

BOROUGH OF FANWOOD
Planning Board Hearing Application Form

ZONING FORM #3

ORIGINAL

Date Received: 11-16-23

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 6' 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.

Signature of Applicant (in the presence of Notary) Nicholas Bruton, Managing Member of NB Home Improvements, LLC

908-868-9304

info@nbhomesnj.com

Sworn and Subscribed to before me this

3

day of

NOVEMBER
-OCTOBER
(month)

20

23

~~Nat Mont~~

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:

Расска

Owner - info@kbhomesnj.com

E-ma

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

Attorney Name: Stephen F. Hehl, Esq

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

Mailing Address: 370 Chestnut Street, Union, NJ 07083

Telephone: 908-687-7000

e-mail shehl@javerbaumwurgaft.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:

1176

550/910

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 15, 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

Inet.#
35636

VERONA
** End of Document **
Deed

NJ 07044 Charge
Recording Fee 115.00
RT Fee 26,028.20

DB6536-0208

RTP-1 (Rev. 3/2/11)
MUST SUBMIT IN DUPLICATE

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. 46:15-6 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 Fenwood Boro

FOR RECORDER'S USE ONLY
Consideration \$ 1,292,000.00
RTP paid by seller \$ 13,000.00
Date 12/15/23 By [Signature]

*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,
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 89 Lot number 6 located at
383 South Avenue, Fenwood 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 + .8661 % = \$ 625,553.00

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. 60, 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. 1976, 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 20 23
Alla Rabinovich

[Signature]
Signature of Deponent
200 South Av., Fenwood, NJ 07023

Sheela's Real Estate LLC
Grantor Name
200 South Av., Fenwood, NJ 07023
Grantor Address at Time of Sale

Deponent Address
XXX-XX-X 326

Last three digits in Grantor's Social Security Number Name/Company of Settlement Officer

ALLA RABINOVICH
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 2401774

MY COMMISSION EXPIRES OCT. 29, 2025

FOR RECORDER'S USE ONLY
Instrument Number 35000
Deed Number 1036
Deed Date 12/15/23
Book 1036 Page 203
Date Recorded 12/15/23

County recording officers shall forward one copy of each RTP-1 form when Section 3A is completed to: STATE OF NEW JERSEY
PO BOX 231

TRENTON, NJ 08646-0231

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/rft/tpcRan.html>

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 8/18/1926 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.

086536-0204

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

WHEREAS, The Applicant was issued a Notice of Violation on April 21, 2022 for failure to obtain required tree removal application permit or reforestation plan as required pursuant to Borough of Fanwood Code Section 184-106 Preservation and removal of trees. The Application is offered to cure any violations for tree removal, replace removed trees in accordance with the code provisions, add a fenced dumpster enclosure and deck for outdoor dining. There are variance requests associated with this Application; and

WHEREAS, the subject property is located in the CC-Eastern District and Redevelopment Plan; and

WHEREAS, the Applicant requires the following C variances due to pre-existing conditions:

Preexisting non-conforming conditions

Article 184 – 119 (c-4) which requires:

- front property line coverage 60% whereas existing and proposed is 9.1%.
- front yard setback of 10 feet minimum and 20 feet maximum whereas existing and proposed is 6 feet and 11 feet.
- Overall Height permitted is a minimum of 1.5 stories with maximum of 4 stories or 45 feet whereas existing and proposed is 1 story.

WHEREAS, the Board received correspondence in support of the application from Fire Department, Rescue Squad, and Historic Preservation, all of which had no comments and the Environmental Commission who recommended replacement of the trees removed pursuant to the Shade Tree Commission letter and the code; and

WHEREAS, the Fanwood Planning Board, after hearing the testimony on behalf of the application, and no one having appeared in opposition thereto, 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.

2. The property is designated as Block 69 Lot 5 as shown on the Official Tax Map of the Borough of Fanwood, County of Union and State of New Jersey and more commonly known as 383 South Avenue. There are pre-existing non-conforming conditions as detailed herein.

3. The Application was initially heard on August 24, 2022. Mr. Sullivan, the Borough Zoning Officer, summarized the Application. In June of 2015, the Property was rezoned to its present zone. Mr. Sullivan testified as to the Tree Removal Ordinance and its purposes. The Applicant clear cut the property without obtaining any permits or the pre demolition tree survey which would have provided the trees which were removed from the provided information the Applicant cut down a total of 19 trees which required the replanting of 25 trees pursuant to the Borough tree ordinance. In addition to the tree replacements, there is need to replace the fence on the west side property or adequate screening of the adjacent property, to include stabilization of the steep sections of the property, and removal of three to four parking spaces at the east side of the property which encroach into the Borough and State's right of way and the inclusion of ADA Compliant parking space.

4. Mr. Hehl presented testimony of James Iler who described the nature of the trees removed and those to be replaced. He was not qualified as an expert, however, he provided his credentials which included a degree in forestry from Penn State University and other experience. His testimony included information regarding the size and condition of the trees removed. He testified that the trees were damaged as a result of storms. He testified regarding a handwritten memo he prepared of the location and type of trees including Black Locust, Silver Maple and Sweet Gums. The memo was not provided prior to the hearing. It was presented on the Zoom

Screen. He also testified that the a majority of the trees were stump sprouts which were sprouts of trees already removed but which the stump remained.

5. The Board members questioned the Mr. Iler regarding his testimony. Borough Engineer questioned Mr. Iler who testified that there were no pictures of the removal of the trees. There are no pictures of the Property prior to the tree removal. There was a picture of the site from Google from prior to the removal of the trees which shows a full wooded site. The Borough Engineer also advised that the Applicant provided the number of trees removed. Then the Borough calculated the number of trees needed to be replaced. The plan provided did not include the appropriate shade trees. rather there were arborvitae which do not qualify. There is also the option to pay into the tree fund. There was significant discussion of the trees requested by the Tree Commission and the Borough based on the Tree Ordinance. The plan proposed did not contain the acceptable number of qualified shade trees.

6. Mark Cifelli, PE as Engineer. He described the existing conditions, the proposed arrangement of the dumpster, fence replacement and ADA parking space. Mr. Cifelli testified that he performed a survey on the property and prepared a replacement tree plan. On the replacement plan there was an "Exhibit A" which included a list of the trees, type and diameter (based on the stump), with the condition and health of the trees. Mr. Cifelli testified as to the survey and the replacement plan with contained 21 arborvitae and 4 shade trees. The chart was not based on Mr. Cifelli knowledge. However, the Applicant believes that only 6 trees removed would qualify as those to be considered to be replaced as opposed to the 19 removed and 25 based on the ordinance, that the Borough recommended. There was significant testimony regarding this issue and it was decided that the Applicant would return with an amended plan. There was discussion of the need

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

residential development planned on the Property and it was requested that the shade trees be planted after the completion of the residential development as the trees would likely be damaged if planted prior to the construction.

10. The Board and the Board professionals discussed the revised Tree Replacement Plan. The Plan provided for 12 giant arborvitae (8 foot at planting) as a screening between the properties on the west parcel line. The Borough would consider 50% of the 12 arborvitaes as a credit towards the tree replacement required of 25 trees. The balance of the 10 trees proposed along South Avenue and Old South Avenue would count towards the tree replacement number of 25 trees. That suggestion would allow a fee in lieu payment at \$500.00 per tree for the remaining 9 trees, however, there was a suggestion of requiring the submission for 5 trees. There was concern about the dumpster screening as the dumpsters will still be seen travelling on South Avenue. There were comments from the Board members regarding the lack of maintenance on the Property and the need to maintain the Property in the future. There was a suggestion to plant a prominent on the Property after the development, possibly at the east point to provide the Property with bio diversity. There was discussion of diversity in the shade tree type.

11. The hearing was opened to the public. There was no comment.

12. The Board further finds that the relief requested may be granted under *N.J.S.A.* 40:55D-70(c)(2), because the benefit of granting the variances will outweigh any detriment. The granting of the variances will improve the property and enhance the general condition of the property.

13. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and the zoning ordinance.

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

to different locations and types for the 10 shade trees as a result of the proposed residential development and also the potential installation of a prominent tree; 4) placement of seeding and lining on the property to remediate the steep slope conditions and general cleanup, including the cleanup of the wood chips, subject to the approval of the Borough Professionals, within thirty(30) days which may be extended by Township Engineer upon reasonable request prior to expiration and the property shall remain properly maintained; 5) placement of the 10 Junipers (at 6 Feet high at installation) at the dumpsters consistent with the testimony provided and the Tree Replacement Plan as last revised, subject to the approval of the Borough Professionals, within sixty (60) days which time may be extended by Township Engineer upon reasonable request prior to expiration; 6) the payment of \$500 for five (5) trees to the Tree Replacement Fund for a total of \$2,500.00 (the Applicant may apply to the Borough Committee for money from the Tree Replacement Fund) within sixty (60) days; 7) the striping and location of the ADA parking spot and any other parking spots needed will be reviewed and approved by the Borough Engineer; 8) the Notice of Violation referred to herein will be satisfied following the satisfaction of the provisions of this Resolution; 9) roof leaders shall not be directed towards adjacent properties and should there be any excavation required; and 10) all excavated material shall be removed from the site and not used to regrade any portion of the property.

E. The variances granted herein shall expire by limitation unless the construction, alteration, or use, as applicable, permitted by this variance shall have been actually commenced within twelve (12) months of the date of memorialization of approval of the variance, provided, however, that the running of the period of limitation herein provided shall be tolled in the case of legal action as provided in §184-68.

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.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the 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 Councilman Carter and seconded by Whitney Chelnik on September 28, 2022, and voted upon as follows:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
Carter	X		
Chelnik	X		
Mahr	X		
Juckes	X		
Matty	X		
Guzzo	X		
Moore	X		
Krone-Speck	X		
Warbeck	X		

I hereby certify that the foregoing action was taken by the Planning Board of the Borough of Fanwood at a meeting held on September 28, 2022, and that this resolution, memorializing the foregoing action, was moved by Anthony Carter and seconded by Whitney Chelnik and was duly adopted by the Planning Board of the Borough of Fanwood at its meeting on October 26, 2022 by the following vote of this who voted in favor of the action taken:

MEMBERIN FAVOROPPOSEDABSTAIN

Carter

X

Guzzo

X

Mahr

X

Matty

X

Moore

X

Krone-Speck

X

Rosen

X

Pat Hoynes, Secretary

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

WHEREAS, The Applicant was issued a Notice of Violation on April 21, 2022 for failure to obtain required tree removal application permit or reforestation plan as required pursuant to Borough of Fanwood Code Section 184-106 Preservation and removal of trees. The Application is offered to cure any violations for tree removal, replace removed trees in accordance with the code provisions, add a fenced dumpster enclosure and deck for outdoor dining. There are variance requests associated with this Application; and

WHEREAS, the subject property is located in the CC-Eastern District and Redevelopment Plan; and

WHEREAS, the Applicant requires the following C variances due to pre-existing conditions:

Preexisting non-conforming conditions

Article 184 – 119 (c-4) which requires:

- front property line coverage 60% whereas existing and proposed is 9.1%.
- front yard setback of 10 feet minimum and 20 feet maximum whereas existing and proposed is 6 feet and 11 feet.
- Overall Height permitted is a minimum of 1.5 stories with maximum of 4 stories or 45 feet whereas existing and proposed is 1 story.

WHEREAS, the Board received correspondence in support of the application from Fire Department, Rescue Squad, and Historic Preservation, all of which had no comments and the Environmental Commission who recommended replacement of the trees removed pursuant to the Shade Tree Commission letter and the code; and

WHEREAS, the Fanwood Planning Board, after hearing the testimony on behalf of the application, and no one having appeared in opposition thereto, 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.

2. The property is designated as Block 69 Lot 5 as shown on the Official Tax Map of the Borough of Fanwood, County of Union and State of New Jersey and more commonly known as 383 South Avenue. There are pre-existing non-conforming conditions as detailed herein.

3. The Application was initially heard on August 24, 2022. Mr. Sullivan, the Borough Zoning Officer, summarized the Application. In June of 2015, the Property was rezoned to its present zone. Mr. Sullivan testified as to the Tree Removal Ordinance and its purposes. The Applicant clear cut the property without obtaining any permits or the pre demolition tree survey which would have provided the trees which were removed from the provided information the Applicant cut down a total of 19 trees which required the replanting of 25 trees pursuant to the Borough tree ordinance. In addition to the tree replacements, there is need to replace the fence on the west side property or adequate screening of the adjacent property, to include stabilization of the steep sections of the property, and removal of three to four parking spaces at the east side of the property which encroach into the Borough and State's right of way and the inclusion of ADA Compliant parking space.

4. Mr. Hehl presented testimony of James Iler who described the nature of the trees removed and those to be replaced. He was not qualified as an expert, however, he provided his credentials which included a degree in forestry from Penn State University and other experience. His testimony included information regarding the size and condition of the trees removed. He testified that the trees were damaged as a result of storms. He testified regarding a handwritten memo he prepared of the location and type of trees including Black Locust, Silver Maple and Sweet Gums. The memo was not provided prior to the hearing. It was presented on the Zoom

Screen. He also testified that the a majority of the trees were stump sprouts which were sprouts of trees already removed but which the stump remained.

5. The Board members questioned the Mr. Iler regarding his testimony. Borough Engineer questioned Mr. Iler who testified that there were no pictures of the removal of the trees. There are no pictures of the Property prior to the tree removal. There was a picture of the site from Google from prior to the removal of the trees which shows a full wooded site. The Borough Engineer also advised that the Applicant provided the number of trees removed. Then the Borough calculated the number of trees needed to be replaced. The plan provided did not include the appropriate shade trees, rather there were arborvitae which do not qualify. There is also the option to pay into the tree fund. There was significant discussion of the trees requested by the Tree Commission and the Borough based on the Tree Ordinance. The plan proposed did not contain the acceptable number of qualified shade trees.

6. Mark Cifelli, PE as Engineer. He described the existing conditions, the proposed arrangement of the dumpster, fence replacement and ADA parking space. Mr. Cifelli testified that he performed a survey on the property and prepared a replacement tree plan. On the replacement plan there was an "Exhibit A" which included a list of the trees, type and diameter (based on the stump), with the condition and health of the trees. Mr. Cifelli testified as to the survey and the replacement plan with contained 21 arborvitae and 4 shade trees. The chart was not based on Mr. Cifelli knowledge. However, the Applicant believes that only 6 trees removed would qualify as those to be considered to be replaced as opposed to the 19 removed and 25 based on the ordinance, that the Borough recommended. There was significant testimony regarding this issue and it was decided that the Applicant would return with an amended plan. There was discussion of the need

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

residential development planned on the Property and it was requested that the shade trees be planted after the completion of the residential development as the trees would likely be damaged if planted prior to the construction.

10. The Board and the Board professionals discussed the revised Tree Replacement Plan. The Plan provided for 12 giant arborvitae (8 foot at planting) as a screening between the properties on the west parcel line. The Borough would consider 50% of the 12 arborvitaes as a credit towards the tree replacement required of 25 trees. The balance of the 10 trees proposed along South Avenue and Old South Avenue would count towards the tree replacement number of 25 trees. That suggestion would allow a fee in lieu payment at \$500.00 per tree for the remaining 9 trees, however, there was a suggestion of requiring the submission for 5 trees. There was concern about the dumpster screening as the dumpsters will still be seen travelling on South Avenue. There were comments from the Board members regarding the lack of maintenance on the Property and the need to maintain the Property in the future. There was a suggestion to plant a prominent on the Property after the development, possibly at the east point to provide the Property with bio diversity. There was discussion of diversity in the shade tree type.

11. The hearing was opened to the public. There was no comment.

12. The Board further finds that the relief requested may be granted under *N.J.S.A.* 40:55D-70(c)(2), because the benefit of granting the variances will outweigh any detriment. The granting of the variances will improve the property and enhance the general condition of the property.

13. The Board further finds that the relief requested may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and the zoning ordinance.

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

to different locations and types for the 10 shade trees as a result of the proposed residential development and also the potential installation of a prominent tree; 4) placement of seeding and lining on the property to remediate the steep slope conditions and general cleanup, including the cleanup of the wood chips, subject to the approval of the Borough Professionals, within thirty(30) days which may be extended by Township Engineer upon reasonable request prior to expiration and the property shall remain properly maintained; 5) placement of the 10 Junipers (at 6 Feet high at installation) at the dumpsters consistent with the testimony provided and the Tree Replacement Plan as last revised, subject to the approval of the Borough Professionals, within sixty (60) days which time may be extended by Township Engineer upon reasonable request prior to expiration; 6) the payment of \$500 for five (5) trees to the Tree Replacement Fund for a total of \$2,500.00 (the Applicant may apply to the Borough Committee for money from the Tree Replacement Fund) within sixty (60) days; 7) the striping and location of the ADA parking spot and any other parking spots needed will be reviewed and approved by the Borough Engineer; 8) the Notice of Violation referred to herein will be satisfied following the satisfaction of the provisions of this Resolution; 9) roof leaders shall not be directed towards adjacent properties and should there be any excavation required; and 10) all excavated material shall be removed from the site and not used to regrade any portion of the property.

E. The variances granted herein shall expire by limitation unless the construction, alteration, or use, as applicable, permitted by this variance shall have been actually commenced within twelve (12) months of the date of memorialization of approval of the variance, provided, however, that the running of the period of limitation herein provided shall be tolled in the case of legal action as provided in §184-68.

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.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the 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 Councilman Carter and seconded by Whitney Chelnik on September 28, 2022, and voted upon as follows:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
Carter	X		
Chelnik	X		
Mahr	X		
Juckes	X		
Matty	X		
Guzzo	X		
Moore	X		
Krone-Speck	X		
Warbeck	X		

I hereby certify that the foregoing action was taken by the Planning Board of the Borough of Fanwood at a meeting held on September 28, 2022, and that this resolution, memorializing the foregoing action, was moved by Anthony Carter and seconded by Whitney Chelnik and was duly adopted by the Planning Board of the Borough of Fanwood at its meeting on October 26, 2022 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>
Carter	X		
Guzzo	X		
Mahr	X		
Matty	X		
Moore	X		
Krone-Speck	X		
Rosen	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.

4. Letter from Martin Truscott, P.P., A.I.C.P., LEED-GA, Planning Consultant at T&M Associates to Planning Board, dated July 27, 2011.
5. Survey prepared by William Held Associates, Inc., dated August 11, 2010.
6. Architectual plans for The Chipperry including: Proposed Floor Plan, drawing A-1.0; Proposed Basement Plan, drawing A-1.1; Front Elevation, drawing A-2.0; Front Elevation (in color), drawing A-2.0; Side Elevation & Bldg. Section, drawing A-3.0 prepared by Scott V. Prisco, AIA of EQA Architecture, LLC.
7. Letter dated April 30, 1971, from the Secretary of the Fanwood Board of Adjustment memorializing a denial of an application for a variance to expand the then-current use/structure on the subject premises.
8. File of the Fanwood Board of Adjustment regarding the application of Cianculli Family, LLC for a certificate of non-conformity for the use/structure in accordance with Section 68 of the Municipal Land Use Law respecting the Property; and

WHEREAS, the Applicant, Brian Walter, 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 a basement to the structure; and

WHEREAS, the Board received correspondence from the Department of Public Works, the Fire Department, and the Police Department, none of which expressed any opposition; from the Construction Official, which had no objection but requested the basement be barrier free; and the Board of Health, which had no objection to the preliminary plan as submitted but would like to see a detailed plan relative to the plumbing and sink in the kitchen area; and

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 Chippery" 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 Chippery years ago. He would like to re-open The Chippery 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 Chippery 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

Chipperry closed. He would like to have a pedestrian (but not drive-thru) pick-up window on the side of the building. As indicated above, while he would like to add the basement, he intends to keep the same building footprint.

4. Mr. Scott Prisco's qualifications as a licensed architect and planner were accepted by the Board.
5. Mr. Prisco testified that The Chipperry has been designed with a nautical theme. The proposed basement and first floor will not exceed the outline of the footprint. He indicated the exterior stairs would not be part of the footprint, the bottom of the stairs would be on the existing concrete patio. The new first floor would provide room for a vestibule. He discussed the proposed plans. He testified that the side of the proposed building would have a walk-up window. He testified the new bathroom would be larger and more user friendly. He explained that several items under the purposes of zoning would support the granting of the D variance applied for including general welfare and a desirable visual environment. In terms of the "negative criteria" analysis, Mr. Prisco testified that there would be no substantial detriment to the surrounding area. He testified the basement would provide much needed storage which would mean less deliveries from trucks since more items could be stored. He testified the new vestibule would be energy efficient. The building would be built to code. The sign would not be internally lit and would replicate the old sign. As for the proposed anchor in the plan, it would be sturdy and spikes could be placed on top for safety concerns. A parking spot would not be lost for the anchor decoration. The Applicant plans to restripe the parking lot. The basement would have access to the outside. The basement would have dry storage and refrigeration. A new shed, 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

concerns of the residents but knows that Brian is meticulous with his restaurants. He realizes the property is an eyesore right now, but believes there is no one better to resurrect this fish and chip restaurant than Brian.

- f. Beth Venezia spoke again. She thinks this proposal is adding insult to injury as The Chipperry is ugly. She feels this is a residential area and it should be a residential lot. She does not want this business in her backyard. She feels the business does not need a basement.

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.
2. This application, pursuant to N.J.S.A. 40:55D-68, is submitted to the Planning Board, which sits as the Board of Adjustment of the Borough of Fanwood pursuant to *N.J.S.A.* 40:55D-25(c).
3. The Property is designated as Block 69, Lot 5, as shown on the Official Tax Map of the Borough of Fanwood, County of Union and State of New Jersey, and more commonly known as 383 South Avenue, Fanwood, New Jersey. The Property is located in an R-75 residential zoning district.
4. The Applicant is the owner of the Property.
5. The Board accepted the testimony presented in support of the application.

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.

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 Board Professionals shall evaluate and review the parking lot configuration post-build to assess same.
2. The proposed pedestrian "walk-up window" must be properly marked and striped; The Board Professionals must evaluate and review the "walk-up window" post-build to assess same.
3. Applicant agrees to comply with the residential zoning requirements with regard to garbage pickup.
4. Applicant agrees that the sign will not be internally lit.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of July 27, 2011 and effective as of that date.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the

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 Juckes	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		
MathewJuckes	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.

5. Letter dated April 30, 1971, from the Secretary of the Fanwood Board of Adjustment memorializing a denial of an application for a variance to expand the then-current use/structure on the subject premises.
6. File of the Fanwood Board of Adjustment regarding the application of Harry W. Herzog for expansion of a non-conforming use or, in the alternative, a declaration that applicant's proposal did not constitute an expansion, respecting property located at 401 South Avenue, Fanwood, New Jersey; and

WHEREAS, the Applicant, Cianciulli Family, LLC, appeared through their attorney, Jerome Krueger, Esq.; and

WHEREAS, the Applicant seeks confirmation of the Fanwood Planning Board, sitting as the Board of Adjustment, that the former use of the subject premises, presently unused, was a lawful nonconforming use as a fish and chips restaurant; and

WHEREAS, the Board received correspondence from the Department of Public Works, Board of Health and Construction Official, none of which expressed any opposition, from the Police Department, which had no comment because no new plan was presented, and from the Environmental Commission, which would like to see more landscaping; and

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

1. The location where the subject premises is situate is an R-75 single-family residential district. The use of the premises for a fish and chips style restaurant, or any other commercial use, is prohibited under the current zoning regulations.
2. Applicant seeks a certificate of nonconforming use to the effect that the restaurant which last existed on the premises, which is currently unused, known as "The

Chipperry” 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 Chipperry, 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

the Board of Adjustment had found in 1971 that the restaurant pre-existed the adoption of the Zoning Ordinance in 1954 and was a lawful nonconforming use, as determined by the Board in 1971.

8. 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 has lived at her present residence for about 50 years. The fish and chips restaurant was not there when she moved in. There was a small mom and pop luncheonette. After the luncheonette closed in the 1960s, the fish and chips restaurant came in. She feels that there are concerns about noise, vermin infestation and odor from a fish and chips restaurant.
- b. Mike Venezia, 23 Laurel Place. He is opposed to the application. He is Beth Venezia's husband. He has lived there for 50 years. The restaurant has not been operating for almost two years. The area is zoned residential. He has concerns about odors, noise and rodents.
- c. Jason Benedict, 288 North Avenue. He did some on-line research. He stated that The Chippery was in existence since 1970 and that the deli was previously established in 1930.
- d. Diane Olkusz, 41 Locust Avenue. She is opposed. She has lived there since she was a little girl. There was a deli. People lived there. It was a small deli. Since the property was changed to fish and chips, there has been an odor coming from the restaurant.
- e. Mike Venezia spoke again. He said that the deli was closed for a period of time before the fish and chips was opened.

- 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:

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

2. This application, pursuant to N.J.S.A. 40:55D-68, is submitted to the Planning Board, which sits as the Board of Adjustment of the Borough of Fanwood pursuant to N.J.S.A. 40:55D-25(c).

3. The property is designated as Block 69, Lot 5, as shown on the Official Tax Map of the Borough of Fanwood, County of Union and State of New Jersey, and more commonly known as 401 South Avenue, Fanwood, New Jersey. The property is located in an R-75 residential zoning district.

4. The Applicant is the owner of the property.

5. The Board finds that the use of the premises as a fish and chips restaurant as last used through approximately October of 2008 was a lawful nonconforming use and that said use has not been abandoned.

6. The basis of the Board's finding that the use was a lawful nonconforming use is based primarily on the long-standing use of the premises, since approximately 1970, as a fish and chips restaurant, the virtually universal acknowledgment that a food service use preceded the fish and chips restaurant by many years, going back to approximately 1930, and the records of the Board of Adjustment of the Borough of Fanwood, which acknowledged in 1971 that the restaurant use of the premises which existed at that time was a lawful pre-existing nonconforming use.

7. The Board's finding that the use of the premises has not been abandoned is based primarily on the fact that the owner attempted to market the business and premises as a "package," that the premises has been continuously listed for sale in its present condition since

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.

E. This decision expresses no determination as to any use of the premises except as stated herein.

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of September 22, 2010 and effective as of that date.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the 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 John Celardo on September 22, 2010, and voted upon as follows:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
John Celardo	X		
Dan Zucker	X		
Dale Flowers	X		
Jack Molenaar	X		
Laura DeGennaro	X		
Eric Gaulin	X		

I hereby certify that the foregoing action was taken by the Planning Board of the Borough of Fanwood at a meeting held on September 22, 2010, and that this resolution, memorializing the foregoing action, was moved by Dan Zucker and seconded by John Celardo and was duly adopted by the Planning Board of the Borough of Fanwood at its meeting on October 27, 2010 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		

John Celardo
Dale Flowers
Eric Gaulin

X
X
X

Pat Hoynes, Secretary

FANWOOD PLANNING BOARD

RESOLUTION OF MEMORIALIZATION GRANTING
APPLICATION OF
383 SOUTH AVE LIMITED LIABILITY COMPANY
WALTER FAMILY LLC d/b/a SEAFARE CHIPPERY
FOR EXPANSION OF A NON-CONFORMING USE
383 SOUTH AVENUE
BLOCK 69, LOT 5
APPLICATION NO. 9-2014

WHEREAS, Brian Walter, hereinafter referred to as the Applicant, is the managing member of 383 South Ave Limited Liability Company, 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 September 15, 2014, 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 June 14, 2014.
2. Review letter from David G. Roberts, P.P., AICP, LLA, Maser Consultants P.A., dated July 29, 2014.

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

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 outdoor seating to the existing restaurant; and to complete food preparation in the existing basement
3. Mr. Lehrer indicated with regard to the comments from the Constructional Official, his position is that those comments are construction code issues and not for the Planning Board to discuss; however, the Applicant will deal with those issues. Mr. Lehrer also indicated that the 2011 Resolution expanded the pre-existing non-conforming use to include the new building and basement. However, that approval did not include food preparation in the basement only storage.
4. Brian Walter testified in support of the application. Mr. Walter is the current chef and co-owner of the Restaurant. Mr. Walter also owns and operates Oh Brian's Pourhouse in Fanwood and is familiar with the restaurant business. Mr. Walter would like outdoor seating for the restaurant. He explained A-1 the proposed location of the outdoor seating. He indicated that planting bollards would be placed in front of the seating facing South Avenue to provide cover. The outdoor seating would only be operational during the warmer months, April to October and from 11:30 AM to dusk. There would not be any additional lighting. He is proposing six (6) tables with four (4) seats per table. There would not be table service; the tables are for takeout

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

each night. Mr. Walter talked about exhibit A3 which is a picture of proposed six tables, they look like spools from a ship and have a nautical theme. Mr. Walter indicated there would not be any additional lighting.

8. Mr. Roberts indicated that a defined location for the tables must be provided, ie. the exact location is needed. Mr. Bodnar indicated that if the survey is to scale, the tables have to be marked out.
9. In response to a comment from Zoning Official Ray Sullivan indicated that six tables would each have four seats for 24 seats and the seats should not exceed 40 seats; the Applicant indicated there would 24 seats outside and 19 seats inside.
10. The meeting was opened to the public. The following testified as to the application:
 - a. Mike Venezia, 23 Laurel Place. He can see the dumpsters on South Avenue, they are an eyesore. A tarp over the furniture would create more of an eyesore. The property is a nonconforming use. He has been a resident for 54 years. He does not want additional noise. The basement is supposed to be storage only not food preparation, if there is to be food preparation there should be sprinkles. He doesn't want people hanging after hours; he wants the area to be cleaned up. He thinks there should be signs that indicate a time limit such as twenty minutes and no one allowed after dark. He would like the application to be denied.
 - b. Alexander Farkas, 374 South Avenue testified. He lives directly across from The Chippery. He thinks the Applicant did an excellent job on the building. He is opposed to the expansion of the facility. The dumpsters are not covered and people dump stuff in it. He doesn't want natural growth and trees

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 Juckes 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.

2. This application, pursuant to N.J.S.A. 40:55D-68, is submitted to the Planning Board, which sits as the Board of Adjustment of the Borough of Fanwood pursuant to *N.J.S.A. 40:55D-25(c)*.

3. The Property is designated as Block 69, Lot 5, as shown on the Official Tax Map of the Borough of Fanwood, County of Union and State of New Jersey, and more commonly known as 383 South Avenue, Fanwood, New Jersey. The Property is located in an R-75 residential zoning district.

4. The Applicant is the owner of the Property.

5. The Board accepted the testimony presented in support of the application.

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 Chippery 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.

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;

3. The Applicant shall install a sign indicating the outdoor seating area closes at dusk,
4. The Applicant shall remove the chairs at night;
5. The Applicant shall install bushes are by the back door and create a screen behind the building,
6. The Applicant comply with the Construction Code Official's requirements

BE IT FURTHER RESOLVED that this resolution shall serve as one of memorialization of the action taken by this Board at its meeting of September 15, 2014 and effective as of that date.

BE IT FURTHER RESOLVED that a copy of this Resolution, certified by the Secretary of the Planning Board to be a true copy, be forwarded to the Zoning Officer, the 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 David Blechinger and seconded by Matthew Jukes on September 15, 2014, and voted upon as follows:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
David Blechinger	X		
Matthew Jukes	X		
Liz Hogan	X		
Dale Flowers	X		
Dennis Sherry	X		
Teressa Seefeldt	X		

I hereby certify that the foregoing action was taken by the Planning Board of the Borough of Fanwood at a meeting held on September 15, 2014, and that this resolution, memorializing the foregoing action, was moved by Teresa Seefeldt and seconded by Dennis Sherry and was duly

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:

<u>MEMBER</u>	<u>IN FAVOR</u>	<u>OPPOSED</u>	<u>ABSTAIN</u>
Seefeldt	X		
Sherry	X		
Flowers	X		
Blechinger	X		

Pat Hoynes, Secretary