

June 10, 2020

Mr. Jim McFarland
State Permits, Inc.
PO Box 171
Commercial Point, OH 43116



POLICY
PLANNING
DESIGN

Re: Variance Justification
Block 266, Lot 28 – 9 State Route 35
Neptune Township, Monmouth County NJ

Dear Mr. McFarland:

Below you will find analysis intended to address submission requirements for the above referenced application, specifically item #9.

APPLICATION ATTACHMENT ITEM #9

9. Justification/Reason(s) for variance(s) requested.

The applicant requires d(1) use variance relief for the proposed digital menu boards, as well as d(3) conditional use variance relief from ordinance section 415.08D2 to permit more than two internally illuminated menu boards. While the proposed digital menu boards are not interpreted as internally illuminated signs, it is clear the ordinance regulates the number of signs, so the applicant seeks relief in that regard.

As to the use variance to permit the proposed digital menu boards, the applicant must satisfy both the positive and negative criteria, including satisfaction of the enhanced quality of proof required by the Court's decision in Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987), proof that shows the variance is not inconsistent with the intent and purpose of the zone plan and zoning ordinance and reconciles the governing body's omission of the use as one permitted in the zone district in the first place.

For the positive criteria, it can be said the grant of the use variance promotes the public welfare because the site is particularly suited to the proposed digital menu boards. The menu boards are associated with an existing permitted drive-thru restaurant and will replace the existing internally illuminated menu boards. They represent a better alternative to the existing menu boards in that they better address glare issues but also make the ordering process more efficient. They are designed to function specifically for the existing drive through restaurant and are therefore uniquely suited to site and use.

Grant of the use variance also promote the purpose of New Jersey Municipal Land Use Law which include: Purpose A – to encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. *Grant of the variance for the digital menu boards provides a clearer, more efficient ordering system for the customer. Especially in this period of time with COVID-19 concerns and increased use of drive through facilities, the digital menu boards also allow for better relay of menu and order information to the customer. With some menu information changing from time to time, including special offerings but also modification to offerings like all-day breakfast, the digital menu boards allow for safe modification of information presented, eliminating the need to physically change internal boards that are part of the current menu displays. This is safer for employees.*

Purpose I – To promote a desirable visual environment through creative development techniques and good civic design and arrangement. *The new digital menu boards are smaller than those that exist on the site today, and total sign area will be reduced even though the number of signs is increasing. The digital menu*

boards respond to ambient illumination and adjust according to brightness outside, better addressing concerns over glare. The smaller digital menu boards will fit better with the site and will have less visual impact for customers and surrounding sites.

Addressing the negative criteria, the grant of the variance to permit digital menu boards will not represent a substantial detriment to surrounding properties. The new digital menu boards are proposed in the same location as the existing internally illuminated menu boards. They are positioned as not to produce undue glare that would impact adjacent properties and respond better to glare concerns as illumination is controlled relative to ambient light. The overall size of signage is being reduced, which will have a positive impact overall. Given the technology utilized and the positioning of the proposed digital menu boards, the impact of the grant of the variance will not be substantial, particularly considering they are replacing existing internally illuminated menu boards.

As to the enhanced quality of proof required under *Medici v BPR Co.*, the grant of the variance is not inconsistent with the intent and purpose of the zone plan and zoning ordinance. The Township's 2012 Master Plan set forth a number of goals and objectives that are promoted by the grant of the variance, including:

1. To advance the purposes of the Municipal Land Use Law as contained in NJSA 40:55D-2. *As stated, the grant of the variance advances two purposes of the Municipal Land Use Law.*
5. Promote aesthetic and site improvements in the Township major commercial and industrial areas. *The use of digital menu boards will better address aesthetics and represent an improvement over the current internally illuminated menu boards.*
10. Provide adequate community facilities and services in order to enhance the quality of life for existing and future Township residents and respond to changing demographics. *The use of digital menu boards enhances the customer experience and provides a more efficient ordering process. In the current environment of COVID-19, much of restaurant business has transitioned to pick-up, delivery and drive through ordering. This service is essential for those that may rely on this restaurant for food.*

In addition, the Land Development Ordinance, §416.01 sets forth purposes related specifically to signage, which given the nature of the application should be considered. These include:

- A. To protect the public health, safety and welfare by restricting signs which impair the public's ability to receive information, violate privacy, or which increase the probability of accidents by distracting attention or obstructing vision.
- B. To encourage signs that promote a desirable visual environment through creative yet orderly design arrangements.
- C. To encourage signs that aid orientation, identify activities, describe local history and character or serve other educational purposes.
- D. To encourage the replacement of nonconforming signs by conforming signs through the strict enforcement of the procedures and requirements of this Article.
- E. To promote the free flow of traffic and protect pedestrian, bicyclists and motorists from injury and property damage caused by, or which may be fully or partially attributable to cluttered, distracting, or illegible signs.
- F. To promote the use of signs that are aesthetically pleasing and of appropriate scale to the zoning district.
- G. To promote the use of signs that are compatible with the Township's character.

The grant of the variance for the proposed digital menu boards is not inconsistent with the purposes of the sign requirements. In fact, they promote purposes A, B, C and F by providing a more efficient ordering system that will benefit customers and replace outdated static signs with smaller, more effective menu board signs. These new digital menu boards will promote a desirable visual environment and will be more aesthetically pleasing as they respond to ambient conditions and reduce potential for glare.

Reviewing the purpose and intent of the land development ordinance as set forth in section 102, they largely mirror the purposes of the Municipal Land Use Law and the goals and objectives of the Master Plan. Overall, the grant of variance is not inconsistent with the intent and purpose of the ordinance and in fact is designed to carry out some of those purposes.

The Board can reconcile the grant of the variance in this specific case based on the fact that digital menu boards are something not widely used at the time the master plan and ordinance was drafted. Their widespread implementation is a relatively new phenomenon that is gaining more currency in the digital age. Further reconciliation comes in the fact that digital menu boards represent a better option than static internally illuminated menu boards, as they better address glare concerns and provide a more efficient and accurate ordering process for the consumer.

Regarding the d(3) conditional use variance relief necessary due to the number of signs proposed, the standards are slightly different than those applicable to the d(1) use variance for the digital menu boards. The standards for review are derived from the case Coventry Square v. Westwood Zoning Bd. Of Adjustment, 138 N.J. 285, 293-294 (1994). In this case, the Court found that an applicant for conditional use variance relief's inability to comply with one or more of the conditions contained in the ordinance "need not materially affect the appropriateness of the site for the conditional use". The Court enumerated standards that focus on the effect the deviations from the conditional use standards have on the continued suitability of the site for the use for the positive criteria, and the affect the deviations have on surrounding properties and reconciling the intent of imposing the standard for the negative criteria.

For the positive criteria, the same purposes of the Municipal Land Use Law cited above for the use variance are applicable. The site remains suitable for the use despite the increase in the number of menu-related signs as the overall sign area is reduced, and the result will be a more efficient ordering process to the benefit of the customer.

As to the negative criteria, the increase in the number of signs will not have a substantial impact on surrounding properties, as they are positioned in a way that they are not largely visible to surrounding properties and the overall area of signage is reduced despite the increase in the number of signs. The grant of the conditional use relief can be reconciled with the governing body's intent of limiting the number of signs given the reduction in overall sign area and improvements to efficiency in the ordering and delivery process gained.

I trust the Board will find this analysis useful in consideration of our application. Should you wish to discuss this matter further, please feel free to contact me at 609-257-6706 or via e-mail at jkyle@kylemcmanus.com.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kyle". The signature is fluid and cursive, with the first letter "J" being particularly large and stylized.

James T. Kyle, PP/AICP
Principal