

**MINOR SITE PLAN APPROVAL**  
**Fabrizio Properties, LLC**  
**Block 830, Lot 31**  
**Property Address: 1643 Route 88**

**Resolution: R-38-17**  
**Application #: PB 2790-MSP-V-5/17**  
**Date: September 27, 2017**

**RESOLUTION OF MEMORIALIZATION OF THE**  
**BRICK TOWNSHIP PLANNING BOARD**  
**MINOR SITE PLAN APPROVAL WITH VARIANCES**

**WHEREAS, Fabrizio Properties, LLC, of 1643 Route 88, Brick, New Jersey, has**  
made application to the Brick Township Planning Board for minor site plan approval for Block  
830, Lot 31 on the Township Tax Map pursuant to N.J.S.A. 40:55D-46, -50, and -60 to remove  
an old block wall and install a tongue and groove fence along the southern property line; and

**WHEREAS, proof of service as required by law upon appropriate property owners and**  
governmental bodies has been furnished and determined to be in proper order; and

**WHEREAS, a public hearing was held on September 13, 2017, in the Brick Township**  
Municipal Building at which time testimony was given and certain exhibits hereinafter described  
were presented on behalf of the applicant and all interested parties having had an opportunity to  
be heard; and

**WHEREAS, the Board makes the following factual findings and findings of law:**

1. This property is designated as Lot 31 in Block 830, on the Municipal Tax Map of  
the Township of Brick and is located on New Jersey State Highway Route 88 with Edge Street  
bounding the property to the North. The property is commonly known as 1643 Route 88.
2. The property in question is located in a B-1 neighborhood business zone where

File  
Appl.  
Giordano  
Jackson  
AR14  
House  
Assessor  
Zoning  
ENG  
9/28/17

the proposed use is a permitted use.

3. The applicant was represented by Kimberly Bennett, Esquire. Mr. James Giordano, PE, PEP, the applicant's engineer and Mr. Reffele Fabrizio, the applicant, were both duly sworn and testified on behalf of the application.

4. The applicant introduced Exhibit A-1 which are four color photographs of an aerial view of the property, a street view of the property where the proposed fence is to be located, an angled aerial view of the property and a more close-up aerial view of the property. Mr. Giordano after generally describing the property indicated the application originally was to construct a solid white fence within the front setback area and the applicant initially was requesting a variance for same. He pointed out that he could have installed a picket fence without requesting a variance. The engineer noted, however, that both the Board's engineer and planner had recommended that the beginning of the fence be set back a minimum of ten feet from the right-of-way which is also the property line and the applicant agreed to do same. As a result of that concession, the request for a variance was eliminated. Moreover, the applicant agreed to the installation of a 48 inch maximum height picket fence of white vinyl with two inch spacing in the area between 10 ft. and 30 ft. from the front property line. The engineer further testified that the applicant would comply with all AASHTO specifications for sight triangles on Route 88. As can be gleaned from the photographs that were introduced by the applicant, the neighboring property owner, the Route 88 car repair business, is actually in some respects encroaching upon the applicant's property by an unintentional widening of its driveway. The construction of the proposed fence would essentially reclaim the applicant's property from the improper use by the neighboring property owner.

5. The Board received and shall maintain in its file reports of the following

professionals:

a. Report of Michael P. Fowler, AICP/PP Brick Township Planning Board Planner dated September 8, 2017.

b. Report of Theodore Wilkinson, PE, of ARH Associates dated June 29, 2017.

c. Report of Township of Brick, Bureau of Fire Safety dated June 20, 2017

d. Report of Traffic Safety Office, Brick Township Police Department dated June 22, 2017

e. Report of Elisssa Commings, Township Engineer dated June 27, 2017.

f. Architectural Review Committee report May 8, 2017 – no issue

6. In addressing same, the applicant and his professionals noted the modifications in the fence as agreed to in the meeting to satisfy the concerns of Ms. Commings and her report. The applicant through his engineer and his own testimony, in addressing the Fire Safety Report agreed to the recommendations noted as follows:

(1) repair of utility service drop

(2) relocation of the sheds and wooden box once the anticipated repaving of the parking lot is completed if approval is granted

(3) the materials referenced in that paragraph have been removed since the photograph was taken

(4) the parking area is to be repaved if approval is granted for the erection of this proposed fence

7. In addressing Mr. Fowler's report, the applicant and his engineer agreed to the see-through fence noted in paragraph III A, as detailed in paragraph 4 above, the setback of ten feet from the pavement edge of the street noted in paragraph III B, and requested a waiver for the existing condition of no 5 foot wide landscaped island between parking facilities and adjoining

properties as noted in paragraph III C.

8. The Board additionally heard at length from Mr. Bart Riganti, who is the proprietor of the automobile repair shop immediately adjacent to the applicant's property. He conceded that his driveway is, in part, encroaching upon the applicant's property and noted that the applicant has the right to do whatever he sees fit to his property within the bounds of the law. Mr. Riganti offered a series of 7 photographs marked 0-1 through 0-7 further depicting the area in question where the proposed fence is to be located.

9. Various Board members inquired if the parties could resolve the matter through negotiation but it appeared after the applicant and his neighbor were afforded an opportunity to discuss same, that the parties could not at the hearing come to a mutual agreement concerning the location of the fence and the encroachment. Thus, the applicant requested the Board act upon its application in the form as presented and amended through the concessions made by the applicant during the course of the hearing.

10. Based upon the concessions made by the applicant concerning the type of fence and the location of the fence as set forth above and as agreed to at the hearing, the Board accepts the testimony of the applicant and his engineer in support of the request for the design waiver (a preexisting condition) as set forth in the site plan. Accordingly for the reasons set forth upon the record by the applicant's engineer and the Board's professional staff, the Board finds that the Preliminary and Final Site Plan Approval should be granted together with the waiver requested by the applicant and same can be granted without substantial detriment to the public and will not substantially impair the intent and purposes of the zone plan, zoning ordinance or the Master Plan of the Township of Brick.

**NOW, THEREFORE, BE IT RESOLVED** by the Brick Township Planning Board on

this 27<sup>th</sup> day of September, 2017 that the application for Preliminary and Final Site Plan approval with design waiver is hereby granted subject to the following conditions:

1. The plan shall be modified to conform with the recommendations of both Mr. Fowler and Mr. Wilkinson concerning the location of the fence 10 ft. back from the edge of pavement and full compliance with all sight triangle requirements.
2. The applicant must post all bonds and guarantees as required and recommended by this Board and the Township Board Engineer. Moreover, the applicant must post all required engineering and inspection fees.
3. The applicant shall submit proof of payment of taxes.
4. The applicant must post all bonds and guarantees as required and recommended by this Board and the Township Board Engineer. Moreover, the applicant must post all required engineering and inspection fees.
5. All representations and statements made by the applicant, as well as the applicant's representatives and witnesses, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an express condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance, shall be deemed a breach of this condition of approval and shall subject this application to further review on this Board's own motion.
6. In the event the Planning Board determines that it reasonably relied upon any misstatement or misrepresentation, then and in that event any approvals previously given may be rescinded and any improvements at the time in place on the premises in question shall not be in compliance with the ordinances of the Township of Brick.
7. The applicant must comply with all conditions contained in the Board Engineer's

report by Theodore Wilkinson, PE of Adams, Rehmann & Heggan dated June 29, 2017, and the Township Planner, Michael Fowler's report dated September 8, 2017, except as specifically noted herein.

8. No building permit shall be issued until the Board Secretary confirms that the Planning Board professional fees have been paid in full. In the event a building permit is issued and there are outstanding Planning Board professional fees, a stop work order will be filed against the applicant/contractor until all professional fees have been paid.

9. In the event there is an existing violation, the applicant shall have thirty (30) days from the date the Notice of Decision was published to correct the violation. Failure to correct the existing violation within the time prescribed will result in the issuance of a summons.

10. The applicant must comply with all conditions outlined in Schedule A attached hereto.

11. The applicant shall apply for and receive approvals from all other municipal, county, state and federal agencies having regulatory jurisdiction over this development as may be required.

**BE IT FURTHER RESOLVED** that the Planning Board Secretary shall cause notification of this favorable Resolution to be published in an official newspaper of the Brick Township within ten (10) days of the adoption of this Resolution.

Certified copies of this Resolution shall be forwarded to the applicant, the Township Construction Official, Zoning Officer and all other parties in interest.

This Resolution memorializes an action taken at the regular meeting of the Brick Township Planning Board held on September 13, 2017 on a roll call vote that evening as follows:

R-38-17  
PB-2795-MSP-V-5/17  
Fabrizio Properties, LLC

September 27, 2017

VOTE ON MEMORIALIZATION

MOVED BY: Councilman Mummolo

SECONDED BY: Mr. Gross

VOTING IN THE AFFIRMATIVE: Ms. Lambusta, Councilman Mummolo, Mr. Gross, Mr. Occhiogrosso, Mr. Nugent, Mr. Philipson, Mr. Osipovitch, Mr. Cooke

VOTING IN THE NEGATIVE:

INELIGIBLE: Mr. Clayton, Ms. Della Volle, Mr. Aiello

IN-CONFLICT:

ABSENT:

ABSTAINING:

PRESENT BUT NOT VOTING :

CERTIFICATION

I, PAMELA O'NEILL/Secretary to the Planning Board of the Township of Brick, County of Ocean, State of New Jersey, do hereby certify that I am duly authorized to certify Resolutions. I certify that the foregoing Resolution was adopted by the Planning Board of the Township of Brick at a regular meeting held on the 27th of September, 2017.

  
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PAMELA O'NEILL/Secretary  
Planning Board/Zoning Board

ATTACHMENT "A"

BRICK TOWNSHIP PLANNING BOARD

STANDARD CONDITIONS FOR SITE PLAN APPROVAL

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1. Applicant shall obtain certification by the Local Soil Conservation District of a plan for soil erosion and sediment control in accordance with N.J.S.A. 4:24-39 et seq., commonly known as the "Soil Erosion and Sediment Control Act."
2. All materials, methods of construction and details shall be in conformance with the current "Engineering Specifications and Construction Details" of the Township of Brick, which are on file in the office of the Township Engineer.
3. Applicant shall obtain all approvals required by any Federal, State, County or Municipal agency having regulatory jurisdiction of this development. Upon receipt of such approval(s), the applicant shall supply a copy of the permit(s) to the Board. In the event that any other agency requires a change in the plans approved by this Board, the applicant must reapply to the Brick Township Planning Board for approval of that change.
4. Applicant shall submit this entire proposal for re-approval should there be any deviation from the terms and conditions of this Resolution or the documents submitted as part of this application, all of which are made a part hereof and shall be binding on the applicant.
5. Applicant shall provide a statement from the Brick Township Tax Collector that all taxes are paid in full as of the date of this Resolution and as of the date of the fulfillment of any condition(s) of this Resolution.
6. Prior to the issuance of a construction permit, the applicant shall furnish the Township Clerk with a cash bond and performance guarantee in an amount to be determined by the Township Engineer.

7. Applicant shall post an inspection fund with the Township Clerk in an amount to be determined by the Township Engineer.

8. No soil shall be removed from the site without the written approval of the Township Council.

9. The applicant shall comply with all provisions and pay all fees established under Article VI (Mandatory Development Fees) of Chapter 245 of the Code of the Township of Brick.

10. For all residential uses the subdivider or site plan applicant shall provide for a trash receptacle.

11. In order to insure uniformity of trash receptacles and compatibility with the automatic trash collection system, all trash can receptacles required herein shall be obtained from the Township of Brick.

12. Applicant shall provide proof of application for Title NJSA 39:5 A-1 to the Planning Board.