

## RECOMMENDATION ON THE VARIANCE APPLICATION OF

### *Brar Realty/Dunkin Donuts - Addition/Signage - Variances*

FILE # 13-642

#### I. INTRODUCTION

An application for four bulk variances has been filed with the New Jersey Meadowlands Commission (NJMC) by James H. Cleary, Esq. of Cleary Reid, LLC, on behalf of Meadowlands Convenience Mart, LLC, for the premises identified as 758 Paterson Plank Road, Block 105.02, Lot 2, in the Borough of East Rutherford, Bergen County, New Jersey. Said premises are located in the Commercial Gateway Center within the Commission's Paterson Plank Road Redevelopment Area. The Paterson Plan Road Redevelopment Plan was last amended on December 19, 2012. The variances are sought in connection with the applicant's proposal to construct a 250-square-foot addition to the existing building on the subject site with associated site improvements, and the installation of 95.07 square feet of additional signage resulting in a total sign area of 114.57 square feet.

Specifically, the applicant is requesting variance relief from the following:

1. Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum side yard setback of 15 feet on any one side within the Commercial Gateway Center. The applicant is proposing to construct an addition that will provide a minimum side yard setback of 5.7 feet along the easterly side yard.
2. Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum rear yard setback of 20 feet within the Commercial Gateway Center. The applicant is proposing to construct an addition that will provide a rear yard setback of 15.1 feet along the southerly rear property line.

3. Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum front yard parking setback of 25 feet within the Commercial Gateway Center zone. The applicant is proposing an additional parking space that will result in a front yard parking setback of 20.1 feet.
4. N.J.A.C. 19:4-8.14(i)4 requires that the total sign area permitted for a multi-tenanted structure shall not exceed five percent of the building's main façade area. A 35.43-square foot wall identification sign and a 59.64-square foot wall identification sign are proposed in addition to an existing 19.5-square foot wall identification sign that will remain, resulting in a total sign area of 114.57 square feet, which is 13.42 percent of the building's main façade.

Notice was given to the public and all interested parties as required by law. The public notice was published in The Record newspaper. No written objections were submitted to the Division of Land Use Management. A public hearing was held in the Office of the Commission on Tuesday, February 11, 2014. All information submitted to the Division of Land Use Management relative to this application is made part of the record of this recommendation.

## **II. GENERAL INFORMATION**

### **A. Existing and Proposed Use**

The subject premises is a 0.50-acre lot containing a fuel service station with two fueling islands and a 1,586-square-foot, single-story retail building utilized as a convenience store. The property is located in the Commercial Gateway Center within the Commission's Paterson Plank Road Redevelopment Area and contains frontage on Paterson Plank Road (New Jersey State Route No. 120), a four-lane divided roadway which also contains the municipal boundary line with Carlstadt. The site is bordered to the north by industrial and commercial uses across Paterson

Plank Road, to the east by an auto sales lot, and to the south and west by a lot containing three warehouse/office buildings with related paved areas. The remainder of the area contains a mix of commercial and industrial properties.

The applicant is proposing a 250-square-foot addition to the existing retail building to provide additional storage area, including refrigerator and freezer space, to accommodate the conversion of a portion of the existing retail space to a Dunkin' Donuts restaurant franchise. The applicant is also proposing renovations to the existing building to provide a more efficient interior layout for use by the convenience store and Dunkin' Donuts, as well as exterior facade improvements. An existing refuse area will remain in its current location to the south of the building. Proposed site improvements include the installation of an ADA-compliant entrance ramp, bollards, striping of parking stalls, and the installation of two new wall signs for Dunkin' Donuts.

**B. Response to the Public Notice**

No written comments or objections were received during the public comment period.

**III. PUBLIC HEARING (February 11, 2014)**

A public hearing was held on Tuesday, February 11, 2014. NJMC staff in attendance were Sara Sundell, P.E., P.P., Director of Land Use Management and Chief Engineer; Sharon Mascaró, P.E., Deputy Director of Land Use Management and Deputy Chief Engineer; Mia Petrou, P.P., AICP, Senior Planner; and Elizabeth Kenyon, P.E., Senior Engineer.

**A. Exhibits**

The following is a list of the exhibits submitted at the public hearing and marked for identification as follows:

<u>Number</u>	<u>Description</u>
A-1	Photograph of Northerly Building Façade, dated February 11, 2014.
A-2	Photograph of Westerly Building Façade, dated February 11, 2014.
A-3	"Existing/Proposed Site Plan, Details, Key Map & Zoning Data," Drawing No. SP1, prepared by gk+a Architects, P.C., dated August 26, 2013, revised through December 6, 2013.
A-4	"Exterior & Proposed Floor Plans, Sign Details & Data," Drawing No. SP2, prepared by gk+a Architects, P.C., dated August 26, 2013, revised through December 6, 2013.
A-5	"Proposed Elevations," Drawing No. SP3, prepared by gk+a Architects, P.C., dated August 26, 2013, revised through December 6, 2013.

#### **B. Testimony**

The applicant was represented at the hearing by James H. Cleary, Esq. The following witnesses testified in support of the application:

1. Oliver Young, A.I.A., gk+a Architects, P.C.;
2. Wael Kioumju, Dunkin' Donuts Franchisee; and
3. Amarjeet Brar, Brar Realty.

Staff findings and recommendations are based on the entire record. A transcript of the public hearing was prepared and transcribed by Susan Bischoff, Certified Court Reporter.

#### **IV. RECOMMENDATION**

- A. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum side yard setback of 15 feet on any one side within the Commercial Gateway**

**Center. The applicant is proposing to construct an addition that will provide a minimum side yard setback of 5.7 feet along the easterly side yard.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. *The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property is currently improved with a fuel service station that has two fueling islands, a 1,586-square-foot, single-story retail building located in the southeasterly portion of the lot, and associated paved areas. The subject property, having a lot area of 0.50 acre, is undersized in relation to the minimum two-acre lot area requirement of the Commercial Gateway Center. The applicant proposes to construct a 250-square-foot addition in the easterly side yard to provide additional storage space to accommodate the conversion of a portion of the existing retail facility to a restaurant use, proposed as a Dunkin' Donuts franchise. Additionally, the property is irregularly-shaped, due to a lot depth that varies approximately 20 percent between the westerly and easterly lot lines, and the resulting skew of the northerly lot line. The existing building is located proximate to the easterly lot line in the deeper portion of the lot.

The proposed addition will provide a minimum easterly side yard setback of 5.7 feet, whereas a minimum side yard setback of 15 feet on any one side is required by the bulk requirements for the Commercial Gateway Center within the Paterson Plank Road Redevelopment Plan.

The existing building is currently within 2.7 feet of the easterly lot line, which is a preexisting non-conformity. The proposed setback of 5.7 feet is three feet greater than this existing non-conforming setback. The configuration of the existing parking and paved areas to the north and west of the existing building footprint on the subject property leaves the easterly yard as the most appropriate location for a building addition. However, the ability to comply with the applicable side yard setback requirement is affected by the existing building's location within the side yard setback.

This combination of conditions related to the size and configuration of the property, and the location of the existing building on the undersized lot, impact the site in a unique manner, and represent challenges in providing for a functional building addition that avoids impacts to the parking and circulation areas associated with the existing uses on the site. These conditions are not ordinarily found in the Commercial Gateway Center within the Paterson Plank Road Redevelopment Area and were not created by any action of the property owner.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested bulk variance to construct a building addition with a minimum setback of 5.7 feet from the easterly property line, whereas a minimum 15-foot side yard setback is required, will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is located is primarily industrial and commercial in nature, and there are no residents nearby.

The proposed improvements will not create any negative visual impacts to neighboring properties or impede their ability to function as intended. The proposed setback of 5.7 feet, three feet greater than the existing building's preexisting nonconforming setback of 2.7 feet, is located to the rear of the existing building, and is required to accommodate the proposed refrigerator and freezer storage areas in a functional manner. The height of the addition is 8.5 feet, which is approximately 6.8 feet lower than the existing building's height of 15.3 feet.

The neighboring property to the east, identified as Block 105.02, Lot 3, would be the neighbor most impacted by the proposed addition. The conditions on the adjoining property most proximate to the area of the proposed addition consist of open space and paved area. The building on the adjoining property is located approximately 100 feet away from the proposed addition, resulting in the provision of adequate air and light between structures. Additionally, the location of the proposed addition will serve to

further screen the view of existing site operations and refuse collection from the adjacent property owner to the east.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulations that would require a minimum side yard setback of 15 feet along the easterly property line, whereas 5.7 feet is proposed, will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The subject property is an irregularly-shaped and undersized lot, having a lot area four times smaller than the minimum two acre requirement of the zone. The property's existing developed conditions present challenges in providing a conforming setback that relates the functionality of the addition to the existing building configuration, while avoiding impacts to the site's parking and circulation areas.

The proposed addition, with a side yard setback of 5.7 feet, will provide an extra three feet of distance from the easterly property line in relation to the existing building's nonconforming setback of 2.7 feet. Alternative locations to construct the proposed addition are limited for several reasons, including the impracticability of constructing storage areas consisting of refrigeration and freezer space on a second floor. An existing rear door proposed to remain for deliveries to the facility would be blocked by an alternative compliant location. Furthermore, existing paved areas utilized for parking and site circulation are present to the north and west of the

existing building, and are integral to the site's operations as a fuel service station with convenience store. Therefore, shifting the location of the proposed addition 9.3 feet to the west to provide a compliant side yard setback would conflict with existing loading and parking areas and drive aisles.

Finally, reducing the size of the proposed addition to comply with the side yard setback regulations, and to avoid impacts to the site's parking and circulation areas, would reduce the footprint of the proposed addition by nearly 63 percent, rendering it unfeasible. The existing lot coverage at the premises, inclusive of all buildings and canopies, is 13.97 percent, whereas up to 60 percent lot coverage is permitted in the zone. The existing area of the building at the premises represents 7.2 percent lot coverage, and the proposed 250-square-foot addition would increase the site's existing lot coverage by only 1.1 percent.

In balancing the requirements of the Commercial Gateway Center of the Paterson Plank Road Redevelopment Plan with the particular characteristics of the property, the proposed variance is required to provide a functional building and site configuration.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse impacts to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the

requested variance. The proposed addition is to be located approximately 100 feet to the west of the existing structure on the neighboring property to the east. The location of the proposed addition is set back three feet greater than the existing building line, and the proposed addition is approximately 6.8 feet lower in height than the existing building.

There will be no changes to the current on-site vehicle circulation pattern. Access to the site from Paterson Plank Road is via an entrance-only driveway on the western side of the property, and an exit-only driveway on the eastern side of the property. The proposed placement of the addition in the side yard as proposed avoids potential public safety impacts that a compliant building addition placed in areas currently used for on-site parking and circulation could engender.

In addition, excess noise, odor, vibration, or glare will not be generated as a result of the proposed building addition.

Therefore, the placement of the building addition within the easterly side yard, as proposed, will have no adverse impact on public safety or health, as adequate light, air, and open space will continue to be supplied.

*v. The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. The location of the proposed building addition in relation to the easterly side yard will not cause the

NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be exceeded. No environmentally sensitive areas will be disturbed. The improved site will provide 15 percent open space, in compliance with the minimum open space requirements of the Commercial Gateway Center zone of the Paterson Plank Road Redevelopment Plan. Additionally, a drainage pattern similar to existing conditions will be maintained.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The granting of the requested variance to construct a 250-square-foot building addition with a minimum side yard setback of 5.7 feet represents the minimum deviation from the NJMC regulations that will afford relief. The proposed setback of 5.7 feet is greater than the existing non-conforming setback of 2.7 feet, and the proposed building addition height is approximately 6.8 feet lower than the existing building height.

Due to the particular characteristics of the property, including its irregular shape, the undersized lot area, and the layout and configuration of the existing building and other improvements on the site, the proposed addition could not be constructed in a feasible, functional manner if the required minimum 15-foot side yard setback was applied.

The total proposed lot coverage of 15.1 percent is in substantial compliance with the zone's required maximum lot coverage of 60

percent. The area of the proposed addition represents a minor 1.1 percent increase in the site's existing lot coverage. The improved site will provide 15 percent open space, in compliance with the minimum open space requirements. Compliance with the lot coverage and open space requirements, particularly on an undersized property, signifies that the property will not be overdeveloped.

The proposed variance represents a reasonable balance between the requirements of the redevelopment plan and their application to the particular characteristics of the property in question.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance will not impair the intent and purpose of the regulations. Specific purposes of the NJMC regulations include providing sufficient space in appropriate locations for a variety of uses, and ensuring that such uses are suitably sited and placed in order to relate buildings and uses to each other and to the environment so that aesthetic and use values are maximized. The purpose of the Commercial Gateway Center zone of the Paterson Plank Road Redevelopment Plan is "to serve as a gateway to both the Paterson Plank Road corridor and the NJSEA Sports Complex. The recommended land uses for this area will provide for a continuation of commercial, retail, and light industrial uses." As the proposed variance will allow for the renovation of an existing accessory retail facility, with a small expansion in floor area to accommodate the storage requirements

of a proposed user, it will promote orderly and comprehensive development in accordance with good planning principles that relates the type, design and layout of such development to both the particular site and surrounding environment.

The placement of the building addition efficiently balances the zoning requirements for the Commercial Gateway Center within the Paterson Plank Road Redevelopment Plan with the specific characteristics of the site, as detailed above. Therefore, the proposed variance would not substantially impair the intent and purpose of the NJMC zoning regulations. Further, the granting of the requested variance will contribute to and promote this intent by allowing the site to be developed and utilized in a safe, orderly, and efficient manner.

**B. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum rear yard setback of 20 feet within the Commercial Gateway Center. The applicant is proposing to construct an addition that will provide a rear yard setback of 15.1 feet along the southerly rear property line.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

*1. Concerning bulk variances:*

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property is currently improved with a fuel service station that has two fueling islands, a 1,586-square-foot single-story retail building located in the southeasterly portion of the lot, and associated paved areas. The subject property, having a lot area of 0.50 acre, is undersized in relation to the minimum two-acre lot area requirement of the Commercial Gateway Center. Additionally, the property is irregularly-shaped, due to a lot depth that varies approximately 20 percent between the westerly and easterly lot lines, and the resulting skew of the northerly lot line. The existing building is located proximate to the easterly lot line in the deeper portion of the lot.

The applicant proposes to construct a 250-square-foot addition in the southerly rear yard to provide additional storage space to accommodate the conversion of a portion of the existing retail facility to a restaurant use, proposed as a Dunkin' Donuts franchise. The proposed addition will provide a minimum southerly rear yard setback of 15.1 feet, whereas a minimum rear yard setback of 20 feet is required within the Commercial Gateway Center of the Paterson Plank Road Redevelopment Area.

The configuration of the existing building on the site, as well as the location of existing paved areas used for parking and circulation to the north and west of the existing building on the site, leaves the southerly rear yard as the most appropriate location for a building addition. The applicant attested that the proposed addition is needed to accommodate a functional floor plan to provide refrigerator and freezer storage space within the addition. The

footprint of the proposed addition is designed to allow access from the existing rear egress door from the building. However, the ability to comply with the applicable minimum rear yard setback requirement is affected by the existing building's location.

This combination of conditions related to the size and configuration of the property, and the location of the existing building, impact the site in a unique manner. These conditions are not ordinarily found on properties in the Commercial Gateway Center within the Paterson Plank Road Redevelopment Area and were not created by any action of the property owner.

- ii. The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested bulk variance to construct a building addition with a 15.1-foot setback from the southerly rear property line, whereas a minimum 20-foot rear yard setback is required, will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is located is primarily industrial and commercial in nature.

The proposed improvements will not create any negative visual impacts to neighboring properties or impede their ability to function as intended. The height of the proposed addition is 8.5 feet, which is approximately 6.8 feet lower than the existing building height of 15.3 feet. A landscaped buffer situated between the subject property and the neighboring property to the south will screen the visual impact of the proposed addition.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The strict application of the regulations requiring a minimum rear yard setback of 20 feet along the southerly property line, whereas 15.1 feet is proposed, will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner. The subject property is an irregularly-shaped undersized lot, having a lot area four times smaller than the minimum two acre requirement within the Commercial Gateway Center. The property's existing developed conditions present further challenges in providing a conforming setback that allows for a functional addition in relation to the existing building configuration, while avoiding impacts to the site's parking and circulation areas.

Alternative locations to construct the proposed addition are limited for several reasons, including the impracticability of constructing storage areas consisting of refrigeration and freezer space on a second floor. An existing rear door proposed to remain for ingress for deliveries to the facility would be blocked by an alternative compliant location. Furthermore, existing paved areas utilized for parking and site circulation are present to the north and west of the existing building, and are integral to the site's operations as a fuel service station and convenience store. Therefore, a building addition providing for a compliant rear yard setback would conflict with existing loading, parking areas and drive aisles.

Finally, reducing the size of the proposed addition to comply with the rear yard setback regulations and to avoid impacts to the site's parking and circulation areas would reduce the footprint of the proposed addition by nearly 51 percent, rendering it unfeasible. The existing lot coverage at the premises, inclusive of all buildings and canopies, is 13.97 percent, whereas up to 60 percent lot coverage is permitted in the zone. The existing area of the building at the premises represents a 7.2 percent lot coverage, and the proposed 250-square-foot addition would increase the site's existing lot coverage by only 1.1 percent.

In balancing the requirements of the Commercial Gateway Center within the Paterson Plank Road Redevelopment Plan with the particular characteristics of the property, the proposed variance is required to provide a functional building and site configuration.

*iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

There will be no substantial detriment to the public good and no adverse impacts to the public health, safety, morals, order, convenience, prosperity or general welfare by the granting of the requested variance. The placement of the building addition within the southerly rear yard, as proposed, will not have a significant adverse impact on public safety or health, as adequate light, air, and open space will continue to be supplied.

The proposed addition is to be located approximately 100 feet to the north of the existing structure on the neighboring property to the south, identified as Block 105.02, Lot 1. The proposed addition is also approximately 6.8 feet lower in height than the existing building on the site.

There will be no changes to the current on-site vehicle circulation pattern. Access to the site from Paterson Plank Road is via an entrance-only driveway on the western side of the property, and an exit-only driveway on the eastern side of the property. The proposed placement of the addition in the rear yard as proposed avoids potential public safety impacts that a compliant building addition placed in areas currently used for on-site parking and circulation could engender.

In addition, excess noise, odor, vibration, or glare will not be generated as a result of the proposed building addition. Therefore, the placement of the building addition within the southerly rear yard, as proposed, will have no adverse impact on public safety or health, as adequate light, air, and open space will continue to be supplied.

*v. The variance will not have a substantial adverse environmental impact.*

The granting of the requested variance will not have any adverse environmental impacts. The location of the proposed building addition in relation to the southerly rear yard will not cause the NJMC's performance standards regarding noise, vibrations, airborne emissions, hazardous materials, glare or water quality to be

exceeded. No environmentally sensitive areas will be disturbed. The improved site will provide 15 percent open space, in compliance with the minimum open space requirements for the Commercial Gateway Center within the Paterson Plank Road Redevelopment Plan. Additionally, a drainage pattern similar to existing conditions will be maintained.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The granting of the requested variance to construct a 250-square-foot building addition with a minimum rear yard setback of 15.1 feet represents the minimum deviation from the NJMC regulations that will afford relief. Due to the particular characteristics of the property, including its irregular shape, its undersized lot area and the layout and configuration of the existing building and other improvements on the site, the proposed addition could not be constructed in a feasible manner if the required 20-foot rear yard setback was applied at this property.

The total proposed lot coverage of 15.1 percent is in substantial compliance with the zone's required maximum lot coverage of 60 percent. The area of the proposed addition represents a minor 1.1 percent increase in the site's existing lot coverage. The improved site will provide 15 percent open space, in compliance with the minimum open space requirements. Compliance with the lot coverage and open space requirements, particularly on an undersized property, signifies that the property will not be overdeveloped.

The proposal represents a reasonable balance between the zoning requirements of the zone and their application to the particular characteristics of the property in question.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance will not impair the intent and purpose of the regulations. Specific purposes of the NJMC regulations include providing sufficient space in appropriate locations for a variety of uses, and ensuring that such uses are suitably sited and placed in order to relate buildings and uses to each other and to the environment so that aesthetic and use values are maximized. The stated purpose of the Commercial Gateway Center of the Paterson Plank Road Redevelopment Plan is "to serve as a gateway to both the Paterson Plank Road corridor and the NJSEA Sports Complex. The recommended land uses for this area will provide for a continuation of commercial, retail, and light industrial uses." As the proposed variance will allow for the renovation of an existing accessory retail facility, with a small expansion in floor area to accommodate the storage requirements of a proposed user, it will promote orderly and comprehensive development in accordance with good planning principles that relates the type, design and layout of such development to both the particular site and surrounding environment.

The placement of the building addition efficiently balances the zoning requirements for the Commercial Gateway Center of the

Paterson Plank Road Redevelopment Plan with the specific characteristics of the site. Therefore, the proposed variance would not substantially impair the intent and purpose of the NJMC zoning regulations. Further, the granting of the requested variance will contribute to and promote this intent by allowing the site to be developed and utilized in a safe, orderly, and efficient manner.

**C. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum front yard parking setback of 25 feet within the Commercial Gateway Center. The applicant is proposing an additional parking space that will result in a front yard parking setback of 20.1 feet.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

*1. Concerning bulk variances:*

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property is currently improved with a fuel service station that has two fueling islands, a 1,586-square-foot single-story retail building located in the southeasterly portion of the lot, and associated paved areas. The subject property, having a lot area of 0.50 acre, is undersized in relation to the minimum two-acre lot area requirement of the zone. Additionally, the property is irregularly-shaped, due to a lot depth that varies approximately 20

percent between the westerly and easterly lot lines, and the resulting skew of the northerly lot line. The existing building is located proximate to the easterly lot line in the deeper portion of the lot.

The applicant proposes to construct a 250-square-foot addition in the southeasterly portion of the site to accommodate the conversion of a portion of the existing retail facility to a restaurant use, proposed as a Dunkin' Donuts franchise. One additional parking space is required to be provided as a result of the proposed addition.

The applicant proposes to provide this additional parking space on existing paved area in the northeasterly portion of the site, having a minimum front yard parking setback of 20.1 feet, whereas a minimum front yard parking setback of 25 feet is required in the Commercial Gateway Center zone of the Paterson Plank Road Redevelopment Plan.

This combination of conditions related to the size of the property, its irregular shape, and the configuration of the existing building, fuel service station and site improvements, impact the ability to provide additional parking on the site in a unique manner. These conditions are not ordinarily found on properties in the Commercial Gateway Center of the Paterson Plank Road Redevelopment Area and were not created by any action of the property owner.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested bulk variance to locate one parking space within the required front yard parking setback will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is located is primarily industrial and commercial in nature, and there are no residences located nearby. The proposed parking space will be located on existing paved area near the egress driveway at the subject property. A 7-foot-wide landscaped strip provides separation between the proposed parking space and the adjoining property to the east, and there will be no negative impacts to the neighboring property's operations or improvements. Therefore, the granting of the requested variance will not adversely affect the rights of neighboring property owners or residents.

- iii. *The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

This application proposes to provide one additional parking space at a minimum setback of 20.1 feet from the front lot line, whereas a minimum front yard parking setback of 25 feet is required. Due to the undersized condition of the lot, there is less area on the site available to accommodate required site improvements, such as parking, than on typical properties in the same zone.

The proposed parking space will result from the application of striping over existing pavement. No additional impervious area is proposed to accommodate the additional parking space, and the site complies with the zone's minimum open space requirements. The granting of the requested variance will allow the site to comply with the minimum number of parking spaces required by NJMC regulations to support the uses on the site.

The existing configuration of the improvements on the property, such as the layout of the fuel service station's fuel pumps and canopies, the placement of the existing building on the site, and the arrangement of parking areas, present challenges in the provision of additional parking spaces on the site. There is no alternative conforming location available on the site to provide an additional required parking space that is adequate in size and positioned in a safe manner so as to avoid circulation conflicts with vehicles maneuvering on the site.

The strict application of the regulations would not permit the installation of the additional required parking space at the premises, and, therefore, would prevent the construction of a minor 250-square-foot building addition integral to the operations of a prospective new tenant at the premises.

Therefore, the strict application of the parking regulations will result in peculiar and exceptional practical difficulties and undue hardship to the applicant.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The granting of the requested bulk variance to provide one parking space within the required front yard parking setback will not result in substantial detriment to the public good or adversely affect the general welfare. The additional parking space is required to support a proposed addition to the building. Ancillary façade and site improvements will result in an aesthetic improvement to this portion of the Paterson Plank Road corridor. Open space will not be affected since the location of the proposed parking space is currently paved. Additionally, public safety will not be negatively impacted as the proposed parking space will be located near the egress driveway of the site, and will not conflict with traffic either exiting the site or entering the site from Paterson Plank Road.

- v. The variance will not have a substantial adverse environmental impact.*

The granting of the requested bulk variance to provide one parking space within the required front yard parking setback will not result in any adverse environmental impacts. No environmentally sensitive areas will be disturbed, and the proposed parking space will be striped on existing pavement. All open space requirements will be met and there will be no adverse impact to area drainage. In addition, the NJMC's environmental performance standards for noise, glare, vibrations, airborne emissions, or hazardous materials will not be exceeded.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

The granting of the requested bulk variance to provide one parking space at a minimum setback of 20.1 feet from the front lot line in order to provide the required number of parking spaces, whereas a 25-foot front yard parking setback is required, represents the minimum deviation from NJMC regulations that will afford relief.

The proposed additional parking space will facilitate compliance with the zoning requirements for the minimum number of parking spaces required at the property, and has been designed to accommodate a functional site layout. No practicable alternate locations are available to accommodate the additional parking space required on the site, due to the location of existing parking and vehicular use areas, the irregular shape of the property, and the undersized area of the lot. Not providing this additional space within the front yard setback would create the need for an additional variance from NJMC regulations for noncompliance with the required number of parking spaces and/or prevent the minor addition to the building that would contribute to renovations on the property.

The proposed encroachment into the front yard setback is by a 4.9-foot-wide portion of the parking space, which does not constitute a significant deviation in the context of the particular characteristics of the site. The adjoining parking spaces meet the minimum required width of 8.5 feet, and could not be re-striped to a lesser

dimension to minimize the intrusion of the proposed parking space into the setback.

Therefore, the proposed variance represents the minimum deviation from the NJMC regulations that will afford relief.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

The granting of the requested variance will not impair the intent and purpose of the regulations. Specific purposes of the NJMC regulations include providing sufficient space in appropriate locations for a variety of uses, and ensuring that such uses are suitably sited and placed in order to relate buildings and uses to each other and to the environment so that aesthetic and use values are maximized. The purpose of the Commercial Gateway Center zone of the Paterson Plank Road Redevelopment Plan is "to serve as a gateway to both the Paterson Plank Road corridor and the NJSEA Sports Complex. The recommended land uses for this area will provide for a continuation of commercial, retail, and light industrial uses."

The proposed parking space supports the construction of a minor 250-square-foot building addition integral to the operations of a prospective new tenant at the premises that would spur the overall renovation of the existing facility. The upgrading of buildings along the Paterson Plank Road corridor is an important component of the redevelopment planning objectives of the area that would be promoted by the granting of the requested variance.

The proposed variance will promote orderly and comprehensive development of the site that relates the type, design and layout of improvements to both the particular site and the surrounding environment, and, therefore, contributes to and promotes the intent of the NJMC regulations.

**D. Standards for the Granting of a Bulk Variance from the Provisions of N.J.A.C. 19:4-8.14(i)4 which requires that the total sign area permitted for a multi-tenanted structure shall not exceed five percent of the building's main façade. A 35.43-square foot wall identification sign and a 59.64-square foot wall identification sign are proposed in addition to an existing 19.5-square foot wall identification sign that will remain, resulting in a total sign area of 114.57 square feet, which is 13.42 percent of the building's main façade.**

The NJMC Zoning Regulations at N.J.A.C. Section 19:4-4.14(e) state in part that, *a variance shall not be granted unless specific written findings of fact directly based upon the particular evidence presented are made that support conclusions that...*

1. *Concerning bulk variances:*

- i. The variance requested arises from such condition that is unique to the property in question, is not ordinarily found in the same zone, and is not created by any action of the property owner or the applicant.*

The subject property is currently improved with a fuel service station that has two fueling islands, a 1,586-square-foot single-story retail building located in the southeasterly portion of the lot, and associated paved areas. The subject property, having a lot area of

0.50 acre, is undersized in relation to the minimum two-acre lot area requirement of the zone. Additionally, the property is irregularly-shaped, due to a lot depth that varies approximately 20 percent between the westerly and easterly lot lines and the resulting skew of the northerly lot line. The existing building is located proximate to the easterly lot line in the deeper portion of the lot.

The size and configuration of the existing building on the site uniquely impact the ability to provide additional signage to accommodate a multi-tenanted building. The size of the existing building on the premises is relatively small in comparison to the size of the lot, representing 7.2 percent of the property's lot coverage, and its usage is currently accessory in nature to the fuel service station use on the property. The applicant proposes to convert a portion of the existing retail facility to a restaurant use, proposed as a Dunkin' Donuts franchise.

The building's main façade is the northerly elevation fronting on Paterson Plank Road, at which the entrance doors to the tenant spaces will be located. However, traffic traveling eastbound on Paterson Plank Road, which is the only travel direction from which the site may be accessed, will view the building's western elevation as the site is approached. Therefore, in order to adequately identify the site, signage must be placed upon both the northern and western façade. Additional sign area above the five percent allocation would be required to accomplish adequate identification of the tenant spaces based on the particular characteristics of the site.

- ii. *The granting of the variance will not adversely affect the rights of neighboring property owners or residents.*

The granting of the requested variance to exceed the maximum permitted sign area will not adversely affect the rights of neighboring property owners or residents. The neighborhood in which the subject property is located is primarily industrial and commercial in nature, and no residences are located nearby.

The proposed signage consists of two wall signs on the northern building elevation and one wall sign on the building's westerly elevation. The applicant proposes to remove one existing Food Mart wall sign, retain and relocate one existing Food Mart wall sign, and install two new Dunkin' Donuts wall signs.

The proposed signage will not adversely impact adjoining neighbors. The property to the west, Block 105.02, Lot 1, has its primary frontage on and access from Murray Hill Parkway, but also contains a 40-square-foot pylon sign located along Paterson Plank Road adjacent to the property in question. The visibility of the neighbor's existing sign will not be obstructed by the proposed wall signs on the subject property. An existing pylon sign on the neighboring property to the east, at Block 105.02, Lot 3, is a significant distance from the proposed wall signage, and will not be obstructed by the proposed wall signs.

Therefore, the granting of the requested variance to install additional signage in excess of the five percent maximum

requirement will not adversely affect the rights of neighboring property owners or residents.

*iii. The strict application of the regulations will result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner.*

The maximum permitted sign area for the building is calculated as five percent of the main building façade area, or 42.7 feet. In this application, additional signage is proposed for the Dunkin' Donuts tenant space that would increase the amount of signage on the site to 114.57 square feet, or 13.42 percent of the building's main façade area, exceeding the five percent maximum requirement by 71.87 square feet.

The applicant proposes to relocate an existing 19.5-square-foot Food Mart sign from the western elevation to the northern elevation. The strict application of the regulations would leave 23.2 square feet of total sign area available to accommodate signage for the Dunkin' Donuts tenant. In order to adequately identify to the motoring public the Dunkin' Donuts tenancy on the site, signage is requested to be installed both on the building's main façade, which is the northern elevation along Paterson Plank Road, for visibility to westbound motorists on Paterson Plank Road, and on the western elevation, which would be visible to eastbound motorists. A 59.64-square-foot Dunkin' Donuts wall sign is proposed on the western elevation, and a 35.43-square-foot Dunkin' Donuts wall sign is proposed on the northern elevation.

Practical difficulties do exist in the application of the sign requirements to this particular property. The existing building on the site currently accommodates a single tenant and is relatively small in relation to the area of the lot, having a lot coverage of 7.2 percent. However, the introduction of a new tenant into the building, proposed as a restaurant use, while retaining the convenience retail use, results in unique signage needs for a building of such small scale. The proposed variance relates to the signage needs of a building being converted from use by a single tenant to a multi-tenanted structure.

The building is located approximately 47 feet from Paterson Plank Road. Existing canopies and pylon signage related to the fuel service station are present in the westerly portion of the site and impact the visibility of the building by motorists traveling eastbound on Paterson Plank Road. In order to adequately identify the tenants in the building to the motoring public, additional sign area above the 23.2 remaining square feet is merited at this particular property.

Due to these specific circumstances, the strict application of the regulations would result in practical difficulties in the applicant's ability to adequately identify the tenants within the building. However, it must be ensured that the amount of additional sign area requested is adequate, but not excessive. It is noted that the proposed Dunkin' Donuts sign on the western elevation is comprised of the words, "DUNKIN' DONUTS," with lettering measuring 1.5 feet in height, but also includes a coffee cup graphic element centrally located within the sign that is 3.34 feet in height.

However, by decreasing the size of the coffee cup logo to match the 1.5 foot lettering height on the sign, a reduction of 33.48 square feet of sign area can be achieved, which would reduce the total size of the proposed sign to 26.16 square feet. At the public hearing, the applicant testified that they would be amenable to this reduction in signage. This reduction in the sign area is recommended as it will reduce the total requested sign area to approximately 9.5 percent of the total façade area.

- iv. The variance will not result in substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.*

The proposed signage area will not result in a substantial detriment to the public good and will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. Rather, the additional sign area will promote these purposes by providing adequate identification of the uses on the site.

The proposed signage is intended to adequately identify the two proposed building tenants, and is directed to the traveling public along Paterson Plank Road. Therefore, identification is required from both the eastbound and westbound travel lanes. The proposed signage on the northern building elevation provides identification of the uses on the site to westbound motorists, while the signage on the western elevation will be directed to eastbound traffic to assist in the identification of the tenants in advance of entering the site. The ability to safely and sufficiently view signage from the surrounding roadway network is a benefit to the safety of

the public, particularly on a location along a heavily-traveled state roadway.

*v. The variance will not have a substantial adverse environmental impact.*

The proposed variances will not have a substantial adverse environmental impact. The signs are proposed to be located on the building façade which currently contains signage on both facades. The proposed signs will not be flashing or moving signs, and will not cause the NJMC's environmental performance standards for noise, glare, vibrations, airborne emissions, or hazardous materials to be exceeded. However, the visual impact of the proposed sign on the westerly elevation could be minimized by a reduction in height of the coffee cup graphic element of the sign to be consistent with the 1.5-foot lettering height of the sign. This would result in a significant reduction in sign area of 33.48 square feet, while continuing to provide adequate identification of the Dunkin' Donuts tenant space.

*vi. The variance represents the minimum deviation from the regulations that will afford relief.*

NJMC sign regulations permit five percent of the building's main façade area to be utilized for determining the permitted sign area. The total permitted sign area at the premises is 42.7 square feet. The applicant proposes to relocate an existing 19.5-square-foot Food Mart sign from the western elevation to the northern elevation, leaving 23.2 square feet of total sign area available to

accommodate signage for the Dunkin' Donuts, which would not be sufficient signage to identify the tenant space at the premises.

The applicant proposes a total sign area of 114.57 square feet, or 13.42 percent of the building's main façade area, exceeding the five percent maximum requirement by 71.87 square feet. In multi-tenanted structures, the NJMC may permit the utilization of up to 10 percent of the building's main façade area where the additional area would assist in developing a more integrated sign plan. However, the proposed signage does not result in the minimum deviation from the regulations in this particular instance.

A reduction in the proposed signage area could be achieved with a small revision to the plan that would not impact the ability of the Dunkin' Donuts tenant to adequately identify the tenant space. The proposed Dunkin' Donuts sign on the western elevation contains lettering measuring 1.5 feet in height, but also includes a coffee cup graphic centrally located within the sign that is 3.34 feet in height. However, by decreasing the size of the coffee cup logo to match the 1.5 foot lettering height on the sign, a reduction of 33.48 square feet of sign area can be achieved, which would reduce the total size of the proposed sign to 26.16 square feet. At the public hearing, the applicant testified that they would be amenable to this reduction in signage. This reduction in the sign area is recommended as it will reduce the total requested sign area to approximately 9.5 percent of the total façade area.

The proposed visual impact of the total sign proposal could be further minimized by providing for a consistent design scheme

with other improvements proposed as part of the renovation of the facility. Currently, the applicant proposes to reuse and relocate an existing Food Mart sign and canopy that are blue in color, with a red band on the facade. The proposed Dunkin' Donuts color scheme would include brown and orange canopies. This combination of colors results in a disjointed appearance. The applicant has testified that he was amenable to changing the colors of existing building elements in order to blend with the Dunkin' Donuts tenancy and provide for a more cohesive design. Therefore, it is recommended that the proposed façade improvements, including, but not limited to, wall color, canopies, and signage, shall provide for a cohesive design scheme at the premises.

With the proposed recommended conditions for a reduction in the proposed sign area and the provision of a more cohesive site appearance, the proposal would represent the minimum deviation from the regulations.

*vii. Granting the variance will not substantially impair the intent and purpose of these regulations.*

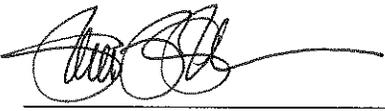
The intent and purpose of the sign regulations is to provide for adequate identification for a use, while providing balance between the scale of a facility and the amount of signage placed upon it. The existing building on the site is relatively small, and the granting of a variance to exceed the maximum permitted sign area would assist the property owner in providing for a more integrated sign plan at the facility. The variance also promotes the public

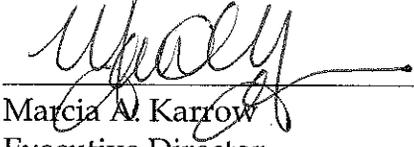
safety through the provision of sufficient sign area to allow adequate identification of the site, without visual clutter, particularly on a property located along a heavily-traveled state roadway. With the proposed conditions related to a recommended reduction in the permitted sign area and a cohesive building appearance, the subject variance to exceed the total permitted sign area would not impair the intent and purpose of the sign regulations.

V. SUMMARY OF CONCLUSIONS

A. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum side yard setback of 15 feet on any one side within the Commercial Gateway Center. The applicant is proposing to construct an addition that will provide a minimum side yard setback of 5.7 feet along the easterly side yard.

Based on the record in this matter, the bulk variance application to construct a 250-square-foot building addition with a proposed side yard setback of 5.7 feet along the easterly side yard, whereas a minimum side yard setback of 15 feet on any one side is required, is hereby recommended for approval.

<u>APPROVAL</u>	<u>4.4.14</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>approval</u>	<u>4/4/14</u>	
Recommendation on Variance Request	Date	Marcia A. Karrow Executive Director

**B. Standards for the Granting of a Bulk Variance from Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum rear yard setback of 20 feet within the Commercial Gateway Center. The applicant is proposing to construct an addition that will provide a rear yard setback of 15.1 feet along the southerly property line.**

Based on the record in this matter, the bulk variance application to construct a 250-square-foot building addition with a proposed rear yard setback of 15.1 feet along the southerly rear property line, whereas a minimum rear yard setback of 20 feet is required, is hereby recommended for approval.

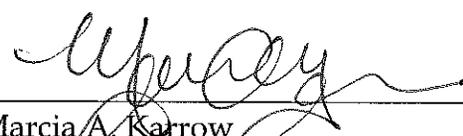
<u>APPROVAL</u>	<u>4/4/14</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>approval</u>	<u>4/4/14</u>	
Recommendation on Variance Request	Date	Marcia A. Karrow Executive Director

**C. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in Section IV.C of the Paterson Plank Road Redevelopment Plan, which requires a minimum front yard parking setback of 25 feet within the Commercial Gateway Center. The applicant is proposing an additional parking space that will result in a front yard parking setback of 20.1 feet.**

Based on the record in this matter, the bulk variance application to construct a 250-square-foot warehouse building addition with a front yard parking setback of 20.1 feet provided, whereas a minimum of 25 feet is required, is hereby recommended for approval.

<u>APPROVAL</u>	<u>4/4/14</u>	
Recommendation on Variance Request	Date	Sara J. Sundell, P.E., P.P. Director of Land Use Management

<u>approval</u>	<u>4/4/14</u>	
Recommendation on Variance Request	Date	Marcia A. Karrow Executive Director

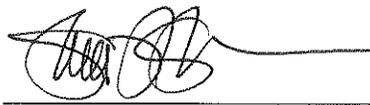
**D. Standards for the Granting of a Bulk Variance from the Provisions of the Bulk Requirement listed in N.J.A.C. 19:4-8.14(i)4, which requires that the total sign area permitted for a multi-tenanted structure shall not exceed five percent of the building's main façade. A 35.43-square foot wall identification sign and a 59.64-square foot wall identification sign are proposed in addition to an existing 19.5-square foot wall identification sign that will remain, resulting in a total sign area of 114.57 square feet, which is 13.42 percent of the building's main façade.**

Based on the record in this matter, the bulk variance application to install a total sign area in excess of the maximum permitted total sign area of five percent of the building's main façade is hereby recommended for approval, subject to the following conditions:

1. The proposed sign on the westerly elevation, inclusive of all lettering and graphic elements, shall not exceed a maximum sign area of 26.2 square feet.
2. The total sign area at the premises shall not exceed 9.5 percent of the building's main façade area.
3. The proposed façade improvements, including, but not limited to, wall color, canopies, and signage, shall provide for a cohesive design scheme at the premises, as approved by the Chief Engineer.

CONDITIONAL APPROVAL

4/4/14



Recommendation on  
Variance Request

Date

Sara J. Sundell, P.E., P.P.  
Director of Land Use Management

conditional Approval

4/4/14



Recommendation on  
Variance Request

Date

Marcia A. Karrow  
Executive Director