

**QUINTON TOWNSHIP PLANNING BOARD**

**RESOLUTION NO.: 2017-08**

**APPROVAL OF THE GRASSHOPPER SHOPPE, L.L.C.  
APPLICATION FOR USE AND BULK VARIANCES  
AND WAIVER OF SITE PLAN REVIEW**

**RE: BLOCK 39, LOT 35 (485 Quinton Marlboro Road – N.J.S.H. Route 49)**

WHEREAS, an application was made to the Quinton Township Planning Board (“Board”) by THE GRASSHOPPER SHOPPE, L.L.C. (“applicant”), whose address is 485 Quinton Marlboro Road, Bridgeton, New Jersey 08302, for use and bulk variances and waiver of site plan review to operate a retail business in a recently constructed storage shed at property owned by Andrew S. Riddle (same address as applicant) located at 485 Quinton Marlboro Road in Quinton Township, designated as tax map Block 39, Lot 35 (the “property”), and more particularly depicted on the single-sheet plan entitled “Plan of Survey Jolyn Mitchell” prepared by James A. Clancy, P.E. & P.L.S., New Jersey License No. 33998, of Land Engineering, L.L.C., 84 East Grant Street, Suite 1, Woodstown, New Jersey 08098, dated October 28, 2016, which plan was filed with the application and is hereby incorporated by reference herein; and

WHEREAS, Lawrence M. DiVietro, Jr., the Board’s professional planner, issued a review letter dated January 5, 2017, in which he set forth the background of the application and the nature and extent of approvals requested; and

WHEREAS, the Board determined that it has jurisdiction to hear the application, and that same is complete and in conformity with the Ordinance and the Municipal Land Use Law except for matters requiring variance or waiver relief, and any matters that must be resolved as conditions of approval; and

WHEREAS, at its January 10, 2017 meeting, the Board (not including the Class I and Class III members) heard testimony and representations from Jolyn Mitchell (the applicant’s sole owner and manager) and Adam I. Telsey, Esq. (the applicant’s attorney); discussed the application with the Board’s professional planner, engineer, and solicitor; and provided an opportunity for interested persons to make statements or ask questions about the application; and

WHEREAS, the Board made the following findings and conclusions based upon its review and consideration of the aforesaid application materials, correspondence, testimony and representations:

1. The property consists of 5.72 acres of land located on the southwest side of the Quinton Marlboro Road (N.J.S.H. 49). Until recently the property was the site of a two-story frame dwelling, two frame garages, a metal garage, and related driveways and improvements,

and was used only as the residence of Jolyn Mitchell (the applicant's owner), her husband Andrew S. Riddle (the property owner), and their family.

2. In the fall of 2015 Jolyn Mitchell obtained zoning, electrical, and building permits to erect a 440 s.f. storage shed at the property (indicated on the plan as "Frame Building-The Grasshopper Shoppe"). Based on her conversations with the previous Quinton Township Zoning Officer at the time the permits were obtained, Ms. Mitchell believed that the permits would allow her to use the new storage shed as her company's retail store for the sale of handcrafted and seasonal items. Accordingly, after the permits were issued she set up and began to use the storage shed for that purpose. In the summer of 2016 the current Quinton Township Zoning Officer informed her that the permits did not allow the retail use.
3. Retail businesses are not permitted in the P-BR zoning district in which the property is located; accordingly the applicant has requested use variance relief pursuant to *N.J.S.A. 40:55D-70.d.* to permit operation of the retail business at the property in addition to the ongoing residential use.
4. The applicant has also requested bulk variance relief pursuant to *N.J.S.A. 40:55D-70.c.(1)* to permit the following non-compliant aspects of the property:
  - a. Front yard setback for two-story dwelling (50 feet minimum required; 30.4 feet existing/proposed);
  - b. Front yard setback for metal garage (50 feet minimum required; 25.4 feet existing/proposed);
  - c. Side yard setback for east frame garage (50 feet minimum required; 28.7 feet existing/proposed); and
  - d. Side yard setback for west frame garage (50 feet minimum required; 28.1 feet existing/proposed).
5. The applicant proposes no site improvements other than those shown on the plan and accordingly has requested a waiver of site plan review pursuant to Quinton Land Use Ordinance § 170-72.
6. Ms. Mitchell testified that she operates The Grasshopper Shoppe store as a "family business" with no employees. The items sold are mostly hand-crafted and seasonal, some of which are made by local and regional crafters, and some of which Ms. Mitchell herself makes in the metal garage at the property. Hours of operation are typically part-time or by appointment, with customers numbering approximately 5 to 7 per day, usually no more than one or two at a time. Ms. Mitchell testified that the parking area for the store, comprised of asphalt millings, is adequate for two vehicles, although for special events, such as the store's grand opening or a holiday sale, some customers choose to park along

the road. Product deliveries to the store occur only a few times per month, and only via services such as UPS and Fed-Ex that typically serve residential customers. The only signage at the property is a single 5' by 2' non-illuminated sign on the storage shed advertising the business name. The only other site improvement relating to the retail business is a newly installed picket fence. Ms. Mitchell testified that there are no other commercial uses or structures on the property, and that, except for the retail business and Ms. Mitchell's use of the metal garage to make craft items, the property and the structures upon it are used by only by Ms. Mitchell, Mr. Riddle, and their family for lawful single-family residential and residential-accessory purposes.

7. Ms. Mitchell testified that the house and frame garages at the property were constructed long ago, perhaps as early as the 1800s, and some of the Board members expressed belief that the metal garage at the property was in existence as far back as the 1960s. Ms. Mitchell testified that all of these structures are in good condition and currently in use.
8. When asked to provide "special reasons" in support of the requested use variance Ms. Mitchell and Mr. Telsey explained that the property is appropriately sized, and is located along a state highway in an area where other small businesses, such as a nearby welding shop, are operated on single-family residential properties. The Board's professional planner expressed satisfaction with this explanation. The Board and its professionals discussed whether there should be additional on-site or off-site signage to discourage off-site parking along Route 49, and possible limitations on hours of operation, the number of employees, or special events, but ultimately the Board determined not to impose any such conditions or limitations. The Board's engineer and professional planner expressed no concerns about the adequacy of the existing two-car parking area and other and improvements that serve the retail store, or the need for any additional improvements. The Board's engineer noted that the applicant should obtain an approval, waiver, or inapplicability determination from the New Jersey Department of Transportation ("NJDOT") for the non-residential use of the driveway.
9. No member of the public objected to the application.
10. For the reasons set forth above, as well as information set forth in all application materials, the Board finds that the "special reasons" identified by the applicant's representatives are sufficient to satisfy the "positive criteria" for use variance approval pursuant to *N.J.S.A. 40:55D-70.d.(1)* to permit the storage shed at the property to be used for retail sale of handcrafted and seasonal items in addition to the ongoing single-family residential use of the property. Based on the aforesaid reasons and information the Board also finds that, subject to the conditions of this approval, the requested use variance approval can be granted without substantial detriment to the public good, and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance, and that the applicant has therefore satisfied the "negative criteria" for the use variance as required by *N.J.S.A. 40:55D-70*. Finally, based on the aforesaid reasons and information, the Board finds that granting the requested use variance approval would not be inconsistent with the intent and purpose of the Quinton Township Land Use Ordinance and Master Plan, and

that the applicant has thus satisfied the so-called "enhanced quality of proof" as expressed by the New Jersey Supreme Court in *Medici v. BPR Co.*, 107 N.J. 1, 21 (1987).

11. Based on the applicant's testimony and representations, as well as information set forth in all application materials, the Board finds that the two-story dwelling, metal garage, and two frame garages at the property were lawfully constructed prior to the enactment of currently applicable zoning requirements, and that to require these buildings to be brought into conformity with current zoning requirements would involve substantial effort and expense. Accordingly, the Board finds that, due to the extraordinary and exceptional situation uniquely affecting this specific piece of property, the strict application of the minimum front yard and side yard setback requirements would in this instance result in peculiar and exceptional practical difficulties to, and undue hardship upon the applicant, and therefore the Board finds it appropriate to grant the requested bulk variances to relieve these difficulties and hardships. Because the structures are in good condition, and are located on the property in a manner that is not inconsistent with other properties in the vicinity, the Board also finds the requested bulk variances can be granted subject to the conditions of this approval without substantial detriment to the public good, and without substantially impairing the intent and the purpose of the Quinton Township zone plan and zoning ordinance. The Board therefore concludes that the applicant has satisfied both the "positive criteria" and the "negative criteria" for the requested bulk variances as required by *N.J.S.A. 40:55D-70.c.(1)*.
12. Based on the applicant's testimony and representations, as well as information set forth in all application materials, and subject to the conditions of approval below, the Board finds that the currently existing site improvements and other structures at the property will adequately accommodate the applicant's retail business and visitors to the property in a manner that will not negatively impact travelers on Route 49 or occupants of nearby properties, and that the applicant's plan and testimonial description of business operations satisfy the purposes of site plan review as set forth in Ordinance § 170-67. Accordingly, the Board finds that the literal enforcement of site plan review requirements would impose undue hardship upon the applicant and therefore deems it appropriate to waive site plan review pursuant to Ordinance § 170-72.

NOW, THEREFORE, BE IT RESOLVED by the Quinton Township Planning Board (not including the Class I and Class III members) that for the reasons set forth above, the applicant's use variance, bulk variance, and site plan waiver application to permit the operation of a retail store in the 440 s.f. storage shed at the property, with site improvements as described by the applicant and as depicted on the applicant's plan, is hereby approved subject to the following conditions:

- A. The applicant must pay any and all required fees and escrow replenishment amounts that are due or may become due to the Township within seven (7) days notice thereof. The applicant must contact the Quinton Township Planning Board Secretary and settle any outstanding review escrow accounts prior to issuance of any zoning permit for the property.

- B. The applicant must comply with all representations made through any representative, during the course of the applicant's presentation to the Board and in all documents filed with the application.
- C. The applicant must obtain an approval, waiver, or letter of inapplicability from the NJDOT that meets the approval of the Planning Board engineer within 90 days following the date of this resolution.
- D. The property and the structures upon it may only be used for single-family residential and residential-accessory purposes, and for the applicant's retail store, all as depicted on the applicant's plan. No additional structures or uses may be constructed or conducted at the property unless first approved by the Planning Board.
- E. Violations of any conditions of this approval may be enforced as zoning violations or in any other manner as may be permitted by law.

The undersigned Chairperson of the Quinton Township Planning Board hereby certifies that the above is a true copy of a resolution adopted by said Board on February 14, 2017 to memorialize action taken on January 10, 2017.

*Attest:*

  
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Bonita K. Bell, Secretary  
Quinton Township Planning Board

  
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Cynthia Sherman, Chairperson  
Quinton Township Planning Board