

**RESOLUTION OF MEMORIALIZATION  
BOROUGH OF LINDENWOLD LAND USE BOARD  
CAMDEN COUNTY, NEW JERSEY  
APPLICATION NO. JLUB-20-4B**

**IN THE MATTER OF  
DAVID CHERUBINI  
(SENSATIONAL LANDSCAPING)**

**: LAND USE BOARD  
: BOROUGH OF LINDENWOLD  
: BLOCK 238, LOT 1.04  
: 1202 LAUREL ROAD  
:  
: GRANTED: February 25, 2021  
: MEMORIALIZED: March 25, 2021**

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**A RESOLUTION AUTHORIZING THE EXTENSION OF TEMPORARY  
OPERATIONS OF A BUSINESS FOR THE SALE OF SEASONAL ITEMS ON THE  
SUBJECT PROPERTY IN ADVANCE OF FINAL SITE PLAN APPROVAL  
SUBJECT TO CERTAIN TERMS AND CONDITIONS.**

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WHEREAS David Cherubini, residing at 24 Willow Cedar Way, Blackwood, New Jersey, 08012, and doing business as Sensational Landscaping (hereinafter designated the “Applicant”) having previously submitted an application for a use variance and having received such approval on April 23, 2020 from the Borough of Lindenwold Joint Land Use Board (hereinafter the “Board”) under Application No. JLUB 20-4 allowing for a multiple use garden center, nursery and landscaping business at the property known as 1202 Laurel Road, Lindenwold, also known as Block 238, Lot 1.04 on the Official Tax Map of the Borough of Lindenwold (hereinafter referred to as the “Subject Property”);

WHEREAS the Applicant had previously sought relief from the Board with respect to the condition imposed with respect to that approval which requires the submission by the Applicant of a site plan and receipt of final site plan approval for said garden center, nursery and landscaping business before the Subject Property could be utilized as proposed by the Applicant and did received authorization to use a portion of the Subject Property for a stand to sell seasonal items, such as pumpkins, corn stalks, fall plantings and Christmas trees prior to obtaining final site plan approval from September 15 through December 31, 2020 subject to the terms and conditions set forth in Resolution JLUB 20-4A;

WHEREAS the Applicant is seeking an extension of that temporary authorization to use the same portion of the Subject Property for a stand to sell seasonal items, such as flowers and plants for spring and summer to include the holidays of Easter and Mother’s Day, which application was heard by the Board at the public meeting held on February 25, 2021 with the chairman and secretary of the Board and Board members Mayor Richard Roach, Jr. and

Councilwoman Linda Hess appearing, and the balance of the Board participating through telephone conferencing and with the Applicant also appearing by telephone conferencing;

WHEREAS, the Applicant submitted the following documentation in connection with his application:

- (1) The Applicant's letter dated January 10, 2021;
- (2) The proposed garden center general arrangement with aerial view of site showing the area for flower and plant sales and the associated parking;
- (3) Email from R. Scott Smith, P.L.S., .P. P., of Key Engineers Inc. to the Board dated February 25, 2021;
- (4) Email from R. Scott Smith, P.L.S., P.P., of Key Engineers Inc. to Dhruv Patel of NJDEP dated January 29, 2021;
- (5) Copies of the FEMA Flood Hazard Map, and NJDEP Wetlands Map applicable to the Subject Property;

WHEREAS, the Board having heard and considered the testimony presented by the Applicant, and having open the hearing for public comment and no members of the public wishing to comment, and having considered the Applicant's request;

**NOW THEREFORE BE IT RESOLVED** that the Board makes the following findings of facts:

### **FINDINGS OF FACT**

1. The Applicant is the owner of the Subject Property, which is a 3.5 acres triangular parcel of land, situated on the westerly side of Laurel Road (County Route No. 673) with the frontage along Laurel Road to the depth of 145 feet being located in the OP-1 (Office Professional) District, and with the balance of the Subject Property to the rear being located in the R-1 (Single Family Detached Residential) District. The Subject Property is designated as Lot 1.04 of Block 238 on the Borough of Lindenwold Official Tax Map. It is further noted that historically the Subject Property had been the site of a produce stand known as "Buck's Produce" since 1963, which has been closed for several years.

2. In his application before this Board on April 23, 2020, the Applicant had elected to bifurcate his application and to seek a use variance for the operation of a multiple use garden center, nursery and landscaping business prior to making application before the Board for site plan approval.

3. A use variance was granted to the Applicant at the April 23, 2020 meeting of the Board to allow for the operation of a multiple use garden center, nursery and landscaping business at the Subject Property subject to the Applicant obtaining final site plan approval.

4. The Applicant thereafter sought a temporary waiver of a full site plan of the Subject Property for his proposed garden center, nursery and landscaping business and permission to operate a stand in a designated area on the Subject Property to sell seasonal items, such as pumpkins, corn stalks, fall plantings and Christmas trees. The Applicant testified that his business has been adversely impacted by the COVID 19 pandemic and the restrictions imposed by Executive Order 104 and 107 issued by Governor Murphy, which involve the closure of all non-essential retail businesses. These restrictions in connection with the ongoing coronavirus public health emergency have caused an economic hardship on the Applicant, and as such, he was not financially able to incur the additional costs of a full site plan at this time. The Applicant testified that this economic hardship could be mitigated by the limited operation of a stand on the Subject Property to sell seasonal items, such as pumpkins, corn stalks, fall plantings and Christmas trees and sought and did receive temporary relief from the requirement of a full site plan and authorization to operate the proposed stand for the sale of the aforementioned seasonal items, from September 15, 2020 to December 31, 2020, which stand will be located along the frontage of Laurel Road in the OP-1 District. That temporary authorization required that the layout of the retail stand and associated parking had to be reviewed and approved by the Construction Code Official for public safety concerns.

5. It is noted that the layout of this temporary stand was approved by the Borough's Construction Code Official and the stand was operated by the Applicant during the permitted time period without incident.

6. The Applicant is presently seeking an extension of that limited authorization to allow this stand to be used to sell spring and summer seasonal items, such as flowers and plants for the holidays of Easter and Mother's Day. In support of that request, the Applicant indicated that he has started the process of developing the site plan, which has become more complicated and expensive than anticipated. The Applicant planner indicates that the site plan will likely require several types of environmental permits related to freshwater wetlands and the flood hazard area program as it related to riparian zones associated with a deep ravine along the Subject Property's northerly boundary, the center or bottom of which is the actual property line. The Applicant's planner is seeking guidance from NJDEP as to whether the Flood Hazard Rules apply, and due to the remote working conditions of NJDEP imposed as a result of COVID 19 they are encountering delays in their inquiry responses.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over the site plan approval process and the authority to grant exceptions and/or waivers of the provisions for site plan approval under N.J.S.A. 40:55D-51 and under Borough Code Section 190-34 which provides the Board with authority to grant exceptions from the requirements of site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan approval.

2. The Board has determined that extraordinary circumstances have occurred by virtue of the COVID 19 and the governmental restrictions imposed on businesses during this time to include the closure of nonessential retail businesses and remote working conditions for government agencies, which have resulted in financial hardships and delays for the business

community. It is further noted that in an effort to assist their business community during these difficult times, municipalities have temporarily relaxed ordinances and also procedural formalities associated with governmental land use review to provide assistance to local retail businesses to financially survive during these difficult times such as the closure of public streets and parking lots to accommodate outdoor restaurant seating.

3. The Board has further determined that it is in the best interest of the Borough to assist and promote the development of businesses in this community in these extremely difficult times, and when warranted, to relax some procedures for site development and exceptions to site plan approval. Due to the financial hardship that has ensued by virtue of the ongoing coronavirus public health emergency to the Applicant, the Board recognized the cost associated with the development of a site plan and the harsh economic realities confronting the Applicant and finds that it is both reasonable and appropriate to temporarily relax its procedures associated with site plan review of the Applicant's proposed limited business operation under specific terms and conditions. The Board also finds that any adverse impact that the Applicant's proposed retail stand for seasonal items may have on the surrounding community in the absence of final site plan approval can be addressed and minimized and the needs of public safety met by subjecting the Applicant's temporary stand to review by the Borough's Code Enforcement Officer as was done previously. It is further noted that given the Subject Property's prior use as a produce stand, the temporary use of the Subject Property for a stand for the retail sale of seasonal items is not a departure from its prior use.

NOW THEREFORE, BE IT RESOLVED, that the motion duly made by Mayor Richard Roach, Jr. and duly seconded by Councilwoman Linda Hess that this application to grant an exception from the requirement of site plan approval to allow for a temporary stand for the retail sale of seasonal items on the Subject Property be and is hereby GRANTED subject to the following terms and conditions.

1. That the application, all exhibits, testimony, maps and other documents submitted, and all representations made, and all testimony given before the Board at its meeting of February 25, 2021 are true and accurate of the facts relating to the Applicant's request for relief. In the event that it appears to the Board, on reasonable grounds, that the application, exhibits, testimony, maps and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same have been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought, the Board may rescind its approval and rehear the application, or any part of said application, either upon the application of an interested party or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interest of justice.

2. The authorization to operate the requested stand for the retail sale of seasonal items shall be subject to the following terms and conditions:

A. The Applicant shall submit a drawing depicting the proposed layout and location of this retail stand and all associated parking to the Borough's Construction Code Official for review, and the Board hereby grants to said Construction Code Official the authority and discretion to approve such a plan and to require any and all revisions to such

plan as the Construction Code Official deems necessary to meet public safety concerns. Any such approvals for this temporary operation are not binding upon the Board in its review of the final site plan of the Subject Property.

B. The operation of this retail stand shall be temporary in duration and the Applicant shall have authority, once approval is received from the Borough's Construction Code Official, to operate said stand from April 1, 2021 to May 31, 2021, at which time all retail sales activities shall cease pending final site plan approval from this Board of the Applicant's garden center, nursery and landscaping business at the Subject Property.

C. This authorization is limited to the operation of a retail stand for the sale of seasonal items as noted herein and the Subject Property shall not be used in any manner for the establishment of a nursery or the landscaping business by the Applicant until final site plan approval is granted and a Certificate of Occupancy is issued.

3. The Applicant shall indemnify and hold the Borough of Lindenwold harmless from any claims whatsoever which may be made as a result of the relaxation of the site plan review and approval process, or as to any representation made by the Applicant.

ROLL CALL VOTE ON MOTION TO GRANT USE VARIANCE AS HEREIN ABOVE SET FORTH.

IN FAVOR: Mayor Richard Roach, Jr., Councilwoman Linda Hess, Chairperson Walter Lenkowski, Craig Wells, Joseph Vandergrift, Kathy Fitzpatrick, and Joy Jackson (Pat Strippoli while in attendance on the telephone conference call did not respond to the roll call on this vote)

OPPOSED: None

ABSTENTION: None

BE IT FURTHER RESOLVED that a certified copy of this Resolution of Memorialization be sent via regular mail to the Applicant within ten (10) days of the date of adoption, and a copy of this Resolution shall be filed with the Administrative Officer or Clerk of the Borough, Borough Construction Official, Borough Zoning Officer and make available to all other interested parties.

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WALTER LENKOWSKI, Chairperson  
Joint Land Use Board  
Borough of Lindenwold

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NANCY DIDOMENICO, Secretary  
Joint Land Use Board  
Borough of Lindenwold

CERTIFICATION

This Resolution of Memorialization being adopted by action of the Joint Land Use Board of the Borough of Lindenwold on this 25th day of March, 2021, is a true copy of the action taken by the Lindenwold Joint Land Use Board at its meeting held on February 25, 2021.

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NANCY DIDOMENICO, Secretary  
Joint Land Use Board  
Borough of Lindenwold