

# **PUFF & COCKERILL LLC**

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File No. 12113

March 13, 2020

Borough of Woodbury Heights  
Planning and Zoning Board  
Attn: Shannon Elton, Secretary to the Board  
500 Elm Avenue  
Woodbury Heights, NJ 08097

**Re: Application for Use Variance  
Property: 307 Glassboro Road, Woodbury Heights  
Block 38, Lots 15, 6 and 7  
Applicant: 302 Tricentennial LLC**

Dear Woodbury Heights Planning & Zoning Board:

Please allow this letter brief to serve in lieu of a more formal brief in support of the Applicant's use variance before the Woodbury Heights Planning and Zoning Board. In the present matter before the Board, Applicant, 302 Tricentennial LLC, by way of managing member Dr. David Gubman, MS, OD, FAOO, (hereinafter the "Applicant") seeks the Board's approval of a use variance for the property known as 307 Glassboro Road, Woodbury Heights, Block 38, Lots 15, 6 and 7 (hereinafter the "Property"). The Property consists of a one-story office space building, known as Suite 100, and a connecting two-story professional office building, which is currently occupied by the Eye & Sight Center on the second floor. The property is situated in the Limited Industrial District (hereinafter "LI District") of the zone map of Woodbury Heights. In a LI District the permitted uses include "office and office building" space.

The present application for a use variance would permit Applicant's proposed Tenant, Crystal Clear Recording and Video Production (hereinafter the "Tenant") to occupy the office space situated in Suite 100 of the Property, which is a single story portion of the building along Glassboro Road. The proposed use is unique, and we believe the use falls under "office" space, however, we understand the Zoning Officer had a difference of opinion, which is why the present application for a use variance has been filed. Music and sound recording is not often indigenous to our area and local economy, and, therefore, this use was not specifically contemplated in the drafting of the ordinance. Indeed, the ordinance for LI District and Community Commercial ("CC District") only contemplated a few broadly worded permitted uses, of which includes "office and office building." (See WH Ordinance Section 70-15(a)(2)). We believe the use falls

under office space. In an effort of abundant caution, the applicant has filed the present use variance for approval before this Board.

An application for a use variance is being brought before this Board because the Applicant and Tenant were denied a Zoning Permit Application by Deptford Township Zoning Officer on February 21, 2020. (A copy of the Zoning Permit Application is attached hereto as Exhibit "D"). The Zoning Officer's denial requested Applicant and Tenant file a use variance. In this case, Tenant intends to utilize the office space at the Property for office use for his audio recording studio.

As set forth more fully below, the positive criteria for the use variance substantially outweigh the negative criteria and this Board may approve the present use variance with full legal support and bring new commerce to Woodbury Heights. The proposed use of the property we believe is compatible with the permitted use in the LI district, the property is suitable for the intended use, and the use will serve the best interest of Woodbury Heights. Accordingly, the Applicant respectfully requests this Board's approval for a use variance to permit Tenant's occupancy and use.

### **Submitted Documents in Support**

Applicant has submitted the following documents in support of the present application:

- Exhibit "A" – Survey & Plan of Property Situate  
Prepared by Herbert J. Neilio, Sr., Land Surveyor
- Exhibit "B" – Drawing of Suite 100 (Tenant's Office Space)
- Exhibit "C" – Drawing of Parking Lot and Lights
- Exhibit "D" – Deptford Township Zoning Permit Application
- Exhibits "E", "F", "G" and "H" – Pictures of interior of Suite 100
- Exhibits "I" and "J" – Pictures of Exterior of 307 Glassboro Road

### **Proposed Use and Applicant's Property**

The Property includes a one-story office space, known as Suite 100, and a connecting two-story professional office building and as stated above is currently occupied by the Eye & Sight Center on the second floor. The Property has two (2) additional office space units for commercial use. The property is situated in the Limited Industrial District (hereinafter "LI District") of the zone map of Woodbury Heights.

#### **I. Tenant's Proposed Use**

As briefly set forth above, the proposed Tenant is Crystal Clear Recording and Video Production, owned and operated by Joseph Heier of Pitman, New Jersey. Mr. Heier founded the company nearly thirty

(30) years ago in 1985. Mr. Heier has a trained musical background as a musician, including, the French horn, trumpet, trombone, flugelhorn, coronet and piano. Mr. Heier has authored a book detailing the best ways to be an audio engineer, which has been used by thousands of students across the United States, Canada and United Kingdom.

Mr. Heier's company utilizes office space to record and teach music and film. His clients are individuals and small groups who desire to learn audio engineering, studio and production management. His clients are various, including singers, songwriters, and musicians from the tri-state area.

The day-to-day business includes working with three (3) to five (5) clients per day. Generally, clients are provided one-on-one services, with an occasional group (5 or so individuals). Each session varies depending on the client. Mr. Heier works with all genres, who are professionals in their field and will respect his work and surroundings.

Mr. Heier has two (2) to three (3) employees, inclusive of himself. It is anticipated that he will utilize two (2) to four (4) parking spaces at any given period. Typically, in a one-on-one session, Mr. Heier will only require two (2) parking spaces. For groups, Tenant expects to use four (4) spaces.

His office space will include recording equipment in his office space, where he utilizes computer software programs. Mr. Heier does not require special equipment or additional electrical use. His office is a common studio office setting. The intended use does not include any use for outside areas. The proposed use is strictly as defined herein.

No structural changes are required to incorporate the office space, as existing, to the office space required for his company's intended use of office space. Any changes to the interior of the property will be cosmetic and not structural.

The Applicant has provided a layout of the property as set forth in the Exhibits "B" and "C" attached hereto. In short, they are as follows:

(a) Interior Office Space Use. The Applicant's Suite 100, located along the Glassboro Road side of the building is already an established office space. (A drawing of the site plan for Suite 100 is attached hereto as Exhibit "B"). The foyer and side office space encompassing 844.83 square feet will be utilized for meeting clients, a front desk and office space. The 160.82 square foot room in the middle will be utilized as a studio and will be properly insulated. The 184.09 square foot room, adjacent to the studio room, will also be used for video and audio engineering use. The three (3) remaining rooms include storage space and a bathroom. The mechanical room will remain a mechanical room. There are no structural alterations to the office space required. For the Board's convenience, I have attached pictures of the three (3) larger rooms as Exhibits "E", "F", "G", and "H".

Accordingly, the existing space accommodates the intended use for Tenant's company. No structural changes are required. The property is move in ready.

(b) Parking. The property has ample parking, with twenty-two (22) available lined parking spaces for daily use in the “front” lot of the property. (Exhibit “C”). The property also has a “rear” lot, where Applicant permits the neighboring company, Pellegrino Chrysler Jeep, to utilize the rear parking spaces (behind the building) for additional parking. (Exhibit “C”). Currently, Pellegrino has sixty-one (61) cars parked in the rear lot. The parking lot for the Property is substantially larger than required pursuant to WH Ordinance Chapter 70-15(G) and 70-23.

If parking is determined to be an issue, which it very unlikely given the number of available spaces, the Applicant can reduce the number of spaces made available to Pellegrino Chrysler Jeep to accommodate more spaces for the building. Moreover, the parking will not detract or injure the professional office building, which has ample parking for Applicant’s and Tenant’s use.

Because there are many available parking spaces, the proposed use will not effect parking. Tenant anticipates using only two (2) to four (4) of the twenty-two (22) available parking spaces in the front parking lot.

(c) Lighting. The Property is adequately illuminated by seventeen (17) exterior lights and five (5) flood lights as shown as (x) on Exhibit “C”. The property is illuminated by lights on all sides of the professional office building, including lights along the parking lot and the flood lights illuminate the parking lot from both North and South side of the lot. Notably, lighting on the parking lot has not been an issue and the proposed use by Tenant will not detract or injure the use of the building or parking lot area.

(d) Signage. The Property currently has one freestanding sign along Glassboro Road and a sign fixed to the property designating the specific location of Applicant’s medical practice.

A waiver is requested for an additional sign to designate Tenant’s Company from Applicant’s company. A second sign would help guide customers to their proper destination. The Tenant intends to add a fixed sign next to the door to the front unit to be occupied by his company, which we believe is permitted under “accessory uses permitted,” pursuant to WH Ordinance Section 70-15(B)(3) (Signs). Applicant’s waiver requests a second sign be permitted to be attached flat against the building next to the entrance of Suite 100. This would permit Applicant to have a sign for the Eye & Sight Center and Tenant to have a sign for Crystal Clear Studio.

A waiver is requested for an additional sign because the permitted signs in the LI District only permits one (1) sign not larger than five percent (5%) of the area of the front wall of the building or one hundred (100) square feet. In the present case, the sign would be less than five percent (5%) of the wall. The proposed sign would be a two (2) foot by two (2) or three (3) feet, within the confines of the permitted size.

### **Criteria for Use Variance**

As required for a use variance, pursuant to Municipal Land Use Law (“MLUL”) N.J.S.A. 40:55-1 et seq., the following is an explanation and balancing of the positive and negative criteria for the proposed use. As set forth more fully below, the positive criteria substantially outweigh the negative criteria, which is slight.

Positive Criteria

(a) Promote the General Welfare. The Tenant's proposed use will promote the general welfare of Woodbury Heights. First, the Tenant will bring a new and successful family-owned and operated business to the local community. The Tenant's use is an inherently beneficial use to the community as customers will be introduced to and engage in business within Woodbury Heights and music in and of itself promotes the good will of the public.

The Tenant will occupy office space, which was previously unoccupied since 2013. Moreover, the Tenant's profession is an inherently beneficial use to the community, fostering the promotion of arts, music and education in the audio engineering world. As we continue to innovate and progress further into a technologically driven world, audio and recording professions are increasingly more important for our local residents to learn and develop. New Jersey has a well-settled history of finding inherently beneficial uses when commercial uses include advancements for technology. In the present application, the proposed use of office space for Tenant's company fits within this context and is suitable for the intended use in the zone map district (i.e., permitting office space).

(b) Promote the Property. Tenant's use will properly promote the property and provide a desirable visual environment by utilizing previously unoccupied office space along a well-traveled road. Further, the intended use is harmonious with the permitted uses in within the zone plan. Accordingly, the proposed use is compatible with the proposed uses permitted in the district. The use does not injure or detract from the use of the property (or neighboring property).

(c) Use is Consistent with Intent and Purpose of the Master Plan and Zoning Ordinance. The proposed use variance is consistent with the intent and purpose of Woodbury Height's Master Plan and Zoning Ordinance. The proposed use is to permit Tenant's company to utilize office space for audio and visual engineering. As indicated above, when the zoning ordinance was enacted, there was no specific permitted use for audio and visual engineering. However, office space was a contemplated use and incorporated in Limited Industrial districts. We believe an audio and visual studio is within the contemplated office and office building use in the LI District. Afterall, limited industrial is a component of tenant's company, i.e., the teaching and mentoring of musicians is inherently limited industrial work. Tenant's use requires office space for his studio, therefore, we believe the use is consistent with the intent and purpose of the master plan and zoning ordinance.

Moreover, the proposed use will not detract from the character of the neighborhood. Indeed, the character of the neighborhood is commercial and professional office space and buildings. The proposed use will further the intent and purpose of the master plan and zoning ordinance. Further, as the Tenant has a very limited number of clients per day, the use will not adversely affect the safe flow of traffic and will not add to any undue congestion.

(d) Undue Hardship. The Applicant would suffer undue hardship if office and office building use were to be denied in a zone specifically permitting such use for "office and office building" in a LI District, which is the case presently before this Board. The proposed use is for this exact purpose, the use of office space for Tenant's company. A denial of a permitted use would create an undue hardship on the Applicant and unnecessarily restrict the LI District beyond its intended use.

### Negative Criteria

As required by the MLUL, an applicant for a use variance is required to show that the positive criteria outweighs the negative criteria, if any, for the proposed use. Accordingly, the MLUL provides that no relief may be granted unless it can be done: (1) without substantial detriment to the public good; and (2) without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

In the present matter before this Board, it is respectfully submitted that there would be no negative criteria for the permitted use. As stated above, we firmly believe the proposed use fits the definition of permitted uses in the LI District.

Nevertheless, the first factor requires a showing that the proposed use would not be a substantial detriment to the public good. Here, the public will not be substantially harmed by the Tenant's occupancy and use for his company. Substantial detriments to the public good focus upon the use variance's impact on nearby properties.

In the present matter, the proposed use will neither impact nor damage the character of the neighborhood and certainly not to the extent of substantial detriment. In our opinion, there is no negative impact on the public good. Instead, there are only positive impacts on the public good. This is not a case of a dangerous or hazardous industry or an obscene or offensive company, which could substantially damage the public good. This proposed use is for an audio and visual studio. It is the promotion of the arts, music and technological innovations that are inherently important for our local community. Accordingly, it is our belief that the negative criteria requirement of a "*substantial detriment to the public good*" is absent in this present use variance application for the intended use.

Secondly, the intent and purpose of the zone plan and zoning ordinance will not be substantially impaired by the use variance. The specific use for audio and visual studios were not contemplated by the ordinance when enacted, however, office and building space was permitted. The proposed use will utilize office space. Accordingly, it is our belief that the negative criteria requirement of a "*substantial detriment to the intent and purpose of the zone plan and zoning ordinance*," is also absent in the present use variance application.

Therefore, when balancing the positive criteria with the negative criteria, it is our belief that the positive criteria substantially outweigh any negative criteria.

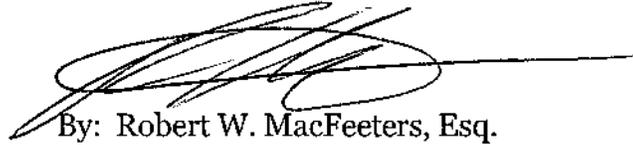
### Conclusion

Based on the foregoing, it is respectfully submitted that the use variance and sign waiver be approved by this Board and any ancillary waivers be approved.

The Applicant and Tenant look forward to addressing any additional questions regarding the Property, the intended use and any additional questions before the Board on Monday, April 6, 2020.

Thank you.

Respectfully submitted,  
**PUFF & COCKERILL, LLC**

A handwritten signature in black ink, appearing to read 'R. MacFeeters', with a long horizontal line extending to the right.

By: Robert W. MacFeeters, Esq.

RWM/sap  
Attachments: Exhibits