

**PLANNING BOARD
CITY OF RAHWAY
APPLICATION No. 11/21-PB**

**A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF RAHWAY
MEMORIALIZING THE ACTION OF THE BOARD
ON THE APPLICATION OF M&H REGINA REALTY LLC
FOR MINOR SITE PLAN APPROVAL
WITH VARIANCES**

WHEREAS, M&H Regina Realty LLC (the “**Applicant**”), applied to the City of Rahway Planning Board (the “**Board**”) for minor site plan approval to increase the height and make other renovations to the existing warehouse building (the “**Application**”), located in the I-H Heavy Industrial Zoning District, on Block 287, Lot 3 on the tax maps of the City of Rahway (the “**City**”), being more commonly known as 190 Regina Avenue (the “**Property**”); and

WHEREAS, a public hearing was held on the application on October 26, 2021, at which time interested parties were given the opportunity to be heard; and

WHEREAS, the Applicant complied with all the procedural requirements of the Municipal Land Use Law, including service and publication of notice of the public hearing, giving the Board jurisdiction to hear the application; and

WHEREAS, due to a declared state of emergency and public health emergency, upon order of Governor Phil Murphy pursuant to Executive Orders, guidelines from the CDC and in an effort to prevent further spread of SARS-CoV-2, commonly known as the novel coronavirus disease 2019 (COVID-19), the meeting was held by electronic means, and the Board provided notice of the meeting by electronic means, and such meeting was held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. and the same was included in the Applicant’s notice; and

WHEREAS, the Board, after carefully considering the evidence presented to it by the Applicant, the Application and the documents filed by the Applicant, and the comments of the public, interested parties and Board Professionals, if any, and has made the following findings of fact and conclusions:

1. The Property consists of approximately 9,995 square feet.
2. The Property is located in the I-H Heavy Industrial Zoning District.

3. The Applicant now seeks to increase the height and make other renovations to the existing warehouse building and the Applicant's proposal is more particularly depicted on the following plans:
 - a. 2-sheet Site Plan, prepared by Harbor Consultants, Inc., dated June 8, 2021, last revised, October 4, 2021.
 - b. 3-sheet Architectural Plans, prepared by Mistry Design, dated February 26, 2021, last revised October 5, 2021
 - c. 1-sheet Architectural Rendering, prepared by Mistry Design, undated
 - d. City of Rahway Land Development Application for #11/21.
 - e. Exhibits presented during the hearing.
4. The Applicant was represented by John Wiley, Jr., Esq. of Wiley Lavender PC. The Applicant presented expert testimony of its architect Yogesh Mistry of Mistry Design, and its site engineer and planner Anthony Gallerano of Harbor Consultants, Inc., both of whom were accepted as experts in their respective fields.
5. In addition, the Board heard the testimony of the Board Engineer Jacqueline Dirmann, P.E., of Colliers Engineering & Design and received her report dated October 25, 2021; and, heard the testimony of the Board's Planner Leigh Fleming, PP, AICP, of Heyer, Gruel and Associates, and received her report dated October 21, 2021.
6. The Property is designated as Block 287, Lot 3 , located at 190 Regina Avenue in the southern portion of the City. The property is an approximately 9,995 square foot corner lot with 100 feet of lot frontage along Regina Avenue and 100 feet of lot frontage on Ferndale Place. The property is currently developed with a one-story 14-foot-tall warehouse building and associated gravel and paved areas. There are two (2) existing garage doors accessed from Regina Avenue, and two (2) accessed from Ferndale Place.
7. The applicant is proposing to increase the height of the building to 22 feet – the building will remain one-story. Additional improvements consist of removing one of the garage doors along Regina Avenue, replacing the existing gravel area along Regina Avenue with pavement, and installing a ramp leading to the door on the western corner of the Regina Avenue frontage. The asphalt area along Ferndale

Place will be milled, paved, and striped to accommodate six (6) parking spaces. No change to the building footprint is proposed.

8. There are two (2) proposed tenant spaces within the project. Both spaces front on Regina Avenue and are identified as 180 Avenue and 190 Regina Avenue. Each tenant spaces contains an office and related non-warehouse space, located off of the entrances on Regina Avenue, and warehouse space. Due to the required parking variance, the Applicant shall not change the warehouse to non-warehouse square footage of the building as depicted on the above-captioned architectural plans without first submitting the same to the Board Professionals to determine if additional variance relief is required, and if relief is required, the Applicant will apply to this Board, which retains jurisdiction over this matter. The façades along all elevations are proposed to consist of stucco, with red accent awnings. The Applicant does not propose any signage except for street the addresses and if future tenants want additional signage that is not compliant, the tenant will apply to this Board, which retains jurisdiction over this matter, for the required relief.
9. The Applicant agreed as a condition of approval to comply with the Board Engineer's report dated October 25, 2021; and, the Board Planner's report dated October 21, 2021, to each of their satisfaction.
 - (i) Specifically, in regard to the Board Engineer's report: The Applicant is advised, understands and accepts that the maintenance of parking spaces in the along Ferndale Place right of way is permitted, however at the Applicant's risk should the city exercise its right of way rights to improve that area, and at such time the Applicant shall, at the Applicant's sole cost and expense remove its parking spaces and/or other improvements in the right of way, and return to this Board, which retains jurisdiction over this matter, for any relief that may be required. The Applicant also agreed as a condition of approval to revise its plans to show the AASHTO compliant site triangle at the intersection of Regina Avenue and Ferndale Place. The Applicant also agreed as a condition of approval to revise its plans to show six straight parking spaces along the Ferndale Place frontage. Further, the Applicant agreed as a condition of approval that all trash and recyclables shall be stored inside the building.

(ii) Specifically, in regard to the Board Planner's report: The Applicant shall revise its plans to include a "No Parking" painted crossed hatched area on the paved area along Regina Avenue.

10. The Application requires the following variance:

1. Insufficient Lot Area – A minimum lot area of 40,000 square feet is required, where 9,995 square feet exists and is not proposed to change as part of the project. This is a pre-existing nonconforming condition.
2. Insufficient Lot Width – A minimum lot width of 150 feet is required, where 100 feet exists and is not proposed to change as part of the project. This is a pre-existing nonconforming condition.
3. Insufficient Lot Depth – A minimum lot depth of 200 feet is required, where 100 feet exists and is not proposed to change as part of the project. This is a pre-existing nonconforming condition.
4. Insufficient Front Yard Setback (Regina Avenue)- A minimum front yard setback of 40 feet is required, where 5.6 feet is existing and proposed from Regina Avenue and is not proposed to change as part of the project. This is a pre-existing nonconforming condition that will be exacerbated as a result of the proposed improvements.
5. Insufficient Front Yard Setback (Ferndale Place) – A minimum front yard setback of 40 feet is required, where 14.9 feet is existing and proposed from Ferndale Place and is not proposed to change as part of the project. This is a pre-existing nonconforming condition that will be exacerbated as a result of the proposed improvements.
6. Insufficient Rear Yard Setback – A minimum 60-foot rear yard setback is required where 0.8 feet and 2.8 feet are existing and not proposed to change as part of the project. This is a pre-existing nonconforming condition that will be exacerbated as a result of the proposed improvements.
7. Excessive Building Coverage – A maximum of 45% building coverage is permitted, where 64.5% is existing and is not proposed to change as part of the project. This is a pre-existing nonconforming condition.
8. Excessive Impervious Coverage – A maximum of 85% impervious coverage is permitted, where 96% is existing and is not proposed to change as part of the project. This is a pre-existing non-conforming condition.
9. Location of Air Conditioners – Air conditioning units are required to adhere to principal building setbacks, and shall be screened from rights-of-way, where neither air conditioning unit adheres to principal building setbacks.
10. Insufficient Parking – A minimum of 13 parking spaces are required, where 6 exist and are not proposed to change as part of the project.

11. The Application requires the following Design Exceptions:

1. Off-Street Loading Location – Loading and unloading areas shall be permitted only in the rear yard, where loading is proposed in both front yards.
 2. Off-Street Loading Screening – At or above-grade loading facilities shall be screened from public view by a solid fence or evergreen shrubs not less than six feet high, where no screening is proposed.
12. The Applicant submits that the Bulk Variances can be granted pursuant to N.J.S.A. 40:55D-70(c)(1) and (2) and that they can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the City’s Master Plan, Zoning Ordinances and the I-H Heavy Industrial Zoning District standards. Specifically, the Applicant submits that many of the variances are pre-existing and are not being exacerbated by the present Application . Further, the Application advances purposes (g) and (i) of the Municipal Land Use Law as contained in N.J.S.A. 40:55D-2 and also provides an aesthetic improvement to the property and the neighborhood in general.
13. The Applicant submits, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Minor Site Plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable City Ordinances, and advances sound land use principals and that Minor Site Plan approval is justified and should be granted. Further, the requested Design Exceptions are reasonable and within the general purposes and intent of the Ordinances and the I-H Heavy Industrial Zoning District and that literal enforcement is impractical and the Design Exceptions can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the City’s Master Plan, and the Zoning Ordinances.

WHEREAS, at the conclusion of the hearing on October 26, 2021, the Board has taken action by voting on said Application in accordance with N.J.S.A. 40:55D-10(g) of the Municipal Land Use Law and has directed that a resolution memorializing such action be prepared.

WHEREAS, the Board has made the following ultimate findings and conclusions based upon the foregoing findings and fact:

- A. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has

satisfied the positive and negative criteria requirements such that N.J.S.A. 40:55D-70(c)(2) has been satisfied for the sign variance, and the Board adopts the Applicant's testimony in this regard, specifically that of its Engineer and Planner

- B. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Bulk Variance applied for can be granted without substantial detriment to the Master Plan, the Zoning Ordinance and the I-H Heavy Industrial Zoning District standards, and, without substantial detriment to the surrounding area, and the Board adopts the Applicant's testimony in this regard, specifically that of its Engineer and Planner.
- C. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Minor Site Plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable City Ordinances, and advances sound land use principals and grants Minor Site Plan approval. Further, the Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the requested Design Exceptions are reasonable and within the general purposes and intent of the Ordinances and the I-H Heavy Industrial Zoning District and that literal enforcement is impractical and the Design Exceptions can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the City's Master Plan, and the Zoning Ordinances. Further, the Board accepts and adopts the Applicant's testimony in this regard, specifically that of its Engineer and Planner.
- D. The Applicant shall incorporate the details of the conditions imposed herein into their Plans which shall be submitted to the Board Engineer and Board Planner to ensure compliance with this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the City of Rahway on the basis of the evidence presented to it, the foregoing findings of fact and ultimate findings and conclusions, that the Board does hereby grant the Application, with the agreed upon and imposed conditions, and subject to the following conditions:

1. The granting of the for Minor Site Plan with Bulk Variance and Design Exceptions with conditions (the "**Approvals**") shall not be construed to eliminate satisfaction of any other requirements of the zoning ordinance and/or other requirements of the

agencies, boards and authorities of the City of Rahway, County of Union or State of New Jersey.

2. The Approvals granted herein are limited in size, scope and intensity to the facts, details and circumstances contained in the Applicant's submissions as supplemented by the exhibits and testimony presented at the hearing and as contained in this Resolution. Any increase in the size, location, intensity or similar expansion of these Approvals are not approved herein and shall be submitted to the Zoning Officer for determination if additional approvals and/or relief is required.
3. All real estate taxes and related charges shall be paid in full prior to applying for building permits.
4. The Applicant shall comply with representations and agreements as well as with all conditions set forth in the Board Engineer's October 25, 2021 report and the Board Planner's October 21, 2021 report, except as modified through testimony at the public hearing.
5. Applicant shall post performance guarantees, escrows and inspection fees with the City in amounts calculated by the City Engineer. All guarantees shall comply with the requirements of the MLUL (N.J.S.A. 40:55D-53 et seq.) the applicable DCA regulations (N.J.A.C. 5:36-4.1 et seq.) and the City land use ordinances (City Code §§53-31 and 53-40) and shall be in a form satisfactory to the Director of Law. This condition shall be satisfied prior to commencing any construction and prior to any disturbance of the property if required by the construction official.
6. Any and all fees and/or escrow payments properly due and owing the Planning Board and/or the City for this Application shall be paid in advance of building permits being issued.
7. The plans shall be revised, if necessary, in accordance with this approval and to the satisfaction of the Board Engineer and Board Planner.
8. All terms and conditions of all prior approvals shall remain in full force and effect, except to the limited extent modified herein.

NOW, THEREFORE BE IT FURTHER RESOLVED that:

1. All conditions contained in this Resolution and in the record of the proceedings in this matter, including any agreements made by the Applicant, were essential to the Board's decision to grant the approvals set forth herein. A breach of any such condition or a failure by

the Applicant to adhere to the terms of any agreement within the time required may result in the automatic revocation of the within approval and may terminate the right of the Applicant to obtain or continue work or occupancy under any construction permits, Certificates of Occupancy or any other governmental authorizations necessary in order to continue development and use of the project.

2. The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event that the Applicant shall make or propose any changes to the project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this Application, whether such change is voluntarily undertaken or required by any other regulatory agency, Applicant shall resubmit any such changes to this Board for review and determination unless the Board Professionals agree the changes can be approved administratively.

[Resolution continues on the following page]

The foregoing is a true copy of a Resolution adopted by the Planning Board of the City of Rahway at its meeting held on November 23, 2021.

 Steven Decker, Board Secretary
 City of Rahway

RECORD OF VOTE OF APPROVAL					
M/S	Name & Title	AYE	NAY	ABSENT	NV/A/R
	Jeffrey Robinson, Chairman; Class IV Member; Environmental Commission Member				
	William Herring, Class IV Member; Board of Adjustment Member				
	Jeffrey Brooks, Class I Member; Mayor's Designee				
	Jeremy Mojica, Class III Member; Council Member				
	Frank Spallone, Class II Member				
	Robert Simon, Class IV Member				
	Thomas O'Reilly, Class IV Member				
	Alexander Shipley, Class IV Member				
	William Cladek, 1 st Alternate				
	Christopher Brown, 2 nd Alternate				

M = Motion, S = Second

"X" Indicates vote

NV = Not Voting, A = Abstain, R = Recusal

RECORD OF VOTE ON MEMORIALIZING RESOLUTION					
M/S	Name & Title	AYE	NAY	ABSENT	NV/A/R
	Jeffrey Robinson, Chairman; Class IV Member; Environmental Commission Member				
	William Herring, Class IV Member; Board of Adjustment Member				
	Jeffrey Brooks, Class I Member; Mayor's Designee				
	Jeremy Mojica, Class III Member; Council Member				
	Frank Spallone, Class II Member				
	Robert Simon, Class IV Member				
	Thomas O'Reilly, Class IV Member				
	Alexander Shipley, Class IV Member				
	William Cladek, 1 st Alternate				
	Christopher Brown, 2 nd Alternate				

M = Motion, S = Second

"X" Indicates vote

NV = Not Voting, A = Abstain, R = Recusal