

**BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN
PLANNING BOARD**

**RESOLUTION GRANTING AMENDED SITE PLAN APPROVAL FOR PREMISES
KNOWN AS BLOCK 20.10, LOT 5.01,
KNOWN AS 195 GODWIN AVENUE, BOROUGH OF MIDLAND PARK
COUNTY OF BERGEN, STATE OF NEW JERSEY**

WHEREAS, ABDD V, LLC, received site plan approval for premises known as 195 Godwin Ave., also known as Block 20.01, Lot 5.01 on the current tax assessment map of the Borough of Midland Park, which approval was memorialized by a Resolution of the Planning Board (“Resolution”); and

WHEREAS, during development of the Premises a retaining wall and related landscaping was not installed in accordance with the plans that were approved; and

WHEREAS, the applicant has submitted an application for Amended Site Plan Approval for such revisions; and

WHEREAS, public hearings of the Planning Board was held on April 17, 2023 and May 15, 2023 (in which due notice was given) and during which the Planning Board heard testimony by the Applicant and its consultants, representatives, and experts, and the Planning Board reviewed and considered all correspondence, maps, plats, reports and public input, if any, on the application, as well as a presentation by the Applicant’s attorney, Craig Feldman, Esq., together with all exhibits submitted as evidence; and

WHEREAS, along with the application, the Applicant submitted a set of engineering plans prepared by Dynamic Engineering dated August 20, 2021, with a final revision date of March 28, 2023, consisting of 19 pages (“Plans”); and

WHEREAS, during the public hearing the following were introduced by the Applicant as exhibits:

A1 – Site Plan drawing, dated August 20, 2021 with a final revision date of March 28, 2023.

A2 – Set of colored pictures of the site.

A3 – Set of colored pictures showing the installation sequence of the retaining wall; and

WHEREAS, the submissions by Applicant have been reviewed by the Planning Board engineer, Erik Boe, and his comments and recommendations are set forth in his letter to the Planning Board dated April 6, 2023, updated May 12, 2023; and

WHEREAS, The Planning Board heard testimony from the Applicant’s representatives as follows:

Kyle Kavinski of Dynamic Engineering testified on behalf of the Applicant at the April 17, 2023 hearing. The Board accepted Mr. Kavinski as an expert in the field of engineering.

Mr. Kavinski testified that when preparing for the installation of the retaining wall along the east

property line a significant amount of rock and shale was found. The type of wall proposed and approved for that area was a soldier pile retain wall which consists of steel beams driven into the ground with timbers running between the beams. He was concerned that the drilling through the rock and shale that would be required to install the steel beams would create vibration that would damage the existing rock wall on the adjoining Church property. As an alternative, a retaining wall of precast concrete block was installed. There is no change to the curbing or the circulation lanes for the drive through. Because the wall that was installed is wider than the proposed wall, some of the small plants proposed along the base of the wall were eliminated and placed at the top of the wall facing the Church property. There is no change to the number of plants.

The Board expressed concern that as the wall is wider than proposed and was closer to the curb line it may interfere with traffic in the drive through lanes. The Board also expressed concern that there was no evidence that the retaining wall had been installed in conformity with the detail drawings; and

WHEREAS, the matter was open to the public for comments and questions of the witness. Mark Braunius questioned why the applicant had not submitted the revised design for approval prior to the installation so the plans and the installation could be properly reviewed; and

WHEREAS, the Board determined that there was not sufficient information as to whether the wall was properly installed and instructed the applicant to provide pictures and other relevant documentation to the Board Engineer for such determination and carried the application to the May meeting; and

WHEREAS, the applicant appeared at the May 15, 2023 meeting and was represented by Eric Friedman, Esq. The applicant provided extensive pictures of the installation process which were marked into evidence as Exhibit A-3. The Board Engineer advised the Board that he had reviewed the pictures and it was his opinion that the pictures were sufficient to show that the installation conformed to the design drawings submitted and that there was no alteration to the drive through aisles. It was his opinion that the revised design was warranted and necessary given the rock and shale encountered; and

WHEREAS, the Planning Board makes the following findings of fact/conclusions of law:

1. The revised design was necessary to avoid the potential damage to the wall on the adjoining property caused by drilling.
2. There is no alteration to the drive through aisles on the site.
3. The installation was completed in conformance with the accepted design for the wall and the wall will serve the same intended purpose as the retaining wall that was originally proposed and approved.
4. There will be no negative effect to the Premises or to any adjoining property.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board that based upon the above findings of fact and conclusions of law the application of ABDD V, LLC for amended site plan approval for those premises known as Block 20.10, Lot 5.01, 195 Godwin Ave. is hereby granted; and

BE IT FURTHER RESOLVED that the approvals set forth above are subject to all of the conditions contained in the Resolution. In addition, the applicant shall provided updated as-build plans showing the signs that have been re-located and shall confirm that the lines for the drive through lanes have been installed in accordance with the approved plans.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Board are hereby authorized to affix their signatures to this resolution granting amended site plan approval. The Secretary of the Board is hereby authorized to advertise the action taken by way of this resolution in the local newspaper and furthermore send certified copies of this resolution to the Borough tax assessor, construction code enforcement official, building sub-code official, zoning official, the borough attorney, and the Applicant's attorney.

Approved:
Planning Board of the Borough of Midland Park

JESSICA HARMON, *Secretary*

By: _____
KENT RIGG, *Chairman*

Date: