

**RESOLUTION**  
**TOWNSHIP OF CHERRY HILL ZONING BOARD OF ADJUSTMENT**  
**APPLICANT'S NAME: SOUTH JERSEY AUTO AUCTION**  
**APPLICATION NO.: 17-Z-0040 (PBC 9924)**

**WHEREAS**, the Applicant, South Jersey Auto Auction, as a sub-tenant of the premises in the Township of Cherry Hill, County of Camden, State of New Jersey, owned by Spirit Master Funding X, LLC with Fox Rehabilitation Services as primary tenant, which premises is located at 7 Carnegie Plaza and designated as Block 468.03, Lot 2 on the tax maps of the Township of Cherry Hill, has filed an application for a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) along with a minor site plan application to permit a wholesale used auto auction business with storage of used cars at the site where said sales and storage are specifically prohibited.

**WHEREAS**, after public hearings held on January 18, 2018 and February 1, 2018 before the Zoning Board of Adjustment, the following initial findings of facts were made, to wit:

1. The Applicant seeks to operate a wholesale used auto auction for the sale and storage of used cars at 7 Carnegie Plaza, a 91,000 square foot office building. Said building contains a total of 599 parking spaces on site. The office building is owned by Spirit Master Funding X, LLC (Spirit) of Dallas, Texas and is under leased to Fox Rehabilitation Services (Fox) which uses the building as office space. The Applicant has proposed to sub-lease approximately 1,000 square feet of office space and a total of 234 parking spaces of which 167 spaces will be used for inventory car storage and 67 spaces will be used for customer parking. The Applicant also proposes minor site improvements including fencing around the parking lot area and landscaping to screen the parking lots where vehicles will be stored.
2. Fox is the primary tenant under a 15 year lease with Spirit expiring December 31, 2029, uses its space for office/medical uses and has consented to sub-lease 1,000 square feet of office space in the existing building as well as designating a total of 234 spaces in the existing parking lot to the Applicant for the use as inventory, car storage and customer parking. The owner of the property, Spirit has consented to the sub-lease between Fox and South Jersey Auto Auction provided, among other considerations, that the use variance is granted by the Cherry Hill Zoning Board.
3. The property is located in the Industrial IR Zone. The proposed use of a wholesale used auto auction for the sale and storage of used cars is not a permitted use in the IR Zone. Thus, a use variance is required.

4. The subject property is approximately 17.4 acres in size. The property is located in the northeastern portion of the Township, north of the Point of Woods neighborhood and east of the New Jersey Turnpike. The property has frontage along Carnegie Plaza and Springdale Road (C.R. 673) and the property abuts the south branch of the Pennsauken Creek which divides Cherry Hill Township and Mount Laurel Township. The property is also part of the Cherry Hill Industrial Park and all properties surrounding this site are located within the IR Zone.
5. The zoning history of the subject property is set forth in the Department of Community Development review letter of January 9, 2018. Said history is incorporated herein by reference.
6. The Applicant has requested a (d)(1) use variance from Section 419.B and 401.J.6 of the Zoning Ordinance which specifically prohibits used car dealerships in the IR Zone. The New Jersey Motor Vehicle Commission regulations require businesses which auction used vehicles to obtain and maintain an active Used Car Dealer license.
7. The Applicant has also requested bulk variances for the following relief:
  - a. From Section 511.H.2.b to permit a parking setback from the right-of-way of 15 feet from Carnegie Plaza and 16.11 feet from Springdale Road where 20 feet is required. This represents a preexisting, non-conforming condition.
  - b. From Section 511.H.2.c to permit a non-residential parking setback of zero feet where 5 feet is required. This represents a preexisting, non-conforming condition.
8. The Applicant has requested a design waiver for the following relief:
  - a. From Section 510.B.1 to permit one loading area where a minimum of 5 off-street loading areas are required. This represents a preexisting, non-conforming condition.
9. The Applicant was represented by Jeffrey Daniels, Esquire.
10. The Applicant presented the testimony of Barry Wolf, owner of the Applicant, Jim Miller, Professional Planner and Teal Jefferis, Professional Engineer.
11. A complete list of the plans and documents submitted by the Applicant in support of this application is specified on page 2 of the Department of Community Development review letter dated January 9, 2018. In addition, the Applicant presented the following exhibits at the public hearings:

- a. A-1 - photos of used car dealers in surrounding communities and of the Applicant's former location;
  - b. A-2 - Exhibit Plan;
  - c. A-3 - Landscape Plan;
  - d. A-4 - Copy of the sub-lease between Fox and South Jersey Auto Auction is incorporated herein by reference.
  - e. A-5 - Copy of the signed and fully executed Consent to Sublease by Owner, Fox and South Jersey Auto Auction is incorporated herein by reference.
12. A comprehensive review letter was issued by the Department of Community Development dated January 9, 2018. Said letter is on file with the Zoning Board Secretary and is incorporated by reference herein.
  13. The Zoning Board presented the testimony of Lorissa Luciani, P.P., A.I.C.P, Director of the Department of Community Development. Ms. Luciani testified with regard to her review letter of January 9, 2018, which was made a part of the record in this matter.
  14. Zoning Board members Ivy Rovner and Jill Roth-Gutman, who were not present at the public hearing on January 18, 2018, both listened to the recording of the January 18, 2018 testimony in this matter and both signed an affidavit to that effect which qualifies them to participate and vote on this application.
  15. No members of the public testified with regard to this application.
  16. Public notice of the hearing was provided in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-12. Public notice was also provided to the Clerk of Mount Laurel Township since said Township abuts the subject property.

**WHEREAS**, the Applicant testified that it currently operates its business at 6 Esterbrook Drive, Cherry Hill, New Jersey and maintains an active used car dealer license issued by the New Jersey Motor Vehicle Commission for that site.

**WHEREAS**, the Applicant testified that the business operates as a wholesale used car auction between licensed car dealers as sellers and buyers which dealers are primarily located in the southern New Jersey region.

**WHEREAS**, the Applicant testified that South Jersey Auto Auction does not accept vehicle inventory from the general public and the general public is not permitted to bid on or purchase any vehicles.

**WHEREAS**, the Applicant testified that all of its customers are licensed car dealers who endeavor to liquidate their trade-in inventory through a silent bid auction, electronic/internet operation where all bidding for each vehicle is done through the internet.

**WHEREAS**, the Applicant testified that the business operates from 9:00 a.m. - 5:00 p.m. Monday through Friday. It does not operate on Saturdays or Sundays.

**WHEREAS**, the Applicant testified that all bidding is done through the internet and that there is no auctioneer, outdoor salespeople or bidding done at the site. There are also no live auctions conducted at the site other than that which occurs on the internet.

**WHEREAS**, the Applicant testified that the internet auctions take place beginning on Tuesdays at 9:00 a.m. - 5:00 p.m. and Wednesdays from 9:00 a.m. - 12:00 p.m. There are no auctions conducted on any other days, however, inventory vehicles are delivered to the site on Mondays through Fridays and car dealers can come to the site to inspect and test drive the vehicle inventory on Mondays through Fridays.

**WHEREAS**, the Applicant testified that its customers are primarily new car dealers, however, some independent used car dealers are also customers.

**WHEREAS**, the Applicant testified that typically, the highest internet bid is accepted and title to the vehicle is exchanged between the selling dealer and the buying dealer. The Applicant testified that South Jersey Auto Auction does not take title to any vehicles.

**WHEREAS**, the Applicant testified that the vehicles which are auctioned are passenger cars and trucks and an occasional motorcycle. The Applicant testified that no commercial vehicles or trucks are sold at these auctions.

**WHEREAS**, the Applicant testified that all auction vehicles are operational and are generally in good condition. Inoperable or "junk" vehicles are not auctioned by the Applicant.

**WHEREAS**, the Applicant testified that the vehicle inventory to be auctioned are normally delivered to the site by a driver from the selling car dealership and that some deliveries occur by way of truck carrier approximately 3 or 4 times per week.

**WHEREAS**, the Applicant testified that all vehicles are delivered to the staging site as noted on the site plan.

**WHEREAS**, the Applicant testified that once the vehicle has been sold to another dealer, the buying dealer picks up the car at this site or the Applicant occasionally delivers the sold vehicle to the buyer's car dealership.

**WHEREAS**, the Applicant testified that South Jersey Auto Auction employs four (4) full-time employees and two (2) part-time employees. The Applicant does not utilize car salesmen and there

are no lights, signs, flags, banners or other decorations placed on the site or on the vehicles.

**WHEREAS**, the Applicant testified that no repair work, vehicle painting, oil changes or other type of body or mechanical repairs are done to the vehicles at this site. The cars arrive in their existing condition and leave in the same condition.

**WHEREAS**, the Applicant testified that the owner, Spirit, the prime tenant, Fox, and the Applicant have all signed and fully executed the Consent to Sublease marked Exhibit A-5.

**WHEREAS**, the Applicant testified that test drives by the prospective buyers are permitted, however, the Applicant specifies the test drive route to be utilized. The Applicant will direct test drivers turn right out of the site so as to not impact the surrounding buildings, including the school located adjacent to this site.

**WHEREAS**, the Applicant testified that vehicles are paid for and picked up by the buyers from Wednesday at noon to Friday at 5:00 p.m. of each week. All payments for auction purchases are made in person and are accomplished directed between the selling car dealer and the buying car dealer. The Applicant testified that it receives a flat fee per vehicle sold for its services.

**WHEREAS**, the Applicant testified that it will install a 6 foot high black vinyl chain link fence surrounding the proposed inventory storage area, that the fence will include mesh strips to shield the vehicles from public view and that landscaping will be installed along the frontage on Springdale Road, including evergreen trees and shrubs to further screen the inventory parking area from public view.

**WHEREAS**, Teal Jefferis, P.E, the Applicant's engineer, testified that the existing building contains approximately 91,000 square feet of space and a total of 599 parking spaces, including ADA spaces located near the entrances to the building.

**WHEREAS**, Mr. Jefferis testified that there is a loading area which will be utilized by the Applicant for its vehicle delivery and that the property also contains a trash enclosure, both of which will be used by the Applicant.

**WHEREAS**, Mr. Jefferis testified that the Applicant will use the rear portion of the property for its office space and will have a total of 234 dedicated parking spaces, 167 of which will be in the controlled, fenced and gated area for inventory parking. As well, 67 designated spaces will be used for its customers in the regular lot.

**WHEREAS**, Mr. Jefferis testified that the 6 foot high fence around the controlled parking area will be gated and that the fence will not impede the parking of the other tenants in the building.

**WHEREAS**, Mr. Jefferis testified that there are no changes being made to the building and there are no site improvements, with the exception of the landscaping to be added and the fence. He stated that the existing lighting will remain the same.

**WHEREAS**, Mr. Jefferis testified that the fence will be black vinyl-coated chain link fence with black mesh for screening and that the frontage along Springdale Road will be planted with evergreen trees and shrubs to provide additional screening of the inventory vehicles from public view.

**WHEREAS**, Mr. Jefferis testified that he investigated numerous calculations for parking requirements at this site and he determined that the 599 existing spaces are more than sufficient for the building's total parking needs. He stated that under even the worst case scenario for parking calculations, the maximum number of spaces which could be required is 595 spaces including the inventory lot, which is still under the existing 599 parking spaces provided.

**WHEREAS**, Mr. Jefferis testified that no signs are proposed except for a wall-mounted tenant sign in the rear above the door to South Jersey Auto Auction's office space and the use of directional signs on-site, which include pavement painting "Reserved for SJAA" on the pavement.

**WHEREAS**, Jim Miller, P.P., the Applicant's professional planner, testified that this site is approximately 2,000 feet away from the Point of Woods residential community which will not be impacted by the Applicant's use of the site.

**WHEREAS**, Mr. Miller testified that the adjoining area and properties in Mount Laurel also have the same type of industrial zoning and uses as exists in this area of Cherry Hill.

**WHEREAS**, Mr. Miller testified that the use variance is required because the Ordinance prohibits used car dealers which are not a part of a new car dealership. He stated that this proposed use is substantially different than the typical used car dealer in that the business is not open to the general public, vehicles are not sold to the general public, the customers are all car dealers, that all sales transactions occur electronically, that there are no banners, signs and/or flags that are placed on the site or in the windows of any of the vehicles, that there are no salespeople or retail sales, there are no sales trailers and the cars do not have prices placed on the windshields.

**WHEREAS**, Mr. Miller testified that this business operation requires inventory parking and that all of the cars to be sold are parked in a lot in regular parking stalls just as the parking occurs for the other office uses. There is no "stacked" parking of vehicles.

**WHEREAS**, Mr. Miller testified that the hours of operation are limited to Monday through Friday, 9:00 a.m. - 5:00 p.m.

**WHEREAS**, Mr. Miller testified as to the positive and negative criteria required by the statute and stated that this site satisfies two (2) purposes of the MLUL, N.J.S.A. 40:55D-2(a) & (g). He also stated that this site is particularly suited for this use because the site has excess parking needed to accommodate this use and is an appropriate location and the actual parking demand is less than the existing 599 spaces. He stated that this site has the capacity to accommodate this use and the required parking since the parking for this building is significantly underutilized.

**WHEREAS**, Mr. Miller testified that it is also particularly suited because the proposed use mirrors other uses that exist in the IR Zone and while the Ordinance does not allow for automobile inventory storage, it does allow for other types of outdoor inventory storage.

**WHEREAS**, Mr. Miller testified that this proposed use has less potential impact than other permitted industrial park uses which require more truck traffic and heavier industry and more signage.

**WHEREAS**, Mr. Miller testified as to the negative criteria and stated that this use can be reconciled with permitted uses in the IR Zone, that this use was not anticipated when the Ordinance was adopted which preceded internet-type sales of used cars.

**WHEREAS**, Mr. Miller testified that this use will not result in a substantial detriment to the public good and the use will not impair the intent of the zone plan and Zoning Ordinance.

**WHEREAS**, Mr. Miller testified that the Applicant has agreed to comply with all of the comments and conditions contained in the Community Development review letter of January 9, 2018, including that the Applicant will comply with the landscape comments contained in said review letter.

**WHEREAS**, Mr. Miller testified that this proposed use is consistent with the Master Plan and that there are no adverse impacts to the surrounding area and that the site supports the particular deviation.

**WHEREAS**, the Applicant testified that it will agree to comply with all of the proposed conditions imposed by the Zoning Board as set forth below herein.

**WHEREAS**, the development plans have been reviewed by the Department of Community Development (whose findings and reports are incorporated herein and made a part hereof) and have been found to be in compliance with the Development Control Regulations of the Township except as noted in the report of January 9, 2018.

**WHEREAS**, from the submissions made by the Applicant, the testimony and evidence presented by the Applicant, the testimony and evidence of all interested parties, and based upon the entire record, the following further findings facts and conclusions of law were made:

1. All of the initial findings of facts as set forth in Paragraphs 1 - 16 are hereby incorporated by reference herein as further findings of facts.
2. The Applicant testified that it currently operates its business at 6 Esterbrook Drive, Cherry Hill, New Jersey and maintains an active used car dealer license issued by the New Jersey Motor Vehicle Commission for that site.
3. The Applicant testified that the business operates as a wholesale used car auction between licensed car dealers as sellers and buyers which dealers are primarily located in the southern New Jersey region.
4. The Applicant testified that South Jersey Auto Auction does not accept vehicle inventory from the general public and the general public is not permitted to bid on or purchase any vehicles.
5. The Applicant testified that all of its customers are licensed car dealers who endeavor to liquidate their trade-in inventory through a silent bid auction, electronic/internet operation where all bidding for each vehicle is done through the internet.
6. The Applicant testified that the business operates from 9:00 a.m. - 5:00 p.m. Monday through Friday. It does not operate on Saturdays or Sundays.
7. The Applicant testified that all bidding is done through the internet and that there is no auctioneer, outdoor salespeople or bidding done at the site. There are also no live auctions conducted at the site other than that which occurs on the internet.
8. The Applicant testified that the internet auctions take place beginning on Tuesdays at 9:00 a.m. - 5:00 p.m. and Wednesdays from 9:00 a.m. - 12:00 p.m. There are no auctions conducted on any other days, however, inventory vehicles are delivered to the site on Mondays through Fridays and car dealers can come to the site to inspect and test drive the vehicle inventory on Mondays through Fridays.
9. The Applicant testified that its customers are primarily new car dealers, however, some independent used car dealers are also customers.
10. The Applicant testified that typically, the highest internet bid is accepted and title to the vehicle is exchanged between the selling dealer and the buying dealer. The Applicant testified that South Jersey Auto Auction does not take title to any vehicles.
11. The Applicant testified that the vehicles which are auctioned are passenger cars and trucks and an occasional motorcycle. The



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13. The Applicant testified that the vehicle inventory to be auctioned are normally delivered to the site by a driver from the selling car dealership and that some deliveries occur by way of truck carrier approximately 3 or 4 times per week.
14. The Applicant testified that all vehicles are delivered to the staging site as noted on the site plan.
15. The Applicant testified that once the vehicle has been sold to another dealer, the buying dealer picks up the car at this site or the Applicant occasionally delivers the sold vehicle to the buyer's car dealership.
16. The Applicant testified that South Jersey Auto Auction employs four (4) full-time employees and two (2) part-time employees. The Applicant does not utilize car salesmen and there are no lights, signs, flags, banners or other decorations placed on the site or on the vehicles.
17. The Applicant testified that no repair work, vehicle painting, oil changes or other type of body or mechanical repairs are done to the vehicles at this site. The cars arrive in their existing condition and leave in the same condition.
18. The Applicant testified that the owner, Spirit, the prime tenant, Fox, and the Applicant have all signed and fully executed the Consent to Sublease marked Exhibit A-5.
19. The Applicant testified that test drives by the prospective buyers are permitted, however, the Applicant specifies the test drive route to be utilized. The Applicant will direct test drivers turn right out of the site so as to not impact the surrounding buildings, including the school located adjacent to this site.
20. The Applicant testified that vehicles are paid for and picked up by the buyers from Wednesday at noon to Friday at 5:00 p.m. of each week. All payments for auction purchases are made in person and are accomplished directed between the selling car dealer and the buying car dealer. The Applicant testified that it receives a flat fee per vehicle sold for its services.
21. The Applicant testified that it will install a 6 foot high black vinyl chain link fence surrounding the proposed inventory storage area, that the fence will include mesh strips to shield the vehicles from public view and that landscaping will be installed along the frontage on Springdale Road, including evergreen trees

and shrubs to further screen the inventory parking area from public view.

22. Teal Jefferis, P.E, the Applicant's engineer, testified that the existing building contains approximately 91,000 square feet of space and a total of 599 parking spaces, including ADA spaces located near the entrances to the building.
23. Mr. Jefferis testified that there is a loading area which will be utilized by the Applicant for its vehicle delivery and that the property also contains a trash enclosure, both of which will be used by the Applicant.
24. Mr. Jefferis testified that the Applicant will use the rear portion of the property for its office space and will have a total of 234 dedicated parking spaces, 167 of which will be in the controlled, fenced and gated area for inventory parking. As well, 67 designated spaces will be used for its customers in the regular lot.
25. Mr. Jefferis testified that the 6 foot high fence around the controlled parking area will be gated and that the fence will not impede the parking of the other tenants in the building.
26. Mr. Jefferis testified that there are no changes being made to the building and there are no site improvements, with the exception of the landscaping to be added and the fence. He stated that the existing lighting will remain the same.
27. Mr. Jefferis testified that the fence will be black vinyl-coated chain link fence with black mesh for screening and that the frontage along Springdale Road will be planted with evergreen trees and shrubs to provide additional screening of the inventory vehicles from public view.
28. Mr. Jefferis testified that he investigated numerous calculations for parking requirements at this site and he determined that the 599 existing spaces are more than sufficient for the building's total parking needs. He stated that under even the worst case scenario for parking calculations, the maximum number of spaces which could be required is 595 spaces including the inventory lot, which is still under the existing 599 parking spaces provided.
29. Mr. Jefferis testified that no signs are proposed except for a wall-mounted tenant sign in the rear above the door to South Jersey Auto Auction's office space and the use of directional signs on-site, which include pavement painting "Reserved for SJAA" on the pavement.
30. Jim Miller, P.P., the Applicant's professional planner, testified that this site is approximately 2,000 feet away from the Point of Woods residential community which will not be impacted by the Applicant's use of the site.

31. Mr. Miller testified that the adjoining area and properties in Mount Laurel also have the same type of industrial zoning and uses as exists in this area of Cherry Hill.
32. Mr. Miller testified that the use variance is required because the Ordinance prohibits used car dealers which are not a part of a new car dealership. He stated that this proposed use is substantially different than the typical used car dealer in that the business is not open to the general public, vehicles are not sold to the general public, the customers are all car dealers, that all sales transactions occur electronically, that there are no banners, signs and/or flags that are placed on the site or in the windows of any of the vehicles, that there are no salespeople or retail sales, there are no sales trailers and the cars do not have prices placed on the windshields.
33. Mr. Miller testified that this business operation requires inventory parking and that all of the cars to be sold are parked in a lot in regular parking stalls just as the parking occurs for the other office uses. There is no "stacked" parking of vehicles.
34. Mr. Miller testified that the hours of operation are limited to Monday through Friday, 9:00 a.m. - 5:00 p.m.
35. Mr. Miller testified as to the positive and negative criteria required by the statute and stated that this site satisfies two (2) purposes of the MLUL, N.J.S.A. 40:55D-2(a) & (g). He also stated that this site is particularly suited for this use because the site has excess parking needed to accommodate this use and is an appropriate location and the actual parking demand is less than the existing 599 spaces. He stated that this site has the capacity to accommodate this use and the required parking since the parking for this building is significantly underutilized.
36. Mr. Miller testified that it is also particularly suited because the proposed use mirrors other uses that exist in the IR Zone and while the Ordinance does not allow for automobile inventory storage, it does allow for other types of outdoor inventory storage.
37. Mr. Miller testified that this proposed use has less potential impact than other permitted industrial park uses which require more truck traffic and heavier industry and more signage.
38. Mr. Miller testified as to the negative criteria and stated that this use can be reconciled with permitted uses in the IR Zone, that this use was not anticipated when the Ordinance was adopted which preceded internet-type sales of used cars.
39. Mr. Miller testified that this use will not result in a substantial detriment to the public good and the use will not impair the intent of the zone plan and Zoning Ordinance.

40. Mr. Miller testified that the Applicant has agreed to comply with all of the comments and conditions contained in the Community Development review letter of January 9, 2018, including that the Applicant will comply with the landscape comments contained in said review letter.
41. Mr. Miller testified that this proposed use is consistent with the Master Plan and that there are no adverse impacts to the surrounding area and that the site supports the particular deviation.
42. The Applicant testified that it will agree to comply with all of the proposed conditions imposed by the Zoning Board as set forth below herein.
43. The development plans have been reviewed by the Department of Community Development (whose findings and reports are incorporated herein and made a part hereof) and have been found to be in compliance with the Development Control Regulations of the Township except as noted in the report of January 9, 2018.
44. The Zoning Board has relied upon the representations made by the Applicant and its professionals in its testimony at the public hearings in this matter, which representations are material and without which the requested use variance relief would not have been granted. The Zoning Board has also relied upon the Consent to Sublease, Exhibit A-5, which the Applicant has represented has been fully executed by all necessary parties. Said Consent has also been relied upon as a material representation, without which said use variance also would not have been granted.
45. The Zoning Board has reviewed and considered the relevant portions of the Zoning Ordinance, the Municipal Land Use Law, exhibits, testimony and other pertinent documents and authority submitted in this matter and has considered the positive and negative criteria as set forth in the MLUL as well as the relevant court decisions.
46. The Zoning Board has reviewed and considered the relevant portions of the Zoning Ordinance, the Municipal Land Use Law, exhibits, testimony and other pertinent documents and authority submitted in this matter and has considered the positive and negative criteria as set forth in the MLUL, whether the site is particularly suited for this proposed use as well as the relevant SICA balancing test to be applied as required by the relevant court decisions.
47. The Applicant has sustained his burden to affirmatively prove, produce and introduce testimony and evidence sufficient to satisfy its burden regarding the negative criteria of the statute and that the application can be granted without any substantial detriment to the public welfare and without impairing the intent and purpose of the zone plan and Zoning Ordinance as set forth above in the findings of facts.

48. The Applicant has sustained its burden to affirmatively prove, produce and introduce testimony and evidence sufficient to sustain its burden regarding the positive criteria of the statute to justify the requested use variance as set forth above in the findings of facts section.
49. Based upon the relevant testimony, the Board finds that the positive criteria of the statute has been met and that there are no negative impacts associated with this application, that the site is particularly suited for this use with the agreed upon conditions imposed and that the Applicant has sustained its burden of proof in this matter.

**NOW, THEREFORE**, based upon the foregoing findings of facts, determinations and conclusions of law, including all the testimony presented at the hearing, **BE IT RESOLVED** by the Township of Cherry Hill Zoning Board of Adjustment that Application No. 17-Z-0040 (PBC 9924) by South Jersey Auto Auction for a use variance pursuant to N.J.S.A. 40:55D-70(d) (1) and for minor site plan approval, is hereby **GRANTED** by a vote of seven (7) in favor and zero (0) opposed, for the reasons set forth on the record in this matter and subject to the following terms and conditions:

1. The use variance from Sections 401.J.6 and 419.B to permit a wholesale used auto auction for the sale and storage of used cars in the IR Zone, is granted.
2. The bulk variances requested from Section 511.H.2.b to permit a parking setback from the right-of-way of 15 feet from Carnegie Plaza and 16.11 feet from Springdale Road where 20 feet is required and from Section 511.H.2.c to permit a non-residential parking setback of zero feet is required, are both recognized as preexisting, non-conforming conditions. Thus, said variances are not required.
3. The design waiver from Section 510.B.1 to permit one loading area where a minimum of five (5) off-street loading areas are required constitutes a preexisting, non-conforming condition not affected by this application. Thus, said waiver is not required.
4. All agreements and/or representations made by the Applicant as set forth at the hearing in this matter and/or as contained in the "**WHEREAS**" recital paragraphs of this Resolution have been specifically relied upon by the Zoning Board in its decision to grant the use variance and said agreements and representations shall be fully satisfied by the Applicant in accordance with their terms.
5. The Applicant shall comply with all of the comments and conditions set forth in the Department of Community Development review letter of January 9, 2018, except as specifically noted on the record.

6. The Applicant shall revise the plans to reflect that a 6 foot high black, vinyl-coated chain link fence with black mesh will be installed for appropriate evergreen trees and shrubs for screening, including along the frontage of Springdale Road.
7. The Applicant shall obtain permits for all signs utilized by the Applicant and all signs shall be consistent with the Ordinance requirements or the Applicant shall return to the Zoning Board for appropriate sign variances.
8. The Applicant shall revise the plans to include a note that there shall be no outdoor signs, light strings, air puppets, pennants, banners and/or flags of a temporary or permanent nature erected on the site or placed on any of the parked or stored vehicles on the site.
9. The Applicant shall not utilize any temporary structures or trailers at this site and there shall be no outdoor speakers, intercom or other such type mechanical devices in the parking areas of the site.
10. The Applicant shall revise the plans to comply with all of the landscaping comments set forth by the Department of Community Development and shall work with the Department of Community Development to install appropriate landscaping along the frontage on Springdale Road.
11. The Applicant shall provide keys or code numbers to the gated portion of the parking lot area to the Cherry Hill Fire Department.
12. There shall be no repair work, oil changes, vehicle painting or other type of mechanical repairs done to any of the vehicles to be sold at this site.
13. There shall be no retail sales of any vehicles permitted and there shall be no sales to the general public. All sales shall occur to licensed dealers by way of electronic silent internet auction.
14. All vehicle sales shall only be conducted via a silent internet auction as described by the Applicant in its testimony in this matter, there shall be no retail business or sales involved, only wholesale used vehicle sales between licensed dealers to licensed dealers.
15. The Applicant shall be required to maintain a valid Used Car Dealer license issued by and consistent with Motor Vehicle Commission regulations.
16. The Applicant shall not expand its business operations at this site beyond Monday through Friday from 9:00 a.m. - 5:00 p.m. without making further application to the Zoning Board approval of such expansion.

17. The Applicant shall revise the plans to include the 200 foot property list and to include the Zoning Districts of all adjacent properties.
18. The Applicant shall revise its parking analysis to reflect the requirements of Section 511.B.2 of the Zoning Ordinance and shall improve the parking requirements for automobile sales including the requirements set forth in Section 511.B.6 of the Zoning Ordinance.
19. The Applicant shall submit any parking agreements entered into between the Applicant, Fox, the primary tenant and the property owner for advance review and approval by the Department of Community Development, the Zoning Board Engineer and the Zoning Board Solicitor.
20. The proposed parking area for the storage and parking of vehicles to be utilized by the Applicant shall be inspected by the Township Department of Engineering to determine whether repairs are required for the parking lot. If so, the Applicant shall make all repairs as noted by the Department of Engineering.
21. The Township Department of Engineering shall inspect the existing striping of parking spaces in the designated area to be used by the Applicant to determine if re-striping is necessary. Any pavement markings shall be consistent with Section 511.J.1, including the use of thermoplastic material or long-life epoxy resin and any crosswalks shall be provided across all curb cuts and a note shall be placed on the plans that the maintenance and upkeep is the responsibility of the Applicant.
22. The Applicant shall revise the plans to include a note that it will comply with the Ordinance regarding site lighting and illumination. Lighting shall be designed to minimize energy and maintenance requirements and shall comply with the US Energy Policy Act of 1992, as amended.
23. The Applicant shall revise the plans to provide additional screening in the areas north and south of the inventory storage lot adjacent to Springdale Road. The final landscaping plan shall be subject to review and approval of the Department of Community Development and the Zoning Board Engineer.
24. The shipping container located in the parking lot along Springdale Road which contains an illegal sign for Fox Rehabilitation shall be permanently removed.
25. The Applicant shall have a total of 234 dedicated parking spaces in the parking lot of the site, 167 of which shall be in the fenced inventory control area and 67 in the general parking lot to be used by the Applicant's customers.

26. Test drives of the vehicles shall be limited to the times when the business is open for operation and conducted only during its normal 9:00 a.m. - 5:00 p.m. business hours. The Applicant shall include a note on the plans as to a designated test drive route to be utilized, which will include a right turn out of the site so as not to impact the surrounding buildings and school.
27. The use approved at this site shall be limited to wholesale licensed dealer to licensed dealer sales of used motor vehicles, trucks and motorcycles. The sale of any commercial vehicles, commercial trucks and trailers shall be prohibited.
28. The Applicant shall use the existing loading area for the delivery of inventory vehicles to the site which arrive by truck carriers or by vehicle driver.
29. The Applicant shall submit all leases, agreements, easements and sub-leases to the Department of Community Development, the Zoning Board Engineer, and the Zoning Board Solicitor for their advance review and approval.
30. The Applicant shall be prohibited from using sales trailers, outdoor loudspeaker system, live outdoor auctions or outdoor sales personnel.
31. All vehicles, including inventory vehicles to be sold, shall be parked in regular parking stalls which shall be striped consistent with ordinance requirements. No stacking of vehicles shall be permitted on the site.
32. The Cherry Hill Zoning Board has relied upon the representations made by the Applicant and its professionals in its testimony at the public hearings in this matter, which representations are material and without which the requested use variance relief would not have been granted. The Cherry Hill Zoning Board has also relied upon the Consent to Sublease, Exhibit A-5, which the Applicant has represented has been fully executed by all necessary parties. Said Consent has also been relied upon as a material representation, without which said use variance also would not have been granted.
33. If applicable, the Applicant shall make payment of the Housing Impact Fee or Non-Residential Development Fee consistent with the relevant statutes, regulations and ordinances.
34. The Applicant is hereby notified that prior to the issuance of any zoning permits:
  - a. All taxes and assessments shall be paid on the property for which this application is made. The Applicant shall submit proof that no taxes or assessments for local improvements are due or delinquent on the property for which the application is made.

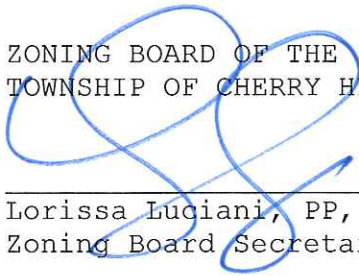


- b. Any and all conditions made a part of this approval, including those noted by reference in any reports of any consultants to the Zoning Board or as set forth on the record at the Zoning Board hearing must be satisfied.
  - c. Zoning approval must be obtained from the Department of Community Development.
  - d. The Applicant shall pay all required escrows, costs and professional fees associated with the application to the Department of Community Development within fourteen (14) days of receipt of a written request for payment of escrow funds. The failure to pay the required escrow funds within the fourteen (14) day period after receipt of written notice may result in the voiding of this approval. Negative escrow account balances shall incur interest at the rate of 1½% per month.
  - e. Any and all outside agency approvals that are required must be obtained by the Applicant.
  - f. Sign permits shall be obtained from the Department of Community Development.
35. The failure of the Applicant to comply with any of the conditions contained in this Resolution will permit the Zoning Board, at its sole option, to rescind the approval being granted by this Resolution and/or to advise the Township to revoke any permits which have been issued to the Applicant.

DATED: February 1, 2018


ZONING BOARD OF THE  
TOWNSHIP OF CHERRY HILL

By:

  
\_\_\_\_\_  
Lorissa Luciani, PP, AICP,  
Zoning Board Secretary

**CERTIFICATION**

This Resolution of Memorialization being adopted by action of the Zoning Board on this 1<sup>st</sup> day of February, 2018, is a true copy of the action taken by the Board at its meetings held on January 18, 2018 and February 1, 2018.

  
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Lorissa Luciani, PP, AICP  
Zoning Board Secretary

