



TOWNSHIP OF NORTH BRUNSWICK

710 HERMANN ROAD
NORTH BRUNSWICK, NJ 08902

Tel.: (732) 247-0922 x440

Website: WWW.NORTHBRUNSWICKNJ.GOV

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Mr. Jae H. Cho, Esq.
100 Plainfield Avenue, Suite 8 E
Edison, NJ 08817

FROM: Sal Profaci, Zoning Officer

DATE: August 31, 2023

SUBJECT: Street Address: 1186 Livingston Avenue, North Brunswick, NJ 08902
Block: 137 Lot: 9.02
Applicant: 1186 Livingston NJ, LLC.
209 W 29th Street 3rd, Suite 6308, New York, NY 10001

Dear Mr. Cho:

I have reviewed the land use application submitted for the above address, and have determined that your client must appear before the North Brunswick Zoning Board of Adjustment for land use approvals, including bulk and use variances. The applicant has not provided a site plan which is required, and has not requested a waiver from this requirement. I am issuing the following Zoning Report and Completeness Determination.

Application Overview

1. The applicant is requesting a bulk variance for a six (6) foot fence located in the front yard area in multiple locations. The fence has already been erected without a permit, and a violation has been issued by the Township.
2. The applicant is requesting a use variance to construct and operate a farm stand and sell produce which is grown on the premises. This is not a permitted use in the R-3 zone.

3. The applicant is requesting an additional use variance to raise livestock, specifically up to five (5) Nigerian Dwarf Goats. The goats and their housing are already on-site and a violation has been issued by the Township.

Subject Property

4. The subject property is located in the R-3 Residential District. There are three buildings on the site which serve as office and storage for Stealth Communications. The three buildings combined total approximately 7,900 square feet. Stealth Communications is a fiber optic commercial contractor and internet service provider providing off site services. This use has been determined by the previous Zoning Officer to be a pre-existing non-conforming commercial use, as it is not permitted in the R-3 Residential Zone. A Zoning Occupancy for use permit application was approved on 1/28/2021 with certain conditions. It was noted that there be no expansion of the pre-existing use without a variance, and there shall be no outdoor storage of materials or equipment.
5. The subject property is approximately 7.5 acres located between Livingston Avenue and Newton Street. The parcel has approximately 158 feet of frontage along Livingston Avenue and has 1,220 feet in depth. There are single family residences located to the West on Bradley Street and residences to the South on Newton Street. Livingston Park Elementary School is located to the East. It is suspected that the subject property does contain wetlands as indicated on a ten (10) lot major subdivision concept plan prepared by Amertech Engineering dated 10/28/2020.

"D" or Use Variance Requested

1. ~~The applicant is requesting a use variance from 205-51 (A). Permitted uses. Farm stands are not permitted as a principal or accessory use in the R-3 Residential zone. Also note that although the property is farmland assessed, it does not control zoning or authorized uses of a property. In addition, the location of the proposed farm stand and parking areas have not been provided with the application.~~
2. The applicant is requesting an additional use variance to raise livestock, specifically up to five (5) Nigerian Dwarf Goats. North Brunswick Township Ordinance 205-40 (B) Uses prohibited in all zones states as follows: The keeping and raising of any animal other than horses or more than five domestic pets is prohibited in all zones. It must be noted that the applicant has not provided a survey or site plan indicating the location of the goat housing and chicken coop. The location and distances from the property lines have not been provided.

The applicant should justify this variance by presenting testimony as to the positive and negative criteria of the Municipal Land Use Law, NJSA 40:55D-1, et seq. sufficient to satisfy the Board that there are special reasons to justify the granting of the use variance, and that such a variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

“C” or Bulk Variances Requested

3. Chapter 205-93 A (1)(a) Fences states as follows: Open fences not exceeding four feet in height above ground level when located in a front yard area. (The applicant has constructed a six (6) foot fence in the front yard on both Livingston Avenue and Newton Street). It must be noted that the applicant has not provided a survey of the property indicating the location of the fence.

The applicant should justify these variances and provide testimony to satisfy the C-1 (“hardship”) and / or C-2 (“benefits v. burdens”) variance criteria.

Miscellaneous

I defer to the Township Engineer regarding the proximity of the site additions to the suspected wetlands located on the site.

Application Materials Reviewed

- 11 page Township of North Brunswick / Variance Application (Form C)
- A drawing of the property “not drawn to scale” submitted by the applicant.
- Township of North Brunswick Tax Map – Page 29
- 1 Sheet 10 Lot Subdivision Concept Plan Prepared by Amertech Engineering dated 10/28/2020.

The Township reserves the right to further comment based upon the testimony at the public hearing.

Completeness

1. Checklist:

The applicant must remit the following items in order for a completeness certification to be issued:

- W-9 Form
- 3 Copies of the Tax Assessment and Payment Report
- 15 Copies of property survey indicating location of fence, animal shelters, proposed farm stand and parking.
- A letter requesting waiver of site plan.

2. Fees and Escrow Deposits (§ 205-139):

Land Use Application Fees:

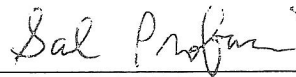
Site Plan Waiver Request	\$ 200.00
Zoning Report:	\$ 200.00
C Variance (\$200 x 1)	\$ 200.00
D Variances (\$750 x 2)	<u>\$ 1,500.00</u>
TOTAL:	\$ 2,100.00

Technical Review Escrow Deposit:

Site Plan Waiver Request	\$ 500.00
C Variance (\$300 x 1)	\$ 300.00
D Variances (\$300 x 2)	<u>\$ 600.00</u>
TOTAL:	\$1,400.00

Note: Please submit two separate checks in the above total amounts and the identified items above. Upon receipt and review of the requested materials, you will be notified regarding the status of your application with respect to a Board hearing, for which proper notification will be required. If you have any questions, you may contact Kristen Olcsvay, Secretary to the Zoning Board, at 732-247-0922, extension 209.

Sincerely,



Sal Profaci, Zoning Officer

c: Mayor and Council
 Michael Hritz, Director of Community Development
 Tom Vigna, Planner
 Planning Board





For Office Use Only	
Date Filed: _____	Appl. No.: _____
Appl. Fee: \$ _____	Escrow Deposit: \$ _____
Check One:	
<input checked="" type="checkbox"/> Zoning Board of Adjustment	
<input type="checkbox"/> Planning Board	

Revision Date: 9/2020

TOWNSHIP OF NORTH BRUNSWICK

Variance Application (FORM C)

The original and fourteen (14) copies of the completed application form supplied by the Township and the required number of copies of supporting documents listed in the applicable checklist must be filed with the Department of Community Development. If a waiver is being requested for any item on the checklist, it must be noted in the "waiver requested" section, and each item must be listed by checklist number and a detailed reason for the request must be provided. Any application that does not include an item required by the checklist, and for which a waiver has not been requested, will be automatically deemed incomplete.

All applications must be accompanied by appropriate fees and escrow deposits together with a written explanation of the amount calculations. Separate application fee and escrow deposit checks must be provided.

In addition to submittal of hard copies of documents, copies of all applications, surveys, plans, reports and studies, such as environmental impact, traffic, stormwater, sewer and water reports, and any other documents associated with the application, shall be submitted on a CD in portable document format (pdf) at 400 x 400 dpi. Submittal of such digital copies shall be required to constitute an application for development, and all revised files shall be resubmitted as the originals are changed or amended. Every electronic submission must be accompanied by a cover letter listing all attached documents and any revisions, where applicable. Single-family or two-family homeowners preparing variance applications on their own behalf shall not be subject to this electronic submission requirement, provided that such applications do not require site plan or subdivision approval.

The following proof of satisfying the notice requirements must be filed with the Secretary of the appropriate Board at least five (5) days prior to the date fixed for the hearing:

- Affidavit of Service
- Copy of notice served
- Certified List of Property Owners within 200 feet and others served with manner of service
- Certified Mail receipts stamped by the USPS
- Affidavit of Publication from the newspaper in which the notice was published.



PART I

SUBJECT PROPERTY:

Block 137 Lot(s) 9.02 Zone R3
Property Location 1186 Livingston Avenue, North Brunswick NJ 08902
Size of Property 7.35 acres

Present Use: Residential Non-Residential Vacant
Proposed Use: Residential Non-Residential **Specify:** .50 Acres Commercial/ 6.85 Acres Farm

CONTACTS:

Applicant: Corporation Partnership Individual
 Other/Explain _____

Name: 1186 Livingston NJ, LLC

Address: 209 W 29th Street Ste. 6308 New York NY 10001

Telephone: 212-232-2020 Fax: _____

Email: _____

Owner (if different from Applicant):

Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

Engineer:

Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____

Attorney:

Name: Jae H. Cho

Address: 100 Plainfield Ave.; Ste 8E Edison, NJ 08817

Telephone: 732-545-9600 Fax: 609-613-5611

Email: Jae@Cholegal.com

North Brunswick Variance Application
Part II

Preamble

1186 Livingston NJ, LLC purchased the property in spring of 2022 with the intention of continuing the use of the land as .50 acres for commercial business and 6.85 acres for farming as it has been for over 50 years. To protect the farms harvest from deer and local wildlife a 6 foot fence was erected around the property. We had asked the contractor if there was any paperwork from us required, to which they replied "no", then built the fence with motorized gate. However, the township has informed us that a permit is required. This variance request is to comply with the zoning ordinance and to allow the fence to remain as it is now built.



PART II

Describe the Proposed Development/Request (continue on a separate sheet if necessary):

Preamble on separate page

1. A. Continued use of property as .50 Acres Commercial for storage of materials and vehicles.
- B. Continued use of property as 6.85 Acres Farm assessed (as it has been for 50+ years) with expansion into livestock.
- C. Specifically the production of up to 5 Nigerian Dwarf Goats and 20 Laying Hens (no roosters)
2. Installation of 6 foot chain-link fence along the sides and front of property.
 - A. 1 Motorized Gate in front entrance.
 - B. Fence in front yard will be set back 70 feet from Livingston Ave and behind setbacks of adjacent property.
3. Installation of 6 foot black steel picket fence along back of property. (Newton St.)
 - A. Fence along back of property will have 10 foot set back from Newton St.
4. Use of mobile seasonal farm stand to sell farm produce. Farm stand will be located no closer than 20 feet from Livingston Ave property border and use wheels to be moved during non-farm seasons.

VARIANCE(S) REQUESTED (Check all that apply):

"C" Variance(s):

- C(1) - The strict application of the provisions of Chapter 205 would result in peculiar and exceptional practical difficulties or exceptional and undue hardship.
- C(2) - The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

"D" Variance(s):

- D(1) - Use or principal structure in a district restricted against such use or principal structure.
- D(2) - Expansion of a nonconforming use.
- D(3) - Deviation from a specification or standard pertaining solely to a conditional use.
- D(4) - Increase in the permitted floor area ratio.
- D(5) - Increase in the permitted density.
- D(6) - Height of a principal structure exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.



ASSOCIATED APPROVALS REQUESTED:

Site Plan:

- Site Plan
- Amended Site Plan
- Conditional Use

Subdivision:

- Minor Subdivision
- Preliminary Major Subdivision
- Final Major Subdivision
- Amended Preliminary Major Subdivision
- Amended Final Major Subdivision

Other (specify): _____

A change to a nonpermitted use shall require a site plan approval or, as a minimum, a site plan waiver request. Such request may be considered by the Board, and, if granted, will constitute an acknowledgment by the Board that the condition of the property is satisfactory and meets the requirements of Chapter 205. No site plan waiver will be granted if the condition of the property is not satisfactory in such matters as traffic, circulation, access, parking, lighting, setbacks, lot coverage, safety, landscaping, buffer, fire safety, noise or other requirements of Chapter 205

Is a site plan waiver requested?

- YES
- NO

If a site plan waiver is sought, explain why the request shall be granted:

Is the application proposed to be bifurcated?

- YES
- NO

If bifurcated, identify the nature of subsequent development approvals to be sought:

Identify Requested Variances:

Ordinance Section:

§205- 42

Requirement:

1 Horses per 5 acres

Proposed Deviation:

5 Nigerian Dwarf Goats per 5 acres



§205- <u>31</u>	<u>Up to 8 Laying Hens</u>	<u>Up to 20 Laying Hens</u>
§205- <u>93</u>	<u>Up to 4' fence in front yard(s)</u>	<u>6' fence in front yard(s) with set back</u>
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____

Identify Requested Design Waivers:

Ordinance Section:	Requirement:	Proposed Deviation:
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____
§205- _____	_____	_____

“C” Variance(s) (Check one that applies):

A variance under N.J.S.A. 40:55D-70.C(1):

Detail your argument for how this case conforms to this requirement, including, if applicable, reference to exceptional narrowness, shallowness or shape of the property, or exceptional topographic conditions or physical features uniquely affecting the property, or extraordinary and exceptional situations uniquely affecting the property or the structures lawfully existing thereon:



and/or

A variance under N.J.S.A. 40:55D-70.C(2):

Detail your argument for how this case conforms to this requirement: _____

D Variance(s):

State special reasons why the refusal to allow the project would impose on the applicant an undue hardship and/or how the proposed project carries out a purpose of zoning as defined in N.J.S. 40:55D-2. Detail your argument for 1) how the proposed use inherently serves the public good, and/or 2) why the property cannot reasonably be adapted to a conforming use, and/or 3) what unique characteristics of the site make it particularly appropriate for the proposed use rather than a permitted use: _____

A variance of 6 foot fence is requested for the 6.85acre farming portion of the property. If the variance application is denied, it would allow deer to travel onto the property and destroy an entire season of farming crop. Once the deer learn of the food source, deer will continue to return, which may increase the car accidents near the property. In addition, the frequency of deer increase the chance of spreading many types of Disease to us and our neighbors: Q fever, Chamydiosis, leptospirosis, among others. Deer also carry ticks that cause among other things, lyme disease. A unique benefit resulting from the variance is the availability of "farm to table" fresh produce, eggs and goat products to the neighborhood.

C and D Variance(s):

Supply a statement of facts why relief can be granted without substantial detriment to the public good: _____
The fence is inconspicuous. The front and sides are painted green to match surrounding fauna and the setback is 70' from Livingston Ave (front) and 10' Setback on Newton St. side (back/second front).

_____ The goat enclosures and waste are to be kept no less than 100' from residential properties.

_____ The chickens enclosure will be kept no less than 30' from residential properties

Supply a statement of facts why relief can be granted without substantial detriment to the intent and purpose of the zone plan and zoning ordinance: _____
The farm assessed land will be used in similar fashion to the existing land use for over 50 years . No change in occupancy.



PART III

Has there been any previous application to any Township Board involving these premises?

YES NO

If yes, provide file number(s) and state the nature, date and disposition of said mater:

Is public water available?

YES NO

If no, how will water service be supplied? _____

Is public sewer available?

YES NO

If no, provide proposed method of sewage disposal: _____

Are there any existing deed restrictions, easements or covenants?

YES NO

If yes, are copies provided?

YES NO

Are any deed restrictions, easements or covenants contemplated?

YES NO

If yes, are copies provided?

YES NO

Does the owner own or have any ownership interest in any contiguous property?

YES NO

If yes, provide type of ownership, address, block and lot(s): _____

LIST OF PLANS, REPORTS AND OTHER MATERIALS SUBMITTED:

Quantity:	Description of Item:
<u>1</u>	<u>Site Plan – Areas of Interest</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____



ESCROW FUNDS AGREEMENT:

The Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) authorizes the collection of Technical Review Escrow Fees to cover the costs incurred by the Township for professional services involved in the review of land use development applications. Subsection 205-139 of the North Brunswick Township Land Use Ordinance establishes the amount of Technical Review Escrow Fees and the procedures for collecting and replenishing same. I hereby acknowledge and agree to the following: 1) I am responsible for the cost of all reasonable professional services rendered to the Planning Board or Board of Adjustment during the review and processing of my development application. 2) If I receive a written Deficiency Notice from the Chief Financial Officer or his/her designee (CFO) that the balance of funds remaining in the account is insufficient to cover invoices, vouchers or bills submitted to the Township for services which have already been performed, no further consideration, review or processing of the application will be permitted until such time as the funds requested in the Deficiency Notice have been deposited, and this cessation of work could result in carrying my application to the next regularly scheduled public meeting of the designated land use agency. 3) Failure to deposit the amount requested in the Deficiency Notice within ten days of receipt shall toll the period for action by the Planning Board or Board of Adjustment as stipulated in N.J.S.A. 40:55D-1 et seq., and shall bar me from seeking a default approval under N.J.S.A. 40:55D-10.4. 4) Failure to post funds requested in the Deficiency Notice within 45 days shall be grounds for dismissal of my application without prejudice, and I acknowledge that failure to pay the shortfall shall result in the shortfall being deemed a lien on the property which is subject of the land development application. 5) In the event that my application is approved and a Deficiency Notice is received after the approval is memorialized, failure to pay the shortfall amount shall be grounds for voiding the approval. 6) In the event that my application is denied and a Deficiency Notice is received after the denial is memorialized, I am still obligated to pay any shortfall amount, and I acknowledge that failure to pay the shortfall shall result in the shortfall being deemed a lien on the property which is subject of the land development application.

Applicant's Signature: 1186 Livingston NJ, LLC **Date:** 05/22/23

Owner's Signature (if different from Applicant): David Flaum (Manager) **Date:** 05/22/23



SITE INSPECTION AUTHORIZATION

I hereby give permission for North Brunswick professional staff or municipal agencies and their agents to come upon and inspect these premises with respect to this application.

Owner's Signature: [Signature] Date: 5/24/23

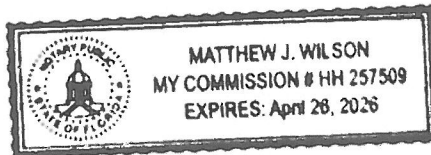
APPLICANT'S CERTIFICATION:

I, Shrihari Pandit, of full age, being duly sworn according to law and upon my oath, depose that: I reside at 4280 Soundside Dr, Gulf Breeze FL 32563 in the County of Santa Rosa and State of FL and that the above statements contained in this application and in the papers appended thereto are true. I further certify that I am the individual applicant, or a general partner of the partnership applicant, or an officer of the corporate applicant, and I am authorized to sign the application for the partnership or corporation.

[Signature]
SIGNATURE

Sworn to and subscribed before me this 24th day of May, 2023

[Signature]
NOTARY PUBLIC



OWNER'S CERTIFICATION (If the owner is a corporation, this section must be signed by an authorized corporate officer, If the owner is a partnership, this section must be signed by a general partner):

I, Shrihari Pandit, of full age, being duly sworn according to law and upon my oath depose that: I reside at 4280 Soundside Dr, Gulf Breeze FL 32563 in the County of Santa Rosa and State of FL and that the above statements contained in this application and in the papers appended thereto are true. I further certify that I am the owner in fee of all that certain lot, piece or parcel of land

