



Department of
Community Development

TO: Cherry Hill Township Zoning Board Members
FROM: Cosmas Diamantis, Esq., Director
Natalie Shafiroff, PP, AICP, Supervisor
Jacob Richman, PP, AICP, Planner
RE: **COMPLETENESS REVIEW**
Eagle One Real Estate Properties, LLC
312 Kresson Road
Cherry Hill, New Jersey 08003
Block 409.01 Lot 7
Application No. 20-Z-0006
DATE: April 24, 2020

I. GENERAL INFORMATION

- A. **Applicant & Owner.** Eagle One Real Estate Properties, LLC, 303 Independence Blvd., Lawnside, NJ 08045.
- B. **Proposal.** A minor site plan with a certificate of nonconformity, or in the alternative, a use (d)1 variance and bulk (C) variances for a 575 sf kitchen expansion, 180 sf walk-in freezer, and use of the second floor as a two bedroom apartment, as well as bulk (c) sign variances for façade signage and a changeable copy LED sign.
- C. **Zone.** Highway Business (B2) Zone.
- D. **Site Area.** The subject property is located in the southwestern portion of the Township on the south side of Kresson Road, just east of Brace Road. With regard to the surrounding zoning districts, the properties adjacent to the site along Kresson Road are zoned Highway Business (B2); directly across the street the site, Bortons Mill Trails and Soccer Fields, is zoned Institutional (IN) zone. The nearby residential neighborhoods include, Batesville, Kresson Woods, and Evans Mill Apartments. The subject site is approximately 0.72 acres in size.
- E. **History.** The Township's Tax Assessor records indicate that the original structure on the property was constructed in 1850. The following records relevant to this application were found on file:
- On August 1, 1985, the Zoning Board of Adjustment memorialized Resolution #2832-85-V, approving the use of the property for multi-family dwelling. The property consisted of one single-family residential structure (now demolished) and a structure with two apartments, a two bedroom, two bath unit on the second floor and a one-bedroom, one bath unit on the first floor (currently used as a restaurant). The two family structure was for rental and the single-family structure was to be occupied by the owner of the property, where such a use was not permitted in the Highway Business (B2) Zone. This approval was conditioned upon, among others, that the variance run with the owner, Barbara Pfeiffer, not with the land, and that the right to conduct a multiple family dwelling shall expire at the time the petitioner's interest in said property expired.
 - On June 2, 1986, the Planning Board memorialized a resolution of approval for PBC #3819-V to approve variances in conjunction with a preliminary site plan including to permit a restaurant to be less than 800 feet from another restaurant and to permit a restaurant to have less than the required 200 seats (no longer applicable under the current ordinance); allowing a reduction in parking stall depths from nineteen (19') feet to seventeen (17') feet; to permit off-street parking to be less than twenty (20') from an existing curb line; to permit parking within the area to be kept free of parking maneuvers. This approval was conditioned

- on site plan approval of PBC #3819; that any expansion in the terrace area will be offset by an equal reduction in the inside seating; and seating capacity would be limited to 60 until such time as the existing residence was no longer used as such. As shown on the site plan, the existing dwelling in question was the separate structure on the same property formerly used as a single family residence.
- On June 19, 1986 the Planning Board memorialized a resolution of approval for PBC #3819 and 3819-F approving preliminary and final site plan approval for the conversion of an existing dwelling into a 60 seat restaurant and a dwelling unit.
 - On July 16, 1990 the Planning Board memorialized a resolution of approval for PBC #3819-A-2, for an amended site plan to permit the an addition to the existing structure to replace an existing greenhouse. The addition was never constructed, but the greenhouse was removed.
 - On June 5, 1995, the Planning Board memorialized a resolution of approval for PBC #8336-SPW to construct a six (6') fence along the rear of the restaurant and around the trash enclosure. The property was under new ownership since the last application in 1990.
 - On July 17, 1995, the Planning Board memorialized a resolution of approval for PBC #8337 for an abbreviated minor site plan to install a canopy over the walkway to the entrance to the restaurant and a 30' x 30' canopy over the rear terrace. The canopy over the entrance walkway has since been removed.
 - On July 20, 2007 a zoning permit was issued (ZP #3612) for a change of owner only, the restaurant remained the same.
 - On April 14, 2014 a zoning permit was issued (ZP #10172) to replace the wood fence. The restaurant was vacant at this time.
 - On April 26, 2016 a zoning permit was issued (ZP-16-00286) for a change of owner only.
 - On August 24, 2016 a zoning permit was issued (ZP-16-00894) was issued for the rehabilitation, change of occupancy and tenant fit-out for "The Farmhouse" in compliance with the submitted signed and sealed plans titled "Minor Site Plan – 312 Kresson Road", dated July 1, 2016, revised August 19, 2016. This site plan showed the removal of the dwelling unit previously located on the property being replaced by a trash enclosure as well as a redesign of the entry walkway and ADA parking spaces to bring the site into compliance with all ADA requirements. It also indicated that the restaurant now had a total of 90 seats.
 - On October 1, 2018 a zoning permit was issued (ZP-18-01004) for a change of owner and change of occupancy for "Denim" with no change in the approved site plan.

II. COMPLETENESS REVIEW

- A. **Submitted Items.** The following information has been submitted in support for this application and reviewed by the Cherry Hill Township Department of Community Development for conformance to the Zoning Ordinance:
1. Plot Plan, prepared by *Joseph A. Mancini, PE, of Tristate Engineering & Surveying, LLC* dated January 22, 2020.
 2. Floor Plans and Elevations prepared by *David Brand Architecture* dated January 9, 2020:
 3. Project Narrative & Existing Use Description.
- B. **Checklist.** The following checklist items must be submitted in accordance with the Township's Zoning Ordinance requirements or a waiver requested:
2. **Fees & Escrow with original, completed Escrow Agreement & W-9. The applicant has requested multiple bulk (c) variances as a part of this application. As per the Cherry Hill Township Zoning Ordinance (2013-18) as amended §901.C., where one application for**

development includes several approval requests, the sum of the individual required fees for each approval request shall be paid, this includes each individual variance request. The following chart represents the fees and escrow that have been submitted to the township versus what is required for the application based on the review of the application. The payment of the fees associated with the requests shall be a condition of approval. If the use (d) variance is determined to be necessary, those application fees will also be added. Additional escrow shall be provided if the previously submitted funds are insufficient.

Application Fee Requirements			
Category	Fee Requirement	Total Requests	\$ Required
Bulk C Variance	\$500.00	6	\$3,000.00
Use D Variance	\$500.00	1	\$500.00
		Total Required	\$3,500.00
		Amount Previously Submitted	\$1,000.00
		Difference =	\$2,500.00

6. *Three (3) copies of Environmental Assessment (see §819). Three (3) copies of Environmental Assessment (see §819). Waiver requested and the Department does not object to the granting of this waiver as the proposed development area is de minimus in nature.*
14. *Photographs of the site showing area in question. Photographs of the site shall be submitted showing the area where the work is proposed and the site as a whole at least 10 days prior to any scheduled hearing date.*
15. *Required Approvals. List and provide applications and permits of regulatory agencies (NJDOT, NJDEP, CCSC, etc). The applicant shall secure approval or a Letter of No Interest from the Camden County Planning Board as the property is located on a County roadway. An approval or exemption waiver from the Camden County Soil Conservation District (CCSCD) shall also be required. All connection fees for sewer (Camden County Municipal Utilities Authority [CCMUA] and Cherry Hill Township Municipal Utilities Authority [CHTMUA]) and water shall be required, if applicable. All outside agency approvals shall be a condition of Zoning Board approval unless otherwise agreed upon.*
16. *Summary. A written description of the proposed use(s) and operation(s) of the building(s), i.e., the number of employee or users of non-residential buildings, the proposed number of shifts to be worked, the maximum number of employees on each shift, expected truck traffic, noise, glare, radiation, heat, odor, safety hazards, air and water pollution. In addition to the summary of the application provided, the applicant shall provide detailed testimony regarding their proposed intent as it relates to the usage of the property for residential and commercial use.*
20. *Survey. Two (2) copies of a survey by a licensed NJ Land Surveyor (PLS), certified on a date within six (6) month of the date of submission. Testimony shall be provided regarding the existing conditions such as the location of ingress and egress (both the site and the building) and the location/availability of adequate parking spaces for the restaurant use and the proposed residential use.*
32. *Zoning Schedule showing required, existing, and proposed lot & yard requirements for relevant zone(s) including, area, frontage, depth, setbacks, height, etc. ~~The setback of 8-16' that requires a variance is from the rear lot line, not the side yard as indicated in the zoning schedule on the site plan. The zoning schedule should also include the setback requirement for the proposed relocation of the existing shed which is also being moved to a position that exacerbates the existing non-conforming setback and therefore requires a variance. In addition, in reviewing the history of this property, it appears that Ordinance 84-21, adopted by the Township Council on May 29, 1984, vacated all public rights to Arbor Ave except drainage and utilities, meaning that Arbor Avenue is not a public right of way and rather is the property of the owners of Block 409.01, Lot 19. As such, the zoning schedule~~*

~~should be updated to recognize this lot as an interior lot, not a corner lot. Please see additional comments below regarding this road vacation. Addressed on revised plans.~~

35. ~~Floor Plans where multiple dwelling units or more than one use is proposed that have different parking standards. The floor plans indicate that the kitchen addition is 275 square feet while the site plan shows that addition to be 575 square feet. The floor plan also shows the concrete pad to be 273 square feet (11' x 24' 10") while the site plan shows the patio to be 180 square feet (10' X 18'). Both of these discrepancies shall be rectified and updated plans submitted prior to any scheduled hearing date. If the rectification of these discrepancies changes the coverage calculations the zoning schedule must be updated to reflect those changes. Addressed on revised plans~~
37. Signs. Existing and proposed signs, including the location, size, height and necessary measurements and a Sign Location Plan. Detailed sign plans shall be submitted showing the dimensions of all proposed signage, including both façade signs and the freestanding sign. The description of the proposed signage is insufficient to determine compliance with the ordinance.

- C. **Determination.** The Department of Community Development has reviewed the aforementioned application and it has been **deemed technically complete**. The above and below-referenced items shall be addressed on revised plans and items submitted for conformance review.

III. DEPARTMENT OF COMMUNITY DEVELOPMENT COMMENTS

- A. **Zoning Requirements.** The proposed use as a restaurant is a permitted in the Highway Business (B2) Zone per §415.B.9. Signs are permitted per §517 via §415.D.11 of the Zoning Ordinance. Residential uses are not a permitted use in the B2 zone. Should a certificate of non-conformity not be issued, a use d(1) variance will be required.

CODE SECTION	MINIMUM REQUIREMENTS	REQUIRED (Corner)	EXISTING	PROPOSED	CONFORM
§415.F	Lot Area (square feet)	20,000 SF	31,217 SF	No Change	C
§415.F	Lot Frontage (feet)	120'	174.52'	No Change	C
§415.F	Lot Depth	150'	97.34'	No Change	ENC
§415.F	Front Yard	25'	30.2'	No Change	C
§415.F	Secondary Front Yard (to restaurant)	25'	58.34'	42.75'	C
§415.F	Secondary Front Yard (to shed)	25'	25	25	C
§415.F	Side Yard	10'	66.98'	No Change	C
§415.F	Rear Yard (to restaurant)	20'	8.4'	8.16'	V
§415.F	Rear Yard (to shed)	20'	2.18	8.82'	V
§415.F	Maximum Height	35'	<35'	No Change	C
§415.F	Maximum Building Cover	30%	7.2%	9%	C
§415.F			2,247 SF	2,809 SF	
§415.F	Maximum Lot Cover	70%	64.3%	64.7%	C

			20,072.5 SF	20,197.4 SF	
§415.F	Open Space	25%	35.7% 11802 SF	35.5% 11,082 SF	C
§511.B.2	Parking Minimum	37 ^A	34	34	V
§511.B.5	Parking Maximum	48			

^VVariance

^{ENC} Existing Non-conformance

^C Conforms

^A Parking Calculation: Restaurants require one (1) parking space per three seats + one (1) per every two employees. 90 seats and 10 employees requires 35 parking spaces. Two bedroom apartment requires 2 parking spaces per RSIS, for a total of 37 parking spaces. No new parking is proposed.

^B No variance is required as §511.H.2.c of the Zoning Ordinance exempts this requirement where a cross easements exist. In this case, a shared parking easement exists between Lot 1 and Lot 2.

- B. **Certificate of Non-Conformity.** The burden of proving the existence of a nonconforming use is upon the Applicant. Evidence presented to the Board should establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity, and incidents. A determination should be based exclusively on whether the use or structure predated the zoning ordinance making it illegal and whether the use or structure was in conformity with the zoning in place at its inception.
- C. **Use (D) Variances.** Should the Board find that a certificate of non-conformity is not warranted for this site, a use d(1) variance is necessary from §415.B of the Zoning Ordinance to permit a single-family dwelling within the B2 zone, where such use is not specifically permitted (NJSA 40:55D-70(d)(1)). Justification should be provided for the requested variance in accordance with N.J.S.A. §40:55D-70(d)(1), where the Township recommends that the burden of proof be provided by a licensed New Jersey Professional Planner (P.P.). In considering a request for a use (d) variance(s), the Zoning Board of Adjustment must be assured that the Applicant has demonstrated either that:
1. The positive criteria are met if at least one of the following is proven by the applicant:
 - a. The proposed use inherently serves the public good.
 - b. The property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone (zoned into inutility).
 - c. The proposed site is particularly suitable for the proposed use.
 2. To meet the negative criteria the applicant must show that the proposed use can be granted without:
 - a. Substantial detriment to the public good.
 - b. Substantially impairing the intent and purpose of the zone plan and zoning ordinance.
- D. **Bulk (C) Variances.** Justification should be provided for the requested variance in accordance with N.J.S.A. §40:55D-70, where the Township recommends that the burden of proof be provided by a licensed New Jersey Professional Planner (P.P.):
1. From §415.F, to permit a lot depth of 97.34', where a minimum lot depth of 150' is required. ***This represents a preexisting nonconformity.***
 2. From §415.F, to permit a rear yard setback of 8.16' to the restaurant expansion, where a minimum rear yard setback of 20' is required.
 3. From §415.F, to permit a rear yard setback of 8.82' to a shed, where a minimum rear yard setback of 20' is required.

4. From §511.B.2. to permit 34 parking spaces where the minimum parking requirement for the restaurant and residential use combined is 37 spaces. The restaurant alone requires 35 parking spaces based on the applicants employee on max shift amount of 10.
 5. From §517.D.23 to permit a changeable copy sign for a restaurant/business establishment that is not a movie theater, religious institution, public school, gasoline filling station, or does not have a Class C Plenary Retail Consumption License.
 6. From §517.D.4, to permit LED changeable copy area, where all flashing, blinking, twinkling, animated, moving or projected sign of any type, or a sign, which presents an illusion of movement, is prohibited.
 7. From §517.G.3.a.i. to permit a façade sign where no street frontage exists. ***A review of the parcel history determined that Arbor Ave, shown as a 45' ROW on the site plan was vacated by the Township in 1984. If evidence is presented to the contrary, then the façade sign would be permitted by right. (See F.2.)***
- E. **Design Waivers.** The following design waivers are required:
1. Any Design Waivers deemed necessary by the Zoning Board or Zoning Board professionals.
- F. **Comments.**
1. The information submitted in regard to the signage must be submitted on an appropriate sign plan, showing all proposed signage, the proposed location on the building, and the dimensions of the proposed signs. The sign sizes as discussed in the submission letter dated February 14, 2020 do not appear to be accurate. A determination of compliance cannot be made without accurate dimensions provided on a plan. Finally, there are two freestanding sign locations shown on the plan. It would seem likely that the existing sign would be removed as only one freestanding sign is permitted. This should be indicated on the plan. ***Since no additional signage plan has been submitted, all dimension of the signs must be compliant with the ordinance or the applicant will need to return to the board to amend this approval.***
 2. As noted above in multiple comments, it appears that Arbor Avenue, located on the Township Tax Map and shown on the applicants plot plan was actually vacated by the Township in 1984. A copy of that ordinance is attached. The Tax Assessor has reviewed the ordinance and is in agreement that the Tax Map is in error and that Arbor Avenue was vacated by the Township. Site Plans of the adjacent block and lot also appear to indicate that what was formerly recognized as Arbor Avenue, is actually part of block 409.01, lot 19. This changes the applicable zoning requirements as its secondary frontage would now be calculate from Lantern Lane South. ***Both the Township and applicant have agreed that the roadway vacation requires additional research to determine the full location of the vacation identified in the ordinance. However, the applicant, in an abundance of caution will request a variance for the façade signage on Arbor Ave. With regard to the setbacks from Lantern Lane, all proposed structures conform to the secondary frontage requirements.***
 3. In regard to the Certificate of Non-Conformity, while accessory dwelling units were permitted in the B2 zone at the time the site plan approval granted for the restaurant, 1986, that site plan also appears to indicate that the approved residential use on the property was the separate single family dwelling that was subsequently removed. The approval also prohibited an increase in the number of seats above 60 in the restaurant while the residential use was occupied. Since the total seats in the restaurant are now 90, it would seem to indicate that the residential use permitted at the time has since been abandoned. However, as noted above, the burden of proof in regard to certificates of occupancy falls on the applicant. ***The applicant still intends to try to meet the burden of proof for a certificate of***

non-conformity, but will also provide testimony that the meet the criteria for a use (d) variance as well (see #8 below).

4. The applicant shall be advised that the provision of parking facilities for handicapped persons shall be in accordance with the requirements of the Barrier-Free Subcode of the New Jersey Uniform Construction Code N.J.A.C. 5:23-7.13 and 5:23-7.14 and the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities.
5. The Applicant shall provide testimony indicating that all applicable Residential Site Improvement Standards (RSIS) requirements are in compliance.
6. Since the applicant requires a variance for parking and a minimum of 2 parking spaces are required for the proposed residential use, two parking spaces shall require signage reserving those parking spaces for the residential unit.
7. If the Certificate of Non-Conformity or the use (d) variance is approved by the Zoning Board, the applicant shall obtain all necessary inspections, certificates, or permits prior to residential occupancy of the dwelling. **This shall be a condition of approval.**
8. If a use variance is required, the applicant shall provide testimony as to how this site is particularly suited accommodate an accessory residential use. The applicant shall provide testimony regarding the existing layout of the building and indicate how and why a residence will complement the existing restaurant component of the building. The applicant shall also provide testimony as to what hindrances are present that would make it difficult to continue utilizing the entire building as a restaurant use.
9. Justification for the requested bulk (c) variance must be provided, in accordance with the M.L.U.L. Section 40:55D-70c. In considering a request for a bulk (c) variance, the Zoning Board of Adjustment must be assured that the Applicant has demonstrated either that:
 - a. By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or
 - b. By reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or
 - c. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon, the developer of such property ((C1) Variance);

OR THAT:

- d. In an application relating to a specific piece of property, the purposes of the Municipal Land Use Law would be advanced by a deviation from the requirements of the zoning ordinance; that the variance can be granted without substantial detriment to the public good; that the benefits of the deviation will substantially outweigh any detriment; and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance ((C2) Variance).

- G. **Conditions.** Should the Zoning Board consider and grant the use variance ((NJS 40:55D-70(d)(1)) to permit the proposed use, they may impose reasonable conditions, as deemed necessary by the Zoning Board members.

IV. APPROVAL PROCESS

If approved, the following items are required to complete the approval process (notwithstanding any other needed items due to the unique nature of the application):

1. After the Resolution is memorialized, a **Notice of Decision** will be published in the Courier Post by the Department of Community Development.
2. Three (3) copies of **revised site plans along with an electronic copy**, if revisions are deemed necessary, which provide completeness items and all conditions of approval, shall be submitted to the Department of Community Development for review.
3. After comments from the Department of Community Development and the Board Engineer have been provided, revise (if needed), and **submit ten (10) copies of finalized plans for signature along with an electronic copy**, if such site improvements plans are deemed necessary by the Zoning Board and/or its professionals.
4. Payment of any outstanding **Review Escrow**.
5. Submission of a **Cost Estimate**, if deemed necessary.
6. Payment of **Inspection Escrow**, if applicable, based on the finalized cost estimate.
7. Submission of **Performance Guarantee(s)**, if applicable.
8. Complete and submit a **Zoning Permit**.

Cc: *Eagle One Real Estate Properties, LLC (via email)*
Joseph A. Mancini (via email)
Allen Zeller, Esq. (via email)
Kevin McCormack (via email)
Danielle Mocerri (via email)
Fred Kuhn (via email)
Sharon Walker (via email)
Tom Shemeley (via email)
Katherine Malgieri (via email)
Kathleen Gaeta (via email)

AN ORDINANCE VACATING ARBOR AVENUE

BE IT ORDAINED, by the Township Council of the Township of Cherry Hill in the County of Camden, State of New Jersey;

Section 1. That all public rights, except drainage and utility rights which are specifically reserved, be and the same are hereby vacated for Arbor Avenue, as described in the following:

Beginning at the intersection of the southwesterly line of Haddonfield-Kresson Road (a.k.a. County Route 671, 49.5 feet wide) with the southeasterly line of Arbor Avenue (32 feet wide) as shown on Plate 46 of the official tax map of Cherry Hill Township; and extends thence, (1) along said southeasterly line, S. 27° 59' 24" W., a distance of 831.09 feet to a point in line common to Lots 4 & 6, Block 409; thence, (2) along said common line, N. 86° 20' 56"W., a distance of 35.12 feet to a point in the northwesterly line of aforementioned Arbor Avenue; thence, (3) along said northwesterly line N. 27° 59' 24" E., a distance of 843.47 feet to a point in the aforementioned southwesterly line of Haddonfield-Kresson; thence, (4) along said line, S 65° 45' 36"E., a distance of 32.07 feet to a point and place of beginning.

Section 2. This vacation of rights shall be in accordance with the terms and conditions as specified in an agreement between the Township of Cherry Hill and Kimco of Cherry Hill, Inc. said agreement having been authorized by Township Council by Resolution 84-1-15, adopted January 9, 1984.


Section 3. That all ordinances or parts of ordinances inconsistent herewith to the extent of such inconsistencies only be and the same are hereby repealed.


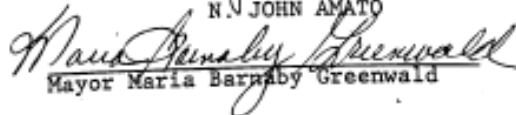
Section 4. This ordinance shall become effective twenty (20) days after its passage when published as required by law.

Introduced: May 16, 1984

Adopted: May 29, 1984

Attest:


Township Clerk


PRESIDENT OF COUNCIL
N. JOHN AMATO

Mayor Maria Barabzy Greenwald






312 KRESSON ROAD

BLOCK 409.01 LOT 7



PREPARED BY:
 NATALIE K. SHAFIROFF, PP, AICP, SUPERVISOR
 DEPARTMENT OF COMMUNITY DEVELOPMENT
 LICENSE NO. 33L00643200

Legend

-  Flood
-  Wetlands
-  Stream
-  Bus Stop