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MEMORANDUM

To: Members Village of Ridgewood Board of Adjustment

From: Bruce E. Whitaker, Esq.

Date: March 31, 2021

Re: Roos Application – 560 North Route 17 North, Ridgewood, NJ, Block 4704, Lot 6.01

1. The Hearing has been continued to May 11, 2021 at 7:30 PM without further Notice;
2. All Exhibits that anyone wishes to rely upon shall be submitted for purposes of having them posted on the Village Website by the Board Secretary no later than May 6, 2021;
3. Outline of issues for the Board's consideration:
 - A. Applicant seeks a certificate of nonconformity as it pertains to the use of the premises and as it pertains to the structures on the premises. This is in accordance with N.J.S.A. 40:55D-68, a copy of which is attached;
 - B. Review of the July 14, 1999 Resolution and the Transcript pertaining to that presentation is important in making the determination pertaining to the nonconforming issue. There are a series of statements made in that Resolution that the Board may consider falls within the concept of "Res Judicata";
 - C. It has been determined, and agreed to by the Applicant, that the site plan that was granted in 1999 expired, and the variance relief other than the use variance expired. As a matter of Law the use variance granted, runs with the land and it did not expire;
 - D. If the Board makes a determination that a nonconforming use exists, the Board needs to determine the parameters of that nonconformity. The Applicant has testified and the prior Resolution of 1999 references a nursery and garden center. A review of the Transcript of 1999 for this purpose is warranted. By way of example, was vehicle storage/garage warehouse use strictly for the owner of the nursery facility, or did the nursery use also include a truck depot for other landscape businesses onsite that are not involved with the nursery and garden center, but are there merely for storage? Are the vehicles onsite used to make deliveries from the site for the garden center and nursery, or is there a nonconforming use that permits a truck depot for landscape trucks and equipment to be stored there by businesses conducting their own operations that goes beyond the scope of the nursery sales and garden center sales being conducted on the property;
 - E. If the Board makes a determination that there is a nonconforming use, and the Board has determined the scope of the nonconformity, then the Board must determine if

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that nonconforming use, as the Board has defined, has been abandoned. Just as the Applicant has the burden of proof to establish the existence of a valid prior nonconforming use, the Applicant also has “the ultimate burden with respect to the issuance of abandonment”. Berkley Square v. Trenton Zoning Board of Adjustment, 410 NJ Super 255, 269 (App. Div. 2009). In that Case when an objector comes forward with sufficient evidence of temporal or physical abandonment, then the Applicant has the burden to prove non-abandonment. The mere 9 years of a nonconforming right, does not constitute abandonment. Abandonment basically requires two factors:

1. Some overt act, or some failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment; and
2. An intention to abandon. Cases are provided for review.

BEW:cbp

2009 New Jersey Code
TITLE 40 - MUNICIPALITIES AND
COUNTIES
Section 40:55D
40:55D-68 - Nonconforming structures
and uses

40:55D-68. Nonconforming structures and uses

Nonconforming structures and uses. Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof.

The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the board of adjustment. The administrative officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in R.S. 54:5-14 and R.S. 54:5-15. The fees collected by the official shall be paid by him to the municipality. Denial by the administrative officer shall be appealable to the board of adjustment. Sections 59 through 62 of P.L. 1979, c. 291 (C. 40:55D-72 to C. 40:55D-75) shall apply to applications or appeals to the board of adjustment.

L. 1975, c. 291, s. 55, eff. Aug. 1, 1976. Amended by L. 1985, c. 516, s. 15.