

**MINOR SITE PLAN APPROVAL  
TWO COUSINS AND A FRIEND, LLC  
Block: 779, Lot: 1  
Property Address: 1490 Route 88**

**Resolution: R-45-2021  
Application No. PB 2882-A- MSP-C-8/21  
Date: November 10, 2021**

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

**WHEREAS,** Two Cousins and a Friend, LLC of 1490 Route 88, Brick , New Jersey 08723 has made application to the Brick Township Planning Board for minor site plan with variance approval pursuant to N.J.S.A. 40:55D-46.1, 40:55-60, and 40:55D-70; 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 October 27, 2021 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. The applicant is proposing to renovate existing Lot existing outdoor paved walkway/parking area currently being used as outdoor seating along the west side of

*File  
App'l.  
Jackson  
Ten/10  
H.H.  
M.H.  
T.P.  
Assessor, Eng.*

the building into a permanent, covered outdoor seating area for the sale of food and beverages as an extension of the indoor restaurant.

2. The property is located in the B-2 Business Zone and is a permitted use.

3. The applicant was represented by Jillian McClear, Esquire, of King, Kitrick, Jackson, McSweeney & Wells, LLC., and she produced the testimony of Mr. Dan Wheaton, of Ten10 Architecture, who qualified both as an architect licensed in the State of New Jersey and as a professional planner.

4. The Applicant seeks variances from the front yard setback requirement of 50 feet whereas only 2.6 feet is existing for the building and proposed to be continued, and the new outdoor seating area will be set back 11 feet from the property line, also not in conformity with the 50 foot setback requirement but not further exacerbating that 2.6 feet existing nonconformity (a pre-existing, non-conformity), a variance from the 25 foot buffer from a B-2 use to a residential zone, where 1.7 feet exists and is proposed to continue (a pre-existing non-conformity), as well as a waiver for submission to the Ocean County Planning Board and a waiver for proposed landscaping, screening and lighting requirements, inasmuch as no changes are proposed with all existing conditions to remain as existing non-conformities.

5. During the course of the testimony, certain exhibits were presented and marked into evidence:

A-1 Power Point Presentation.

6. The Board received from its professional staff two reports from Adams, Rehmann and Heggan Associates, Inc., dated September 13 and 20, 2021, the Planning Board's engineers; report of the Architectural Review Committee dated

October 13, 2021, October 21, 2021 report of Elissa C. Commins, PE, PP, CME, CFM, Township Engineer; October 20, 2021 report from Tara B. Paxton, MPA, PP, AICP, Township Planner; a report from the Environmental Commission of October 6, 2021, a Traffic Safety Unit Report dated September 17, 2021 and a September 9, 2021 report of Kevin C. Batzel, Bureau Chief/Fire Marshal, Brick Township Bureau of Fire Safety. These reports are received into evidence and shall continue to be maintained as a part of the Planning Board's file.

7. After being sworn, as explained by Ms. McClear and testified to by Mr. Wheaton, the Applicant is the owner of Tuscan Restaurant on Route 88. They seek to make permanent outdoor seating space that has been utilized on a temporary basis during the Covid pandemic. They are renovating the area to put a canopy over a portion of the parking area and add 36 seats to the restaurant's total capacity in this outdoor space. Mr. Wheaton prepared the Architectural Plans and noted the pre-existing non-conformity, 2.6 foot front yard setback for the building whereas fifty feet is required. The structure, however, is not being changed by way of this application. He noted, moreover, that the parking lot extends into the rear buffer, another pre-existing non-conformity.

8. Mr. Wheaton testified that the proposal is to continue the awning on the left side of the building and put seating in that area to the left side. They would provide tables for 36 seats that were being added. As to the mathematics of parking requirements, Mr. Wheaton testified that nine parking spaces would be required by the creation of the new section with 36 seats. This would require a total of 57 spaces for the project. There are currently 74 parking spaces on site, but eight (8) spaces would

be lost due to the creation of the seating area and the redesign of the parking lot. This would bring the total down to 66 spaces, still in excess of the 57 spaces required by way of Ordinance.

9. Mr. Wheaton testified that the traffic flow around the building would remain the same, but they were removing the two way aisle in the area where the new seating is on the western portion of the building and making that simply an exit. Mr. Wheaton testified that no new bulk variances would be created and that the project did not exacerbate any of the currently existing non-conformities. He testified that a new wall would be installed with parking bollards in front of a reinforced masonry wall, which was a slight modification from what was presented to the Architectural Review Committee. He opined that the proposed seating area was an aesthetic upgrade because the view as one heads east on Route 88 is the side of the restaurant building with a Bilco door to the basement, which would now be hidden by way of this addition. He testified that the drainage was going off of the awning and that the area of the proposed addition is currently 100% paved; thus there is no change to the impervious coverage and therefore no change in existing drainage.

10. In response to questioning by Ms. Paxton, the Applicant's professionals indicated that they could comply with all of her requests from her report. Mr. Wheaton also testified that at the Architectural Review Committee meeting, the Applicant indicated that there would be no outdoor heating. They wish, however, to maintain the ability, in the future, to install ceiling mounted electric heaters. In response to a request for testimony concerning the need for the continued variances, Mr. Wheaton testified that he was of the opinion that the variances could be granted based both on the C1

and C2 criteria. He felt it was a hardship because the pre-existing structure there and the rear buffer area would be worsened if there was movement of the structure to comply with the front yard set back . As to the C2 requisites, Mr. Wheaton testified that the outdoor seating area was in response to the Covid pandemic and he felt that providing same promoted general health, safety and welfare. He did not feel that it was detriment to the Zone Plan or Zone Scheme and again, reiterated that it was more esthetically pleasing to have this area on the side of the structure.

11. In response to discussions with Mr. Parks from ARH, the Applicant was reminded that bollards must be two (2) feet away from the wall so that they did not collapse into the wall, and Mr. Wheaton testified that the Applicant would revise the plan to show same. In further elaborating on the architectural profile, Mr. Wheaton testified that the materials used for the wall area would match the current structure and the restaurant staff would access the seating area through a new doorway in place of an area that is currently a window on that side of the building. All existing lighting would remain as is.

12. The matter was opened up to questions and/or testimony from the public. No one appeared to voice any questions or objections to the application..

13. After considering the testimony of the Applicant's architect and planner and the comments and recommendations from the Board's professional staff, the Board accepts the testimony proffered on behalf of the Applicant in support of this request for a minor site plan with variances and waivers as noted above, and some may be granted as requested by the Applicant, without substantial detriment to the public good and will not substantially impair the intents and purposes of the Zone Plan, Zoning Ordinances,

or the Master Plan of the Township of Brick.

**NOW, THEREFORE, BE IT RESOLVED** by the Brick Township Planning Board on this 10th day of November, 2021 that the application for minor subdivision approval with variances is hereby **GRANTED** subject to the following conditions:

1. The Applicant must submit proof of payment of all currently due taxes to the Brick Township Planning Board and shall pay all real property taxes through and including the calendar quarter of the date of this Resolution.

2. The Applicant must post all bonds and guarantees as required and recommended by this Board and the Township Engineer. Moreover, the applicant must post all required engineering and inspection fees, and shall further provide any and all necessary performance guarantees and enter into any and all necessary developer's agreements as required by law.

3.. All representations and statements made by the Applicant, as well as the applicant's representatives, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed 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.

4. 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.

5. 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.

6. The Applicant must comply with all conditions outlined in Schedule A attached hereto.

7. 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.

R-45-21  
PB-2882-A-MSP-C 8/2021  
TWO COUSINS & A FRIEND, LLC.

November 10, 2021

VOTE ON MEMORIALIZATION

MOVED BY: Mr. Occhiogrosso

SECONDED BY: Councilman Mummolo

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

VOTING IN THE NEGATIVE

INELIGIBLE TO VOTE: Mr. Clayton, Mr. Ward

PRESENT BUT NOT VOTING:

ABSTAINING:

ABSENT: Mr. Cooke

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 10th of November 2021

  
\_\_\_\_\_  
PAMELA O'NEILL/Secretary  
Planning Board/Zoning Board

ATTACHMENT "A"

BRICK TOWNSHIP PLANNING BOARD

STANDARD CONDITIONS FOR SITE PLAN APPROVAL

RESOLUTION: R-45-2021

PAGE: 9

CASE NO.: PB-2882-A-MSP-C 8/2021

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.