

**BOROUGH OF NEW PROVIDENCE
PLANNING BOARD
MARION STREET PROPERTIES 1280-SA LLC**

RESOLUTION

WHEREAS, MARION STREET PROPERTIES 1280-SA LLC (the “Applicant”) is the owner of property located at 1276-1282 Springfield Avenue (Block 150, Lot 18 on the Tax Map), approximately 150 feet east of the South Street intersection, in the Central Commercial District (the “Site” or “Property”), and has applied to the Planning Board of the Borough of New Providence (the “Board”) for site plan approval, in connection with new gooseneck lighting on the front and rear facades of the building, new awnings in the front, and new wall signage on the rear façade, and the following variance relief¹:

1. A variance for four awnings that encroach upon the sidewalk by 1.5 feet, whereas the minimum permitted awning encroachment upon the sidewalk is three (3) feet, pursuant to Section 310-33(L)(2)(g) of the Zoning Ordinance; and
2. A variance for three awnings having signage on the canopy portion of the awning, whereas signage shall be provided on the valance portion of the awning, pursuant to Section 310-33(L)(2)(g) of the Zoning Ordinance; and

WHEREAS, the Applicant served the required Notice of Public Hearing, filed proof of service in accordance with pertinent statutes, and gave public notice of the application by publication in the official newspaper of the Borough of New Providence; and

¹ The Applicant originally sought variance relief from Section 310-33.F(3), relating to sign materials and Section 310-33.L(2).g, relating to maximum letter height on an awning, but at the September 12, 2017 hearing, the Applicant stipulated to complying with the Zoning Ordinance requirements, thereby eliminating the need for such relief.

WHEREAS, the application was heard by the Board at a public hearing conducted on September 12, 2017, at which members of the public and interested parties had an opportunity to appear and be heard; and

WHEREAS, the Applicant was represented by Roger Mehner, Esq., of Lindabury, McCormick, Estabrook & Cooper, P.C.; and

WHEREAS, the Board Planner, Susan S. Gruel, P.P., and the Borough Construction Official, Keith Lynch, were duly sworn according to law; and

WHEREAS, the Board has examined, considered and placed on file with its record all of the exhibits submitted by the Applicant; and

WHEREAS, the Board does hereby make the following findings of fact and conclusions:

1. The Property is an 11,369 square foot lot currently improved with a two-story structure that contains four separate ground floor retail tenants and office and residential uses on the second story. A surface parking lot is in the rear of the Property, accessed by a driveway on the west side of the Property that is shared by the adjoining property. The Property is surrounded by a variety of one- to two-story retail and commercial uses.

2. The Applicant is proposing new gooseneck lighting on the front and rear façades of the building, new awnings in the front (facing Springfield Avenue), and new wall signage on the rear façade. No other changes are proposed for the existing building or parking lot at this time.

3. The Applicant's proposal is depicted on plans entitled, "Marion Properties Storefront Renovation," prepared by H.G. Edwards, dated July 27, 2017, unrevised, same consisting of three (3) sheets, one of which is a Survey prepared by Frank R. DeSantis, P.L.S., of Morgan Engineering & Surveying, dated August 30, 2016, unrevised.

4. The Applicant seeks site plan approval and variance relief for four awnings that only encroach 1.5 feet upon the sidewalk, whereas Section 310-33.L(2)(g) of the Zoning Ordinance requires a minimum encroachment of three (3) feet (and a maximum of six (6) feet). The Applicant also seeks variance relief for the proposed signage on three of the four awnings, which signage will be located on the canopy portion of the awnings, whereas Section 310-33.L(2)(g) requires that signage on an awning shall be on the valance, rather than the canopy.

5. Richard Angel, a Member of the Applicant LLC, having an address of 85 Central Avenue, New Providence, New Jersey, was duly sworn according to law. Mr. Angel testified that he was also the owner of the dwelling located adjacent to the Property at 1286 Springfield Avenue (Block 150, Lot 17) and that he sought to develop both properties. Mr. Angel acknowledged that parking downtown is an issue and expressed his willingness to participate in a shared parking arrangement with other tenants in the shopping center once both lots were improved.

6. Mr. Angel testified that the Applicant was in the process of renovating the interior of the building and had already installed new doors and windows. He confirmed that all of the work completed was done so only after the proper permits were obtained. Mr. Angel introduced the following exhibits into evidence:

- **Exhibit A-1**: A view of the rear façade of the building;
- **Exhibit A-2**: A view of the front façade of the building; and
- **Exhibit A-3**: A rendering of the proposed color scheme, lighting, and details of same.

7. Referencing Exhibit A-1, Mr. Angel testified that the proposed rear façade design and signage would be consistent with the adjacent buildings in that it would have an Azek white sign band and signs that have a border/frame around the text. Although the Applicant originally

sought approval for aluminum signs, the Applicant withdrew its request and stipulated to constructing the signs in accordance with the sign material requirements of Section 310-33.F(3) of the Zoning Ordinance.

8. Mr. Angel testified that the anticipated first floor commercial tenants included George's Appliance (a long-standing tenant), H.G. Edwards (previously located in Summit), and a Juice House. He explained that H.G. Edwards intended to use the location as a showroom for the windows and doors that it sells. As to the Juice House, Mr. Angel testified that there were two other Juice House locations (Garwood and Long Beach Island) and that, in his opinion, it would provide a healthy option to the residents of New Providence. As to the second floor, Mr. Angel testified that there were two apartments (one one-bedroom and one two-bedroom), office space for H.G. Edwards, and a second office which was used by the Applicant.

9. Referencing Exhibit A-2, Mr. Angel testified that he had tried to utilize the existing façade, but that he was unable to do so given the poor condition of same. Referencing Exhibit A-3, Mr. Angel described the proposed color scheme of tan or gray for the building and an accent of dark gray. He explained that the proposed gooseneck light fixtures would be similar in style to the existing light fixtures on the adjacent commercial buildings and stipulated, as a condition of approval, to complying with the Borough's lighting ordinance.

10. As to the location of the awnings, namely the H.G. Edwards awning, the Board noted that, as proposed, the sign was not over the entranceway to H.G. Edwards. As such, the Board suggested that the Applicant consider utilizing said awning to indicate the property address. The Applicant stipulated, as a condition of approval, to labeling each tenant's suite with an appropriate designation (e.g., a suite letter above the door of each tenant space) so as to ensure emergency personnel could easily locate it. The Applicant further stipulated, as a condition of

approval, to working with the Zoning Officer regarding the size and location of the lettering on the signs and the proposed design of same.

11. On discussion by the Board regarding whether the Applicant should be required to seek variance relief for the existing parking deficiency, the Board concluded that same was not necessary because the deficient number of parking spaces was an existing condition and the Applicant was not altering the current use. The Applicant recognized that an opportunity to enter into a shared parking arrangement with other tenants existed and testified that same would be addressed when the Applicant sought approval for the renovations on adjacent Lot 17. The Board expressed its preference that the fencing in the rear of the Property be removed. On questioning by the Board, the Applicant stipulated, as a condition of approval, to facilitate shared parking in the rear by striping an approximate location for a pedestrian accessway along the rear of the building in lieu of a sidewalk, such striping to be completed on or before November 1, 2017, and same to be subject to the review and approval of the Borough Engineer/Zoning Official.

12. As to comments set forth in the September 8, 2017 Memorandum of Susan S. Gruel, P.P., and M. McKinley Mertz, A.I.C.P., the Applicant provided testimony as to Comments 1 through 4. As to Comment 5, the Applicant testified that the proposed color scheme of gray/tan was set forth in Exhibit A-4. As to Comments 6 and 7, regarding lighting levels and hours of lighting, the Applicant stated that it would comply with the Zoning Ordinance and any recommendations of the Borough Engineer/Zoning Officer. As to Comment 8, the Applicant testified that the building would have a sign band and that the proposed signs would comply with the sign ordinance as it related to the number of colors permitted.

13. Mr. Bruce Matthew, having a business address of 1283 Springfield Avenue, was duly sworn according to law. Mr. Matthew expressed his support for the proposal.

DECISION

14. After reviewing the testimonial and documentary evidence presented and based thereon, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied its burden of proving its entitlement to site plan approval, and to variance relief pursuant to N.J.S.A. 40:55D-70(c)(2) for the proposed awning deviations, as aforesaid.

15. The Board finds that the Applicant has satisfied the positive criteria for c(2) variance relief by meeting its burden of demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements, and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. The Board finds that the proposal advances the purposes of the MLUL, as set forth in N.J.S.A. 40:55D-2, specifically purposes (a), (c), (i), in that it promotes the general welfare, provides adequate light, air and open space, and promotes a desirable visual environment. In this regard, the Board recognizes that the installation of the new awnings constitute a better planning alternative because it will result in a more consistent and aesthetically pleasing downtown. Moreover, the Board believes that the stipulated conditions, as set forth below, should mitigate any detriments associated with the deficient awning encroachment and location of the text on said awnings.

16. The Board further finds that the Applicant has satisfied the negative criteria, that is, it has demonstrated that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. As to the substantial detriment prong of the negative criteria, the Board considers that the proposed awning and signage thereon is more aesthetically pleasing and consistent with the balance of the downtown, and that the proposed awnings will not be out of

character with the neighborhood. This finding is supported by the lack of any public opposition, and rather, the support of the occupant of the adjacent commercial use on Lot 17. Moreover, the Board finds that the variance relief does not impair the intent of the zone plan and zoning ordinance. Indeed, same is consistent with the guidelines set forth in the Downtown Design Standards.

17. The Board further finds that the Applicant has demonstrated good cause exists for the Board to grant the requested site plan approval.

WHEREAS, the Board took action on this application at its meeting on September 12, 2017, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of New Providence, on the 3rd day of October, 2017, that the application of Marion Street Properties 1280-SA LLC, for site plan approval and variance relief, as aforesaid, be, and is hereby, granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Borough to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall design and construct the proposed signage on the rear façade in accordance with the requirements set forth in the Zoning Ordinance including, but not limited to, size, number of colors, placement, and appearance, and same shall be subject to the review and approval of the Borough Construction Official;
- (3) The Applicant shall ensure the height of the letters on the awnings is less than 18 inches and same shall be subject to the review and approval of the Borough Construction Official;
- (4) The Applicant shall install the gooseneck light fixtures such that they are consistent with the lighting levels and lighting timing on the adjacent commercial buildings and shall comply with the illumination levels provided for in the Zoning Ordinance, and same shall be subject to the review and approval of the Borough Construction Official;

- (5) The Applicant shall label each tenant's suite above the entranceway with a designation to ensure that emergency personnel can quickly locate each tenant's suite;
- (6) The Applicant shall, by no later than November 1, 2017, stripe an approximate location along the rear of the building for pedestrian access in lieu of a sidewalk, and same shall be subject to the review and approval of the Borough Construction Official;
- (7) The Applicant shall address the existing parking deficiency and/or demonstrate participation in a shared parking agreement in connection with the anticipated subsequent development application relating to Lot 17 or within three (3) years of the date of the publication of this Resolution, whichever is sooner;
- (8) The proposed improvements shall be installed strictly in accordance with the plans and testimony presented to the Board and any conditions testified to during the hearing, even if not specifically set forth herein, shall apply thereto;
- (9) The Applicant shall post all performance and maintenance guarantees required, if any, by the Borough Engineer and shall pay all taxes, escrows and fees to the Borough official and shall obtain any necessary municipal governmental approvals;
- (10) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
- (11) The Applicant shall comply with all Federal, State, County and Borough statutes, ordinances, rules, regulations and requirements affecting development in the Borough, County and State;
- (12) Pursuant to Section 291-9H of the Land Use Procedures Ordinance and Ordinance No. 2011-20(O)(3), the site plan and variance relief granted herein shall expire unless such alterations permitted by said relief has actually commenced within six (6) months of the adoption of this Resolution; and
- (13) All notes included in the approved plans, including any notes required by this Resolution, shall be deemed to be conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

ROLL CALL VOTE:

Those in Favor: Mr. Hoefling, Mr. Kapner, Mr. Keane, Mayor Morgan
and Mr. Castagna

Those Opposed: -----

The foregoing is a true copy of a Resolution adopted by the Planning Board of the Borough of New Providence at its meeting of October 3, 2017.

Approved this 3rd day of October, 2017.



Margaret Koontz, Secretary



John Keane, Vice Chairman