



## MEMORANDUM

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To: Hightstown Planning Board

From: Brian Slaugh, PP, AICP  
Donna Miller, AICP, PP, CFM

Re: **Americana Hospitality Group (Applicant)**  
**Katsifis Family, LLC (Owner Lot 40.02)**  
**Borough of Hightstown (Owner Lot 41)**  
Preliminary and Final Major Site Plan  
Application No. 2019-05  
Block 7, Lot 40.02 and 41  
R-3 Residential Single-Family District

Date: October 7, 2022

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### 1. Materials Reviewed

The following materials were reviewed in the preparation of this report:

- Application No. 2019-05, dated July 3, 2019 and Application No. 2021-02 dated April 8, 2022.
- *Americana Center Site Plan*, by prepared Gregory S. Oman, PE, Menlo Engineering Associates, Inc., dated October 9, 2018, and last revised April 29, 2022, consisting of 18 sheets.
- *Americana Center Americana Diner Parking Lot Improvements*, prepared by Gregory S. Oman, PE, Menlo Engineering Associates, Inc., dated February 11, 2022 and last revised September 15, 2022, consisting of 11 sheets.
- Lease Agreement between Katsifis Family, LLC, and the Borough of Hightstown, dated March 5, 2012 pertaining to Block 7 Lot 41 with two amendments.

In addition to the review of this material, the site was investigated to determine existing conditions.

### 2. Application Description

- 2.1 Applicant's Proposal. The applicant has entered into a lease with the Borough to use and occupy a 35,650 sf. portion of the southerly area of Lot 41 in Block 7 that adjoins the existing diner in East Windsor for a parking lot. The applicant had

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originally proposed to construct a 78-space parking lot and driveways on this leased land and connect them to the existing parking area on adjoining Lot 40.02. No access to the Borough's wastewater treatment plant will be provided through the new parking area, which is on the same lot. The applicant had presented a site plan application in 2019 which depicted the proposed layout of parking and vehicle circulation, landscaping and lighting on the Borough property and how it would integrate with the improvements on the existing diner site. The applicant did not proceed with that application but nonetheless constructed most of those improvements without use variance/site plan approval.

Additionally, slight modifications to the existing parking layout and driveway on East Windsor Township's Block 57, Lot 11 are planned. The lease with the Borough also allows a farm stand to be constructed on the property, however, a farm stand has not been included in the application.

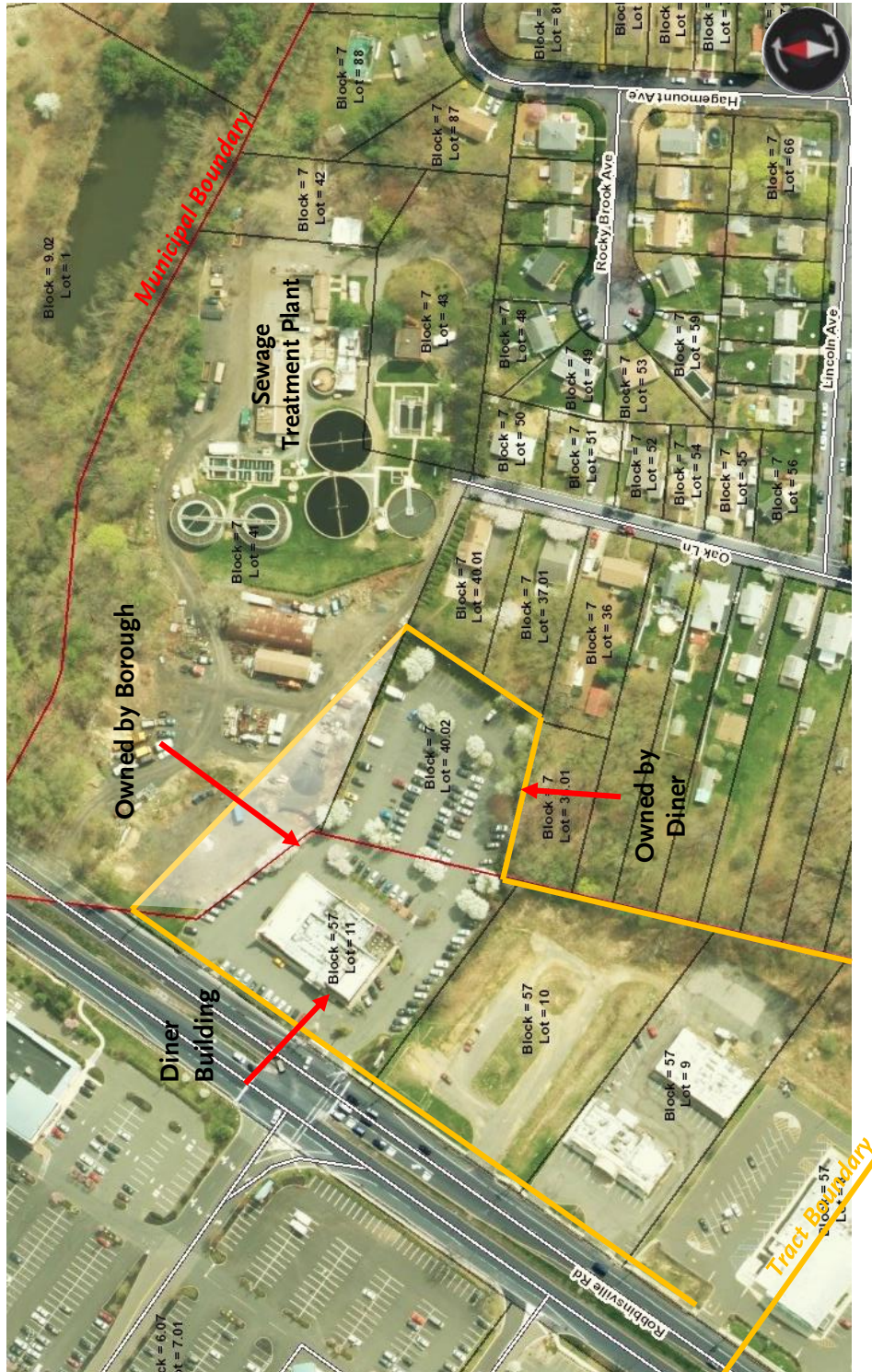
- 2.2 Property Description. Lot 41 in Block 7 contains the Borough of Hightstown's wastewater treatment plant. It has frontage on Route 130 just north of the traffic signal for the entrance to the East Windsor Towne Center shopping center and the Americana Center. Lot 40.02 is owned by the applicant and is currently developed as a parking lot at the rear of the Americana Diner. This lot directly adjoins residences on Oak Lane in Hightstown. Both lots are zoned R-3 Residential Single-Family by Hightstown. Adjoining properties to the south area located in East Windsor and have frontage on Route 130 and are zoned by the Township of East Windsor as H-C Highway Commercial.

**3. Variances and Exceptions**

- 3.1 Non-Permitted Use. Lots 40.02 and 41 are located in the Borough's R-3 Residential District which permits detached single-family dwellings, schools, places of worship, public utility offices and facilities, hospitals, nursing homes, cemeteries, agricultural uses, community residences and shelters. The existing parking lot on Lot 40.02 is an existing non-conforming use which has been expanded and altered to provide access to the new parking area on Lot 41. A d(2) use variance, was granted in 2011 to permit the expansion of the non-conforming parking use on a portion of Lot 41. That approval permitted only parking facilities and was conditioned on a number of requirements which were apparently never met. The applicant currently proposes to construct refuse storage facilities and compaction equipment on a portion of Lot 40.02 which had previously been used as parking spaces and landscape buffer area. A new d(2) use variance is recommended to permit the expansion of the existing non-conforming parking lot and new refuse storage and compaction facilities.



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Aerial Photograph of Subject Property and Surrounding Area



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- 3.2 Parking Stall Size Variance. §28-10-11.f requires parking stalls to be a minimum of 20 feet long. A variance had been granted as part of the original 2011 site plan application to permit 18-foot long stalls. The new parking area was also constructed with unapproved 18-foot long stalls. A variance is required to permit this depth for the new undersized stalls.
- 3.3 Maximum Lot Coverage Variance. The only bulk standard applicable to the subject property is Maximum Lot Coverage, which is limited to 40% of the gross lot area per §28-3-7-B(10). Of the 35,650 sf. of Lot 41 developed as part of the new parking area, approximately 27,000 sf. of that lot will be impervious coverage. In order to determine if the entire lot, which also includes the Borough's sewage treatment plant and its ancillary equipment and compacted areas, the applicant will need to supply a lot coverage percentage to determine if it meets the Borough's ordinance limit. With regard to Lot 40.02, the property had an existing lot coverage of 73% which was increased to approximately 76% following the construction of the new, but unapproved, improvements. A variance to permit the increased lot coverage on Lot 40.02 is required. If not approved, the applicant will be required to remove two percent of the lot coverage in a logical fashion.
- 3.4 Fence Height Variance. The proposed refuse enclosure consists of eight-foot tall board-on-board fencing. §28-10-4.b limits fences to a maximum height of six feet.

**4. Variance Comments**

- 4.1 Expansion of Non-conforming Use Variance. As noted previously, the changes to the existing parking lot and addition of refuse storage and compaction facilities constitute an expansion of the non-forming use and require a variance pursuant to N.J.S.A. 40:55D-70(d)2. In *Shire Inn, Inc. v. Avon-By-The-Sea*, 321 NJ Super. (App. Div. 1999), the Court drew from multiple rulings from other non-conforming use cases to reiterate the key findings that set forth the basic premise pertaining to such requests, "The pre-existing, non-conforming use concept was developed as an appropriate device for balancing the public interest in sound land use planning and control with the private right to maintain a previously permitted use ... that device permits a currently disapproved-in-the-zone use to continue without significant expansion or substantial change, until the use abates or is abandoned. Continued use and necessary maintenance are mandated, but enlargement or material modification are prohibited. Thus, the owner or occupant is guaranteed its right to continued use, but is prohibited from changing or improving the property so as to provide for different uses or enhanced returns."

While seemingly at cross purposes, these limitations are tied to the rationale of





the negative criteria; that there must be a benefit to the community and not just enhanced returns for the owner. The inquiry must focus on the quality, character and intensity of the use, viewed in its totality and with regard to their overall effect on the neighborhood and the zoning plan. This involves an appraisal of the use, both before and after the change.

- 4.2 Positive Criteria. To satisfy the positive criteria for a “d” variance, also known as special reasons”, the applicant must demonstrate that “the proposed use promotes the general welfare and is particularly suited for the site.” A site for commercial use, may only meet the positive criteria if it, “serves the general welfare and thereby satisfies the positive criteria [and] if the use is particularly suited for the proposed site.” To demonstrate that a property is particularly suited for the proposed nonconforming use, an applicant must show the need for the use at that particular location. Peculiar suitability may exist where “the use is one that would fill a need in the general community, where there is no other viable location, and where the property itself is particularly well fitted for the use either in terms of its location, topography or shape.” The applicant should be prepared to address the need(s) in the community that the use may already be serving, and the suitability of the site for the use. Since a portion of the site (Lot 40.02) has already been used in this manner for many decades, the continuation of the same type of use would point towards finding it suitable.
- 4.3 Negative Criteria. In addition to meeting the special reasons, or positive criteria, a second test of meeting the negative criteria is required. In considering potential detriment to the public good related to the proposed expansion of the non-conforming use issues to consider may include, but are not limited to, impacts on traffic and circulation, parking, visual character/aesthetics, noise, and air quality.
- 4.4 Neighborhood Context. From a neighborhood context viewpoint, the existing commercial development adjoining both the wastewater treatment plant and the existing diner parking are separated from the residential neighborhood by extensive landscape screening and buffering. The applicant also benefits from the adjoining residential lots having much greater depth than other lots in the immediate neighborhood, which allows for greater separation of the nuisance aspects of the parking lots from the residences. However, the reduction and quality of the existing landscape screening and buffering and the new encroachments into that landscape screen by the refuse containers is a factor in considering whether the development creates a substantial adverse impact to the neighborhood and the zoning scheme of the municipality.

As a short hand guide, we have listed several questions that are commonly asked in use variance applications for the Board’s consideration:



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SPECIAL REASONS (POSITIVE CRITERIA)

- Does the site have characteristics which make it peculiarly (but not uniquely) suited for the proposed use?
- Are there unusual circumstances regarding the applicant and/or property which would result in undue hardship if a use variance were not granted?
- Does the use promote the purposes of zoning? Typically, the Board would need to find that one of the purpose statements of the municipal land use law applies to the application.

NEGATIVE CRITERIA

- Would substantial detriment occur to the public health, safety and welfare if a use variance were granted?
- Would an impairment of the intent and purpose of the Master Plan or the Zoning Ordinance and Zone Plan (Zoning Map) result if a use variance were granted?

4.5 Consistency with the Master Plan and Zoning Ordinance. The applicant must also prove not only "that the variance can be granted 'without substantial detriment to the public good,'" but also "must demonstrate through an 'enhanced quality of proof . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.'" The master plan provides the basis for land use policy throughout the Borough. The 2014 master plan update does not contain a land use plan map but instead has a proposed zoning map tied to a description of the different land use categories and zoning districts of Hightstown. The master plan does not address the subject property or provide any references to the use of the Borough's wastewater treatment plant.

**5. Site Plan Comments**

5.1 Changes in Layout. The plans have been revised to depict most of the conditions as they have actually been constructed. Overall, the layout is essentially unchanged from the April 2019 version of the plans, except for the location and type of outdoor refuse storage, arrangement of parking spaces near the building and the extent of plantings.

5.2 Refuse Storage Location. The plans have been revised since our last review to relocate the refuse facilities from Lot 41 to the solely on Lot 40.02. During a site visit in April 2022, it was observed that the diner was utilizing multiple dumpsters, totes, milk crates and compactors concentrated in the landscaped



buffer area between the parking lot and the rear lot line of Lot 40.01 and the southeast corner of Lot 40.02.



**View of Dumpsters, Crates and Totes in Buffer at Northeast Corner of Site**

- 5.3 Refuse Storage Area Design. The current version of the site plan proposes two compactors and an 8-yd dumpster to be located in the rear of Lot 40.02, in the northeast corner of the property. As currently proposed, an eight-foot high board-on-board fence will enclose the dumpster and compactors and be secured with gates. Although the eight-foot tall fencing exceeds the maximum permitted, it is high enough to obscure the height of the compactors. The revised layout creates a conflict with an adjoining parking space and now extends into the landscaped buffer between the parking lot and the residence on adjoining Lot 40.01. Given the extent of facilities currently serving the diner based on our previous observations, the proposed design raises numerous concerns with respect to the adequacy of the space and facilities proposed to accommodate the refuse generated by the now expanded diner, including noise, vibration, odor and effluent, that may affect the adjoining residential uses.

If the Board finds this location is acceptable for refuse storage, we recommend that the entire refuse storage area be enclosed by a raised curb to contain the dumpster and any effluents that may result from refuse storage. A drainage inlet may need to be added and tied into the stormwater system. Additionally, specifications on the noise and vibration from the operation of the compactors should be provided to determine whether physical measures are required to mitigate these factors as well as restrictions on the time of day when compactors may be operated.



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- 5.4 Landscape Plan. The April 2019 Landscape Plan proposed a line of shade trees along the easterly lease line of Lot 41 and significant shrub and groundcover plantings within the parking lot islands, including six shade trees and four ornamental trees. Evergreen shrubs were provided around the dumpster enclosure. The current Landscape Plan has a date of April 29, 2022, with no prior issue date or revision dates and includes a Plant Schedule which does not include the size of plant material or full common or botanical names. This plan differs substantially from the Landscape Plan of April 2019; providing only four shade trees and five ornamental trees within the parking lot islands and scant shrub and groundcover plantings. There are no plantings proposed around the refuse storage area. A line of evergreen trees is proposed along the easterly lot line of Lot 41.

We recommend a return to the April 2019 landscape plan, adjusted for the changes in site layout but continuing with the same theme as the original. The Plant Schedule should be revised to include common and botanical names of plant materials, planting size and height and planting details and notes in accordance with standard reference material.

- 5.5 Lighting. The current plan depicts a new layout of fixtures, some retrofitted and some new fixtures, however still with 25 foot mounting height and 4,000°K color temperature. The plan notes indicate an average light level of 1.27 foot-candles and an average to minimum uniformity ratio of 4.23:1. The plan has been revised to indicate all lights within the parking field will be extinguished at 3 a.m. We defer to the Borough Engineer on the adequacy of this lighting plan.

We would be pleased to answer any questions concerning this review.

- Cc. Jane Davis, Planning Board Secretary  
Scott Miccio, Esq., Planning Board Attorney  
Carmela Roberts, PE, Planning Board Engineer  
George Chin, Zoning Officer  
Mark S. Shane, Esq., Applicant's Attorney  
Gregory S. Oman, PE, Applicant's Engineer