

**BOROUGH OF HAWTHORNE  
PLANNING BOARD**

**RESOLUTION GRANTING SITE PLAN AND VARIANCE APPROVAL FOR  
PREMISES KNOWN AS BLOCK 174, LOTS 29, 30.01 and 30.03,  
KNOWN AS 60 FIFTH AVENUE, BOROUGH OF HAWTHORNE  
COUNTY OF PASSAIC, STATE OF NEW JERSEY**

**WHEREAS**, an application has been submitted to the Borough of Hawthorne Planning Board by Premio Foods, Inc. for site plan and variance approval and for a certificate of compliance for occupancy for the premises known as Block 174, Lots 29, 30.01 and 30.03 on the current tax assessment map of the Borough of Hawthorne; and

**WHEREAS**, a public hearing of the Planning Board was held on Tuesday, July 20, 2021 (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, Robert Landel, Esq., together with all exhibits submitted as evidence; and

**WHEREAS**, during the public hearing the following was introduced by the applicant as exhibits:

- A-1 Site Plan (4 sheets) entitled, "Preliminary Site Plan for Premio Foods Incorporated, 60 Fifth Avenue, Borough of Hawthorne, Passaic County, New Jersey, prepared by Bruce D. Rigg, PE PLS, dated May 5, 2021, with a final revision date of June 28, 2021.
- A-2 Easement
- A-3 Lease Agreement dated February 1, 2000, between The New York, Susquehanna and Western Railway Corporation and Garden State Sausage Company
- A-4 Plan entitled "Proposed Alteration for Premio Foods Incorporated-Proposed Elevations" prepared by Edward A. Easse, Architect, dated January 15, 2021, and identified as sheet no. A-1.
- A-5 Plan entitled "Proposed Alteration for Premio Foods Incorporated-Proposed Floor Plan" prepared by Edward A. Easse, Architect, dated January 15, 2021, and identified as sheet no. A-2; and

**WHEREAS**, the submissions by Applicant have been reviewed by the Planning Board engineers, Boswell Engineering, and their comments and recommendations are set forth in their letters to the Planning Board dated June 18, 2021 and July 13, 2021; and

**WHEREAS**, the submissions by the Applicant have been reviewed by the Planning Board Planner, Burgis Associates, Inc. and their comments and recommendations are set forth in their Memorandum

dated July 14, 2021; and

**WHEREAS**, the Planning Board also considered the a report by Lt. Mark Michalski of the Hawthorne Police Department dated July 14, 2021; and

**WHEREAS**, the application submitted by the applicant requests the following relief:

Waivers

Checklist Item C(5) Topographic survey of all utilities within 200 feet.

Checklist Item C(7) Setback dimensions of all structures within 200 feet.

Checklist Item C(14) Stormwater calculations. This waiver is eliminated by the conditions of this resolution.

Checklist Item C(15) B&C Lighting and landscape plan.

Variances

Section 540-132(b) – Minimum Parking Area – Zoning Ordinance requires 200 square feet, 162 square feet proposed.

Section 140-132(c) - Zoning Ordinance requires all parking spaces to be paved. Applicant proposes parking spaces which are not paved.

Section 540-7 - Minimum side-yard setback of 10 feet required by Zoning Ordinance. There is an existing side-yard setback of zero feet. Addition proposed along same building line with setback of three-tenths of a foot.

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

Robert Landel, Esq. as the legal representative of the applicant. Mr. Landel gave the Board an overview of the application. He advised that the applicant was also the owner of Lot 30.02 and that the applicant is the contract purchaser of Lots 29, 30.01 and 30.03. He believes that although the property is shown as three lots they have merged by law and the applicant would prepare and record a deed merging the lots. Upon closing, the lots would be under common ownership with Lot 30.02. The applicant leases Lot 30 from the railroad. He introduced the lease agreement, which was marked as Exhibit A-3, and advised the Board that the lease remains in effect. The intent of the use of the property will be to supplement and complement the existing use of the applicant on Lot 30.02 and will allow the applicant to control traffic, particularly truck traffic, in and out of the site and direct it to Utter Avenue rather than to Fifth Avenue. He noted that additional parking will be provided which will alleviate vehicle parking on Fifth Avenue.

Bruce Rigg testified on behalf of the applicant and was accepted by the Board as an expert in the

field of engineering. He prepared the plans that were introduced as Exhibit A-1. He testified that the applicant proposes to use the existing building that is located on Lots 29, 30.01, and 30.03 in connection with the applicant's operation currently existing on Lot 30.02. The footprint of the building will not change except for a small addition along the lot line of Lot 30.01 which replaces a ramp that currently exists in that area. This addition requires a variance as it has a setback of 3/10 of a foot where the zoning ordinance requires a 10-foot setback. However, the addition extends from the existing building which is located directly on the property line. The common property line is with Lot 30 which is leased by the applicant from the railroad and is part of the applicant's operations.

Four loading docks will be added to the north side of the building. These loading docks will be somewhat recessed. There will be five loading docks added to the west side of the building. An existing fence and wall between the properties will be removed to allow vehicular and truck access to these loading docks.

Fifty-three parking spaces will be located on the property which will be designated as employee parking. The parking spaces are proposed to be 9 feet by 18 feet where the zoning ordinance requires 10 feet by 20 feet. Since the parking spaces will be used by employees, there will be limited vehicular movement and, in his opinion, the proposed size of the spaces is sufficient and fairly common for this type of use. The ADA spaces will comply and he will provide a certification to that effect. There is a gravel parking area proposed which requires a variance as the zoning ordinance requires all parking areas to be paved. However, this area will only be used for truck parking.

With respect to drainage, the topography of the property is such that all surface water drains towards the railroad. The gravel area will be beneficial with respect to drainage. Nine seepage pits are proposed to handle the roof drains and any overflow of the seepage pits will flow towards the railroad property.

No new lighting is proposed and the only change is that one existing pole light is being moved 20 feet as it is currently located in front of the one proposed doorways. In response to an inquiry from a board member, he indicated that the lights can be adjusted so they do not shine on the property across the railroad tracks which is a catering facility.

A generator and refrigeration units will be located outside of the building. The generator will be located on the east side along with two of the refrigeration units. Four refrigeration units will be located on the west side of the building near the proposed addition. All units will be protected by bollards.

He acknowledged that the trucks using the loading dock along the north side of the building would use Lot 30 which is owned by the railroad and subject to a lease agreement with the applicant. The applicant agreed to provide written consent of the railroad to this application and use of the property, although the use is permitted by the applicant's lease with the railroad.

Mike Kelly, the Board Engineer, agreed that the parking lot size proposed is sufficient for the type of use and allowing the smaller size increases the number of spaces which can be

provided which is a benefit to prevent employees from parking on the street.

Mark Cinque, the president, and chief executive officer of the applicant, testified. The applicant produces food products which require refrigeration. The intent of the improvements is to use the building in connection with its existing operations on Lot 30.02. The existing building will be used to manufacture products and the finished product will be transferred to the new building which will be a refrigerated building. All shipments out will be from the new building. The proposal will result in a spreading out of the operation but there will be no new operations or increase in the number of employees. Currently, finished product is kept refrigerated in refrigerated trailer units which are then parked in their parking lot and the units must run continuously. Under the current operation there are up to twenty refrigerator containers on site. With the proposed refrigerated building there will be a maximum of six. This will significantly reduce the noise of the operation.

He testified that the operation runs three shifts, which will continue. For the first shift, there are 330 employees and they have counted 73 employee vehicles. Second shift has 220 employees and they have counted 43 vehicles. The third shift is a cleaning crew with a limited number of employees. There are only 28 spaces on the current site and the majority of the employees have to park on the street, primarily along 5<sup>th</sup> Avenue. With the 53 additional spaces, all the employees will be required to park on site.

All delivery trucks will be required to enter and exit from Utter Avenue and will not be permitted to use the access off of 5<sup>th</sup> Avenue which will eliminate the truck traffic on that residential street. The company has employees that will enforce that restriction.

Edward Easse testified and was accepted by the Board as an expert planner and architect. He prepared and introduced the exhibits that were marked as A-4 and A-5. He described the proposed building improvements. The footprint of the building will remain substantially the same except for a small addition that replaces an access ramp and the addition of loading doors on the north and west sides of the building. The loading doors and the trucks will not be visible from the residential areas and were designed for that purpose. The loading bays have been located so that all trucks will enter and exit onto Utter Ave. and not onto the residential area on 5<sup>th</sup> Avenue. The air conditioning units that are located on the east and west sides of the building have ultra-quiet condensing units. The location of these units is dictated by the design of the building, but he does not feel that the noise will be heard by the residents in the area.

The proposed use of the property in connection with the applicant's existing use on the adjoining property is beneficial from a planning standpoint as it will reduce the number of refrigeration trailers and allows the applicant to dictate the traffic flow off of 5<sup>th</sup> Avenue. The parking variance is justified under both the C1 and C2 criteria in that available area for parking is limited because of the layout of the existing structures. The benefit of the smaller spaces is that it allows for more parking spaces so that the number of vehicles parking on the street will be reduced or eliminated. As there is minimal vehicular movement in and out, the size is appropriate.

John Szabo, the Planning Board's planner, testified and offered the opinion that consolidation of the properties into one use is beneficial as it allows the control of truck traffic and greater efficiency of the use of the property. The use of the building for refrigerated products will reduce the number of refrigeration trailers operating on the property which will reduce the effect of the operation on the residences. It is also his opinion that the parking size proposed is appropriate as there is limited movement and allows for an increased number of spaces.

### **Public Comment and Questions**

**WHEREAS**, the matter was open to the public for questions of the witness and comments to the application. A number of residents questioned the ability to enforce the street parking and access of the delivery trucks.

### **Findings of Fact and Conclusions of Law**

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

1. The applicant currently operates its business on Lot 30.02, which adjoins the property that is the subject of this application. The proposed use is a permitted use.
2. The subject property is landlocked and the only access is through an easement across Lot 29.01 onto Fifth Ave. or across the applicants property which is Lot 30.02. This results in truck access onto Fifth Ave. The applicant's proposal will allow and require trucks to access the property from and to Utter Ave. which is a benefit to the residences on Fifth Ave.
3. The applicant testified, and the Board finds the testimony credible, that the scope and intensity of the operation will not increase. Rather, the operation will be spread out to the new facility, which will allow for a more efficient operation. The use of the facility as a refrigerated building will reduce the number of refrigerated trailers on site which will reduce the noise from those units.
4. There are 28 parking spaces on the applicant's current property, which is not sufficient for the number of employees. As a result the employees are forced to park on the street. The addition of 53 parking spaces will reduce or eliminate the need for street parking.
5. The applicant has met the burden for the variance for the size of the parking spaces under both the C1 and C2 criteria. The irregular shape of the property and the fact that it is already fully developed limits the available area for parking. As there is limited movement in and out of the spaces, the intend of the ordinance is met. The benefit of the additional number of spaces that are provided by reducing the size outweighs any minimal detriment as it allows more employees to park on site rather than on the street.
6. The side yard setback variance requested is along the common property line with the lot that is leased from the Railroad and used in connection with the applicant's operations. Although

legally the lot line exists, practically the Railroad property has no use other than by the applicant.

7. The Board professionals are of the opinion that the proposal provides a greater efficiency of use of the properties by allowing the applicant to control truck access and allows for the parking of employee vehicles on site with no increase to the intensity of the use. The effect of the consolidation of the lots into one use will reduce the effect on the residences in the area.

**WHEREAS**, the Planning Board has considered the request by the applicant for the variances and waivers set forth above. In considering the overall application to be in accordance with sound and proven zoning and planning principles, the Planning Board has determined that, based on the above mentioned facts and the testimony of the witnesses, the requested variances can be granted without causing a substantial detriment to the public good, nor substantially impairing the intent and purpose of the Hawthorne Zoning and Land Use Ordinance.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board that based upon the above findings of fact and conclusions of law that the application of Premio Foods, Inc. for preliminary and final site plan approval for the premises known as Block 174, Lots 29, 30.01 and 30.03, along with the waivers and variances set forth herein in accordance with the plans and exhibits is hereby granted; and

**BE IT FURTHER RESOLVED** that the approvals set forth above are subject to the following conditions:

1. That the granting of the application is subject to the approval of the Passaic County Planning Board, if necessary.
2. All improvements will be constructed in accordance with the Plans submitted by the applicant. Notwithstanding, no approval granted herein shall be deemed to supersede any building code requirements.
3. The applicant shall obtain and comply with any federal, state, county, and borough government rules, ordinances, or regulations with regard to the granting of the applications hereto, including the payment of all fees and escrows, established by the borough for the review of the subject application.
4. To the extent not set forth above, the applicant shall comply with any and all applicable requirements of the Federal Americans with Disabilities Act.
5. This approval is subject to all of the representations made by the applicant and its' experts.
6. The applicant shall obtain and submit to the Planning Board a certification from the Passaic County Soil Conservation District.
7. The applicant shall comply with all the comments and requirements of the review letters/reports from the Planning Board engineer and planner.

8. The refrigeration units on the east side of the building shall either be moved to the west side of the building or, if not possible, the applicant shall provide a buffer to reduce the noise of these units. The form of buffer shall be submitted to and approved by the Planning Board engineer.

9. The applicant shall prepare and record a deed consolidating Lots 29, 30.01 and 30.03 which deed shall be subject to the review of the Planning Board attorney and engineer.

10. The applicant shall provide written documentation from the railroad (owner of Lot 30) that the lease is still in full force and effect and consenting to this application.

11. The applicant shall be required to direct all employees to park onsite and not on the streets and institute the appropriate controls to enforce.

12. The applicant shall have a preconstruction meeting with the Borough officials to coordinate the construction process and schedule.

13. No trucks shall be permitted to access the property from 5<sup>th</sup> Avenue and the applicant shall establish procedures for enforcement.

14. Any onsite lighting that is directed towards the properties on 4<sup>th</sup> Avenue shall be redirected, subject to the review by the Planning Board engineer.

15. The applicant shall comply with NJAC 7:29-12 with respect to noise levels emanating from the property.

16. Subject to approval of the applicant's Soil Movement application.

**BE IT FURTHER RESOLVED** that the Chairman and the Secretary of the Board are hereby authorized to affix their signatures to this resolution granting approval for preliminary and final site plan and variances. 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 Hawthorne**

By:   
WALTER GARNER III, *Chairman*

  
JANICE PATMOS, *Secretary*