

* per recorded deed, dated 2/9/24, Attached. ph

ZONING FORM #3

**BOROUGH OF FANWOOD
Planning Board Hearing Application Form**

ORIGINAL

Date Received: 11-6-23

Application #: 11-2023

Applicant name: NB Home Improvements, LLC

Address: 1227 Morris Avenue, Union, NJ 07085

Owner name: Sheelen's Real Estate LLC * 383 South.

Address: 200 South Avenue, Fanwood, NJ 07023

Address of Project: 383 South Avenue

Fanwood, NJ 07023

Description of Project: Construct Multi-Family Building

If the applicant is not the owner, attach a notarized letter of authority or power of attorney, signed by the owner to file with this application.

	CHECK WHERE APPLICABLE	MINOR	MAJOR	PRELIMINARY	FINAL	AMENDED
SITE PLAN ⁽¹⁾		⁽²⁾ ()	⁽²⁾ (X)	⁽²⁾ (X)	⁽²⁾ (X)	⁽²⁾ ()
SUBDIVISION ⁽¹⁾		()	⁽²⁾ ()	⁽²⁾ ()	⁽²⁾ ()	⁽²⁾ ()
INFORMAL REVIEW	()					
BULK VARIANCE	⁽²⁾ (X)					
USE VARIANCE ⁽¹⁾	⁽²⁾ ()					
CONDITIONAL USE ⁽¹⁾	⁽²⁾ ()	Attach Form #17, available from Zoning Officer				
OTHER	⁽²⁾ ()	Attach Forms as directed by Zoning Officer				

Notes:

⁽¹⁾ Submit two sets of the application and plans for review by both the Zoning Officer and the Borough Engineer

⁽²⁾ Legal notice is required: see Zoning Form #7 for instructions

All mounted exhibits must be mounted with removable glue. Permanent glue will not be accepted.

PROPERTY INFORMATION

1. The proposed building or use thereof is contrary to the following sections of the Land Use Ordinance (state specifically):

- (a) Section: _____ Variance Requested: _____
Permitted: _____ Present: _____ Proposed: _____
- (b) Section: _____ Variance Requested: _____
Permitted: _____ Present: _____ Proposed: _____
- (c) Section: _____ Variance Requested: _____
Permitted: _____ Present: _____ Proposed: _____
- (d) Section: _____ Variance Requested: _____
Permitted: _____ Present: _____ Proposed: _____

Data to answer questions 2 through 5 may be found on your survey, or sought from your architect.

2. Dimensions of Lot: _____ Area of Lot: 18,650 SF

3. Building coverage (footprint), based on maximum of 120 feet lot depth:

Present: 4.2% % Proposed: 62.7% %

4. Improvement coverage (building coverage + driveway, patio, etc.) based on actual lot area :

Present: 36.35% % Proposed: 69.1% %

BOROUGH OF FANWOOD **Additional Variance Listing**

PROPERTY INFORMATION

1. The proposed building or use thereof is contrary to the following sections of the Land Use Ordinance (state specifically):

(e)	Section: <u>NJ RSIS</u>	Variance Requested: <u>Minimum parking space dimensions</u>
	Required: <u>9' x 18'</u>	Present: <u>N/A</u> Proposed: <u>8.5' x 18'</u>
(f)	Section: <u>184-119.C (4)</u>	Variance Requested: <u>Minimum ground story height</u>
	Required: <u>12'</u>	Present: <u></u> Proposed: <u>9'</u>
(g)	Section: <u>184-119.C (4)</u>	Variance Requested: <u>Minimum upper story height</u>
	Required: <u>10'</u>	Present: <u></u> Proposed: <u>9'</u>
(h)	Section: <u>184-119D(15)</u>	Variance Requested: <u>Balconies</u>
	Required: <u>6' deep x 5' wide</u>	Present: <u></u> Proposed: <u>"Juliet balcony"</u>
(i)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(j)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(k)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(l)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(m)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(n)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>
(o)	Section: <u></u>	Variance Requested: <u></u>
	Required: <u></u>	Present: <u></u> Proposed: <u></u>

5. Zone District: Commercial Corridor Redevelopment Plan
Eastern District Block #: 69 Lot #: 5

6. **Present Use of Premises:**

Present: Commercial Building - Restaurant Proposed: Multi-family building

7. Do any deed restrictions exist which affect this property? (check one) ☐ Yes ☒ No
If yes, describe or attach a copy of deed:

8. The following arguments are urged in support of this appeal:

see attached supplemental statement

9. I/We, the undersigned applicant(s) do hereby grant permission for the members of the Planning Board and the Zoning Officer of the Borough of Fanwood, NJ to enter upon the property which is the subject of this application, during all daylight hours during the pendency of this application. Permission to enter structures will be given for mutually agreeable times.

I hereby depose and say that all the above statements and statements contained in the papers submitted herewith are true and correct.

Michael C. Runk

908-868-9304

Phone

Cell

info@nbhomesnj.com

e-ma

Sworn and Subscribed to before me this

3

day of

October

20

23

(date)

(month)

(year

Notary Public
Natasha Montalvo, Esq. Attorney at law state of NJ

Note: If the applicant is a corporation or partnership, attach notarized list of names and addresses of stockholders or partners with a more than 10% interest.

10. Non-refundable application fees to be paid when filed: \$ 1,500.

Notes: 1. Checks should be made payable to "Borough of Fanwood, NJ"
2. Periphery list fee, if required (see Zoning Form #7 for details), is additional
3. Escrow fees, if required, must be submit as a separate check

CONTACT INFORMATION: Is the Contact the same person as the Applicant? Yes X No

Name: _____

Mailing Address:

Phone

Ce

E-mail

Attorney Information (if applicable). Corporations *must* be represented by an attorney.

Attorney Name: Stephen F. Hehl, Esq

Name of Firm: Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C.

Mailing Address: 370 Chestnut Street, Union, NJ 07083

Telephone: 908-687-7000

e-mail shehl@javerbaumwurgift.com

TO BE COMPLETED BY BOARD SECRETARY

There have (☒) have not (☐) been previous appeal(s) involving these premises. If yes, copy attached.

TO BE COMPLETED BY COMPLETENESS DESIGNEE

Application accepted as complete:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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Signature _____

Signatures. The Grantors sign this Deed as of the date at the top of the first page.

Witnessed by:

Sheelen's Real Estate LLC

Alle Rabinovich

Frank Pascale
By: FRANK PASCALE, Authorized Member

STATE OF NEW JERSEY :
: SS.
COUNTY OF UNION :

I certify that on December /5, 2023, Frank Pascale, personally came before me and stated to my satisfaction that this person:

- (a.) was the maker of the attached Deed;
- (b.) was authorized to and did execute this Deed as Authorized Member of Sheelen's Real Estate LLC, the entity named in this Deed, and
- (c.) this Deed was made for \$1,292,000.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5).

Alle Rabinovich
NOTARY PUBLIC
(Print Name and Title Below Signature)

ALLA RABINOVICH
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2401774
MY COMMISSION EXPIRES OCT. 29, 2025

RECORD AND RETURN TO:

H. Jonathan Rubinstein, Esq.
215 Millburn Avenue
Millburn, NJ 07041

RECORD AND RETURN TO:
PRESTIGE TITLE AGENCY, INC.
130 POMPTON AVENUE
VERONA NJ 07044
973-239-0101

PRESTIGE TITLE AGENCY INC
130 POMPTON AVENUE

Inst.#
35636

VERONA
** End of Document **
Deed

NJ 07044 Charge
Recording Fee 115.00
RT Fee 26,028.20

DB6536-0208

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER

(Chapter 49, P.L. 1983, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY

COUNTY

Union

SS. County Municipal Code
2005

MUNICIPALITY OF PROPERTY LOCATION Fanwood Boro

FOR RECORDER'S USE ONLY
Consideration \$ 1,292,000.00
RTF paid by seller \$ 13,708.20
Paid By 219124

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3 and #4 on reverse side)

Deponent, FRANK PASCALE being duly sworn according to law upon his/her oath,
(Name)
deposes and says that he/she is the Grantor in a deed dated December 15, 2023 transferring
(Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.)

real property identified as Block number 69 Lot number 5 located at
383 South Avenue, Fanwood Boro and annexed thereto.
(Street Address, Town)

(2) CONSIDERATION \$ 1,292,000.00 (Instructions #1 and #5 on reverse side) ☐ no prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:
(See Instructions #5A and #7 on reverse side)

Total Assessed Valuation + Director's Ratio = Equalized Assessed Valuation

\$ 541,800.00 + .6661 % = \$ 625,583.00

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE (See Instruction #8 on reverse side)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1988, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.

(5) PARTIAL EXEMPTION FROM FEE (Instruction #9 on reverse side)

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

A. SENIOR CITIZEN Grantor(s) ☐ 62 years of age or over. * (Instruction #9 on reverse side for A or B)
B. BLIND PERSON Grantor(s) ☐ legally blind or;
DISABLED PERSON Grantor(s) ☐ permanently and totally disabled ☐ receiving disability payments ☐ not gainfully employed*

Senior citizens, blind persons, or disabled persons must also meet all of the following criteria:
☐ Owned and occupied by grantor(s) at time of sale. ☐ Resident of State of New Jersey.
☐ One or two-family residential premises. ☐ Owners as joint tenants must all qualify.

*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. LOW AND MODERATE INCOME HOUSING (Instruction #9 on reverse side) IF APPLIES ALL BOXES MUST BE CHECKED.
☐ Affordable according to H.U.D. standards. ☐ Reserved for occupancy.
☐ Meets income requirements of region. ☐ Subject to resale controls.

(6) NEW CONSTRUCTION (Instructions #2, #10 and #12 on reverse side) IF APPLIES ALL BOXES MUST BE CHECKED.
☐ Entirely new improvement. ☐ Not previously occupied.
☐ Not previously used for any purpose. ☐ "NEW CONSTRUCTION" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES (Instructions #5, #12, #14 on reverse side) IF APPLIES ALL BOXES MUST BE CHECKED.
☐ No prior mortgage assumed or to which property is subject at time of sale.
☐ No contributions to capital by either grantor or grantee legal entity.
☐ No stock or money exchanged by or between grantor or grantee legal entities.

(8) INTERCOMPANY TRANSFER IF APPLIES ALL BOXES MUST BE CHECKED. (Instruction #15 on reverse side)
☐ Intercompany transfer between combined group members as part of the unitary business
☐ Combined group NU ID number (Required)

(9) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1988, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me
this 15th day of December 2023

ALLA RABINOVICH

ALLA RABINOVICH
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2401774

MY COMMISSION EXPIRES OCT. 29, 2025

Signature of Deponent
200 South Av., Fanwood, NJ 07023

Deponent Address

xxx-xx-x 326

Last three digits in Grantor's Social Security Number

Sheelen's Real Estate LLC

Grantor Name

200 South Av., Fanwood, NJ 07023

Grantor Address at Time of Sale

Name/Company of Settlement Officer

FOR OFFICIAL USE ONLY
Instrument Number 35006
Deed Number 1136
Deed Date 12/15/23
County Union
Book 1136 Page 203
Date Recorded 12/15/23

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to:

STATE OF NEW JERSEY

PO BOX 251

TRENTON, NJ 08695-0251

ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:

<https://www.state.nj.us/treasury/taxation/fp/localtax.shtml>

DB6536-0206



WESTCOR

LAND TITLE INSURANCE COMPANY

SCHEDULE A-5 LEGAL DESCRIPTION

Issuing Office File No. 23CL-2320

ALL THAT CERTAIN LOT, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING IN THE Borough of Fanwood, IN THE COUNTY OF Union, STATE OF NEW JERSEY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

KNOWN AND DESIGNATED AS PLOT 6A AS SET FORTH ON A CERTAIN MAP ENTITLED, "MAP OF SECTION ONE FANWOOD" SITUATED IN THE Borough of Fanwood, COUNTY OF Union, STATE OF NJ BEING MAP NO. 71-D FILED 6/18/1926 IN THE Union COUNTY CLERK'S OFFICE.

TOGETHER WITH ALL THAT RIGHT TITLE AND INTEREST IN AND TO THAT VACATED PORTION OF LOCUST AVENUE.

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SOUTH AVENUE (66' WIDE) A/K/A STATE HIGHWAY NO. 28, SAID POINT BEING THE INTERSECTION OF THE NORTHERLY LINE OF SOUTH AVENUE A/K/A STATE HIGHWAY NO. 28, WITH THE SOUTHERLY LINE OF OLD SOUTH AVENUE (66' WIDE) RUNNING THENCE

- 1) ALONG THE SOUTHERLY LINE OF OLD SOUTH AVENUE, SOUTH 80 DEGREES 05 MINUTES 00 SECONDS WEST, 12.57 FEET TO A POINT; THENCE
- 2) STILL ALONG THE SAME, SOUTH 83 DEGREES 37 MINUTES 00 SECONDS WEST, 101.74 FEET TO A POINT; THENCE
- 3) STILL ALONG THE SAME, SOUTH 86 DEGREES 08 MINUTES 00 SECONDS WEST, 101.81 FEET TO A POINT; THENCE
- 4) STILL ALONG THE SAME, SOUTH 89 DEGREES 55 MINUTES 00 SECONDS WEST, 20.23 FEET TO A POINT; THENCE
- 5) SOUTH 15 DEGREES 23 MINUTES 40 SECONDS WEST, 177.65 FEET TO A POINT IN THE NORTHERLY LINE OF SOUTH AVENUE A/K/A STATE HIGHWAY NO. 28; THENCE
- 6) ALONG THE SAME, NORTH 55 DEGREES 15 MINUTES 00 SECONDS EAST, 239.64 FEET TO A POINT OF CURVATURE; THENCE
- 7) ALONG THE CURVE HAVING A RADIUS OF 1465.50 FEET, AN ARC LENGTH OF 101.76 FEET TO THE POINT AND PLACE OF BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY: ALSO BEING KNOWN AS TAX LOT 5 IN TAX BLOCK 69 ON THE OFFICIAL TAX MAP OF THE Borough of Fanwood, Union COUNTY, STATE OF NEW JERSEY.

DB6536-0204

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Westcor Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

APPLICANTS: NB HOME IMPROVEMENTS, LLC
PROPERTY: 383 SOUTH AVE
BLOCK 69, LOT 5
ZONE: CC (Commercial Corridor Redevelopment Plan Eastern District)

STATEMENT OF PRINCIPAL POINTS

The applicant, NB Home Improvements, LLC (the "Applicant"), requests preliminary and final site plan approval, in connection with the property located at 383 South Avenue, Fanwood, NJ, further identified as Block 69, Lot 5 on the Tax Maps of the Borough of Fanwood (the "Property" or the "Site").

The Site is located between South Ave and the Old South Ave and currently improved with a small restaurant. The Property is in the Borough's CC (Commercial Corridor Redevelopment Plan Eastern) Zone District which permits the proposed use of a residential use.

Applicant is proposing to demolish the existing restaurant and construct a 3-story apartment building. Applicant proposes a total of 19 units which includes 16 two-bedroom units and 3 one-bedroom units.

The benefits of granting the Application outweigh any perceived detriments. The Property is well suited to handle the proposed improvements, which will not encroach upon the neighboring properties or negatively impact their light, air and/or open space. The Applicant will provide the necessary professional testimony demonstrating that the Application may be granted without negative impact to the neighboring properties or zone district. For these reasons, as well as those that may be introduced at the public hearing on this matter, the Applicant respectfully request that the Board grant the relief sought herein.

FANWOOD PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING
C VARIANCES TO
SHEELLEN'S REAL ESTATE, LLC
383 SOUTH AVENUE
BLOCK 69 LOT 5

WHEREAS, Sheelen's Real Estate LLC hereinafter referred to as "the Applicant," is the owner of Block 69 Lot 5 as shown on the official Tax Map of the Borough of Fanwood, and more commonly known as 383 South Avenue in the Borough of Fanwood, County of Union and the State of New Jersey; and

WHEREAS, the Applicant has applied to the Fanwood Planning Board for approval of Minor Site Plan Approval and approval of C variances; and

WHEREAS, the Fanwood Planning Board held a public hearing on said application on August 24, 2022 and September 28, 2022, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, at said hearing, the Planning Board considered the following documents:

1. Planning Board Hearing Application Form dated March 3, 2022.
2. Notice of Violation dated April 21, 2021.
3. Memo from the Fanwood Shade Tree Commission dated August 10, 2022
4. Tree Replacement & Improvement Plan prepared by Paulus, Sokolowski and Sartor, LLC, 4/26/2022, last revised 8/28/2022
5. Borough Engineer, Antonios Panagopoulos, P.E., Review dated August 1, 2022
6. Borough Planner, Janki Patel, Review dated August 1, 2022
7. Narrative of responses to comments prepared by Paulus, Sokolowski and Sartor, LLC
8. Aerial and street view photos (8 pages)

WHEREAS, Stevonn Hehl, Esq. appeared on behalf of Applicant in support of this application; and

for a portion of the trees to be replaced at a later date as there may be construction of a residential building on the Property.

7. The Application continued September 28, 2022. Steven Hehl advised of the letter and plans which were submitted prior to the hearing. He proceeded with the testimony of the engineer John Sartor. Mr. Sartor presented the revised plan of the property which addressed the ADA restriping, the fence and the grading where trees were removed. He testified that there would be 12 arborvitaes would be planted to replace the dilapidated fence. none of the arborvitaes would be submitted as shade trees. He testified that as to the grading issue and steep slope the applicant is proposing that there would be seeding. The balance would be wood chips. The ADA spaces are located on the plan which may require a spot to be replaced. The Applicant is willing to move the spots as required and the Applicant is willing to work with the engineer to come up with a proper solution. regarding the dumpsters, Mr. Sartor testified that the three dumpsters would be combined and there would be junipers installed to provide screening.

8. The Borough Engineer testified that the concern with keeping the wood chips on the property is the state of the property. The property, as gateway, is in dilapidated state and there is need for improvement. The Borough Zoning Officer testified that when there are two zones attached, as is here, there is required a buffer. the arborvitaes will satisfy that requirement. As to the tree replacement issue, Mr. Sullivan testified that the Borough concluded that there were 25 trees that need to be replaced.

9. Mr. Hehl advised that there would be an additional 10 shade trees, 6 along south avenue and 4 along old south avenue, to satisfy the trees removed and comply with the tree ordinance. There will be two types, Japanese Hornbeam and Red Maple trees which are consistent with PSEG requirements and the Borough. He also advised that there was contemplated a

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Fanwood that the application for variance approval of Sheelan Real Estate, LLC and for C variances be and is hereby granted in accordance with the application and plans filed herein, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Fanwood and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. The application shall be subject to the submission of revised plans and shall be subject to any other outside agency approvals as may be necessary, including, but not limited to, Union County Planning Board, Borough of Fanwood Fire Department, Plainfield Area Regional Sewerage Authority, all utilities and Somerset/Union Soil Conservation District.

D. The approval shall be subject to the conditions, prior to permitting of the Property, that there shall be the following: 1) planting of the 12 giant arborvitae (at 8 feet high at installation) along the west property line consistent with the Tree Replacement Plan as last revised, within thirty (30) days which time may be extended by Township Engineer upon reasonable request prior to expiration; 2) the planting of 10 shade trees as noted on the Tree Replacement Plan as last revised shall be provided on site following the construction of the proposed residential development which shall not be prolonged beyond two (2) years, which time may be extended by Township Engineer upon reasonable request prior to expiration; 3) the planting of the shade trees shall be located as noted on the Tree Replacement Plan as last revised, however, the Borough Professionals may agree

BE IT FURTHER RESOLVED that the Applicant understands and acknowledges that all of the conditions contained in this resolution, including presentation of the tree replacement plan to be approved by the Township and compliance with soil movement and sediment controls permitting and measures subject to the review and approval of the Borough Engineer and the record of proceedings in this matter including any agreements made or plans submitted by the Applicant were essential to the Board's decision to grant the approval set forth herein. Breach of any such conditions or the failure of the Applicant to adhere to the terms of any agreement or condition may result in revocation of the within approval and may terminate the right of the Applicant to obtain any further permits or any other governmental authorizations necessary in order to effectuate the purpose of this resolution. The Applicant has been advised by this resolution that all conditions contained in this resolution are to be complied with and that breach of any of the conditions shall be rectified before the issuance of any certificate of occupancy.

BE IT FURTHER RESOLVED that if any of the above-stated conditions are found to be illegal by a court of competent jurisdiction or conditions similar to the above are deemed to be illegal by a court of competent jurisdiction or any action of the Legislature, then in that event, the approval rendered in this resolution shall be deemed null and void based upon these changed circumstances.

BE IT FURTHER RESOLVED that nothing herein shall be interpreted to excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental subdivisions as set forth in any laws, ordinances or regulations.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of October 26, 2022 and effective as of that date.

MEMBER

IN FAVOR

OPPOSED

ABSTAIN

Carter
Guzzo
Mahr
Matty
Moore
Krone-Speck
Rosen

X
X
X
X
X
X
X

Pat Hoynes, Secretary

FANWOOD PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING
APPLICATION OF THE CHIPPERY – BRIAN WALTER
FOR EXPANSION OF A NON-CONFORMING USE
383 SOUTH AVENUE
BLOCK 69, LOT 5
APPLICATION NO. 7-2011

WHEREAS, Brian Walter, hereinafter referred to as the Applicant, is the owner of Block 69, Lot 5, as shown on the official Tax Map of the Borough of Fanwood, and more commonly known as 383 South Avenue, in the Borough of Fanwood, County of Union and State of New Jersey (the "Property"); and

WHEREAS, the Applicant has applied to the Fanwood Planning Board for an expansion of the pre-existing non-conforming use, and the Applicant requires a D(2) variance; and

WHEREAS, the Fanwood Planning Board held a public hearing on said application on July 27, 2011, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, at said hearing, the Planning Board considered the following documents:

1. Zoning denial letter dated June 23, 2011.
2. Planning Board Hearing Application Form dated June 30, 2011.
3. Memorandum from Antonios Panagopoulos, P.E., T&M Associates, dated July 27, 2011.

WHEREAS, the Fanwood Planning Board heard evidence and reviewed documents as follows:

1. The subject Property is situated in an R-75 single-family residential district. The use of the Property for a fish and chips style restaurant, or any other commercial use, is prohibited under the current zoning regulations.
2. Applicant seeks an expansion of the pre-existing nonconforming use, to wit, the addition of a basement to "The Chipperry" structure on the Property for which a certificate of non-conformity was issued by the Planning Board in 2010.
3. Brian Walter testified in support of the application. Mr. Walter is the current owner of the Property. Mr. Walter is a chef and also owns and operates Flannery's in Fanwood and is familiar with the restaurant business. Mr. Walter used to go to The Chipperry years ago. He would like to re-open The Chipperry while maintaining the nostalgia and spirit of the restaurant while at the same time updating same with modern conveniences such as a new filtration system for the oil and adding health conscious items to the menu. The existing Chipperry building will be razed and a new building will be constructed on the same footprint. He would like to have the restaurant open from 11 AM to 9 PM, seven days a week. He also would like 40 seats in the interior of the restaurant. Applicant plans to enlarge the bathroom to bring it up to current code. In order to do this, he needs the proposed basement for storage and kitchen equipment. Also, he intends to install a new oil filtration system in place of the original 1940s system which was last upgraded in the 1970s. Garbage removal will be conducted in a manner to be the least disruptive to the surrounding neighborhood. He will provide better cleanup of the area than has existed since The

same size as the existing one would be installed. The front of the building would have multiple paint colors but the back would have one color. The fence would be repaired in order to improve the site.

6. The file of the Board of Adjustment from an application on the subject premises, 383 South Avenue, Fanwood, New Jersey, was reviewed. In 2010, an application was made to secure a certificate of non-conformity to confirm that The Chipperry restaurant use and structure were protected. That application was granted.

7. The meeting was opened to the public. The following testified as to the application:

a. Beth Venezia, 23 Laurel Place. She is opposed to the application. She is concerned about noise from the garbage trucks and does not want pick-up before 5 AM.

b. Mike Venezia, 23 Laurel Place. He is opposed to the application. He is Beth Venezia's husband. He said the plan sounds good but he wants to know if it is written into law. He thinks there should be state law on the sprinklers. He is concerned with the area surrounding the restaurant.

c. Fernando Messercola, 96 Woodland Ave. He is in support of the application. He knows Brian to be a stand-up guy. He thinks the proposal will benefit the town. He believes the basement is crucial since storage is needed.

d. Diane Olkusz, 41 Locust Avenue. She is encouraged by what she has heard tonight. She has fought the battles over the years with The Chipperry. She hopes the applicant follows through on what he says and wishes him luck.

e. Erick Gabrial, Scotch Plains, New Jersey. He grew up with Brian and knows so many kids who grew up on The Chipperry food. He understands the

6. The Board noted that the applicant submitted a survey and architectural plans showing a one story building with proposed open storage basement.

7. The Board finds that the relief requested in the application may be granted, as the Applicant has shown special reasons for the granting of the variance pursuant to N.J.S.A. 40:55D-70(d)(2). The Board finds that there was sufficient evidence to support the granting of a D(2) variance in that the proposed use promotes the general welfare because the proposed structure is particularly suitable for the proposed use as it has been a restaurant in this municipality for a significant time. The Property is particularly suitable for an expansion of the non-conforming use, that is, the addition of the basement to the new building (to be placed on the same footprint as the existing Chipperry building) because storage is needed and the new building will promote a desirable visual environment.

8. The Board further finds that the evidence presented has addressed the negative criteria under the statute such that the requested variance can be granted without impairing the intent and purpose of the zone plan and zoning ordinance, and without substantial detriment to the public good, because there will not be additional traffic, there will be no functional change to the use of the Property, and there will be no additional signage, other than the replacement of the prior original sign on the building.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Fanwood that the application of Brian Walter, for an expansion of the non-conforming use, therefore a d(2) variance is hereby granted, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Fanwood and return of proof of said publication to the Secretary of the Planning Board.

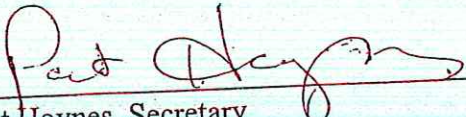
Borough Clerk, Borough Planner, Borough Engineer, Borough Attorney, Borough Construction Official and the Applicant herein within ten (10) days of the date hereof.

The above action was moved by Dan Zucker and seconded by Dale Flowers on July 27, 2011, and voted upon as follows:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
Kevin Boris	X		
John Celardo	X		
Laura DeGennaro	X		
Dale Flowers	X		
Dennis Sherry	X		
Matthew Jukes	X		

I hereby certify that the foregoing action was taken by the Planning Board of the Borough of Fanwood at a meeting held on July 27, 2011, and that this resolution; memorializing the foregoing action, was moved by Dan Zucker and seconded by Dale Flowers and was duly adopted by the Planning Board of the Borough of Fanwood at its meeting on August 24, 2011 by the following vote of this who voted in favor of the action taken:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
Dan Zucker	X		
Dale Flowers	X		
Kevin Boris	X		
John Celardo	X		
Mathew Jukes	X		


Pat Hoynes, Secretary

FANWOOD PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING
APPLICATION OF CIANCIULLI FAMILY, LLC
FOR CERTIFICATE OF NON-CONFORMING USE/STRUCTURE STATUS
383 SOUTH AVENUE
BLOCK 69, LOT 5
APPLICATION NO. 17-2010

WHEREAS, Cianciulli Family, LLC, hereinafter referred to as the Applicant, is the owner of Block 69, Lot 5, as shown on the official Tax Map of the Borough of Fanwood, and more commonly known as 383 South Avenue, in the Borough of Fanwood, County of Union and State of New Jersey; and

WHEREAS, the Applicant has applied to the Fanwood Planning Board for a certificate of non-conforming use/structure status; and

WHEREAS, the Fanwood Planning Board held a public hearing on said application on September 22, 2010, after compliance with the notice, service and publication requirements of N.J.S.A. 40:55D-12; and

WHEREAS, at said hearing, the Planning Board considered the following documents:

1. Zoning Denial dated July 1, 2010.
2. Planning Board Hearing Application Form dated August 30, 2010.
3. Survey prepared by William Held Associates, Inc., dated August 11, 2010.
4. Periphery Map, Block 69, Lot 5.

Chippery” was a lawful nonconforming use and that said nonconforming use has not been abandoned.

3. Gary Schneider testified in support of the application. Mr. Schneider is a licensed real estate agent with Coldwell Banker. Mr. Schneider is familiar with the circumstances concerning the listing and proposed sale of the premises. Mr. Schneider’s qualifications as a licensed real estate agent were accepted by the Board.
4. Mr. Schneider testified that the premises operated as a fish and chips restaurant, The Chippery, until October of 2008. He indicated that the restaurant had been operated by the Cianciulli Family. The family ceased operation of the business in October, 2008. The property was listed for sale with its then – recently discontinued use in February of 2009. Originally, the family tried to market the business and building as a package, but this was unsuccessful. The property has been continuously listed for sale in its present state since February of 2009. It is multiple listed.
5. The building has continued in the state that it was when the property was last used. All of the equipment is still in the restaurant, including the cooking equipment and seating.
6. Mr. Schneider testified that there has been no intent to abandon the use as a fish and chips restaurant. In fact, in the last month or so, four interested purchasers have made themselves known, three of which were interested in continuing with some type of fish and chips – style restaurant.
7. The file of the Board of Adjustment from an application on the subject premises, 401 South Avenue, was reviewed. In 1971, an application was made to extend the then – existing restaurant use. The application was denied. The file reflected, however, that

- f. Alexander Farkas, 374 South Avenue. He is opposed. He has lived there since 1959. He agrees with the factual statements made by Mike Venezia. The noise from the premises was bad when it was in operation. Garbage dumpsters were unloaded in the morning. He says that the neighbors were not notified when the fish and chips restaurant was started.
- g. William Thiemann, 271 South Avenue. He is opposed. He bought his house in 1999. He has two daughters and a Golden Retriever. He complained that when the fish and chips restaurant was opened, people ate in their cars in the parking lot and made noise and threw garbage out the windows. Garbage trucks coming to the premises made noise. On days when people eat a lot of fish, like Ash Wednesday, cars were parked all over the neighborhood.
- h. Diane Ewaska, 37 Locust Avenue. She is opposed. She would like to see the property go back to residential use. She complained about maintenance on the property and indicated that she has complained to the municipality on numerous occasions about maintenance issues.
- i. Joe Messinger, 36 Laurel Place. He bought his home in September of 2009. At that time, the restaurant was not in operation. He thought the property had been abandoned. He would like to see it remain with no restaurant.

WHEREAS, the Fanwood Planning Board, after hearing all of the evidence presented on the application, and having reviewed the records of the municipality concerning the subject premises, and having considered the comments of the public, and the arguments in favor of and opposed to the application, has made the following findings of fact and has drawn the following conclusions of law:

February of 2009, only four months after the restaurant closed, and that the restaurant has been maintained in its existing condition, including cooking facilities and fixtures and equipment.

8. Having so found, the Board concludes that Applicant is entitled to a certification to the effect that "The Chippery" was a lawful nonconforming use and structure, and that Applicant is entitled to a certificate certifying that the use and structure existed prior to the adoption of a zoning ordinance which rendered the use and structure nonconforming. Applicant has carried its burden of proof with respect to these issues. The Board further found that the use has not been abandoned.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Fanwood that the application of Cianciulli Family, LLC, for a certificate of nonconforming use and structure is hereby granted, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Fanwood and return of proof of said publication to the Secretary of the Planning Board.

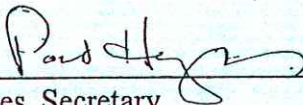
B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. The application shall be subject to any other outside agency approvals as may be necessary, including, but not limited to, Union County Planning Board, Borough of Fanwood Fire Department, Plainfield Area Regional Sewerage Authority, all utilities and Somerset/Union Soil Conservation District.

D. The Applicant shall reimburse the Fanwood Planning Board and/or the Borough of Fanwood for all professional fees associated with this application.

John Celardo
Dale Flowers
Eric Gaulin

X
X
X



Pat Hoynes, Secretary

369
L 5

April 30, 1971

Mr. Harry W. Herzog
1441 Prospect Avenue
Plainfield, New Jersey

Dear Mr. Herzog:

The Board of Adjustment, at their meeting held on April 15, 1971, passed the following resolution:

The Board of Adjustment finds after considering the evidence submitted that the refusal to grant a variance in the case of the application of H. Herzog, 401 South Avenue, Fanwood, New Jersey would not impose an unnecessary hardship upon the petitioner and granting of such a variance would be with substantial detriment to the public good and would substantially impair the intent and purpose of the Zoning Ordinance. The Board, hereby denies the application of Harry W. Herzog, 1441 Prospect Avenue, Plainfield, New Jersey for variances on Lot 5 Block 69 being 401 South Avenue, Fanwood, New Jersey

Very truly yours,

OA:JCG

cc L. S. Kudlick

Oliver Artell
Secretary
Board of Adjustment

3. Review letter from Peter Bondar, P.E., T&M Associates, dated July 30, 2014.
4. Handdrawn sketch regarding the location of the proposed outdoor tables, marked as Exhibit A-1 during the hearing;
5. Survey of the property Lot 5, Block 69, by Jack L. Held, William Held Associates, Inc., dated August 10, 2010; marked as Exhibit A-1 during the hearing;
6. Handdrawn sketch of the existing basement of the building with the proposed location of additional sink and prep tables, marked as Exhibit A-2 during the hearing;
7. A photograph of the proposed tables, marked as Exhibit A-3 during the hearing;
8. Resolution on application number 7-2011 of the Fanwood Planning Board regarding the application of The Chipperry – Brian Walter, for an application for an expansion of the non-conforming use; and

WHEREAS, Brian Walter, as Managing Member of 383 South Avenue Limited Liability Company, represented the Applicant and appeared through his attorney, Jeffrey Lehrer, Esq.; and

WHEREAS, the Applicant seeks confirmation of the Fanwood Planning Board, sitting as the Board of Adjustment, for an expansion of the pre-existing nonconforming use of the subject Property, specifically to add outdoor seating to the property; to complete food preparation in the existing basement and for a waiver of site plan approval; and

WHEREAS, the Board received correspondence from the Police Department, Department of Public Works, neither of which expressed any opposition; and from the Construction Official, who had no objection has two comments: (1) under the subcode, the stairs must be corrected and (2) under the plumbing subcode, the bathroom in the property does not comply with the occupancy load; and

customers only. With regard to the proposed food preparation in the basement, Mr. Walters testified that food preparation is occurring in the upstairs restaurant area currently and they need more space. Mr. Walters indicated that they are butchering fish every day and the basement space is not being used. The plan for the basement is to use FRP sheetrock which is non-mold forming; to also use FRP on the walls; to install a three component sink; install a hand washing sink and a nonporous floor. Mr. Walters testified there will be no detrimental impact to the neighbors, there will no be increased traffic. Mr. Walters indicated that his previous approval granted 40 seats and he is only using 19 currently.

5. Board Professional Mr. Roberts indicated that the 2011 Resolution says the Applicant wants forty seats. This Application is an intensification of a pre-existing nonconforming use. Mr. Roberts indicated that the triangular lot is a hardship and makes it difficult for residential use; non-residential use is easier to accomplish. This Application is to expand the use. It does not appear parking is a concern because there is also street parking. There is no significant adverse impact since the change will occur within the footprint of the building, in the basement. The outdoor seating will provide a convenience for takeout customers.
6. Board Professional Mr. Bondar suggested that the dumpsters should be screened with plantings if not full masonry.
7. Mr. Walter indicated that he could push the dumpsters further back. He also indicated that the steps would have less activity if they could do food preparation in the basement. Mr. Walter indicated that in the winter months, the tables would be taken out of the area to be stored and in the warmer months the tables would be chained up

destroyed. He does not want to look at people eating and he doesn't want

people watching him either. The tables should be in the back of the building.

11. Mr. Walter testified that the tables will go on the bark mulch and the cars parked will be blocking the tables.

12. Mr. Leher, in summation, indicated that there will landscaping provided for the dumpsters, there will not be cooking in the basement, only food preparation. This is the expansion of a pre-existing nonconforming use. The tables and chairs will be anchored. The idea of a shed was raised but is not part of this application.

13. Board Member Blechinger commented that outside searing should not affect the inside seating. He is from Boston and you get fish and chips there and eat it outside. There will be no alcohol, no lighting and there are no neighbors on the back side. If a car is parked there, it will be in front of the table, blocking the table.

14. Board Chair Flowers suggested maybe the applicant should put in a sign that indicates the seating area closes after dusk.

15. Board Member Jukes indicated the chairs should be removed at night.

WHEREAS, the Fanwood Planning Board, after hearing all of the evidence presented on the application, and having reviewed the records of the municipality concerning the subject premises, and having considered the comments of the public, and the arguments in favor of and opposed to the application, has made the following findings of fact and has drawn the following conclusions of law:

1. The Planning Board of the Borough of Fanwood has proper jurisdiction to hear the within matter.

the public good, because there will not be additional traffic, there will be no functional change to the use of the Property, and there will be no additional signage, other than the replacement of the prior original sign on the building.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Fanwood that the application of Brian Walter, for an expansion of the non-conforming use, therefore a d(2) variance is hereby granted, subject to and conditioned upon the following:

A. Publication by the Applicant of a notice of this decision in an official newspaper of the Borough of Fanwood and return of proof of said publication to the Secretary of the Planning Board.

B. The Applicant furnishing proof to the Secretary of the Planning Board that no fees, escrows or assessments for local improvements are due or delinquent on the Property in question. No permits shall be executed for filing until all fees and escrows are paid in full.

C. The application shall be subject to any other outside agency approvals as may be necessary, including, but not limited to, Union County Planning Board, Borough of Fanwood Fire Department, Plainfield Area Regional Sewerage Authority, all utilities and Somerset/Union Soil Conservation District.

D. The Applicant shall reimburse the Fanwood Planning Board and/or the Borough of Fanwood for all professional fees associated with this application.

E. The Applicant shall comply with the following conditions:

1. The Applicant shall work with the Board Professionals as to the location of the dumpster;
2. The Applicant shall work with the Board Professionals as to where to store the tables in the winter;

adopted by the Planning Board of the Borough of Fanwood at its meeting on October 22, 2014

by the following vote of this who voted in favor of the action taken:

MEMBER

IN FAVOR

OPPOSED

ABSTAIN

Seefeldt

X

Sherry

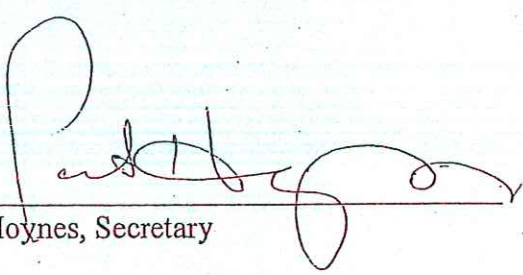
X

Flowers

X

Blechinger

X


Pat Hoynes, Secretary