

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: January 4, 2011

Re: Application No. 2010-28-PFSPV
Applicant: MJK Enterprise of New Jersey, Inc. d/b/a 299 A-Cleaner City
Premises: 210 South Livingston Avenue, Livingston, New Jersey
Block: 4300; Lot: 21
B-Zone

WHEREAS, an Application has been submitted by MJK Enterprise of New Jersey, Inc. (hereinafter referred to as the "Applicant"), the owner of the subject premises commonly known as 210 South Livingston Avenue, Livingston, New Jersey (hereinafter referred to as the "Site"), to the Planning Board of the Township of Livingston (hereinafter referred to as the "Board") for Preliminary and Final Site Plan Approval, with variances, to permit the operation of a dry cleaning and clothing alteration business in the existing building on the Site; and

WHEREAS, a completed Application has been filed, the fees required by Ordinance have been paid, and it otherwise appearing that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was heard before this Board on November 2, 2010 with regard to this Application; and

WHEREAS, the Applicant, represented by its attorney, Stephen A. Geffner, Esq., of Schenk, Price, Smith & King, LLP, has demonstrated that the Applicant is in compliance with all statutory requirements of publication and service of notice and has submitted proof that there are no taxes due or delinquent with respect to the Site; and

WHEREAS, the Board has heard and considered the testimony of the Applicant and its expert witnesses, and there being no objectors appearing;

NOW, THEREFORE, the Board does make the following findings of fact and conclusions of law regarding this Application:

1. The Applicant is the owner of the Site and requests Preliminary and Final Site Plan approval, with variances, to allow the operation of a dry cleaning and clothing alteration business on the Site. The Applicant proposes to add new façades to the building, and to realign the front yard and rear yard parking.

2. The Applicant requests the following variances:

A: Front yard parking is prohibited by Township Code Section 170-107.B.(7). The Applicant seeks a variance to permit the location of 8 parking spaces in the front yard.

B: The proposed operation would require 15 parking spaces in accordance with Code Section 170-94.E. 13 are provided; resulting in a request for a variance of 2 parking spaces.

C: The Applicant proposes a 12-foot wide two-way driveway, between the front and rear yards, on the northerly side of the building. Code Section 170-94.B.(11) requires a two-way driveway to be a minimum of 20 feet wide; resulting in a variance request of 8 feet.

D: Code Section 170-94.F.(1) requires a loading space measuring a minimum of 10 feet wide by 26 feet long. The Applicant proposes a loading space of 10 feet by 20 feet; resulting in a variance request of 6 feet.

3. The Applicant presented the following witnesses:

A: Jisoo Suzy Yoon, a project architect employed by Sehwan Kim Architects. The witness was not qualified as an expert and testified only as a fact witness with respect to her work on the preparation of the architectural plan.

B: Richard Keller, of Casey & Keller, Inc., admitted as an expert in engineering and planning, who prepared the Site Plan submitted on behalf of the Applicant.

C: Estelle Lee, a principal in the Applicant.

4. The testimony and exhibits introduced by the Applicant establish that the proposed use of the building will be as a retail dry cleaning and clothing alteration business. The Applicant currently operates 13 similar businesses in New Jersey and other states. The proposed hours of operation are: from 7:00 a.m. to 7:00 p.m., Monday through Friday; and 8:00 a.m. to 5:00 p.m. on Saturdays. The business would be closed on Sundays. The Applicant estimated that there would be a maximum of 5 employees plus one member of management on the premises and that most employees will end their work day by 3:00 p.m. Machinery to be used for dry cleaning meets all industry standards and utilizes environmentally-safe chemicals and products. Dry cleaning chemicals are inserted by a supplier. The waste is collected within the dry cleaning machinery and is removed by the supplier. All suppliers of dry cleaning chemicals are licensed by the State of New Jersey. Since all chemicals are environmentally-safe there is no requirement for State inspection. No chemicals of any type would be stored on the property. At the request of the Board, the Applicant agreed that the rear parking lot lights would be turned off no later than 1 hour after the store closes and would not be turned on any earlier than 1 hour before opening. Said lights will be controlled by a timer.

5. The Applicant proposes to re-do the façades on all four sides of the building. At the recommendation of the Business Improvement District (“the “BID”), windows in the front will have blinds to conceal the working area from view from the street. The interior of the building will be divided into work areas and a customer service area. All heating and air conditioning equipment will be located within the building. An exhaust fan will be located in the northerly side wall of the building adjacent to the driveway. None of the proposed dry cleaning machines will have any exhaust to the exterior of the building and are all self-contained systems. A loading dock in the rear of the building will open to the work area. The façade will be stucco in an egg white color. A cornice will be added to each of the corners of the building with krypton accent color to provide an improved streetscape. A natural stone veneer will be installed on the bottom portion of the building under a chair rail located 3 feet above ground level. The façade will be totally transformed from its existing appearance, which remains from the prior use of the building as an automobile lubrication center. The Applicant agreed that any

signage will be conforming and will be submitted to the BID for review before it is brought to the Board. The Board indicated that it would retain jurisdiction over all signs if the Application is approved.

6. The testimony of Richard Keller was that the Site is approximately .43 acres, is located within the B-1 district, and abuts the R-4 residential district to the west. The Site contains a one-story block building set back 51 feet from the right-of-way of South Livingston Avenue, and was formerly used as an auto lubrication center. There are currently 4 striped parking spaces in the front yard. One of them is a sub-standard handicapped space. 8 parking spaces are currently located in the rear of the premises. 84.53 percent of the Site is paved surface or building. Access from South Livingston Avenue onto the Site is directly into the front yard parking area. A driveway currently measuring just under 11 feet in width provides access to the rear of the property. An easement from the adjoining northerly property will provide an additional 4-foot strip running 46 feet in length and will allow the driveway pavement to extend onto the adjoining property. This will permit providing a two-way driveway with a width of 12 feet; which is an increase from the existing driveway width. The south side of the building sits only 2.58 feet from the property line; thus providing no space for a driveway there. Attempts to obtain permission from the adjoining properties to share access to Amelia Avenue (the closest intersecting street) were unsuccessful. 15 parking spaces are required. Because of the location of the building on the Site, it is not physically possible to provide the required parking of 15 spaces; nor is it possible to locate all parking to the rear of the property. The Applicant proposes to move the rear parking spaces further from the abutting residence zone and to install landscaping between the parking area and the rear property line. That buffer area would be 23 feet deep from the curb of the redesigned rear parking to the rear line. The small front parking area is an existing non-conforming use. Applicant proposes to increase that parking from 4 spaces to 8, including a van-accessible handicap space. Rear parking would be designated primarily for employees, but would be available to customers if needed. 5 spaces and 1 loading zone will be located in the rear. Deliveries are normally by van and not by larger trucks, so the proposed loading space 10 feet wide by 20 feet in length will be more than adequate.

7. The limited use of the rear yard by the public will mitigate the narrow width of the two-way driveway. Most dry cleaner customers visits are of short duration

of not more than 2.5 minutes, which would lessen any chance of the entire front parking area being filled at any one time. The Applicant agreed that two signs would be installed, one at the back of the driveway and facing vehicles coming out and one at the front facing vehicles entering the driveway from the front. The signage would indicate that there is two-way traffic and that exiting vehicles should yield to the vehicles entering from the front. The Applicant further indicated that one rear door could be utilized by any customer who had to park in the rear lot. A sign would be added indicating that there is customer access through that rear door. The Applicant also agreed to add bollards or wheel stops in the front parking area and at the northeast corner of the building to prevent vehicles from causing damage to the building. The size and installation procedures for the bollards or wheel stops will be subject to approval by the Township Engineer prior to installation. The Applicant proposes to add 15 new trees and 20 Arborvitae on the Site. 1 tree is being removed from the front yard. The dumpster enclosure would have landscaping for added screening as indicated on the Plans. Lighting will be increased by the addition of 4 pole-mounted fixtures that will have house-side cutoff shields for the benefit of the residential properties. The proposed Plan will reduce pavement by approximately 2,600 square feet. Stormwater runoff will be picked up by 2 new curb inlets and piped directly into the Township storm sewer system. That will improve drainage on the Site.

8. Four variances were requested as follows:

- A: Front yard parking is not permitted by Code Section 170-107.B.(7). Applicant seeks a variance to permit the location of 8 parking spaces in the front yard.
- B: The proposed business would require 15 parking spaces in accordance with Code Section 170-94.E, 13 are proposed; resulting in a request for a variance of 2 parking spaces.
- C: The Applicant proposes a 12-foot wide two-way driveway, on the northerly side of the building, leading to the rear yard. Code Section 170-94.B.(11) requires a 20-foot wide two-way driveway; resulting in a variance request of 8 feet.

D: Code Section 170-94.F.(1) requires a loading space measuring a minimum of 10 feet wide by 26 feet long. The Applicant proposes a loading space of 10 feet by 20 feet; resulting in a variance request of 6 feet.

9. The present front yard parking and the sub-standard driveway width are existing non-conforming conditions. Because of the location of the building on the Site there is no way to provide parking only in the back of the property. Some front yard parking is the only solution. The width of the driveway cannot be increased to 20 feet because of the location of the building. The existing conditions on the property preclude providing a full parking of 15 spaces; resulting in the request for a 2-space variance. The proposed size of the loading space of 10 feet by 20 feet will be adequate because the Applicant relies primarily on delivery by van and not by larger trucks. The Board finds that the front yard parking variance is justified as a c.(1) variance because the existing configuration of the lot and location of the existing building create a hardship. The parking space variance is also justified under the c.(2) criteria because it creates a better plan than would be permitted by the Code, and advances the purposes of the Municipal Land Use Law. The driveway width variance meets the c.(1) variance criteria because the location of the lawfully existing building creates a hardship in that the Applicant cannot comply with the Township requirement of a 20-foot width for a two-way driveway; resulting in a request for an 8-foot variance. All the variances meet the negative criteria in that there will be no substantial detriment to the public good or to the intent and purpose of the zone plan and zoning ordinance. The improvements to the façade and front yard landscaping will improve the streetscape.

10. No members of the public appeared either in support of or in opposition to the Application.

NOW THEREFORE, BE IT RESOLVED by the Board, having duly considered the evidence presented, and having heard the testimony of the witnesses presented by the Applicant, the Board concludes as follows:

1. The Application for Preliminary and Final Site Plan approval converting the use of the subject building to a dry cleaning and clothing alteration business with improvements to the exterior façades, driveway, and the parking configuration be and is hereby approved

2. The Board finds that the following variances can be granted without detriment to the public good, meet the standards of the Municipal Land Use Law, and will not have any negative impact on the zoning ordinance or plan and are hereby granted:

- A: A parking variance of 2 spaces is granted from the requirement of Township Code Section 170-94.E that 15 spaces be provided.
- B: A variance from the requirements of Township Code Section 170-107.B.(7) prohibiting parking in the front yard is granted to permit 8 parking spaces, one of which shall be handicap van-accessible, in the front yard.
- C: A variance of 8 feet from the requirement of Township Code Section 170-94.B.(11) that two-way driveways have a width in multiples of 10 feet is granted to permit a 12-foot wide two-way driveway on the northerly side of the Site.
- D: A variance of 6 feet from the provisions of Township Code Section 170-94.F.(1) so that the length of the loading space may be 20 feet rather than the required 26 feet is granted.

3. The Board's approvals and grants herein are subject to the following conditions agreed to on the record:

- A: A "No Left Turns" sign facing exiting traffic shall be posted at the exit to South Livingston Avenue.
- B: Signs, as approved by the Township Engineer, shall be provided at the front and rear of the driveway to the rear of the Site. The signs shall state that

traffic is two-way. The sign facing exiting vehicles shall require that right-of-way be yielded to vehicles entering from the front of the property.

C: Subject to prior approval by the Township Engineer, the Applicant shall install bollards or wheel stops at the front yard parking spaces and a bollard at the right front corner of the building..

D: A sign advising that it is a customer entrance shall be posted at the southerly rear access door.

E: All exterior lighting shall be on timers and shall shutoff no later than one hour after closing of the business and shall not be turned on any earlier than one hour before opening of the business.

F: The Applicant and the owner of adjoining Lot 20 shall have executed an Easement Agreement allowing the widening of the driveway area onto said adjoining property as shown on the approved Site Plan. After approval of said agreement by the Board's Attorney, the Easement Agreement shall have been filed and recorded, and evidence of such recordation shall have been submitted to the Board Secretary by Applicant.

G: The Applicant shall replace the damaged Arborvitae at the rear of the south property line as part of its landscaping.

H: The following Model Conditions of Approval attached hereto are hereby incorporated herein as further conditions: 1, 3, 4, 6, 8 through 11, 12.c, and 14.

4. The following of the conditions above are **Conditions Precedent** that must be met before the approvals and variances granted by the Board take effect: F and Model Condition of Approval 11.

5. The following conditions above must be met prior to issuance of any permits by the Township: Model Conditions of Approval 6 and 8.a.

6. The following conditions must be met prior to the issuance of any certificate of occupancy: A, B, C, D, E, and Model Conditions of Approval 1, 3, and 8.b.

7. The following conditions are continuing conditions: E and Model Conditions of Approval 9, 11.a and 14.

8. The Board hereby retains jurisdiction as to all signage.

NOW, THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that the Application for Preliminary and Final Site Plan approval and the itemized variances set forth herein be and are hereby granted and approved subject to the further terms and conditions set forth herein.



Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on January 4, 2011 wherein Board Members Dinar, Kalishman, Kimmel, Klein, Leopold, Meade, Venza, Alternate No. 1 Ratner (in place and stead of Member Fernandez) and Alternate No. 2 Anthony (in place and stead of Member O'Neill) voted in favor of the Resolution; they being all of the Members both present and eligible to vote.



Jackie Coombs-Hollis, Secretary

Applicable Model Conditions of Approval
(As Amended through November 13, 2007)

1. Architecture

- a. Rooftop ancillary structures and equipment shall be screened by material compatible with the exterior finish of the building and matching the exterior color of the building as closely as possible.

- b. Enclosures of trash bins or dumpsters shall be of the same type of materials and the same color as the exterior finish of the building.

3. Cleanliness

- a. At the close of each work day the Site shall be thoroughly cleaned and all construction debris, including that within buildings under construction, shall be placed in covered dumpsters which shall be removed from the Site, and replaced, before they overflow.
- b. Not less often than weekly, and whenever else required by the Construction Official or the Township Engineer, the public streets adjacent to the Site, and within 500 feet of the Site, shall be manually or mechanically broom swept to remove dirt, mud or debris originating from the Site.
- c. Dust suppression methods acceptable to the Construction Official and the Township Engineer shall be utilized on the Site.

4. Deeds & Easements

All deeds, easements, dedications or restrictions required by this approval shall be subject to review and approval by the Board Attorney prior to signing and filing for recordation.

6. Final Plans

- a. The full text of all of the conditions of this approval shall be set out on the final plans which shall be submitted to the Construction Official, the Township Engineer and the Board Secretary prior to the issuance of any Township permit in respect of demolition, preparation of the Site or construction of any improvement.
- b. Such final plans shall also include all changes agreed to in the course of the hearing, and shall have been reviewed by the Board Secretary or the Board's Planning Consultant for determination of whether the plans conform to the Board's approvals.

8. Guarantees

- a. The approval of this Application is subject to the posting of any and all required performance guarantees, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the commencement of Site preparation or construction.
- b. This approval is also conditioned upon the Applicant providing, prior to

issuance of the first certificate of occupancy, a performance guarantee for any aspects of the approved landscaping or fencing that has not been completed by the time of issuance of such certificate.

9. Landscaping & Environmental Protection

- a. All deciduous trees planted shall have a caliper of 3.5 to 4.0 inches measured at a height of 4.0 feet above the root ball. All evergreen trees planted shall have a height of 8.0 to 9.0 feet.
- b. Street shade trees shall be planted in front yards and outside the right-of-way.
- c. Any tree or other planting installed in accordance with the plans which dies shall be replaced, within the current or next planting season, in kind and at the same size as it had reached at the time of death; except that if it died more than three years after planting its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to a tree or other planting removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed except as identified for removal on an approved plan. Every existing tree to be preserved shall be tagged and shall be shown on the Site Plan or Subdivision Plan. During site preparation and during construction, each such tree shall be protected by snow fencing or a more substantial means approved by the Construction Official. No soils, excavated materials, or any construction equipment or building materials, shall be stored or operated within a root protection zone that shall be the greater distance of (i) the crown drip line, or (ii) a distance equal to caliper multiplied by one (1) foot, (but never less than eight (8) feet from the trunk of a tree to be preserved), or anywhere else where such soil or materials can adversely affect the health of trees to be preserved. All work done within the root protection zone shall be accomplished with hand tools.
- e. The grade of land located within the root protection zone shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining wall methods; but in no event shall welling or retaining walls be installed less than eight (8) feet from the trunk of a tree.
- f. During site preparation or construction, no fuel storage, and no refueling, maintenance, repair or washdown of construction equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, § 170-53 et seq. of the Code of the Township of Livingston, that establishes a higher or more restrictive standard or requirement shall control.

- h. No mulch shall be placed, or allowed to accumulate, within six inches of the trunk of any tree or shrub planted on the Site in compliance with this resolution. Mulch shall not be applied, or allowed to accumulate, elsewhere within the drip line of the tree or shrub to a depth in excess of four inches.

10. Noise

- a. No site preparation, demolition or construction activity shall be performed on the Site on Sundays, or before 7:30 a.m. or after 5:00 p.m. on weekdays, or before 9:00 a.m. or after 5:00 p.m. on Saturdays or federal holidays.
- b. No machinery or heavy equipment shall be operated on Site on Saturdays, Sundays or federal holidays.
- c. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.
- d. No site preparation, demolition or construction activity (other than authorized blasting) shall produce, at the property line, (i) continuous airborne sound at a sound level in excess of 65 dBA, or which has an octave band sound pressure level in decibels which exceeds the standards provided in 32 N.J.R. 2230 et. seq., or (ii) impulsive sound in air which has a peak sound pressure level in excess of 80 decibels, or (iii) impulsive sound in air which repeats more than four times in any hour and has a peak sound pressure level in excess of 50 decibels.
- e. Relief from these noise conditions may be permitted, temporarily, by the Township Engineer upon his finding that a circumstance constituting an emergency exists and necessitates such permission.

11. Other Governmental Approvals

- a. Applicant shall comply with all applicable Federal, State and local laws and Regulations and obtain any other governmental approvals required for implementation of this application as approved. If any other governmental agency or authority grants a waiver of or variance from any law, rule or regulation, or imposes any condition or requirement, which affects this approval or any of the conditions contained herein, then this Board shall have the right to review such action as it relates to this Board's approval or conditions and to modify, amend or revoke its approval and/or conditions.
- b. No Township permit in respect of preparation of the Site or construction of any improvement shall be issued until proof of request for such approvals, and any action thereupon, shall have been presented to the Construction Official.

12. Paving and Sidewalks

- a. Applicant shall install the top course of street paving not later than the earlier of six (6) months after issuance of the last certificate of occupancy or three (3) years after the issuance of the first certificate of occupancy.
- b. All manholes, catch basins, and driveway curbs shall be ramped until the top course of street paving has been installed.
- c. All sidewalks shall be constructed of concrete or of non-asphalt pavers and shall be not less than four feet wide in a residence district or five feet wide in the Business Improvement District.

14. Traffic and Parking Enforcement

- a. The Applicant shall comply with Township Ordinances Chapter 29, Article 26, regarding handicapped parking and shall maintain such spaces and all the traffic and parking signage and markings on the Site in good order and repair.
- b. At the time of applying for a building permit the Applicant shall submit proof of having filed a written request pursuant to, and in accordance with, N.J.S.A. 39:5A-1, requesting that N.J.S.A. 39:1-1 *et seq.* be made applicable to the roads, streets, driveways, parking areas, etc. within the Site. The Applicant shall provide proof of the governmental action on such request to the Construction Official prior to issuance of the final certificate of occupancy.