

RESOLUTION 2013-16

A RESOLUTION CERTIFYING THE PREEXISTING NONCONFORMING STATUS OF THE USES OF THE PRIMARY STRUCTURE LOCATED UPON BLOCK 18 LOT 31 COMMONLY KNOWN AS 224 WHIG LANE ROAD, ELK TOWNSHIP, NEW JERSEY, AND GRANTING A WAIVER OF SITE PLAN REVIEW FOR THE CONSTRUCTION OF A NEW 392 SQUARE FOOT BUILDING TO BE USED AS AN OFFICE

WHEREAS, the Zoning Board of Elk Township met at its regular meeting on March 20, 2013 and considered the application of Evergreen Roping, LLC, for a certification of the preexisting nonconforming status of the uses currently made of the primary structure located on lands identified as Block 18 Lot 31, on the tax map of the Township of Elk, which property is commonly known as 224 Whig Lane Road, Elk Township, NJ; and

WHEREAS, the Applicant has followed all proper procedures necessary to date to bring this application on for public hearing by the Zoning Board of the Township of Elk, including public notice as required by the Municipal Land Use Law, NJSA 40:55D-1 et seq.; and

WHEREAS, the Applicant submitted the following documents:

1. Application form and supporting documentation
2. Tax Certification
3. Plan and existing conditions survey
4. Pictures of the proposed storage office building to be manufactured by Springville Woodworks
5. An article from the Gloucester County Times dated November 30, 1986 entitled "Deck the Halls" providing a history of the business

WHEREAS, the Zoning Board has conducted a public hearing on the application and considered all of the testimony presented at the hearing, all other evidence and the Township Ordinances; and

WHEREAS, the Applicant, Evergreen Roping, LLC appeared with the assistance of its attorney, Dale Taylor, Esquire; and

WHEREAS, the Board after consideration of the evidence presented by the Applicant made the following findings:

1. The Applicant is the owner in the land identified as Block 18 Lot 31 commonly known as 224 Whig Lane Road upon the tax map of the township and operates Evergreen Roping, LLC.
2. The site consists of 11.75 acres and currently contains a single family residential dwelling, nursery stock container fields, two sheds and 13,403 square foot workshop building.

3. The use is primarily the creation of evergreen garlands and wreaths which occurs only seasonally beginning October 1st and ending approximately December 18th. Only a small piece of the building now approximately 20% is used in the production aspect. The balance of the buildings are storage of the evergreens. There is a 12' x 12' office space within the warehouse which is very small. In addition to the seasonal Christmas wreath and evergreen garland business, there is a residential use and agriculture uses on the property.
4. The property is located with the RE Rural Environmental Residential District which permits agricultural uses and single family dwellings. The property is surrounded in all directions by either residential or agricultural uses.
5. The Applicant has established to the satisfaction of the Board that the use was commenced on or before the early 1930's which date was before the zoning ordinances were in place. The Board finds that the business was started in the 1930's and remained in primarily the same status throughout the decades. In the early 1940's or 1950's the existing buildings that currently exist on this site were built and the last expansion or any construction on this site was approximately the late 1960's. The Zoning Ordinance and Code in this Township was adopted in 1965.
6. Since the date the use described herein began, there has been no interruption or abandonment of the use and the character, extent and intensity of the use has remained ongoing and unchanged.
7. The use described herein was permitted under the regulations in effect at that time. The applicant established to the satisfaction of the Board that all proper permits were issued at the start of the use.
8. There is no substantial detriment to the zone plan or the zoning ordinance for the area by the continuation of this use and the Board finds no evidence that the continuation of this use would pose a substantial detriment to the public interest.
9. Pursuant to New Jersey Statutes Annotated 40:55D-68, the Board finds and certifies that the use and the structures currently existing on the property pre-dated the adoption of the existing Ordinance and as a result this use and these structures are granted legal non-conforming status.
10. The Applicant wishes to construct a 392 square foot building in front of the existing 13,403 square foot metal workshop. This 392 square foot building would be used as office space.
11. The Applicant testifies that the current office space is very cold and very noisy and it is very difficult to have the space within the warehouse and manufacturing area.
12. The expansion is only 2.9% of the overall development of the site and in the opinion of the Board Planner and Engineer it is a de minimus expansion. The Applicant testified that there will be no increase of the manufacturing operation on the site.
13. The Applicant testified there are no retail sales conducted on the site. It is all manufacturing and the ends of their labor are shipped to nursery centers, etc.

14. The Board Engineer and Professional Planner testified that based upon the testimony and evidence presented by the Applicant and the affirmative representations made at the hearing they supported a waiver of formal site plan review.
15. There was no public comment or opposition to this application.
16. The Board finds that the change in use is not a significant deviation from the existing commercial use on the site and is no more intense. The continued use of this building in this commercial capacity would allow the building to be maintained and not to lie idle and vacant. The Board finds that the benefits of this minor change in use outweigh the detriments and that the Applicant has satisfied the positive criteria required by Statute. The Board further finds that the variance will not pose a substantial detriment to the public good or to the zone plan for the area and as such, the Applicant has proven the Negative criteria required by Statute.

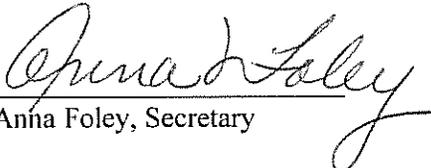
NOW THEREFORE, BE IT RESOLVED on this 17th day of April, 2013, by the Zoning Board of the Township of Elk that the use of Block 18 Lot 31 identified as 224 Whig Lane Road, Elk Township, New Jersey, described as set forth above, is hereby certified to be a legally preexisting nonconforming use which may continue as permitted by law.

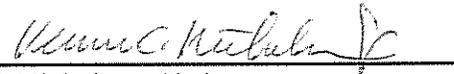
IT IS FURTHER RESOLVED, that the addition of the 392 square foot building to be used as office space is not so significant in this instance considering the current development on the lot as to require the applicant to perform more elaborate site plan design or obtain formal site plan approval. A waiver of Site plan review is granted.

In favor: Carter, McCreery, McKeever, Nicholson, Shoultz, Tondo, White

**ATTEST
OF ELK**

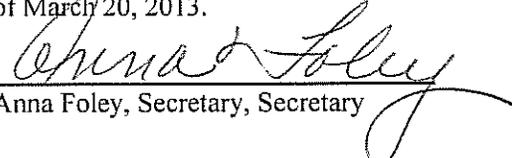
PLANNING BOARD, TOWNSHIP


Anna Foley, Secretary

By: 
Chuck Nicholson, Chairperson

Certification

The undersigned, Secretary of the Planning Board of Elk Township, hereby certifies that the above is a true copy of a resolution adopted by said Board on the 17th day of April, 2013, its decision of March 20, 2013.


Anna Foley, Secretary, Secretary



January 8, 2013

Elk Township Planning/Zoning Board
667 Whig Lane Road
Monroeville, NJ 08343

Attn: Anna Foley, Secretary

Re: Evergreen Roping, LLC
Determination of Pre-existing Non-conforming Use
Block 18, Lot 31
224 Whig Lane Road
RE Rural Environmental Residential District
Elk Township ZB-12-09
Bach Associates Proj. # ET2012-9

Dear Chairman and Members of the Board:

We have received the application, plot plan, and supplemental documents submitted by Evergreen Roping, LLC in support of a request for a determination of pre-existing non-conforming use and minor site plan waiver at the above referenced site. The subject property consists of 11.75 acres and contains a single family residential dwelling, nursery stock container fields, two sheds, and a 13,403 square foot workshop building. In addition to the residential and agricultural uses on the property, the applicant operates a seasonal Christmas wreath and evergreen garland business.

The property is located within the RE Rural Environmental Residential District (section 96-71) which permits agricultural uses, single family dwellings, public parks and playgrounds, along with a number of conditional uses. The existing evergreen garland business on the site is non-conforming. The property is surrounded in all directions by other properties in the same zoning district. The property to the west contains Lucas Greenhouses and the other surrounding uses are generally residential and agricultural in nature.

Municipal Land Use Law (N.J.S.A. 40:55D-68) provides that the applicant may seek certification from the zoning board that the use and structure existed before the adoption of the ordinance which rendered the use non-conforming. In addition to the request for certification of the non-conforming use, the applicant requests a site plan waiver and a determination that the proposed construction of a 392 square foot building in front of the existing 13,403 square foot metal workshop building is a de minimum expansion that does not require a use variance (for the expansion of a non conforming use).

Submission Items

The applicant has submitted the following items in support of this application:

1. Application Form for Request for Determination of Pre-Existing Nonconforming Use, Narrative in support of application request, letter to Combined Planning/Zoning Board from applicant's attorney Dale Taylor dated December 7, 2012, Escrow Agreement dated December 11, 2012, Affidavit of Applicant & Ownership dated December 4, 2012,

- Disclosure statement, Tax Certification dated December 4, 2012 indicating that taxes are current.
2. Plot Plan and Existing Conditions Survey for Block 18 Lot 31 prepared by Stephen Datz, PLS of Datz Engineering & Land Surveying dated November 6, 2012.
 3. Picture of proposed storage/office building by Springville Woodworks.
 4. Gloucester County Times article by Noreen Toner entitled "Deck the halls..." dated November 30, 1986.

Completeness

The applicant has submitted the Request for Determination Checklist. It appears that all required items have been submitted. The request for determination of pre-existing non-conforming use may be scheduled for a hearing. If it is determined that a minor site plan is required, the applicant may be required to submit additional information in support of the minor site plan application as set forth in the checklist.

RE Zone Requirements and Bulk Standards

The property is within the RE Rural Environmental Residential Zoning District (section 96-71) which permits agricultural uses and buildings, single-family dwellings, public parks and playgrounds, and accessory uses that are customarily incidental and subordinate to the primary use on site. The subject property contains a residential dwelling occupied by the applicant during the season and farm qualified nursery stock container fields (leased to Lucas Greenhouses) as well as a 13,403 square foot metal building. The applicant operates a seasonal evergreen decoration (garland, wreaths, etc) business out of the 13,403 square foot building. The inputs to the evergreen decoration business are not grown at the site, they are imported from out of state. The commercial business use and commercial business structure are not permitted in the RE zone, and are therefore non-conforming.

Certification of Nonconforming Use or Structure

The applicant has the burden of proof in establishing that the use existed prior to the adoption of an ordinance that rendered the use nonconforming. The applicant indicates that the Toms family has operated the business since the 1930s and is now being operated by the 3rd generation. The applicant requests that the use and structure be granted legal non-conforming status ("grandfathered"). The applicant further requests that the addition of a 392 square foot building be determined to be insubstantial relative to the use overall, thereby not requiring a "d(2)" variance for the expansion of a non-conforming use. We offer the following comments for the Board's consideration in reviewing the applicant's request. This information will assist the Board in having an accurate description of the existing use, and in documenting the use for future reference.

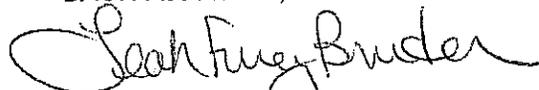
1. **Nature of Use.** The applicant should describe the business that is carried out on the site during the operating season.
 - a. How are the input materials delivered to the site?
 - b. Confirm that the use is limited to five weeks of the year as indicated in the narrative.
 - c. Is the business whole sale only or is there also a retail business at the site?
 - d. Indicate where the 30 to 50 employees park at the site and whether there is a

parking agreement with the owner of adjacent lot 28.

2. **Extent of business at time of ordinance adoption.** In addition to providing sufficient evidence that the business itself predates the ordinance that rendered the business non-conforming, the applicant should present information about how the business has changed over the years. At the time of the adoption of an ordinance rendering the use non-conforming what was the extent and character of the use, and has the extent or intensity of the use increased significantly?
3. **Building Construction.** Based on the information provided it seems that the business has operated at the site for many decades, but the extent of the business at the time of the adoption of the ordinance is not clear. The applicant indicates that the manufacture of the evergreen garlands and wreaths takes place inside the 13,403 square foot building on the site. The applicant should indicate in what year the building was constructed and if the building was constructed for this particular use.
4. **Expansion of Office Space.** The applicant indicates that within the metal building there is a 144 square foot office area, which is inadequate and unsuitable for a proper office. The applicant proposes to construct a 392 square foot building 15 feet in front of (south of) the existing building, which would be used as an office for the evergreen decoration business. The additional space freed up inside the existing building would be used to rearrange existing equipment, not for an expansion of production. The applicant asserts that the building addition will not result in an expansion of the use. The new building will however result in an expansion of the physical structure. The applicant suggests that a site plan waiver is appropriate because the proposed building meets setbacks and will not trigger a grading plan (less than 600 square feet). The applicant further suggests that the physical enlargement of the use is negligible and is necessary to serve the needs of the existing use, and that a "d(2)" variance is not required. We defer analysis of the case law to the Board's solicitor. If it is determined that a variance is required for the expansion, then the applicant will be required to provide the positive and negative criteria to justify the minor expansion.

We defer to the Board's solicitor to advise the Board as to the legal standards that must be met for certification of a nonconforming use. Please call with any questions. We reserve the option to make additional comments as more information becomes available.

Very truly yours,
BACH Associates, PC



Leah Furey Bruder, BP, AICP

cc: Joan Adams, Esq.
Corey Gaskill, P.E., CME
Elk Environmental Commission
Evergreen Roping, LLC, applicant
Stephen Datz, PLS
Dale Taylor, Esq