

R-10-03

**BRICK TOWNSHIP PLANNING BOARD
MINOR SITE PLAN APPROVAL
WITH VARIANCES AND DESIGN WAIVER**

Resolution R-10-03

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Case No. PB-2424-MSP-10/02

January 8, 2003

WHEREAS, MATTONE'S PIZZA GARDEN & CAFÉ, AS APPLICANT,
having a mailing address of 180 Raritan Center Parkway, Suite 11, Edison, New
Jersey 08837, has applied to the Brick Township Planning Board for minor site
plan approval pursuant to N.J.S.A. 40:55D-47, 51, 60, and 70; and

**WHEREAS, New Plan Excel Realty Trust, Inc., 1120 Avenue of the
Americas, 12th Floor, New York City, NY 10035, as owner, has consented and
authorized this application;**

**WHEREAS, proof of service as required by law upon appropriate property
owners and governmental bodies has been furnished and determined to be in
proper order; and**

**WHEREAS, a public hearing was held on December 11, 2002 in the
Municipal Building, at which time testimony and exhibits presented on behalf of
the applicant and all interested parties having been heard;**

**WHEREAS, the Board makes the following factual findings and findings of
law:**

1. This property is known and designated as Block 1149, Lot 5, 5.01
and 6, on the Municipal Tax Map.

2. The property is located in the Laurel Square Shopping Center
which is in the B-3 Highway Development Zone. The site is located on NJ State

FILE 2
APP
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TAX A

Highways 88 and 70 and is developed with several strip centers, including a Pathmark Food Store and a K-Mart Department Store. The subject application is for re-development of an existing stand – alone building (formerly occupied by China Buffet Restaurant, and prior, a Steakhouse Restaurant) in the southeast corner of the site adjacent to Route 88 Westbound. Applicant is further proposing a new restaurant of 5000 square foot at the site along with the conversion of seven parking spaces into any associated outdoor dining area of 2,700 square feet.

3. Applicant's architect, Paul L. Barlow, AIA, P.P. and applicant David Mamiye testified that Mr. Mamiye's dream was to transfer the concept of an "outdoor dining garden (popular in Mr. Mamiye's native Brooklyn, as much as nine months of the year) here to the New Jersey shore area. The proposal would include an indoor seating area as well as the outdoor "garden seating area". Mr. Mamiye further testified that the restaurant's "upscale casual" atmosphere is expected to do quite well here in Brick. He testified that it was a self-service dining experience, with various food items and coffee, espresso, juice and soda also available. Mr. Mamiye also explained that there would be a full-scale, self-service soda fountain, with ice cream, gelatto and Italian specialties such as Spumoni. No Liquor License is desired – and applicant reaffirmed that he was eager to have this concept work, and would work very hard to assure the restaurant's success.

4. The application is shown on plans entitled, "Schematic Site Plan, Mattone, Rte 88 – Laurel Square Shopping Center, Brick Township, Ocean County, New Jersey," dated 11/20/02, consisting of one (1) sheet, as prepared by Barlo & Associates, P.A.

5. Birdsall Engineering, Inc., prepared a report to the Board dated December 3, 2002. The Board hereby adopts the findings in that report and incorporates that document in this resolution by reference.

6. Michael P. Fowler, AICP/PP, Municipal Planner, prepared a report to the Board dated December 11, 2002. The Board hereby adopts the findings in that report and incorporates that document in this resolution by reference.

7. Kevin Batzel of the Brick Township Board of Fire Safety prepared a report dated December 4, 2002. The Board hereby adopts the findings in that report and incorporates that document in this resolution by reference.

8. Per section 190-103, applicant has sought a variance for a front yard setback (75 ft required, 56.9 ft. existing from building) in that this application represents an improvement over the existing vacant building. As such, the Board finds that this existing variance for a front yard setback is reasonable. Further, per 190-224.1, applicant originally requested a variance from requirement for trash enclosure to be landscaped on three (3) sides, whereas originally, no enclosure was proposed – simply an existing dumpster. After some discussion, applicant agreed to re-locate existing dumpster to be enclosed and landscaped on two (2) sides and placed at a location in rear, adjacent to building, with a shallow depth enclosure. Applicant further agreed to police the area to maintain its cleanliness on a regular basis. Further, per section 190-108 a minimum of twenty percent (20%) of the site area should be landscaped. Applicant and his engineer testified that the landscaping provided is a substantial upgrading to what is presently on site. As such, these variances may be granted. Further, applicant has requested a variance for parking space stalls. In accordance with Section 190-161J, parking spaces shall be 10' by 20' whereas applicant

proposes that the existing 9' by 18' stalls be permitted. As such, this existing condition variance may be granted. Applicant and his engineer further testified that based on adjacent parking areas, there is sufficient spaces available that this application meets the parking space requirements of Section 190-160. As such, no variance is requested, and none is given.

Although some Board members wanted the applicant to agree to perform more and greater remedial work at the applicant's site, it is understood that applicant is a tenant in the Laurel Square Shopping Center. This proposal is an attempt to upgrade the site area and together with applicant's representations, the variances are therefore granted.

9. Design waivers are required as follows:

(a) Applicant further agrees to comply and provide, per Section 190-161G, designation of the proposed loading area on the plan, and this design waiver is therefore, not necessary.

(b) Applicant proposes waiver from requirement that a landscaped island be included for every row of 10 parking spaces. As this is an existing condition – and applicant seeks to maximize available parking, this waiver may be granted.

(c) Applicant proposes waiver from requirement that aisle width be 25' whereas, proposal is 23' along Route 88 side of building. This waiver may be granted – as applicant is limited to existing curb cuts and location of existing building.

10. With the exception of the variances and design waiver granted hereinabove, the applicant has complied with the requirements of the minor site plan ordinance. The plan is consistent with the intent and purpose of the Master

Plan and the Municipal Development Ordinance. Accordingly the Board finds that the benefits of the proposed development outweigh any detriments, and the relief requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Township Zoning Ordinance or Master Plan.

NOW, THEREFORE, BE IT RESOLVED by the Township Planning Board on this 8th day of January 2003, that this application be approved subject to the following conditions:

1. The applicant shall comply with all standard Planning Board conditions for minor site plan approval as set forth on Attachment 'A.'
2. The applicant shall comply with all representations and agreements made by the applicant, its attorney or other professionals during the presentation of this case.
3. The applicant shall comply with the following paragraphs contained in the report of Birdsall Engineering dated December 3, 2002: 4(paving completed by owner/landlord New Plan Realty; elevations will be supplied), 5, 6, 7, 8, 9, and 10.
4. The applicant shall comply with the following comments contained in the report from Michael P. Fowler, AICP/PP dated December 11, 2002: V. Comments: A (Applicant will use its best efforts to upgrade landscaping in immediate vicinity of their site to satisfaction of Board Engineer/Planner. However – larger area of shopping center drainage plan should be addressed to owner of Shopping Center – and applicant and Board's Engineer/Planner will endeavor to engage owner in a workable remedial comprehensive plan for Center. Board's professional engineer is to report back to Board as to response

by landlord to drainage plan submitted by Board's Engineer. B (Applicant's Architect testified plan meets ordinance requirements) C, D, E (No Neon, no free standing signs, signage will be backlit), F, G, H (Testimony of applicant anticipated that the hours of this restaurant would vary with the seasons, with spring and summer time would include breakfast from about 6 or 7 a.m. and later starts in fall/winter. Dining would be as expected to continue through mid-day lunch and evening dinner staying open as late as approximately midnight).

5. The applicant shall comply with the comments contained in the report from Kevin Batzel, Bureau of Fire Safety, dated December 4, 2002.

6. Applicant represents and agrees that it will plant shrubs and supplement other plantings along proposed thirty inch (30") masonry wall on Pizza Garden side, to satisfaction of Board's Engineer/Planner. Planters will be installed on top of decorative wall.

7. Applicant has agreed that the mechanicals on roof will be screened on all four sides.

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January 8, 2003

MOVED BY: Mr. Scherer

SECONDED BY: Mr. Dockery

VOTING IN THE AFFIRMATIVE: Councilman Underwood, Mr. Kelly, Mrs. LaDuke,

Mr. Aiello, Mr. Dockery, Mr. Petoia, Mr. Reilly, Mr. Vespi,
Mr. Scherer

VOTING IN THE
NEGATIVE:

PRESENT BUT NOT VOTING Mr. Fredo

INELIGIBLE TO
VOTE:

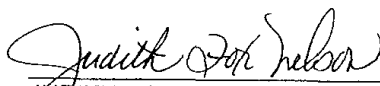
ABSTAINING:

ABSENT: Mr. Higgins

CERTIFICATION

I, JUDITH FOX NELSON, Clerk of the Planning Board of the Township of Brick, County of Ocean, State of New Jersey, do hereby certify that the foregoing resolution was duly **ADOPTED** by the said Planning Board of the Township of Brick at a regular meeting held on the 8th day of January, 2003.

IN WITNESS WHEREOF, I have set my hand this 13th day of January, 2003.


JUDITH FOX NELSON
Clerk of the Planning Board

ATTACHMENT "A"

BRICK TOWNSHIP PLANNING BOARD

STANDARD CONDITIONS FOR SITE PLAN APPROVAL

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1. Applicant shall obtain certification by the Local Soil Conservation District of a plan for soil erosion and sediment control in accordance with N.J.S.A. 4:24-39 et seq. commonly known as the "Soil Erosion and Sediment Control Act."
2. All materials, methods of construction and details shall be in conformance with the current "Engineering Specifications and Construction Details" of the Township of Brick, which are on file in the office of the Township Engineer.
3. Applicant shall obtain all approvals required by any Federal, State, County or Municipal agency having regulatory jurisdiction of this development. Upon receipt of such approval(s), the applicant shall supply a copy of the permit(s) to the Board. In the event that any other agency requires a change in the plans approved by this Board, the applicant must reapply to the Brick Township Planning Board for approval of that change.
4. Applicant shall submit this entire proposal for re-approval should there be any deviation from the terms and conditions of this Resolution or the documents submitted as part of this application, all of which are made a part hereof and shall be binding on the applicant.
5. Applicant shall provide a statement from the Brick Township Tax Collector that all taxes are paid in full as of the date of this Resolution and as of the date of the fulfillment of any condition(s) of this Resolution.
6. Prior to the issuance of a construction permit, the applicant shall furnish the Township Clerk with a cash bond and performance guarantee in an amount to be determined by the Township Engineer.
7. Applicant shall post an inspection fund with the Township Clerk in an amount to be determined by the Township Engineer.
8. No soil shall be removed from the site without the written approval of the Township Council.
9. The applicant shall comply with all provisions and pay all fees established under Article VB (Mandatory Development Fees) of Chapter 190 of the Code of the Township of Brick.
10. For all residential uses the subdivider or site plan applicant shall provide for a trash receptacle.
11. In order to insure uniformity of trash receptacles and compatibility with the automatic trash collection system, all trash can receptacles required herein shall be obtained from the Township of Brick.
12. Applicant shall provide proof of application for Title NJSA 39:5 A-1 to the Planning Board.

TOWNSHIP OF BRICK

LAND DEVELOPMENT APPLICATION

Application No. 2424-MSP-10/02

Planning Board ☒ Zoning Board ☐ Date of Submission 10-17-02

Filing Fee \$ 500⁰⁰
Escrow # 500⁰⁰

A. APPLICANT Mattone Pizza Garden and Café/Attn: David Mamiye

Name

180 Raritan Center Parkway, Suite 11 732-512-1445

Street Address

Telephone #

Edison, New Jersey 08837

City & State

Zip Code

(If not owner set forth ownership interest, contact purchaser, etc., & attach copy of document following same).

OWNER New Plan Excel Realty Trust, Inc.

Name

c/o Greg Levine 1120 Avenue of Americas, 12th Floor

Street Address

Telephone #

New York, NY

10036

City & State

Zip Code

B. TYPE OF APPLICATION: New ☒ Amended ☐

1. Minor Subdivision ☐

4. Site Plan - Prel. ☐

2. Major Sub.-Prel. ☐

5. Site Plan - Final ☐

3. Major Sub.-Final ☐

6. Conditional Use ☐

Date of Prel.App. ☐

(Must be accompanied by Site Plan)

7. Minor Site Plan ☒

8. Cluster Zone ☐

12. C.40:55D70D ☐

9. C.40:55D-70A ☐

13. C.40:55D-34 ☐

10. C.40:55D-70B ☐

14. C.40:55D-35 ☐

11. C.40:55D-70C ☐

C. PREVIOUS APPEALS OR ACTIVITY

No ☐ Yes ☐ If yes, date - - Type Variance

Approved ☐ Disapproved ☐

D. LOCATION: Laurel Shopping Center, N.J. Statte Highway Rt. 88

Street Address

60

1149

5, 5.01 and 6

Tax Map # Block(s) #

Lot(s)

Type of Road: Cul-de-sac ☐ Secondary ☐