

**BOROUGH OF PENNINGTON
ORDINANCE NO. 2014-21**

**AN ORDINANCE AUTHORIZING ACQUISITION OF A REVOCABLE EASEMENT ON THE PROPERTY
KNOWN AS 2 SOUTH MAIN, BLOCK 503, LOT 14 ON THE TAX MAP OF THE BOROUGH**

WHEREAS, Karen Marino and David C. Clark (“Owners”) are the owners of certain real property known as 2 South Main Street, also known as Block 503, Lot 14 on the Tax Map of the Borough of Pennington, located at the corner of Main Street and Delaware Avenue adjacent to the public right-of-way on both South Main Street and West Delaware Avenue and presently used as a beauty salon owned and operated by Owners (“the Property”);

WHEREAS, the Borough has constructed a sidewalk in the public right-of-way which dips down at the corner of the Property and for a distance along South Main Street, requiring construction of an inner curb between the sidewalk and that portion of the adjoining land at a higher elevation than the sidewalk (“Inner Curb”);

WHEREAS, Borough and Owners agree that it is in their mutual interests to place and maintain planters along the inside edge of the Inner Curb extending wholly or in part onto the Property, subject to the terms and conditions set forth in the attached Agreement (“Agreement”);

WHEREAS, the Agreement provides that the Borough will be permitted to enter onto the Property as needed to place and maintain planters extending wholly or in part onto the Property, the planters to be placed side by side along the full length of the Inner Curb at a height of 18 inches, extending back from the edge of the Inner Curb approximately 12 inches, any changes in the dimensions or arrangement of the planters requiring written agreement;

WHEREAS, the Agreement further provides that the Borough agrees to procure the planters and any replacements for them at its sole expense;

WHEREAS, the planters shall be filled with soil and, at the Borough’s discretion, also contain plantings, the planters and any plantings to remain the property of the Borough;

WHEREAS, the Agreement provides further that the Borough shall, at its sole expense, maintain the planters and repair and replace them from time to time as it reasonably determines to be necessary, and, also in its discretion, shall care for and replace any plantings;

WHEREAS, Owners agree to permit the Borough and its employees and contractors to enter upon the Property to the extent as reasonably necessary to maintain, repair and replace the planters and to care for and replace any plantings;

WHEREAS, Owners agree that they shall not disturb the planters or plantings and, absent an emergency, shall not alter or move or attempt to repair or replace the planters;

WHEREAS, the Agreement shall be revocable by either party upon 90 days’ prior written notice;

WHEREAS, the Borough shall indemnify and hold harmless Owners from and against any and all liability arising from the presence of the planters on the Property;

WHEREAS, the parties also agree to cooperate in recording the Agreement or any revocation of the Agreement, at the expense of the Borough;

WHEREAS, it is the intention of the Borough, with the agreement of the Owners, to acquire a revocable easement in the Property requiring the adoption of an authorizing ordinance in a form suitable for recording;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized (a) to enter into the attached Agreement on behalf of the Borough for the purpose of acquiring an easement in the Owners’ Property subject to the terms of the Agreement, and (b) to take such steps as may be necessary to have the Agreement recorded for this purpose; and

BE IT FURTHER ORDAINED, that this Ordinance shall be effective upon passage and publication as provided by law.

Introduced: December 1, 2014

Advertised: December 4, 2014

Public Hearing: December 29, 2014

Adopted: December 29, 2014

Published: January 1, 2015

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor