceleration lane in front of the Property. DOT-1. To enter the Property, motor vehicles turn right from the right lane of Route 18 into an 86.6'-wide driveway apron that the Property shares with Lot 9 under an easement. DOT-1; NDK-1; 1T75:8-24.³ This design allows a Semitrailer Large Truck ("WB-50"⁴), which typically delivers motor fuels to gas stations, to enter the Property safely. 1T84:13-85:6; 1T91:4-16; 1T109:18-110:1; NDK-2. The edge clearance of the driveway is less than 12', DOT-1, which means the Property's current access to Route 18 does not meet the requirements of the State Highway Access Management Code, N.J.A.C. 16:47-1.1 to -14.1 ("Access Code").

In conjunction with the Route 18 project, the OAD directed the NJDOT's engineering consultant, HNTB Corporation ("HNTB"), to consider the Property "as currently vacant with no knowledge of future use" and not a gas station. 1T68:24-69:7. HNTB then designed a modification of driveways plan under which the driveway apron shared by the Property and Lot 9 would be converted into two depressed curb driveways (one for each lot), separated by 24 feet per the Code; the driveway for the Property would be 20.9' wide. 1T19:15-20:3; 1T58:14-60:4; DOT-1. Separate driveways would improve safety by removing a hazardous conflict point where the projected path of a vehicle exiting Lot 9 crosses the projected path of a vehicle entering the Property. 1T19:23-20:3; 1T63:1-16. The edge clearance of the driveway under the proposed plan would be less than 12', which required the OAD to grant a waiver. DOT-1.

² "1T" refers to the transcript of the September 24, 2021 hearing. "2T" refers to the transcript of the November 19, 2021 hearing.

³ The Property also has a driveway for exiting vehicles near its southern boundary that the OAD proposes to modify. See DOT-1. This driveway is not at issue and will not be further discussed.

⁴ See NJDOT Roadway Design Manual 2-5 (2015) (WB-50 truck has wheelbase of 50 feet and overall length of 55 feet).

Under the proposed plan, an SU-30 truck, which is 25' shorter than a WB-50 truck,⁵ is the largest truck that can safely access the Property. 1T67:16-68:23; 1T146:22-147:5; DOT-2. Paul Ignarri of the OAD testified that other considerations were "not necessary because [the proposed plan] can get WB 30s [sic] into the [Property]." 1T42:11-12. Steven Alpert of HNTB opined that a truck larger than an SU-30 truck could not safely access the Property because it would have to encroach from the right lane of Route 18 into the center lane of Route 18 to make the right turn into the proposed 20.9'-wide driveway for the Property. 1T68:5-15. The Owner's engineering expert, Gary Dean of Dolan & Dean Consulting Engineers, LLC, opined that a WB-50 truck in the right lane of Route 18 would "need[] to swing left and occupy all three travel lanes of the highway to make the right turn." 1T95:24-96:1; see NDK-3. He stated that the property was undergoing environmental remediation, a Department of Environmental Protection requirement. 1T:129:17-130:3.

"Modification of driveway" as defined at N.J.A.C. 16:47-2.1 covers NJDOT-approved "changes to driveways in conjunction with the implementation of a State highway improvement advanced by the [NJDOT] . . . which changes the . . . width of the curblane opening of a driveway by more than five feet."⁶ N.J.A.C. 16:47-11.3(g) provides that review of a modification decision is to be heard on the basis of criteria set forth in the State Highway Access Management Act, N.J.S.A. 27:7-89 to -98, the Code, and the evidence presented at the hearing.

The only question for me to decide here is whether the proposed modification of driveway will "allow continuation of the existing use on the lot or site," as required by N.J.A.C. 16:47-11.1(a). N.J.A.C. 16:47-2.1 defines "existing use" as "the permitted size and type of land use that exists, or that apparently exists, on a lot or site at the time . . . [the NJDOT] notifies the lot or site owner of an access alteration." Existing use as so defined concerns the permitted type of land use. If there is any change in the use of the Property, the Access Code requires the Owner to apply for a new permit or to request that the NJDOT issue a letter of no interest to allow the new proposed use of the site. N.J.A.C. 16:47-8.1 to -8.2.

There is no dispute that the Property's permitted type of land use is gas station. However, the OAD did not consider the possibilities of WB-50 truck access to the Property because the Property was undergoing environmental remediation, the gas tanks had been decommissioned, and the OAD assumed that the use of the Property would change (in which case the Owner would be required to come back to the NJDOT) and that the Property would not be used as a gas station after the remediation. I agree with the Owner that, while the gas station that used to be on the Property is currently closed, the Property is not vacant. The decommissioning of the underground gas tanks does not mean vacancy; the Owner presumably could have new gas tanks and pumps installed and operate a new gas station and does not have to come to the NJDOT for a new access permit. This is because the Property already has a permit and that permit allows for WB-50 truck access. The OAD should have designed for WB-50 truck access to the Property so that the Property can be used as a gas station after the remediation. For these reasons, I find that the OAD's proposed plan

⁵ See NJDOT Roadway Design Manual 2-5 (SU-30 truck has wheel base of 20 feet and overall length of 30 feet).

⁶ The Owner's post-hearing brief refers to a revocation of access. Id. at 2, 4. This is mistaken, as this case is a modification case.

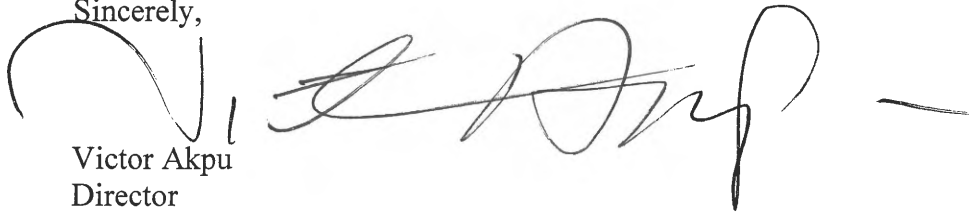
would not allow continuation of the existing use on the Property and does not meet the requirements of the Code. I therefore reject the proposed plan and the OAD should consider a new design that would allow the Property to continue to be used as a gas station with WB-50 truck access.

Given my determination, I do not need to consider the Owner's proposed alternative access concept for a bifurcated or "porkchop" driveway. See NDK-5. However, I note that Figure C-6 of the Code (entered into evidence as NDK-4) features a shoulder and a deceleration lane, while Route 18 has no shoulder or deceleration lane in front of the Property. I make no determination as to whether a bifurcated or "porkchop" driveway would be possible without on-site changes. I also note the Owner's willingness to waive any right to any on-site mitigation necessitated by a bifurcated or "porkchop" driveway, 2T184:25-185:4, and expect that the OAD and the Owner will proceed accordingly.

This is the final agency decision rendered on behalf of the NJDOT, which may be appealed, if desired, to the Appellate Division of the Superior Court of New Jersey.

Should you have any questions, please feel free to contact my office at (609) 963-1180.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victor Akpu', followed by a horizontal line.

Victor Akpu
Director
Division of Right of Way and Access Management

cc: Dennis J. Mikolay, II, Deputy Attorney General
Paul Ignarri, Supervising Engineer