

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF MIDLAND PARK**

RE: Parkwood Deli, LLC  
342 Erie Avenue  
Block 8, Lot 1  
R-1 Zone District

**RESOLUTION**

**WHEREAS**, Parkwood Deli, LLC (the “Applicant”) has filed an Application with the Midland Park Zoning Board of Adjustment (the “Board”) seeking site plan approval and variances to allow for the approval of an outdoor refrigeration box at its existing commercial property located at 342 Erie Avenue, Midland Park, New Jersey (the “Property”); and

**WHEREAS**, a Public Hearing was held by the Board on February 9, 2022; and

**WHEREAS**, the Applicant’s Notice of Public Hearing has been served on all required parties and published in accordance with the requirements of the Municipal Land Use Law; and

**WHEREAS**, the Board has considered the Application and supporting documents submitted by the Applicant as they relate to the applicable provisions of the Midland Park Zoning Ordinance; and

**WHEREAS**, the Board has considered the following testimony presented at the Public Hearing:

**Testimony**

1. The Board heard testimony from the Applicant’s professional engineer, Robert Weissman. Mr. Weissman provided testimony with respect to the plan he prepared entitled, “Outdoor Cooler Plan,” with last revision date, September 21, 2021. The plan was marked into evidence. Mr. Weissman testified that the actual size of the proposed cooler would be 8 feet by 14 feet, smaller than the size depicted on the plan. The cooler would be located on 2 existing parking spaces thereby reducing the number of provided spaces from 12 to 10. Pursuant to the engineer’s testimony as well as the report prepared by the Board’s engineer, Richard Wostbrock, when applying the updated 2021 Midland Park parking requirements, 26 spaces are required and 10 are proposed as a result of the existing Application. When applying the prior ordinance, 38 were required and 12 were provided. Therefore, a preexisting nonconforming parking condition exists. Although as a result of the new parking ordinance, the deficiency has been reduced even when reducing the number of spaces from 12 to 10. The Applicant testified that a larger cooler box has been on the site for several months and there has been no issue with parking.

2. The Applicant agreed that as a condition of approval he would move the proposed cooler box to be 3 feet off the eastern rear property line and fence. In addition, the cooler box would be moved 5 feet off the existing air conditioning unit and 8 feet from the existing building. In addition, the Applicant agreed that no tables or chairs would be permitted inside the building and that the cooler box would be painted white to match the existing fence.

3. The Applicant and his engineer confirmed that the cooler box would have a height of 8 feet 6 inches. The existing temporary box is 12 feet high and has been at the location for 3 months.

4. The Applicant testified that 2 parking spaces to be removed as a result of the location of the cooler box are not practical and not used as a result of their location. In addition, the Applicant testified that employees park offsite.

5. The Board took notice that the indoor seating that existed when the Applicant appeared before the Planning Board for site plan approval has been removed, and, thereby, the parking requirements have been reduced.

6. The Applicant also testified that a gate on the dumpster is not practical since it would have to face the street and could cause a safety issue. The gate could no longer face the remainder of the parking lot since the dumpster sits at a different elevation than the remainder of the parking lot.

7. The Applicant provided details of the proposed outdoor cooler box.

8. The Applicant proposes to increase the fence height to 6 feet which was already reviewed and approved by the Planning Board..

### **Comments and Findings of the Board**

9. The Board finds that the Application for site plan approval can be granted as the improvements provide a benefit to the site. The Board finds that the 2 parking spaces to be eliminated were not practical or likely to be used. A variance for the number of parking spaces provided is justified by the undersized nature and irregular shape of the lot. As result of the size and shape of the lot, the Board finds that a hardship exists.

10. Moreover, the Board finds that the current location of the dumpster facing the street provides a safe and sensible location. A gate is not practical since the dumpster area faces the street and is at a different elevation than the parking lot. The Board finds that a 6 foot fence around the dumpster would provide for better screening and constitute an improvement and thereby promote the purposes of the Municipal Land Use Act.

11. The Board approves the proposed size and location of the outdoor refrigeration box as amended by the Applicant through testimony. The refrigeration box will be 3 feet from the rear yard property line, 5 feet from the air conditioning unit, and 8 feet from the building. The box will be 8 feet by 14 feet in size and no more than 8 feet 6 inches in height. The Board finds the location and size to be reasonable and, therefore, approves the same. A variance for the location of the cooler box is justified as a result of the undersized nature and irregular shape of the lot.

12. The Board finds that the Applicant has met its burden with respect to the justification for a variance pursuant to N.J.S.A. 40:55D-70(d)(2). The Board finds that the proposed refrigeration box is particularly well suited for the existing delicatessen so that the proposed refrigeration box carries out the purpose of zoning as defined pursuant to the Municipal

Land Use Law. Specifically, by promoting the general welfare by guiding the appropriate use of the lands pursuant to N.J.S.A. 40:55D-2a and providing for sufficient and appropriate commercial uses pursuant to N.J.S.A. 40:55D-2g. Specifically, the Board recognizes the fact that the existing delicatessen exists on a difficult lot, and the outdoor refrigeration box will allow the use to continue and thrive at the location which has limited space.

13. The Board finds that there will be no substantial negative impact to the Zoning Ordinance, the Zoning Plan, or neighborhood since the proposed refrigeration box will be significantly lower and closer to the building than the existing box. The circulation of the site and business has continued to work with the existing refrigeration box and should be much improved with the smaller and relocated refrigeration box.

**NOW, THEREFORE, BE IT RESOLVED**, by the Midland Park Zoning Board of Adjustment that, based upon the above findings of fact and conclusions of law, the Application of Parkwood Deli, LLC for site plan approval and variances as described herein is hereby GRANTED, and that the action taken by the Board of Adjustment on February 9, 2022, be and is hereby memorialized subject to the following conditions:

1. The Applicant is required to obtain a building permit and post all necessary fees and costs with the Borough prior to any construction.
2. All construction shall be completed in accordance with the plans and drawings marked into evidence, along with the testimony of the Applicant and its experts, and in accordance with all applicable, state, county, and municipal codes, ordinances, rules, regulations, and in accordance with the instructions of the construction code of the Borough.
3. The variance relief granted by this Resolution applies only to such variance requests as depicted in the Resolution.
4. The refrigeration unit shall be moved 3 feet from the rear east line fence, 5 feet from the existing air conditioning unit, and 8 feet from the existing building.
5. The unit will be no more than 8 feet by 14 feet in size and no more than 8 feet 6 inches tall.
6. There shall be no tables or chairs permitted inside the building.
7. The refrigeration unit shall be painted white to match the fence.
8. Employees shall park off site.
9. A 6 foot fence shall be installed around the dumpster.

**BE IT FURTHER RESOLVED** that the Chairperson and Secretary of the Board are hereby authorized to affix their signatures to this Resolution confirming approval of the Application.

Approved: March 9, 2022

---

Mark Braunius, Secretary

---

Les Andersen, Chairperson