

**LANC & TULLY**  
**ENGINEERING AND SURVEYING, P.C.**

John J. O'Rourke, P.E., Principal  
David E. Higgins, P.E., Principal  
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Arthur R. Tully, P.E.

September 24, 2020

Mr. Lee Bergus, Chairman  
Town of Goshen Planning Board  
41 Webster Avenue  
Goshen, NY 10924

Re: Site Plan for 10 6-1/5 Station Road  
Tax Lot # 12-1-8.13

Dear Chairman Bergus and Members of the Planning Board:

Please find enclosed the following:

- Fourteen (14) copies of plans entitled, "Site Plan Prepared for 10 6-1/2 Station Road LLC", dated October 3<sup>rd</sup> and last revised September 24, 2020.
- Fourteen (14) copies of the Decision of the Zoning Board of Appeals dated September 1, 2020
- Fourteen (14) copies of e-mail correspondence from Barry Terach, architect to Neal Halloran, dated May 17, 2020

You may recall that the project appeared before the Planning Board several times, with the most recent meeting being on March 5, 2020, at which time the application was referred to the Zoning Board of Appeals for consideration of three variances consisting of (1) side yard setback less than 30 feet, (2) less than 600 feet of separation between curb cuts, and (3) impervious surface coverage exceeding 70%. Attached is a copy of the ZBA decision provided to be by Kelly Naughton. I do not know if Town has a signed copy of the decision yet. As outlined in the decision, however, the ZBA granted the variance for the side yard setback and the curb cut for the driveway. It was determined during the course of the review that the impervious surface calculation done by my office prior to the ZBA application was done incorrectly and that the actual impervious surface cover is less than the 70% maximum permitted, so no variance for surface coverage was needed.

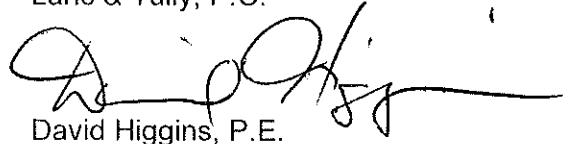
The enclosed plans have been revised to address the prior comments of the Planning Board, and now provide a landscaping plan, including additional landscape plantings on the west side of the building. The plans now also incorporate an open-bottom arch culvert pipe for the driveway crossing instead of the 15" HDPE pipe previously shown. At this time, we are coordinating with our wetland consultant to see if the DEC will require this type of crossing or if the originally shown 15" HDPE pipe will be acceptable.

There was a question previously raised during the review regarding requirements for fire suppression and sprinkler systems. As outlined in the correspondence from Barry Terach, the architect for the project, to Neal Halloran outlining that that the building code does not require a fire sprinkler system.

On behalf of the applicant, we respectfully request placement on the next available Planning Board agenda to continue with the approval process. If a public hearing is required, we ask that it be scheduled. If you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Lanc & Tully, P.C.

A handwritten signature in black ink, appearing to read 'David Higgins', with a long horizontal flourish extending to the right.

David Higgins, P.E.

cc: Lipa Brach  
Barry Terach

TOWN OF GOSHEN, NEW YORK  
ZONING BOARD OF APPEALS

-----X  
In the Matter of the Application of  
LIPA BRACH  
(a/k/a 10 6½ Station Road LLC)  
Designated as Tax Map Section 12, Block 1, Lot 8.13

**DECISION**

For Two Area Variances from the  
Town of Goshen Zoning Board Of Appeals.  
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THIS APPLICATION comes before the Town of Goshen Zoning Board of Appeals (“Board”) as a request for two area variances from the minimum side yard setback and the minimum curb cut separation distance applicable to structures in the Highway Commercial (HC) district in the Town of Goshen.

**PRELIMINARY STATEMENT**

Lipa Brach (a/k/a 10 6½ Station Road LLC) (hereinafter referred to as “the Applicant”) is the contract vendee for the property located at 10 6½ Station Road in the Town of Goshen, New York.<sup>1</sup> The property is shown on the Town tax maps as Section 12, Block 1, Lot 8.13, and is located within the Town’s Highway Commercial (HC) zoning district. The property is considered a “corner lot” under the Town Code, meaning that it has two front yards and two side yards, but no rear yard. *See* Town Code § 97-84.<sup>2</sup> The application before this Board, dated November 7, 2019, seeks two area variances from the minimum side yard setback and the minimum curb cut separation distance applicable to property located within the HC district. *See* Town of Goshen Zoning Code § 97-14. The variances are sought in connection with the Applicant’s proposal to convert an existing tennis club facility on the property into a warehouse and office building.

The quorum of the Board present at the September 1, 2020 meeting voted to grant the requested area variances, as conditioned below, and directed the Applicant to the Planning Board for site plan review, subject to the terms and conditions set forth in this decision and all applicable State and Town Code requirements, including all required permits from the Building Department.

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<sup>1</sup> Orange Hollow Racquet Club, the owner of the property, submitted an Owner’s Endorsement authorizing this application dated May 27, 2020.

<sup>2</sup> “Corner lot” is defined in the Town Code as “[a] lot at the junction of and abutting on two or more intersecting roads.” Town Code § 97-84. The property was determined to be a corner lot due to the configuration of 6 ½ Station Road.

## **PUBLIC HEARING AND SEQRA**

The public hearing on this Application, upon a notice duly published, was held on August 18, 2020, when it was closed. In accordance with the State Environmental Quality Review Act (“SEQRA”), the Board acted as lead agency in an uncoordinated review, and declared this to be an Unlisted action. At its August 18, 2020, meeting, the Board issued a Negative Declaration, concluding the SEQRA process.

## **COUNTY GML § 239 -l or -m REPORT**

The Board referred this application to the Orange County Department of Planning on July 22, 2020 pursuant to General Municipal Law § 239-l or -m. No response was received from the County, and more than thirty (30) days had passed since the referral was made, giving the Board jurisdiction to take action.

## **DECISION**

### **§ 97-14(A): Minimum Side Yard Setback: Area Variance**

The Applicant is seeking to convert the existing building to a warehouse and office use. The existing facility was approved by the Town Planning Board in or around 1974. The approved site plan noted that the rear of the building was to be located thirty (30) feet from the property line. However, the building was constructed 23 feet, 7 inches from the property line. Town Code § 97-14(A) requires a minimum side yard setback of thirty (30) feet. The Applicant is requesting an area variance to bring the existing building, which was admittedly constructed too close to the property line, into compliance with the Town Code. *See* Town Code § 97-14(A).

Consistent with its statutory obligations under New York State Town Law § 267-b when considering an area variance, the Board balanced the benefit to the Applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community if the requested variance was granted. Further, as also required by statute, the Board took into consideration the following five issues in its balancing test:

1. Whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variance;
2. Whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicant to pursue, other than an area variance;

3. Whether the requested area variance was substantial;
4. Whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the difficulties professed by the Applicant were self-created.

The Board was also aware of its obligation to grant the minimum variance that it deemed necessary and adequate.

The Board began by discussing whether an undesirable change would be produced in the character of the neighborhood, or a detriment to nearby properties would be created, by the granting of the requested area variances, and whether the requested variances would have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board considered the character of the neighborhood, which consists of commercial businesses located very close to New York State Route 17M. The Board noted that although it generally does not consider the fact that a building already exists when it has been constructed not in accordance with the Town Code, this particular structure has been existence since the 1970s – nearly half a century – and no additions to the existing building are proposed. The Board also considered the shape, location and configuration of the property, as well as the lack of available developable area on the site. Due to the unique nature of the property as a corner lot, with two front yards and two side yards, the presence of the wetland areas and related buffer areas, and the fact that the structure has been in existence for almost 50 years, the Board determined that the location of the building on the property does not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties and will not have an adverse effect or impact physical or environmental conditions in the neighborhood. The Board weighed heavily that there was no undesirable change to the neighborhood and no adverse impact on physical environment as their discussions continued.

Additionally, the Board weighed whether reducing the required minimum side yard setback from thirty (30) feet to 23 feet, 7 inches was substantial. The Board concluded that if the Applicant was starting from scratch with the construction of this facility, the variance requested would be considered substantial.

The Board also considered whether the alleged difficulty was self-created, and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. It determined that the alleged difficulty was self-created by the Applicant, as

the building was not constructed in accordance with its approved site plan, and that the benefit sought could arguably be achieved by another method feasible for the Applicant to pursue, by relocating the portion of the structure that encroaches into the side yard setback. However, the Board determined that due to the location and unique circumstances of the property, including the presence of wetland areas and related buffer areas, there is not much room on the site for the Applicant to remove the encroaching portion of the structure and reconfigure the proposed building, although it might be possible. Because of those considerations, the Board gave little weight to this factor. The Board ultimately determined that the fact that there would be no change to the neighborhood and no adverse impacts to the physical environment outweighed the substantial nature of the variance, the fact that it was self-created, and the presence of potential feasible alternatives.

**§ 97-14(D)(6) – Curb Cuts: Area Variance**

Under § 97-49(D)(6), “the minimum distance between curb cuts shall be 600 feet, unless the configuration of a parcel in relation to adjoining parcels makes this requirement impossible to satisfy.” The Applicant has proposed a second curb cut for entry into the property for purposes of separating truck traffic, pedestrians and cars. The property’s existing curb cut is located directly across from the curb cut that gives access to the property located on the opposite side of 6 ½ Station Road (Section 12, Block 1, Lot 8.21). The proposed additional curb cut will be located approximately 75 feet to the east of the property’s existing curb cut, and approximately 8 feet to the west of the curb cut for the adjacent property (Section 12, Block 1, Lot 7.31).<sup>3</sup>

The Board discussed the required balancing test outlined above, including whether an undesirable change would be produced in the character of the neighborhood or if a detriment would be created to nearby properties by the granting the area variance, and whether the requested area variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board considered the character of the neighborhood, which consisted of commercial businesses, and noted that the existing curb cuts along 6½ Station Road in the vicinity of the property do not meet the 600-foot minimum separation distance. Additionally, the Board recognized that due to the unique configuration of the lots along this portion of the road, the location of the proposed additional curb cut gives the maximum site

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<sup>3</sup> These distances are measured from edge of pavement, excluding the apron.

distance in both directions. The Board expressed its concern with the location of landscaping on the site, which might interfere with sight distance, and concluded that landscaping shall be placed and/or removed so as not to interfere with the sight distance, to the satisfaction of the Planning Board in consultation with the Town Engineer. The Board determined that, with this landscaping condition, the location of the proposed curb cut would not produce an undesirable change in the character of the neighborhood, or result in an adverse effect or impact on the physical or environmental conditions of the neighborhood.

Additionally, the Board weighed whether the 592 foot variance (from the closest curb cut to the east of the proposed curb cut) and 515 foot variance (from the closest curb cut to the west of the proposed curb cut) were substantial, as well as whether the alleged difficulty was self-created and whether the benefit sought by the Applicant could be achieved by some alternative method feasible for the Applicant to pursue. The Board concluded that the requested variances were substantial. In discussing feasible alternatives the Board found that safety concerns dictated the necessity of the second curb cut in the proposed location and determined that it could not be relocated due to the proximity to the wetlands onsite. The Board acknowledged that the proposed location of the second curb cut was to accommodate truck traffic and allow for safe truck turning movements into and out of the property. The Board concluded that there is no other method feasible for the Applicant to pursue. The Board next determined that the requested variance was self-created because the Applicant seeks to install the curb cut in this location, rather than complying with the required separation distance for one side of the curb cut, but acknowledged that the purpose of the additional curb cut was to separate truck traffic from cars and pedestrians. The Board also determined that the existing curb cut was previously approved in the 1970s, and therefore did not require a variance from the Board.

**CONCLUSION**

The Board had several concerns with the granting of the aforementioned variances, and determined that the concerns would be alleviated with the imposition of the following conditions:

1. This approval is conditioned upon the receipt of site plan approval from the Planning Board.
2. Any landscaping shall be placed and/or removed so as not to interfere with the sight distance, to the satisfaction of the Planning Board in consultation with the Town Engineer.

As a consequence of the Board’s discussions, the Zoning Board of Appeals hereby grants the requested area variances described and discussed above, subject to the aforementioned conditions, and hereby finds that the variances as granted are the minimum variances necessary to preserve and protect the character of the neighborhood.

Approved by Board:                    September 1, 2020

Vote of the Board:                    Chairman Garling –    Aye  
    Member Canton –     Aye  
    Member Donovan –   Absent  
    Member Farfalla –    Aye  
    Member VanHaaster – Aye

Written Decision Signed:            September \_\_, 2020

\_\_\_\_\_  
Edwin Garling, Chairperson

I, Priscilla Gersbeck, Town Clerk, do hereby certify that the foregoing Resolution of Decision was filed in the Office of the Town Clerk on September \_\_, 2020 and a copy thereof mailed to the Applicant.

\_\_\_\_\_  
PRISCILLA GERSBECK, CLERK  
TOWN OF GOSHEN, NEW YORK

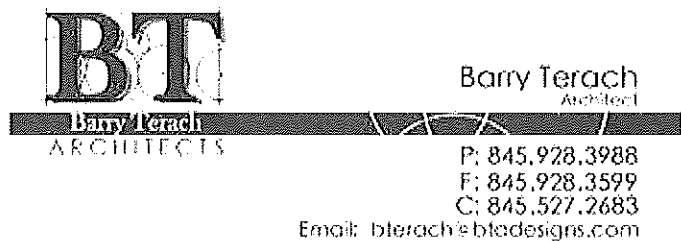


Of course, we will construct the accessible elements as we discussed, including a new exterior entrance to the proposed warehouse area.

I will put together the applicable sections of the code and email to you for you to review, I would like to move forward with the project for the owner as soon as possible.

If you want to give me a call meanwhile, (845) 527-2683.

Thanks,  
-Barry



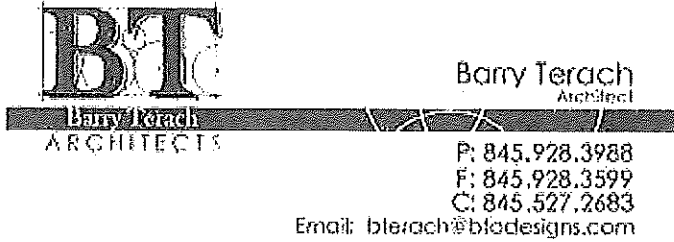
8 TURNER ROAD • CENTRAL VALLEY, NEW YORK 10917

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SECTION 202  
GENERAL DEFINITIONS

**CHANGE OF OCCUPANCY.** A change in the use of a building or a portion of a building that results in any of the following:

1. A change of occupancy classification.
2. A change from one group to another group within an occupancy classification.
3. Any change in use within a group for which there is a change in application of the requirements of this code

CHAPTER 10  
CHANGE OF OCCUPANCY

**1001.2 Certificate of occupancy.**

A *change of occupancy* or a *change of occupancy* within a space where there is a different fire protection system threshold requirement in Chapter 9 of the Building Code of New York State shall not be made to any structure without the approval of the *building official*. A certificate of occupancy shall be issued where it has been determined that the requirements for the *change of occupancy* have been met.

**1001.2.2 Change of occupancy classification or group.**

Where the occupancy classification of a building changes, the provisions of Sections 1002 through 1011 shall apply. This includes a change of occupancy classification and a change to another group within an occupancy classification.

SECTION 1002  
SPECIAL USE AND OCCUPANCY

**1002.1 Compliance with the building code.**

Where the character or use of an *existing building* or part of an *existing building* is changed to one of the following special use or occupancy categories as defined in the Building Code of New York State, the building shall comply with all of the applicable requirements of the Building Code of New York State:

1. Covered and open mall buildings.
2. Atriums.
3. Motor vehicle-related occupancies.
4. Aircraft-related occupancies.
5. Motion picture projection rooms.
6. Stages and platforms.
7. Special amusement buildings.
8. Incidental use areas.
9. Hazardous materials.
10. Ambulatory care facilities.
11. Group I-2 occupancies.

*Change of use/occupancy does not include any of the above.*

SECTION 1004  
FIRE PROTECTION

**1004.1 General.**

Fire protection requirements of Section 1011 shall apply where a building or portions thereof undergo a *change of occupancy* classification or where there is a change of occupancy within a space where there is a different fire protection system threshold requirement in Chapter 9 of the Building Code of New York State.

**SECTION 1011  
CHANGE OF OCCUPANCY CLASSIFICATION**

**1011.1 General.**

The provisions of this section shall apply to buildings or portions thereof undergoing a change of occupancy classification. This includes a change of occupancy classification within a group as well as a change of occupancy classification from one group to a different group or where there is a *change of occupancy* within a space where there is a different fire protection system threshold requirement in Chapter 9 of the Building Code of New York State. Such buildings shall also comply with Sections 1002 through 1010 of this code. The application of requirements for the *change of occupancy* shall be as set forth in Sections 1011.1.1 through 1011.1.3. A *change of occupancy*, as defined in Section 202, without a corresponding change of occupancy classification shall comply with Section 1001.2.

**1011.1.3 Change of occupancy classification based on hazard category.**

The relative degree of hazard between different occupancy classifications shall be determined in accordance with the categories specified in Tables 1011.4, 1011.5 and 1011.6. Such a determination shall be the basis for the application of Sections 1011.4 through 1011.7.

**TABLE 1011.5  
MEANS OF EGRESS HAZARD CATEGORIES**

RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (highest hazard)	
2	A-3
3	S-1
4 (lowest hazard)	

*Existing occupancy is higher hazard than the proposed occupancy.*

**1011.5.2 Height and area for change to an equal or lesser-hazard category.**

Where a change of occupancy classification is made to an equal or lesser-hazard category as shown in Table 1011.5, the height and area of the *existing building* shall be deemed acceptable.

**1011.6 Exterior wall fire-resistance ratings.**

Hazard categories in regard to fire-resistance ratings of exterior walls shall be in accordance with Table 1011.6.

**TABLE 1011.6  
EXPOSURE OF EXTERIOR WALLS HAZARD CATEGORIES**

RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (highest hazard)	
2	S-1
3	A
4 (lowest hazard)	

**1011.6.1 Exterior wall rating for change of occupancy classification to a higher-hazard category.**

Where a change of occupancy classification is made to a higher-hazard category as shown in Table 1011.6, exterior walls shall have fire resistance and exterior opening protectives as required by the Building Code of New York State.

*Existing occupancy is lower hazard than the proposed occupancy. However, the required fire rating for walls, based on Table 601 & Table 602 in the Building Code is 0.*

#### **1011.2 Fire protection systems.**

Fire protection systems shall be provided in accordance with Sections 1011.2.1 and 1011.2.2.

##### **1011.2.1 Fire sprinkler system.**

Where a change in occupancy classification occurs or where there is a *change of occupancy* within a space where there is a different fire protection system threshold requirement in Chapter 9 of the Building Code of New York State that requires an automatic fire sprinkler system to be provided based on the new occupancy in accordance with Chapter 9 of the Building Code of New York State, such system shall be provided throughout the area where the *change of occupancy* occurs.

*The threshold for existing and proposed is the same, therefore no change is required.*

##### **1011.2.2 Fire alarm and detection system.**

Where a change in occupancy classification occurs or where there is a *change of occupancy* within a space where there is a different fire protection system threshold requirement in Chapter 9 of the Building Code of New York State that requires a fire alarm and detection system to be provided based on the new occupancy in accordance with Chapter 9 of the Building Code of New York State, such system shall be provided throughout the area where the *change of occupancy* occurs. Existing alarm notification appliances shall be automatically activated throughout the building. Where the building is not equipped with a fire alarm system, alarm notification appliances shall be provided throughout the area where the *change of occupancy* occurs in accordance with Section 907 of the Building Code of New York State as required for new construction.

#### **1011.3 Interior finish.**

In areas of the building undergoing the change of occupancy classification, the interior finish of walls and ceilings shall comply with the requirements of the Building Code of New York State for the new occupancy classification.

2020 Building Code of New York State  
First Printing: Nov 2019

### **CHAPTER 3 OCCUPANCY CLASSIFICATION AND USE**

#### **Existing**

##### **303.1 Assembly Group A.**

Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

##### **303.4 Assembly Group A-3.**

Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

- Gymnasiums (without spectator seating)

#### **Proposed**

##### **311.1 Storage Group S.**

Storage Group S occupancy includes, among others, the use of a building or structure, or a portion thereof, for storage that is not classified as a hazardous occupancy.

**311.2 Moderate-hazard storage, Group S-1.**

Storage Group S-1 occupancies are buildings occupied for storage uses that are not classified as Group S-2, including, but not limited to, storage of the following:

**CHAPTER 5  
GENERAL BUILDING HEIGHTS AND AREAS**

**SECTION 501  
GENERAL**

**501.1 Scope.**

The provisions of this chapter control the height and area of structures hereafter erected and *additions* to existing structures.

**[F]501.2 Address identification.**

New and existing buildings shall be provided with *approved* address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 1/2 inch (12.7 mm). Where required by the fire *code official*, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building address cannot be viewed from the public way, a monument, pole or other approved sign or means shall be used to identify the structure. Address identification shall be maintained.

**SECTION 504  
BUILDING HEIGHT AND NUMBER OF STORIES**

**SECTION 506  
BUILDING AREA (EXISTING)**

OCCUPANCY CLASSIFICATION	SPRINKLER	TYPE OF CONSTRUCTION	SQUARE FEET
A-3 (Existing)	NS	III	9,500
or	NS	V	6,000
S-1	NS	III	17,500
or	NS	V	9,000

**CHAPTER 6  
TYPES OF CONSTRUCTION**

**TABLE 601  
FIRE-RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS (HOURS)**

BUILDING ELEMENT	TYPE Vb
PRIMARY STRUCTURAL FRAME	0
BEARING WALLS	
EXTERIOR	0
INTERIOR	0
NONBEARING WALLS AND PARTITIONS	0
FLOOR CONSTRUCTION	0
ROOF CONSTRUCTION	0

**SECTION 602  
CONSTRUCTION CLASSIFICATION**

Fire Separation distance	Type of Construction	Occupancy A & S-1
$10 \leq X < 30$	Vb	0
30 or Greater	Vb	0

**CHAPTER 9  
FIRE PROTECTION AND LIFE SAFETY SYSTEMS**

Existing

**903.2.1.3 Group A-3.**

An *automatic sprinkler system* shall be provided throughout stories containing Group A-3 occupancies and throughout all stories from the Group A-3 occupancy to and including the levels of exit discharge serving that occupancy where one of the following conditions exists:

1. The *fire area* exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. The *fire area* has an *occupant load* of 300 or more.
3. The *fire area* is located on a floor other than a *level of exit discharge* serving such occupancies.

Proposed

**903.2.9 Group S-1.**

An *automatic sprinkler system* shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 *fire area* exceeds 12,000 square feet (1115 m<sup>2</sup>).
2. A Group S-1 *fire area* is located more than three stories above *grade plane*.
3. The combined area of all Group S-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m<sup>2</sup>).
4. A Group S-1 *fire area* used for the storage of commercial motor vehicles where the *fire area* exceeds 5,000 square feet (464 m<sup>2</sup>).
5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 m<sup>2</sup>).