

**IN THE MATTER OF
GRANTING
THE APPLICATION OF
2300 NEPTUNE REALTY, LLC
D/B/A BRENNAN'S DELI
BLOCK 5 LOT 3.01**

**RESOLUTION

PRELIMINARY AND FINAL
MAJOR SITE PLAN APPROVAL
WITH VARIANCES**

WHEREAS, 2300 NEPTUNE REALTY, LLC D/B/A BRENNAN'S DELI, hereinafter the Applicant, has proposed the development of property located at 38 West River Road, in the Borough of Rumson, County of Monmouth and State of New Jersey, which property is further known and designated as Block 5, Lot 3.01 on the Tax Map of the Borough of Rumson; and

WHEREAS, the Applicant has applied to the Planning Board of the Borough of Rumson for preliminary and final minor subdivision approval with variances to construct a 5,330 square foot 2-story commercial building with associated improvements including but not limited to a paved parking lot, concrete apron with refuse enclosure, granite block curbing, lighting, landscaping, utilities as well as various drainage structures tying into the adjacent system flowing directly into the Navesink River which requires the following variance relief:

1. Lot coverage of 89.1% where 65.7% is permitted (Section 22-5.11.E)
2. Four wall signs where one wall sign is the maximum permitted (Section 22-5.11.C.1)
3. Rear yard accessory setback of 1 foot between proposed trash enclosure and north property line where 5 feet is required (Section 22-5.11.R)

The foregoing are contrary to the aforesaid referenced provisions of the Borough of Rumson Development Regulations; and

WHEREAS, the subject property is located in the GB General Business Zone District and the proposed Delicatessen and Commercial Development is a permitted use in the Zone; and

WHEREAS, the Applicant appeared before the Planning Board of the Borough of Rumson on September 13, 2021, due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act and the Municipal Land Use Law and a quorum of the Planning Board being present the application was heard; and

WHEREAS, the Applicant's witnesses were sworn and the Planning Board having heard the testimony of the Applicant's witnesses and having examined the Exhibits presented by the Applicant and having considered all of the evidence presented in favor of or in opposition to the application, the Planning Board has made the following findings of fact:

The Planning Board has received and reviewed the following documents, Exhibits and reports:

1.1 Development Application of 2300 Neptune Realty, LLC, marked as Exhibit A-1 in evidence.

1.2 Preliminary and Final Major Site Plan prepared by Cranmer Engineering dated July 23, 2021, marked as Exhibit A-2 in evidence.

1.3 Architectural Elevation and Floor Plans prepared by Architrave Group P.C., dated July 13, 2021, marked as Exhibit A-3 in evidence.

1.4 Stormwater Management Report prepared by Cranmer Engineering, dated July 23, 2021, marked as Exhibit A-4 in evidence.

1.5 Completeness and Engineering Review of T&M Associates, dated September 1, 2021, marked as Exhibit A-5 in evidence.

1.6 Phase 1 & 2 Environmental Audit & Site Assessment prepared by Aqua-Terra Environmental, dated July 12, 2018, marked as Exhibit A-6 in evidence.

1.7 Aerial Map prepared by Cranmer Engineering, dated September 13, 2021, marked as Exhibit A-7 in evidence.

1.8 Lot Coverage Exhibit prepared by Cranmer Engineering, dated September 13, 2021, marked as Exhibit A-8 in evidence.

1.9 Color Rendered South Elevation prepared by Architect Santos, dated January 7, 2021, marked as Exhibit A-9 in evidence.

1.10 Color Rendered Southwest Elevation prepared by Architect Santos, dated January 7, 2021, marked as Exhibit A-10 in evidence.

1.11 Color Rendered Southeast Elevation prepared by Architect Santos, dated January 7, 2021, marked as Exhibit A-11 in evidence.

2. The premises in question are located at 38 West River Road, in the Borough of Rumson, County of Monmouth and State of New Jersey, which property is further known and designated as block 5 lot 3.01 on the tax map of the Borough of Rumson.

3. The Planning Board conducted a Completeness Review at the commencement of the hearing of the application and, based upon the engineer's comments and recommendations, has determined that all relevant completeness items have been satisfied and any outstanding items are not necessary in order

to review and decide the application. With respect to items in the Engineer's review letter where the Engineer indicated no objection but required compliance as a condition of approval, compliance with those items are a condition of this approval.

4. The subject property is located in the GB General Business Zone District and the proposed delicatessen and commercial development is a permitted use in the Zone.

5. The subject property has approximate dimensions of 100.00 ft. x 260.00 ft. x 101.17 ft. x 260.00 ft. and is an elongated rectangle in shape which is narrow in width and substantial in depth with an approximate area of 26,140.87 square feet (0.6001 acres). The property is presently undeveloped with the exception of a 35 foot wide access easement providing access to Borough property located to the rear, known and designated as block 5, lot 3.02 on the tax map of the Borough of Rumson which is known as the "Victory Park Expansion Property".

6. The Applicant was represented by Rick Brodsky, Esq. who presented the testimony of Dave Cranmer, a licensed professional engineer and professional planner of the State of New Jersey, Jose Santos, a licensed architect in the state of New Jersey, John Rea, a licensed engineer in the state of New Jersey specializing in traffic and Caryn McCann, a principal of the Applicant. Mr. Cranmer testified as to the unique features of the subject property including its unique, elongated, rectangular shape and the 35 foot wide access easement along the easterly side of the property providing access to block 5 lot 3.02 to the rear, the "Victory Park Expansion Property". He noted that this access easement will now be paved with blacktop in order to provide improved access to the Borough property. It is a paved blacktop access to the Borough property which causes the need for lot coverage exceeding that which is permitted. Testimony was also provided that the proposed current layout substantially complies with

the concept layout plan that was approved by the Borough when this property was subdivided to create the Victory Park Expansion. The changes to that concept plan were principally in order to accommodate a 16 ft. x 2 ft dumpster of adequate size for the property and with a design to accommodate efficient access by sanitation vehicles. The dumpster location will have a rear yard setback of 1 foot where 5 feet is required. Mr. Cranmer opined that the proposed lot coverage and rear accessory setback variances are justified as they will promote the purposes of the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2 encouraging the coordination of public development with Land Use Policies, Section G to provide sufficient space in appropriate locations for a variety of uses and open space both public and private, Section I promoting a desirable visual environment through creative development techniques and good civic design and arrangement and Section M encouraging coordination of various public and private procedures and activities shaping Land Development and the more efficient use of land. The Planning Board agrees.

7. The Planning Board finds that the proposed variances will permit an improved situation with respect to the access from West River Road to the Victory Park Expansion Property. The paving of this area will enhance the access to this public park, will provide improved ingress and egress which constitutes the coordination of public development with land use policies. Moreover, it is providing sufficient space in an appropriate location for this new commercial use while preserving the access to open space thus coordinating the use of public and private property. The Planning Board further finds that from the architectural plans and testimony the resulting development will promote a desirable visual environment utilizing good civic design and arrangement and will result in the more efficient use of land by permitting this vacant parcel in the GB General Business Zone District to be utilized for a permitted commercial use. With respect to the dumpster deviation the Planning Board finds that the proposed location is an improved design over that which was previously proposed in the original concept plan and will create a more desirable visual

environment as its location will be adjacent to similar facility of Barnacle Bill's restaurant and will be located a substantial distance from West River Road and will be blocked from view by the proposed commercial building. Furthermore, it will provide a design for the more efficient use of land by providing improved access for sanitary service vehicle access. As a result of all of the foregoing the Planning Board finds that the Applicant has satisfied the positive criteria for the grant of the requested Variance relief as these deviations will promote the purposes of the Municipal Land Use Law.

8. The Planning Board further finds that the grant of the requested Variances will not result in any substantial detriment to the public good. With respect to lot coverage there will actually be an enhancement of the public good as this proposal will provide for improved access to the Victory Park Expansion Property to the rear that is utilized by the public. Moreover, the proposed commercial use is consistent with adjacent uses along West River Road. Finally, the deviation is associated with increased pavement surface of the access to the Victory Park Expansion Property and parking area which will be located to the rear of the proposed commercial building and not visible from the streetscape. Therefore, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial detriment to the public good but will actually result in an enhancement to the public good.

9. The Planning Board finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. The Planning Board notes that the Master Plan and the Zoning Ordinance encourage the use of public property for recreational purposes. The ordinance with respect to lot coverage is designed to ensure that properties do not appear to be "over built" and to ensure that excessive coverage does not result in unacceptable stormwater runoff. In this case, the purposes of the Master Plan and the Zoning Ordinance are promoted by the grant of Variance relief to provide improved access to the public park area. In addition, the

Planning Board is satisfied from the documents submitted, the review of the Planning Board Engineer and the testimony of the Applicant's witnesses that the proposed development will not result in any adverse runoff issues. The Planning Board notes the findings in the report of its engineer that the subject site discharges into the Navesink River which is a tidal water body and is exempt from stormwater quantity requirements and notes that the Applicant shall be required to provide an NJDEP approved flood hazard area control permit as a condition of approval. The Applicant provided testimony agreeing to comply with the technical comments and recommendations of the Planning Board Engineer's report which will ensure that there will be appropriate stormwater management. More particularly, the Applicant has agreed to comply with Section 3 "grading and drainage" of the report, subparagraphs 3.1 through 3.18. Based on the foregoing, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance as it does not offend the purposes for which the Ordinance was adopted and complies with the spirit and intent of those provisions.

10. With respect to the Variance for signage, the Applicant provided the testimony of architect Santos who showed the architectural elevations and renderings of the proposed signage. He testified that although there are four signs instead of the single sign permitted by the Zone, those signs are necessary to enhance the functioning of the property. The exhibits that he provided demonstrated that the first sign, sign A, is an identity sign on the front of the structure, modest in size which notes the type of goods sold on the premises. Sign B is a modest sign for "pick-up" over the pick-up window directing patrons coming for pick up to the correct place so that they need not enter the building resulting in more efficient operations and convenience for customers. He noted that both of those signs will be beneath an awning which further diminishes their impact. Sign C is the logo sign which extends out from the building and is visible from West River Road in both directions identifying the site to motorists. Finally, the fourth sign D is simply a directional sign directing patrons to the parking area

at the rear of the building. The Planning Board notes the signs are of modest size and will provide for the more efficient identification and use of the subject property. The Planning Board finds that they are attractive and provide for a desirable visual environment and assist in creating a more efficient use of this site thus promoting the purposes of the Municipal Land Use Law. Therefore, the Planning Board finds that the positive criteria for the grant of the requested Variance relief has been satisfied.

11. With respect to the negative criteria the Planning Board finds that the grant of the requested signage Variance will not result in any substantial detriment to the public good. As indicated previously herein, the subject property is in an area of commercial uses and the proposed signage on the building will provide for the more efficient identification and use of this commercial property. No negative impacts upon the public good, surrounding area and neighborhood or streetscape were identified. Thus, the Planning Board finds that there will be no substantial detriment to the public good by granting this Variance.

12. The Planning Board further finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan or Zoning Ordinance. The Planning Board finds that the signage ordinance is designed to prevent a proliferation of signage on buildings and properties that are unattractive and distracting. The Planning Board finds that the signage proposed here will create an improved functionality for this site by providing adequate identification and directive signage for citizens patronizing the establishment. Thus, the Planning Board finds that the grant of the requested Variance relief will not result in any substantial impairment of the Zone Plan and Zoning Ordinance. The Planning Board finds that the grant of the requested Variance relief will actually provide for improved aesthetics and functioning of the property which will not offend the purposes for which the Ordinance was adopted.

13. The Planning Board notes the report of its Engineer that the 35 foot wide depressed curb access to the Victory Park Expansion Property appears to be located outside of the access easement. The Applicant agreed to revise the plans to relocate the depressed curb so that it is fully within the easement area which is a condition of this approval.

14. The Applicant also noted that its parking lot will be made available to the public going to Victory Park during non-peak hours which are from 11 am to 2 pm each day.

15. The Applicant provided testimony and agreed that there will be no rooftop seating on the proposed building which is a condition of this approval. The only outdoor seating will be in front of the first level of the building

16. The Applicant agreed that vehicles will not be permitted too "idle" during deliveries to the new building.

17. The Planning Board acknowledges the testimony of the Applicant's architect and finds that the proposed architectural elements are consistent with the Master Plan and Zoning Ordinance expectations for development of commercial properties within this area of the Borough. The Planning Board finds that this architecture is consistent with other buildings in the area and will promote a desirable and visual environment that does constitute good civic design and arrangement.

18. The Planning Board finds that the testimony and exhibits presented demonstrate that the proposed plan will provide for safe and efficient vehicular and pedestrian circulation parking and loading through the site. Moreover, it will provide for adequate screening, landscaping and proper location of structures. The Applicant agreed to comply with technical requirements set forth within the Planning Board Engineer's report Section 4 "landscaping and lighting" such that

adequate onsite illumination is provided and offsite disbursement will be contained. The Planning Board further finds that the layout and design does provide for appropriate recycling and the efficient layout design and use of the subject property.

19. As a result of all of the foregoing the Planning board finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested Variance relief and that the Variances requested can and should be granted at this time.

20 The Planning Board further finds that the Applicant has submitted a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for site plan approval have been met. The Planning Board further finds that the detailed drawings, specifications and estimates of the application conform to the standards established by Ordinance for final approval. As a result of the foregoing, preliminary and final major site plan approval can and should be granted at this time. Such approval is subject to all the conditions referenced previously in this resolution and any additional conditions set forth at the conclusion of this resolution.

17. The Planning Board further finds that all property owners within 200 ft. of the premises in question were given proper Notice of the Hearing of this Application and were provided with an opportunity to present evidence in support of or in opposition to the Application.

NOW THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Rumson on this 4th day of October 2021, that the Application of **2300 NEPTUNE REALTY, LLC D/B/A BRENNAN'S DELI** be and is hereby approved, which approval shall be subject to compliance with the following terms and conditions.

GENERAL CONDITIONS –

- 1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.
- 2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.
- 3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.
- 4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees, Temporary Certificate of Occupancy Guarantees, Safety and Stabilization Guarantees, Maintenance Guarantees, Inspection Fees and such other Guarantees or fees as may be required pursuant to the Municipal Land Use Law and the Ordinances of this Municipality for the purpose of assuring the installation and maintenance of on-tract/off-tract and private site improvements.

6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity. This approval is conditioned upon compliance by the Applicant with all Ordinances and Regulations of this Municipality.

9) In the event any de minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".

10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Municipal Affordable Housing Fund as applicable to this application.

12) In the event that this Application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-49 or 40:55D-52.a, as applicable, and in no event shall extend beyond the fifth anniversary of the date of adoption of this resolution.

13) In the event that this approval involves the approval of a subdivision, the Applicant shall provide to the Board Engineer and attorney for review and approval, deeds for each of the lots created and shall file such deeds simultaneously with the recording of any subdivision plat.

14) All special conditions shall be included as notes on the plans.

15) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

16) The Applicant shall comply with the requirements of the Municipal Ordinances with respect to its Affordable Housing obligation by either providing the required affordable housing on-site, providing affordable

housing off-site or making a contribution of an Affordable Housing fee pursuant to the applicable Municipal Ordinances. This approval is subject to the Applicant paying all applicable fees, including any fee due and owing to the Municipality's Affordable Housing Trust Fund.

17) This Resolution does not constitute a permit for the construction of the approved improvements. The Applicant shall be responsible for obtaining any and all permits and approvals required **prior to** the commencement of **any** development activities including, but not limited to, N.J.D.O.T., N.J.D.E.P., Monmouth County Planning Board, Freehold Soil Conservation District, Regional and/or Municipal Utility Authority approval, in addition to any and all building and construction permits, required by the Municipality. All work performed shall be in accordance with, and shall not deviate from, the approved plans and all applicable Federal, State, County and Local laws, rules and regulations.

18) As an essential and non-severable condition of this approval, the Applicant shall comply with all Mount Laurel obligations and shall comply with the Municipality's approved Housing Element and Fair Share Plan including but not limited to, any associated implementing Ordinances.

19) The scope of the review of this application is necessarily limited to planning, zoning and land use review of the site as compared to the requirements of the Municipality. The grant of this approval and of any permit or approval in connection therewith shall not constitute a representation, guarantee or warranty of any kind or nature by the Municipality or by any Municipal official or employee thereof with respect to the practicability or safety of any structure, use or other plan proposed and shall create no liability upon or cause of action against the Board, the Municipality or any officials or employees of the Municipality for any damage or injury that result from the construction of the improvements for which this Zoning approval is granted.

SPECIAL CONDITIONS –

1) The approvals granted herein are as follows:

a.) Preliminary and final major site plan approval pursuant to the plans prepared by Cranmer Engineering dated July 23, 2021 as may be revised to comply with the conditions of this resolution.

b.) Variance from Section 22-5.11E of the Ordinance to permit lot coverage of 89.1% where 65.7% is the maximum permitted.

c.) Variance from Section 22-5.11.C.1 to permit four wall signs where one wall sign is the maximum permitted.

d.) Variance from Section 22-5.11.R to permit an accessory rear yard setback of 1 foot where 5 feet is the minimum required.

2) The Applicant shall comply with the technical requirements set forth in the report of the Planning Board Engineer dated September 1, 2021 marked as Exhibit A-5 in evidence.

3) The Applicant shall revise the plans to maintain all curbing within the easement area for access from West River Road to the Victory Park Expansion Property.

4.) The parking lot for the proposed commercial building will be available for use by citizens utilizing Victory Park during non-peak hours of 11 am to 2pm.

5.) Lighting along the frontage of the property will comply with the requirements of the Ordinance.

6.) Easement access from West River Road to the Victory Park Expansion Property shall be paved blacktop.

7.) The roof of the proposed commercial building shall not have any seating area.

8.) The only outdoor seating for the proposed commercial building shall be in the front along West River Road at the first level.

9.) There shall be no idling of vehicles making deliveries to the commercial property.

BE IT FURTHER RESOLVED that nothing herein shall excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

BE IT FURTHER RESOLVED that a written copy of this Resolution certified by the Secretary of the Planning Board to be a true copy be forwarded to the Applicant, the Code Enforcement Official of the Borough of Rumson and the Construction Code Official of the Borough of Rumson. A written copy of the certified Resolution shall also be filed in the office of the Administrative Officer of the Municipality, which copy shall be made available to any interested party and available for public inspection during normal business hours.

BE IT FURTHER RESOLVED that a proper notice of this Decision be published once in the official newspaper of the Municipality or in a newspaper in general circulation within the Borough.

OFFERED BY:

SECONDED BY:

ROLL CALL:

YES:

NO:

ABSTAIN:

ABSENT:

**Chairperson, Planning Board
Borough of Rumson**

I certify that the above is a true and exact copy of the Resolution passed by the Planning Board of the Borough of Rumson at its meeting held on October 4, 2021.

**Secretary, Planning Board
Borough of Rumson**