

APPLICANT: COLLARD REALTY, LLC
APPLICANT'S ATTORNEY: Peter Falvo Esq. & Jennifer Krimko, Esq.
APPLICATION NO.: PB 2020-01
BLOCK 19, LOTS 47 & 48.01

**RESOLUTION OF THE
PLANNING BOARD
OF THE BOROUGH OF WEST LONG BRANCH**

**GRANTING BULK VARIANCE RELIEF
AND PRELIMINARY AND FINAL MINOR SITE PLAN APPROVAL**

WHEREAS, COLLARD REALTY, LLC, hereinafter referred to as the "Applicant", filed an application with the Planning Board of the Borough of West Long Branch (hereinafter referred to as the "Board") seeking the following:

minor site plan approval and related bulk variance relief pertaining to the establishment of a landscaping services business at the subject property.

WHEREAS, the application pertains to the premises designated as Block 19, Lots 47 and 48.01 (Lot 44.01, adjacent to the subject site, was also included in the notice insofar as the applicant proposes creating a handicapped-accessible parking space on said lot to serve the subject site via an easement), on the Tax Map of the Borough of West Long Branch, which premises are commonly known as 193 Wall Street, West Long Branch, New Jersey;

WHEREAS, all notice requirements were satisfied by the Applicant, and the Board had jurisdiction to hear, consider, and decide the application at issue;

WHEREAS, the Board held a public hearing with regard to the referenced application on January 12, 2021; and

WHEREAS, the Board, having given due consideration to the exhibits moved into evidence and the testimony presented at said hearing, does hereby make the following findings of fact:

1. The premises are located in the N/C (Neighborhood Commercial) zone; a landscaping services business is a permitted use in said zone.

2. The applicant submitted the following exhibits into evidence: Minor Site Plan, prepared by Matthew R. Wilder, PE, of Morgan Engineering, consisting of 5 sheets, dated 9/4/19, last revised 12/7/20 (A-1); Boundary & Topographic Survey, prepared by David J. Von Steenburg, PLS, of Morgan Engineering, consisting of one sheet, dated 8/19/19 (A-2); Copy of the Deed pertaining to the subject property (A-3); Copy of the Application here at issue (A-4); Copy of the Submission Letter (A-5); Copy of the Environmental Commission Application (A-6); the Stormwater Management Report (A-7); the Trip Generation Report (A-8); 14 Photographs of the site and environs (A-9); Aerial Photograph of the site taken from Google Earth, August 2019 (A-10); and Photograph of the metal “crane” structure at the site (A-11).

3. Jennifer Krimko, Esq., counsel for the applicant, introduced the application and advised that the subject property consists of tax Lots 47 and 48.01. She noted that the site was formerly the location of a monument company, but a prospective tenant of the applicant proposes to establish a landscaping services business at the property. Ms. Krimko stipulated that the applicant will consolidate the two lots at issue into a single tax lot. She further advised that the applicant owns nearby property, including adjacent Lot 44.01. The applicant proposes to create a handicapped-accessible parking space on Lot 44.01 to serve the subject site; this will be memorialized in a recorded easement.

4. Matthew Wilder, PE & PP, the applicant's Professional Engineer and Professional Planner, testified in support of the application. He reviewed for the Board the photographs submitted into evidence as exhibit A-9, and noted that some of the photographs show the site from prior to 2018, whereas others depict current conditions. The earlier photographs show monuments displayed by the prior user of the site. Mr. Wilder pointed out that the Rosario Realty property and a shopping center are located to the north of the site. To the south, across Wall Street, is a small commercial plaza. He added that a small strip mall, containing a 7-11 convenience store and a gas station, is located to the east across Locust Avenue. A small commercial plaza abuts the site to the west. The applicant owns this latter property, and proposes to grant an easement to create a handicapped-accessible parking space on Lot 44.01 for use by the subject property.

5. Mr. Wilder testified that Lot 47 is the "front" part of the subject property, located at the northwest corner of the intersection of Locust Avenue and Wall Street. The proposal is to establish the office for the landscaping services business in the existing structure on Lot 47, and to also install a landscaping "hardscape" display at the property corner. Lot 48.01, adjacent to the rear (northwest) of the "front" lot, contains a detached garage and gravel surfaced area that will be used for parking for landscaping vehicles and storage of landscaping equipment and materials. Lot 48.01 is lower in topography than Lot 47, and is accessed by stairs from adjacent Lot 44.01 as well as via a vehicular drive aisle across the western end of Lot 44.01. There are cross-access easements over Lot 44.01, Lot 48.01, and the shopping center property to the north. Lot 44.01 previously received a parking variance, and there is also an easement that allows Lot 44.01 to use 29 parking spaces at the shopping center. As a result of these circumstances, the dedication of the proposed

one ADA-compliant space on lot 44.01 for use by and for the subject property will not create a parking deviation for Lot 44.01.

6. Mr. Wilder confirmed that no retail sales will take place at the subject property. The “front” lot will be used for the landscaping company’s office and for the “hardscape” display referenced above. The “rear” lot will be used for storage purposes, parking of the landscaping company’s vehicles, and an unstriped parking area. The storage at the rear lot will include the existing detached “garage” building and an existing shed, as well as concrete block storage bins. Mr. Wilder stipulated that the garage will be used only as and for storage space for the landscaping business; the garage will not be rented out to or used by any other person or entity. He further stipulated that the concrete block storage bins will be relocated so as to be set back no less than 5 feet from the property line and so as to also avoid impacting any existing trees at the site. Mr. Wilder advised that the largest vehicle to access or be parked at the site will be no larger than a standard garbage truck.

7. Mr. Wilder testified that the applicant proposes to retain the gravel surface of the rear lot as same currently exists. He added that the gravel is stable, and he suggested that adding curbing may adversely impact drainage. Mr. Wilder also advised that the project does not constitute a major development, and therefore no stormwater management facilities are proposed. He further testified that the project provides for 14 parking spaces, plus the one ADA-compliant space to be created on Lot 44.01 via easement, and thereby conforms to parking requirements. He asserted that the proposed use of the property is similar to that of the prior monument company, so no adverse impacts will result from this project. Mr. Wilder indicated that the shed is less than 60 square feet in dimension, and approximately 12 feet tall. He stipulated that the shed will be relocated to conform to setback requirements.

8. Mr. Wilder stated that a trash enclosure consisting of a slatted, chain-link fence will be installed at the rear lot. He added that the plan will be revised to depict same. Mr. Wilder indicated that building-mounted lights exist, and will be updated as required. Further, two new light poles are proposed to be installed at the rear lot. Mr. Wilder stipulated that a lighting plan, which will include light cast from neighboring properties, will be prepared and submitted to the Board Engineer for review and approval. He also stipulated that there will be no flood lights at the “hardscape” display area; the display area will be illuminated only by customary landscape lighting. Mr. Wilder noted that no signage is proposed as a result of this application, but it was agreed that appropriate signage for the ADA-compliant parking space will be provided and added to the plan. Mr. Wilder pointed out that the site has existed in its current condition for many years, and he added that to the extent inadequate buffers exist, the buffer areas in question abut existing commercial uses. Mr. Wilder opined that no detriments will result from this project, and he added that the proposal will enhance the streetscape of the property.

9. Mr. Wilder confirmed that no hazardous materials will be stored at the site. He added that appropriate fire lanes will be maintained and depicted on the plan. In addition, it was agreed that the applicant will paint the building located on the front lot (Lot 47). Mr. Wilder also stipulated on behalf of the applicant that the applicant will comply with the requirements and recommendations set forth in the Board Engineer’s report.

10. Mr. Alain Belilty, a principal in Vision Landscaping & Design, the prospective tenant at the site, also appeared with regard to this matter. He testified that Vision Landscaping operates Mondays through Saturdays. Mr. Belilty stated that the trucks used by the business include pick-up trucks, vans, 2 “rock trucks” (12 feet and 14 feet in length) and “a couple of trailers”. Mr. Belilty advised that these vehicles will be parked on site. He

added that there will be no deliveries of material to the subject property. Rather, all materials will be delivered by vendors directly to the particular work site. Any unused materials will then be brought to the yard (the rear lot) by Vision Landscaping's vehicles and stored in the bins. Mr. Belilty added that demolished sidewalks and concrete will also be stored in the yard until a sufficient quantity exists to remove same to the recycling facility. He also stated that one 10-yard dumpster will be located on the rear lot, and it will be emptied once per week by a contractor. Mr. Belilty testified that the only fuel stored on site will be limited to "hand" gas cans used for the landscaping equipment, which cans will be stored in the small shed on the property. He confirmed that there will be no unsightly mounds of materials located on the site or overflowing the bins. He also agreed to install a fence or row of evergreens, subject to review and approval by the Board Engineer, to screen the bins from view from the west. Mr. Belilty further stipulated that the sidewalk along the entire property frontage will be replaced.

11. No objectors or interested parties appeared with regard to this matter.

12. The Board finds that the subject property is located at the northwest corner of the intersection of Wall Street and Locust Avenue in the N/C (Neighborhood Commercial) zone. The site consists of two tax lots; namely, Lot 47 and Lot 48.01. The front lot (Lot 47) has frontage on both streets and is improved with a one-story masonry block building that formerly housed the office of a monument company. The monument company had also displayed various monuments on the front lot. The rear lot (Lot 48.01) is an interior lot that abuts Lot 47 on the northwest; the rear lot has no street frontage. The owner of the subject property (Lots 47 and 48.01) also owns Lot 44.01. This latter lot has frontage on Wall Street, and is adjacent to Lot 47 on the west and adjacent to Lot 48.01 on the south. Lot 44.01 is improved with a small commercial building and small parking area. The rear lot (Lot 48.01)

of the subject property is lower in topography than the front lot (Lot 47), has a gravel surface, contains a detached garage structure, and was used for parking and storage by the monument company. Access to the rear lot (Lot 48.01) is gained via stairs from Lot 44.01 and via an access drive at the western end of Lot 44.01. To the north of the subject property is the Rosario Realty site as well as a shopping center (formerly known as the "Cost Cutters" Plaza). Across Locust Avenue from the subject property to the east is a small strip mall with a 7-11 convenience store, a real estate office, and a gas station. To the south of the site, across Wall Street, is another small commercial property with a single-story building that houses several offices. The Board is advised that cross-access easements exist with regard to the drive aisle that runs from Wall Street through Lot 44.01 and Lot 48.01, to and into the shopping center to the north.

13. The Board finds that the site exists with a number of nonconformities; these include the following. The existing building on the front lot (Lot 47) is deficient in its front yard setback from Wall Street (3.9 feet existing; 35 feet required) and its side yard setback (2.2 feet existing; 10 feet required). The detached garage located on the rear lot (Lot 48.01) is deficient in its setback from Lot 44.01, with only one foot of setback existing whereas the setback must otherwise match the height of the accessory structure. The existing buffer is either deficient or non-existent at various locations along the property lines, whereas a buffer of no less than 25 feet in width is required, and further, required wall, fencing or evergreen screening is also absent. In addition, the rear lot consists of a gravel surface, whereas the Ordinance requires pavement for parking areas, driveways, and passageways.

14. The Board finds that the proposal is for use of the property by and for a landscaping services company. "Landscaping Services" are delineated in NAICS (North

American Industry Classification System) code 561730, and are a permitted use in the N/C (Neighborhood Commercial) zone. The Board notes the testimony of the applicant's witnesses as to the nature and scope of the proposed use; the testimony in that regard is expressly incorporated herein with regard to the Board's findings regarding the proposed use. Among other things, the applicant's witnesses confirmed that there will be no retail sales at the site and no bulk delivery of landscape materials to the site. Rather, delivery of landscape materials will be made by vendors directly to the particular job site at issue. Further, there will be no storage of hazardous materials at the subject property (other than the limited storage in the shed of "hand" gasoline cans used to fill the landscaping equipment as described above). Moreover, the Board finds that the site will not (and shall not) be used as a nursery or garden center; such uses are separately delineated NAICS codes and are not permitted in the subject zone. The office of the landscaping services company will be set up in the existing building on the front lot of the site, and a "hardscape" display area will also be installed on the front lot. The rear lot will be used for parking for the landscaping company's vehicles and storage of landscaping equipment and material as specifically described above (and further subject to the conditions hereinafter set forth). In addition, an ADA-compliant parking space will be created on Lot 44.01, adjacent to the existing building on the front lot (Lot 47), and dedicated by easement for use by the subject property only.

15. The Board finds that "hardship" (C(1) criteria) exists to support granting bulk variance relief for this application, insofar as the deviations in question are rooted in existing conditions at the site. The setback deficiencies of the building on the front lot, as well as the setback deficiency of the detached garage on the rear lot, are existing conditions not being altered or exacerbated by this application. The applicant proposes to retain the

existing gravel surface of the rear lot, rather than pave same as required by Ordinance. As a result of the proposed use of the rear lot primarily for parking of landscaping vehicles, storage of landscaping equipment, and limited storage of certain landscape material, the Board finds that maintaining the surface in its current gravel condition is not unwarranted. The Board also notes that buffer deficiencies are an existing condition, as is the limited lighting at the subject property, but the applicant will nevertheless enhance the buffer and increase lighting to some degree as reflected on the plan, referenced in the testimony, and/or set forth in the conditions hereinafter set forth. As a result of the specific nature of the use of the property, and the scope of the operations of the landscaping company, the Board finds that only limited site lighting (subject to final review and approval by the Board engineer) is required.

16. The Board finds that granting the relief at issue will have no adverse impact upon neighboring properties, and the Board further finds that this relief can be granted without causing substantial detriment to the public good and without causing substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The proposal will generally be consistent with the prior use of the site by the monument company, which use existed for many years. The setback deviations of the front building and rear garage are existing conditions, as is the gravel surface of the rear lot. The proposal is not a major development, so no stormwater management facilities are proposed or required. Moreover, little additional coverage is proposed, and the Board finds that the project will have no adverse impact upon drainage at and about the site. The applicant proposes to improve existing site lighting to the extent necessary and appropriate, and also enhance the existing buffer to some degree. The applicant will also make certain additional improvements to the site, including: painting the front building; installing a “hardscape”

display; relocating the shed and storage bins to conform to setback requirements; screening the storage bins; and removing (if possible, otherwise painting) the “crane” structure at the site. The Board finds that the proposed improvements will enhance this site in particular as well as the subject intersection in general.

17. Based upon all the facts and circumstances at issue, the Board further finds that preliminary and final minor site plan approval can and should be granted regarding this matter (subject nevertheless to the conditions hereinafter set forth).

NOW, THEREFORE, be it hereby resolved by the Board that it adopts the aforesaid findings of fact, and specifically makes the following conclusions:

1. Based upon the aforesaid findings of fact, the Board concludes that the Applicant has established and demonstrated that the premises are of such exceptional size or shape, and/or are so uniquely affected by exceptional topographic or physical features, and/or are so uniquely affected by other extraordinary and exceptional circumstances that the strict application of the zoning regulations would result in exceptional practical difficulties or exceptional and undue hardship; and

2. Based upon the aforesaid findings of fact, the Board further concludes that granting the approvals set forth herein will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning ordinance and zone plan.

BE IT FURTHER RESOLVED by the Board that the following bulk (“C”) variance relief be and is hereby GRANTED:

1. Variance relief to permit the existing front yard setback of the one-story building on the front lot (Lot 47) from the Wall Street frontage of 3.9 feet, whereas 35 feet is required;

2. Variance relief to permit the existing side yard setback of the one-story building on the front lot (Lot 47) from adjacent Lot 44.01 of 2.2 feet, whereas 10 feet is required;

3. Variance relief to permit the existing side yard setback of the one-story detached garage structure on the rear lot (Lot 48.01) from adjacent Lot 44.01 of one foot, whereas the setback must otherwise match the height of that accessory structure;

4. Variance relief to permit the buffer areas and related evergreen screen(s) and/or fencing as enhanced by the applicant and depicted on the final revised plan after review and approval by the Board Engineer, whereas a buffer of no less than 25 feet in width is required, and further whereas walls, fencing, and/or evergreen screening is absent in some areas; and

5. Variance relief to permit the gravel surface of the rear lot (Lot 48.01) to be retained, whereas the Ordinance otherwise requires pavement for parking areas, driveways, and passageways.

BE IT FURTHER RESOLVED by the Board that Preliminary And Final Minor Site Plan approval be and is hereby GRANTED.

BE IT FURTHER RESOLVED by the Board that any relief not expressly granted by the Board herein, be and is hereby denied.

ALL APPROVALS GRANTED HEREIN ARE SUBJECT TO THE FOLLOWING CONDITIONS:

General Conditions

1. Subject to the development here at issue being undertaken in accordance with the testimony presented to the Board and the plans submitted to/approved by the Board.

2. Subject to the testimony of all witnesses called on behalf of the Applicant being true and accurate.

3. Subject to the Application, all attachments thereto, and all exhibits offered by the Applicant being accurate depictions of that which they purport to represent.

4. The Applicant shall furnish proof that taxes have been paid through the current quarter and through the quarter in which he receives his initial construction permits.

5. Subject to the Applicant paying in full all application fees, review fees, engineering and consulting fees, and escrows.

5A. Subject to the Applicant posting required performance bonds and/or guarantees, as well as engineering and inspection fees, in amounts fixed by the Board and/or municipal Engineers, and in such form as shall be acceptable to the Borough Attorney and governing body.

6. Subject to the Applicant obtaining and complying with the approval of any other reviewing agency having jurisdiction over the Property and/or the Project, including but not limited to the Board of Health, the municipal Engineer, the municipal Fire Official, and any County, State, or Federal agency; provided, however, that in the event that any other agency or authority shall require any changes in the plans herein approved, then any such changes must be submitted to this Board for review and approval. Further, if another governmental agency grants a waiver or variance of a regulation, which same affects this approval or any condition attached hereto, or otherwise requires any changes in the plans herein approved, then this matter shall be brought back before the Board for review of any such action, and the Board shall have the right to modify this approval and/or the conditions attached hereto as a result of any such action.

7. The action of the Board in approving this Application shall not relieve the Applicant from responsibility for any damage caused by the Project, nor does the Board or the Borough of West Long Branch or any of their respective professionals and consultants, accept any responsibility for the design or the installation of the Project.

8. Subject to the provisions of section 16-2.9, Chapter XVI, Land Use Procedures, of the Ordinances of the Borough of West Long Branch, as same may hereafter be amended and/or supplemented, and successor provisions thereto, if any, which provide(s) for the expiration and/or limitation of variances as set forth therein.

9. Subject to the applicant paying to the Borough's Affordable Housing Trust Fund, any and all applicable development fees, and subject to the applicant further satisfying any applicable "Affordable Housing" requirements as established by State statutes/regulations and/or municipal ordinances.

Specific Conditions

1. Subject to the applicant complying with all requirements and recommendations set forth in the Board Engineer's review letter dated January 8, 2021, and supplements thereto, if any.

2. Subject to the applicant submitting a revised lighting plan, which shall be subject to review and approval by the Board Engineer.

3. Subject to the applicant submitting a revised landscape plan (depicting enhanced borders with additional proposed landscaping and/or fencing), which shall be subject to review and approval by the Board Engineer.

4. Subject to a deed of consolidation, satisfactory in form and content to the Board Attorney, Board Engineer, and municipal Tax Assessor, being executed and recorded by the applicant at the Monmouth County Clerk's Office, so as to consolidate the two lots (Lots 47 & 48.01) here at issue into a single tax lot.

5. (a) Subject to the applicant preparing and recording at the Monmouth County Clerk's Office, after review and approval by the Board Attorney and the Board Engineer, an easement regarding dedication of an ADA-compliant parking space on Lot 44.01 to serve only the subject site. (b) Subject further to the easement also referencing appropriate signage as approved by the Board Engineer for this parking space. (c) Subject further to the plan being revised to depict/note same (including the signage), which plan revision shall be subject to review and approval by the Board Engineer.

6. (a) Subject to the applicant relocating the shed on the site to conform to setback requirements. (b) Subject further to the plan being revised to depict the relocation of the shed to a conforming location on the site, which plan revision shall be subject to review and approval by the Board Engineer.

7. (a) Subject to the applicant relocating the storage bins so that each is set back no less than 5 feet from the property line and further so that each will not impact any existing trees at the site. (b) Subject further to the plan being revised to depict the relocation of the storage bins on the site in accordance with this condition, which plan revision shall be subject to review and approval by the Board Engineer.

8. (a) Subject to the plan being revised to depict the trash enclosure at the rear lot of the site, which enclosure will consist of a slatted, chain-link fence and which will be located so as to conform to setback requirements; the plan revision in this regard shall be subject to review and approval by the Board Engineer.

9. Subject to the applicant causing the building located on the front lot (Lot 47) to be painted.

10. (a) Subject to the applicant or the occupant of the subject property, as the case may be, making arrangements so that the 10-yard dumpster located on the rear lot shall be emptied no less than once per week by a contractor. (b) Subject further to the plan being revised to note same, which plan revision shall be subject to review and approval by the Board Engineer.

11. (a) Subject to the applicant replacing the sidewalk along the entire property frontage, unless the Board Engineer shall determine otherwise. (b) If not replaced in its entirety pursuant to subparagraph (a), then the applicant shall repair and replace such curb and/or sidewalk as is in disrepair and/or damaged as a result of this project. (c) Subject

further to a note being added to the plan to incorporate this Specific Condition, which note shall be subject to review and approval by the Board Engineer.

12. Subject to the applicant removing the “crane” (also referred to as the “metal frame”) that exists on the site; provided, however, that if an architect or structural engineer certifies that removing same will impair the structural integrity of the building (which certification shall be subject to review and approval by the Board Engineer), then in such case the applicant may retain the “crane” (“metal frame”), but shall cause same to be painted white.

13. Subject to review and approval of the plan by the Borough Fire Official, including but not limited to, the need for and location of fire lanes.

14. (a) “Landscaping Services” as designated by NAICS (North American Industry Classification System) code 561730 are a permitted use in the N/C (Neighborhood Commercial) zone here at issue. Subject therefore, to the operations of the landscaping services company at the subject property conforming to said NAICS category code designation. (b) Subject further to the business operations of the landscaping services company conforming to the testimony given and stipulations made by the applicant’s witnesses during the proceedings, which included, the following:

(i) the site shall not be used as a landscape nursery or garden center (such uses are not permitted in the subject zone);

(ii) there shall be no retail sales at the subject property;

(iii) there shall be no deliveries of material to the subject property; rather, all materials shall be delivered by vendors directly to the particular work site at issue;

(iv) the entire site shall be utilized only by a single entity for a single use;

(v) the garage at the site shall be used only as and for storage space for the landscaping services company occupying the overall site; the garage shall not be rented out to or used by another person or entity;

(vi) the largest vehicles to access, and/or be parked at, the site will be no larger than a standard garbage truck;

(vii) site lighting will comply with the final approved lighting plan, and there shall be no flood lights at the hardscape display area; the display area may only be illuminated by customary landscape lighting;

(viii) no hazardous materials shall be stored at the site (other than the limited storage in the small shed of “hand” gasoline cans used to fill the landscaping equipment as described above, but such storage of gasoline cans shall nevertheless be subject to review and approval by the Borough Fire Official);

(ix) no demolition materials or debris shall be stored at the site, although excess, unused material may be brought back from job sites and stored in bins at the yard, and further, demolished sidewalks and concrete may also be stored in the yard until a sufficient quantity exists to remove same to a recycling facility; and

(x) no unsightly mounds of material(s) shall be located on the site or allowed to overflow the storage bins.

15. Subject to the Applicant complying with any and all requirements established by, and obtaining any and all necessary approvals/permits (or "letters of no interest") from, the following: (a) Freehold Soil Conservation District; (b) Monmouth County Planning Board; (c) Two Rivers Water Reclamation Authority; (d) Board of Health; (e) Borough Traffic Safety Officer; and (f) Borough Fire Official; provided, however, that in the event that any other agency or authority shall require any changes in the plans herein approved, then any such changes must be submitted to this Board for review and approval.

ROLL CALL VOTE

THOSE IN FAVOR:

THOSE OPPOSED:

CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Board of the Borough of West Long Branch at its meeting on _____, 2021.

DATED:

, Secretary