

**Resolution No: 2024-07 Use Variance subject to  
subsequent application of Site Plan**

**RESOLUTION OF THE JOINT LAND USE BOARD OF THE BOROUGH OF BELLMAWR  
MEMORIALIZING CONDITIONAL GRANT OF USE VARIANCE SUBJECT TO  
SUBSEQUENT APPLICATION FOR AND APPROVAL OF SITE PLAN APPROVAL AND  
OTHER RELATED RELIEF FOR ACCIAVATTI PROPERTIES LLC 432 CREEK ROAD,  
BLOCK 72, LOTS 1 AND 2**

**WHEREAS**, on August 5, 2024, at the regular meeting of the Bellmawr Joint Land Use Board consideration was given to the application filed by Acciavatti Properties LLC seeking a use variance and a waiver of site plan upon the application filed by Acciavatti Properties LLC for property located at 432 Creek Road, Block 72, Lots 1 and 2; and

**WHEREAS**, the applicant was represented by Robert A. Gleaner, Esquire and provided testimony from Samuel Agresta, a professional engineer and planner and having heard testimony from Nicole Mallei, proposed tenant for the subject business, and having heard testimony from Steven Bach, Board Planner and Engineer, and having heard testimony from members of the public, including Lisa Scullion and having reviewed the documentation submitted with the application and during the hearing, and for good cause shown, the Board makes the following factual findings in conditionally approving the subject application for use variance, subject to site plan application and approval, while denying a waiver of site plan:

1. The application has been properly noticed and applied for and all conditions precedent to the board's jurisdiction have been satisfied.
2. The Board have before it the following items:
  - Cover letter prepared by Robert A. Gleaner, PC, dated July 2, 2024.
  - Borough of Bellmawr Land Development Application.
  - List of requested waivers.
  - Photographs of site.
  - Floor plans with no title block (3 sheets).
  - Survey entitled "Survey of Premises 432 Creek Road Situate in Borough of Bellmawr, County of Camden, New Jersey", prepared by Ewing Associates, dated 11-16-23, no revision.
  - Plan entitled "Existing Site Analysis with Minor Improvements, Plate 18, Block 72, Lot (2) 1 & 2, Land Situate in Bellmawr Borough, Camden County, New Jersey" prepared by Agresta Engineering & Planning, dated 5-06-24, revised 6-20-24.

3. Through the testimony and application materials, the board learned of certain facts, which it relies on as foundations for the conditional grant of the use variance relief.
4. Specifically, the application is for two separate use variances. The first is to permit a commercial use in a zone not permitted for the use as hereinafter described in more detail. The second use variance has to do with the proposal for two primary uses on the same property, same being a commercial property and a residential property. Two primary uses are not permitted.
5. The property is located at the corner of Creek Road and Worthman Avenue and contains 2 structures. The first is an existing 2-story brick and frame building, the second a 1-story masonry garage. The site is serviced by a parking area and associated site improvements that alone would not be adequate to sustain the use variance.
6. The applicant's proposal is for a permanent makeup studio business with storage areas in the main building, (none of which are to be utilized for any purposes whatsoever except as a minor adjunct to the business use of a makeup salon.) The detached masonry garage is presently unimproved, but is proposed for a studio apartment, subject to all necessary approvals for residential rentals.
7. The following are the zoning ordinance requirements:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Conforms</u>
Min Lot Size (SF)	6,000	6,000	6,000	Yes
Min Lot Width (Ft)	60	60	60	Yes
Min Lot Depth (Ft)	100	100	100	Yes
Min Setbacks (Ft)				
Front	25	24.75*	24.75*	No
Side	5	9.75	9.75	Yes
Side Aggregate	15	29.71	29.71	Yes
Rear	30	44.94	44.94	Yes
Lot Coverage (%)	30	53.59*	53.59*	No
Max Bldg Ht. (Ft)	35	<35	<35	Yes
Accessory Structures Min. Setback (Ft)				

Side (Ft)	3	2.95*	2.95*	No
Rear (Ft)	3	4.8	4.8	Yes
Garage Height (Ft)	12	<12	<12	Yes
Garage Area (SF)	16x24 (384)	22x24 (528)*	22x24 (528)*	No

\* Indicates existing non-conformance

8. Accordingly, at site plan, the applicant will have to prove entitlement to the nonconformities consistent with the municipal land use law.
9. With respect to the use, the makeup studio proposed is not permitted pursuant to Section 260-13 and hence a use variance is required. Additionally, pursuant to Section 260-11, although residential uses are permitted, the proposed apartment in the detached garage, when coupled with the proposed commercial use, is more than one principal use on the property, contrary to Section 260-11 and hence a separate use variance is required.
10. As stated, there are variances for lot coverage, minimum front setback and minimum side setback as noted in the above zoning grid. Additionally, the "garage area" to be converted to a studio apartment is 520 square feet where 384 square feet is the maximum for a garage. Subject to site plan approval, this variance may be obviated if the garage is abandoned and is instead converted to a studio apartment. Finally, the applicant is short of parking under Section 260-85d where 5 spaces are proposed and 4 are required. The variance is required because only three of the parking spaces are viable spaces, as set out in the engineer's report.
11. As hereinafter described, only the use variance is dealt with in this application the approval at which is conditional on-site plan application and approval, at which time the applicant will be required to apply for and receive approvals for all necessary C variances and waivers, in addition to the site plan approval.

#### TESTIMONY

12. The Board heard testimony from Samuel Agresta, a professional planner engineer. He offered credible professional testimony with respect to the proposal to repurpose the existing building so as to provide for a very low-impact commercial use. This proposal constitutes an act in furtherance of abandonment of all prior alleged commercial uses on the subject property, and the relief granted herein shall be only for this particular use and the extent and intensity of which is hereinafter described in detail.
13. The applicant's planner further testified that the several purposes of the Municipal Land Use Law set out in NJSA40:55d-70-2 will be served, including those purposes set out in sub (c), (g), and (i). He noted, also, that the master plan and/or the Municipal Land Use Law encourages repurposing of properties in lieu of demolition or vacancy. He argued

these purposes serve the public good by avoiding blight and dissipation of natural resources, while the aesthetic reports also serve the public at large.

14. Mr. Agresta emphasized the low intensity of the use in terms of hours of operation, number of employees, number of customers visiting the property, and other details set out in the testimony of the proposed tenant hereinafter stated. Mr. Agresta further offered expert testimony that the proposed use, with appropriate conditions and improvements to the site, would not offend the purpose and intent of the zoning ordinances, zone plan, and zoning ordinance, nor cause any significant harm to the public good. To the contrary, he indicated that aesthetic improvements to the site and the accomplishment of a residential look in the upgrade of the subject structure would benefit the community as a whole.
15. Nicole Mallei testified. She indicated that she is the proposed tenant of the subject property, which she proposes to use as a permanent makeup salon. She described the concept of permanent makeup, which is essentially the application of pigmentation on the face, similar to a tattoo. This pigmentation is generally applied to eyebrows, eyes, and lips. She described how this is done. Her current license by the State of New Jersey for this craft is pending, and receipt of such license is a specific condition of this use variance.
16. She described her hours of operation as Monday through Saturday, 9:00 to 5:00 by appointment only. This latter limitation is important. She indicated that she would have at most a maximum of three employees, and most probably only one other person besides herself. She intended to limit her hours as she has 2 children, and her personal schedule would probably be limited to 3 days a week. She has not yet hired her other employee. She indicated that at most she could expect to see 2 clients in any given day because the applications take 2 to 4 hours each.
17. With regard to trash, she indicated that trash would be provided for in the site plan but that biohazardous materials would be disposed of consistent with FDA approved vendor that picks up such materials one time a week.
18. With respect to storage, she indicated that she only needed a small amount of storage that would utilize the storage area in the existing structure and that her lease would provide her with the exclusive use and possession of all storage areas in the subject structure. An agreed upon condition of approval was that there would be no other user utilizing any aspect of the structure, and no tenants would be suffered nor leases entered into for any of these storage areas denoted on the floor plans attached to the application.
19. With respect to signage, the applicant indicated that this would be set out in more detail in the site plan to follow, but that it would be small and comply with Borough ordinance.
20. There is a kitchen in the subject structure that shall not be used for any commercial or residential purpose except as a convenience adjunct to the salon business, as was true of the storage areas on the first floor and the second floor. The solicitor shall be provided with the salon lease which shall recite these conditions together with those imposed at site plan.

21. Various improvements were described as having already been accomplished for the subject property. Nevertheless, the applicant's engineer and the Board Engineer discussed in detail the Board Engineer's report, with which the applicant agreed to comply as a condition of approval. However, such compliance would require a site plan application and approval at a properly advertised public hearing. The improvements proposed by board engineer, but requiring site plan approval are a specific foundation for the grant of the use variance insofar as they provide the benefits provided by the applicant's engineer, absent which the board would not have granted the use variance.

**NOW, THEREFORE**, after considering the foregoing facts, the board concludes that the application for use variance has substantial merit, subject however to site plan application and approval, including all variance relief and all site improvements recommended by the board engineer, together with the following additional conditions:

1. The applicant must contact the Joint Land Use Board office to settle any outstanding review escrow accounts prior to the issuance of building permits.
2. Approval of all appropriate reviewing agencies.
3. Compliance with all Borough, County, State and Federal rules, regulations and ordinances.
4. Compliance with the Board Engineer's report and comments at the public hearing.
5. Compliance with all representations made by the applicant at all public hearings, including the testimonies and agreements set out above.
6. Provision of a compliance plan depicting all improvements with subsequent amendments identified by date of approval.
7. Posting any required additional performance and maintenance bonding.
8. Compliance with the conditions of approval set forth in this resolution.

The Board further concludes the applicant has satisfied the positive and negative criteria that is the applicant's burden of proof for the use variance under NJSA 40:55D- 70(d), namely a use or principal structure in a district restricted against such use of principle structure, in this case, a commercial use in a residential zone.

The Board further concludes the applicant has demonstrated special reasons, including the repurposing of an existing structure, the enhancement of the visible environment, and improvement of the decaying infrastructure on the existing lot, together with the substantial buffering and site improvements made for the benefit of the entire community. In short, the Board concludes that the applicant has readily satisfied the positive criteria.



Likewise, the applicant has satisfied his burden of proof as to the negative criteria, and the Board finds that there will be no substantial detriment to the public good, nor substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The conditions of approval imposed by the Board including application for and approval of site plan implementing the proposed solutions to the issues addressed in the hearing will be more than sufficient to offset any potential negative impacts. The vacant property being repurposed prevents harm to the public from potential blight and the aesthetic and engineering enhancements to be imposed at site plan will ensure a betterment of existing conditions.

Those Eligible to Vote

Those in Favor

Those Opposed

Ken Murray  
Emil Andrae  
Raymond Staszak  
Joshua Haas  
Mar DeBerardinis  
John Scarborough  
Harry Corcoran

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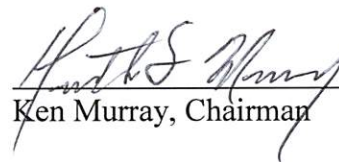
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ATTEST:

JOINT LAND USE BOARD:



Mark DeBerardinis, Secretary



Ken Murray, Chairman

### CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Borough of Bellmawr Joint Land Use Board at a meeting held on the 9<sup>th</sup> day of September, 2024.



Mark DeBerardinis, Secretary