

**RIDER TO THE CITY OF NORTHFIELD
PLANNING BOARD APPLICATION OF
PLASTIC SPOON, LLC**

Dated: June 16, 2021

Applicant: Plastic Spoon, LLC
Property address: 2318 New Road
Block 82, Lot 8.01
(the "Property")
Northfield, New Jersey

Nature of Application:

Applicant Plastic Spoon, LLC seeks conditional use approval, variances from certain requirements of such conditional use and a waiver of site plan approval as described in detail below.

Present use of the Property and Buildings and Zoning:

The Property lies on the easterly side of New Road in the C-B (Commercial Business) Zoning District. The Property contains 10,700 square feet of land and contains a single story 814 square foot building, a free-standing sign, on-site parking and associated site improvements. The building has been vacant for years with the last use being a piano service business. Despite being vacant, the Property has been well maintained over the years.

Project Description:

Applicant seeks to adaptively reuse the existing building to become a takeout ice cream parlor and retail store to be known as "The Sweet Spot". Applicant will renovate and repurpose the interior of the building for the proposed use, make aesthetic improvements to the exterior of building, leave the freestanding sign structure as is with a change to the sign board for the new use, and add an exterior trash enclosure required by the Department of Health for a food store use. The program desired would be approximately half of the building devoted to retail sales of merchandise such as gifts, candy, greeting

cards, dog treats, glassware, table liners, and other miscellaneous boutique type gift/candy items. The other half of the building will be devoted to retail ice cream sales done over the counter where customers enter the building, place their order, staff immediately creates the dessert and the customer pays and walks out with their order ready to eat. There will be no seating inside the building. Four picnic tables are proposed for convenience seating outside of the building in the existing front yard of the lot that is currently a concrete pad between the freestanding sign and the building. The existing driveways to New Road and interior parking and circulation will remain in its existing condition.

Relief Requested:

In the C-B District, retail sales are a permitted use, and restaurant is a permitted conditional use. The ice cream parlor portion of the use is included in the definition of "Drive-In Restaurant" in the City ordinance so although this use will essentially function as retail, this application includes a request for a conditional use approval and a conditional use variance pursuant to N.J.S.A. 40:55D-70(d)(3) since the existing site does not meet three of the specific conditions of the restaurant use which are minimum lot size, minimum lot frontage and minimum buffer to the adjacent residential district as shown on the plan submitted with the application. Given the lack of any site improvements/changes to site improvements, a waiver of site plan approval is also respectfully requested.

There are other existing non-conforming conditions related to bulk standards that the site does not meet since the Property and its improvements appear to have been created prior to adoption of the current ordinance standards. There will be no exacerbation of those existing non-conforming conditions but to the extent relief for those existing non-conforming conditions is determined to be required by the Board, we respectfully request that relief. Such relief as to the existing-nonconforming conditions shown on the plan is justified under either the hardship or the flexible-C standards in N.J.S.A. 40:55D-70(c)(1) and (2) as such conditions have existed. In addition, the site will be aesthetically enhanced and the purposes of the Municipal Land Use Act would be advanced by deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

Reasons for relief:

The New Jersey Supreme Court in Coventry Square vs. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994) set forth the standards for municipal boards to apply when reviewing conditional use variance requests pursuant to N.J.S.A. 40:55D-70(d)(3). The Court held that an applicant seeking a variance from a conditional use standard has a lighter burden than an applicant seeking a D variance for a use not permitted in the

zone. Conditional uses are essentially compatible uses in the zoning district. The focus of the board must be on the deviation from the standards related to the conditional use in the context of the total proposed development. Proof of special reasons that is required is limited to proof sufficient to satisfy the board that the site proposed for the conditional use continues to be an appropriate site for such use notwithstanding the deviation from the standards in the ordinance. Thus, a conditional use variance applicant must show that the site accommodate any problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address any such problems.

The focus then turns to site suitability considerations that arise in respect to the negative criteria that must be established.

"In respect of the first prong of the negative criteria, that the variance can be granted "without substantial detriment to the public good," N.J.S.A. 40:55D-70, the focus is on the effect on surrounding properties of the grant of the variance for the specific deviations from the conditions imposed by the ordinance. "The board of adjustment must evaluate the impact of the proposed [conditional] use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute 'substantial detriment to the public good.'" ...: In respect of the second prong, that the variance will not "substantially impair the intent and purpose of the zone plan and zoning ordinance," N.J.S.A. 40:55D-70(d), the board of adjustment must be satisfied that the grant of the conditional-use variance for the specific project at the designated site is reconcilable with the municipality's legislative determination that the condition should be imposed on all conditional uses in that zoning district." *Id.* at 299 (citations omitted). See Cox & Koenig, *New Jersey Zoning and Land Use Administration* (Gann, 2021) at Section 34.-2.2

When viewed against the above standards, Applicant respectfully submits that the Property continues to be an appropriate site for the proposed ice cream parlor with take out only. The conditional use standards do not differentiate between large eat-in restaurants or small boutique retail counter sales of ice cream such as that proposed in this application. Applicant submits that the minimum one acre lot size and 200 minimum lot width are not appropriate or necessary for the proposed small-scale ice cream take out operation. The minimum 25 foot buffer to residential district is adequately addressed by the existing approximately 16 foot landscaped buffer that exists on the site. Parking requirements will be met by the proposed uses. In sum, Applicant submits that if there are any problems associated with the proposed ice cream parlor/take out use (Applicant submits there are none), the Property will accommodate any such problems.

As to the negative criteria, Applicant submits that there will be no negative impact of the proposed ice cream parlor/take out only use upon adjacent properties nor will it result in substantial detriment to public good. Finally, the grant of such variance at this Property is justified. The proposed improvements will dress up, brighten up and create a vibrant, fun atmosphere at the Property which has sat vacant for years and will be a positive enhancement in every single respect over the existing conditions.

Levine, Staller, Sklar, Chan & Brown, P.A.
Attorneys for Applicant

By: 

Benjamin Zeltner, Esq.