

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON OCTOBER 26, 2022 AT 6:00 P.M.

RESOLUTION #24-321/2022 To approve Special Use Permit No. 2022-044 for Floor & Decor Outlets of America, Inc. to allow a building height of 36 feet.

On Motion of  
Supervisor Schultz

Seconded by  
Councilmember Bellanca

WHEREAS, an application was filed with the Town Board of the Town of Henrietta by Floor & Decor Outlets of America, Inc. (the "Applicant"), regarding the Applicant's proposal to develop the property known as Floor and Decor, for which the Applicant requests a Special Use Permit approval pursuant to Section 295-18 to allow the height of the proposed new building to be approximately 36 feet and single story in height, whereas the Town Code only permits a height of 30 feet (Special Use Permit No. 2022-044); and

WHEREAS, the Town Board has carefully considered all relevant documentary, testimonial, and other evidence submitted, including but not limited to the Special Use Permit application, Letter of Intent, and other materials and information submitted by the Applicant, correspondence and oral testimony from the public, State, County and local agencies, and other information, and the Town Board makes the findings of fact set forth in Schedule "A" attached hereto and made a part hereof; and

WHEREAS, the Town Board has considered each of the criteria for granting of the requested Special Use Permit approvals, as set forth in Town Code Section 295-53, and the Town Board finds that, given the conditions imposed herein, the criteria are satisfied as set forth at Schedule "A;" and

WHEREAS, on October 26, 2022, in accordance with the New York State Quality Review Act ("SEQR"), the Town Board, as the Lead Agency, issued a Negative Declaration for the Project (the "Negative Declaration").

THEREFORE, BE IT RESOLVED, that based on the aforementioned information, documentation, testimony, and findings (set forth herein and in Schedule "A"), the Town Board hereby grants Special Use Permit approval to permit the proposed maximum height of 36 feet for the proposed building, subject to the following conditions:

1. Applicant agrees to construct the buildings in accordance with the Town’s draft design guidelines to the maximum extent feasible.
2. The Project shall be constructed consistent with the concept most recently submitted prior to approval, subject to any modifications by the Planning Board during its Site Plan review.

Duly put to a vote:  
 Councilmember Sefranek Aye  
 Councilmember Bolzner Aye  
 Councilmember Page Aye  
 Councilmember Bellanca Aye  
 Supervisor Schultz Aye

RESOLUTION ADOPTED

## **SCHEDULE "A"**

**Town Code Section 295-54 sets forth the criteria to be considered by the board in determining whether to grant a Special Use Permit. The Town Board makes the following findings with respect to each of these criteria, based upon its own knowledge and investigation or from testimony or other information submitted to it:**

**A. Whether the proposed use is substantially consistent in its scale and character with those uses permitted and the existing built permitted uses in the subject zoning district and neighborhood or will otherwise impair such uses due to inconsistency.**

The proposed use of this property will be consistent with the existing uses within the surrounding area. The area is a developed commercial/industrial area of the Town and would be an infill parcel within the Marketplace Mall area.

Within the same Commercial, B-1 zoning district within the Town, other multi story buildings, greater than 30' in height exist such as the old Macy's Building, the new URMC medical facility, a multi-story apartment building, and other retail uses that are in close proximity to the proposed site. Other multi-story buildings greater than the proposed retail building height exist within the Town as well including the approved URMC medical facility tower at Marketplace, and buildings within the RIT campus.

The proposed use is not adjacent to residential neighborhoods which are generally located west of West Henrietta Road, north of Calkins Road, and over a mile east from I-390. The residential neighborhoods are buffered by existing various commercial & industrial developments and highway networks including I-390.

**B. Whether the proposed use aligns with the vision, goals and recommendations of the Comprehensive Plan and other applicable plans and studies conducted by or on behalf of the Town.**

The proposed use does align with the vision, goals and recommendations of the recent Comprehensive Plan conducted on behalf of the Town. The Project is consistent with the Town's zoning of the area, which zoning is based upon the Comprehensive Plan.

The Plan calls for the development of underutilized and vacant buildings, which is accomplished with this Project.

**C. Whether the proposed use aligns with the purpose, intent, and applicable design and development standards of the zoning district(s) in which the use is proposed to be located.**

The proposed use will be within and is consistent with the Commercial, B-1 zoning district of the Town. The proposed retail use is allowed within the Commercial, B-1 district and will be designed according to the Town of Henrietta Town Code and design and development guidelines as well as appropriate County/State agency standards. The proposed use will comply with

appropriate building setback requirements as listed in the code.

The code states that non-industrial activities within the districts are allowed and should act as an accessory or complement existing and future uses within the district. Adjacent to the project and throughout the Town are various commercial uses all within the Commercial, B-1 and Industrial districts, including retail. The proposed Floor and Décor Outlet would complement all existing and future uses within the district.

As part of this Special Permit Application the applicant is requesting to allow the construction of a one-story retail building which exceeds the maximum 30' allowed. It should be noted that there are other apartments, hotels and buildings within the adjacent Commercial, B-1 and Industrial districts throughout the Town that are greater than 30' in height and thus the proposed hotel is alignment with development within the zoning district.

**D. Whether the proposed use will be a nuisance in law or in fact due to its being materially noxious, offensive or injurious by reason of the production of or emission of dust, smoke, refuse, poisonous substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters.**

The proposed retail building will not be a nuisance or create any of the conditions noted above, and such use will be consistent with the Commercial, B-1 and Industrial zoning districts in the vicinity of the project. The retail store will be designed and constructed to conform with local, State and County agency requirements as necessary. Allowing the retail store to be greater than 30' provides adequate screening of rooftop mechanical equipment.

**E. Whether the proposed use will create material hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking of vehicles, or other causes.**

The proposed use and building height will not create any hazards or dangers to the public, or persons in the vicinity of the use. The proposed development will be designed in accordance with the Town of Henrietta and appropriate County/State agency standards. Ample parking of vehicles will be available on-site including adequate ADA accessible spaces.

**F. Whether the proposed use will create materially adverse impacts that cannot be adequately mitigated, such as to adversely impact natural resources or the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA).**

The proposed use and building height will not create adverse impacts to natural resources, the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA) as the site is located at Marketplace Mall where the old Macy's building will be demolished and the new Floor and Décor Outlet building will be constructed in the same footprint.

Disturbance to the project site is necessary for construction of the retail building, parking lot, utility connections and stormwater management facility and will be completed meeting the NYSDEC requirements to minimize impacts to the environment and surrounding area. The

project site is not located within an agricultural district. The proposed building height does not result in any visual impacts as it is consistent with other buildings in the vicinity and zoning district and does not abut any residential zoned districts.

A full SEQR analysis was completed by the Town, concluding with a Negative Declaration, which is incorporated herein and made a part hereof.

**G. Whether the physical conditions and characteristics of the site are suitable for the proposed use considering site size, configuration, location, access, topography, vegetation, soils, and hydrology for effective stormwater management and, if necessary, the ability to be screened from neighboring properties and public roads.**

The physical conditions and characteristics of the site are suitable for the proposed use as the site is in a developed commercial/industrial mall. This site offers significant assets such as highway access, space for ample parking, pedestrian sidewalk network, as well as space to detain stormwater runoff on site and readily available utility infrastructure. The closest residential homes are east of I-390. A full SEQR analysis was completed by the Town further assessing these issues, concluding with a Negative Declaration, which is incorporated herein and made a part hereof.

**H. Whether there are adequate public infrastructure, utilities, community facilities and emergency services, either existing or to be provided by the applicant or others, to effectively serve the proposed use. A proposed use shall not create or contribute to an existing inadequacy.**

The project site offers adequate existing assets, including those listed above, and the proposed use shall not create or contribute to any known existing inadequacies in the area. The location of the retail facility does not require an extension of existing infrastructure or creation of new Town roads. Ample parking will be available for shoppers and existing sidewalks are available within Marketplace Mall. The adjacent properties are currently served by emergency services and the proposed use does not alter their ability to serve the area. The required fire lane will be proposed for the retail building and adequate space given to emergency vehicles.

There are other buildings within the Town that are of similar height to what is being proposed that are served by local emergency service providers today. The proposed height at  $\pm 36'$  is able to be served by the Henrietta Fire District aerial ladder apparatus. The site also provides close proximity to major highways and road networks in order to serve a significant portion of the Town and County.

**I. Whether the proposed use will provide, maintain, or enhance, as necessary, safe and efficient vehicular traffic patterns, nonmotorized travel, and pedestrian circulation as well as, where feasible, access to public spaces, parks, recreation, and open space resources.**

The proposed use is anticipated to enhance a developed area to provide a new retail facility to better serve the community. The site will be designed in accordance with the Town design standards to ensure adequate traffic and pedestrian circulation within Marketplace Mall to the site are met.

Moreover, a full SEQR analysis was completed by the Town, further assessing these issues, concluding with a Negative Declaration, all of which is incorporated herein and made a part hereof.