



HDPB-R0010

November 2, 2023
(via email)

Borough of Haddon Heights Planning and Zoning Board
Borough of Haddon Heights
625 Station Avenue
Haddon Heights, New Jersey 08035

Attn: Suzanne Ritter, Board Secretary

**Re: Case No. 23-10-1P: Certificate of Non-Conforming Use
Interfaith Homeless Outreach Council
802 Station Avenue; Block 54, Lot 1
R-2 Residential Zone
First Review**

Dear Ms. Ritter and Members of the Planning and Zoning Board,

As requested, we have reviewed the following materials submitted in relation to the above referenced Application:

1. Borough of Haddon Heights Planning Board Application for Certificate of Non-conforming Use, consisting of five (5) pages, submitted August 29, 2023;
2. Borough of Haddon Heights Planning Board Application for a Use Variance, consisting of two (2) pages, dated August 28, 2023;
3. Borough of Haddon Heights Planning Board Use & Bulk Variance Application Checklist, consisting of three (3) pages, dated August 22, 2023;
4. Borough of Haddon Heights Planning Board Affidavit of Ownership, consisting of one (1) page, dated August 3, 2023;
5. Summary of Application consisting of two (2) pages, undated; and,
6. Letter prepared by Donald S. Ryan of Ryan and Thorndike to Borough Zoning Officer concerning existing non-conforming use of subject property (802 Station Avenue), consisting of two (2) pages, dated August 7, 1990.

Based on our review, we offer the following comments regarding the above application.

A. Subject Property & Surrounding Area Description

1. Subject Property. The subject property is located at 802 Station Avenue and is comprised of Block 54, Lot 1 as identified on the Borough Tax Map, and located within the Borough's R-2 Residential Zone. Lot 1 is a rectangular, 160 ft. x 125 ft. (20,000 SF/ 0.459-acre) corner lot that fronts the intersection of Station Avenue (to the northwest) and 8th Avenue (to the northeast). The subject property is currently improved with a 2.5-story, 4,226 SF wood-frame dwelling, one (1) detached, two-car garage and two (2) separate, crushed stone driveways; the

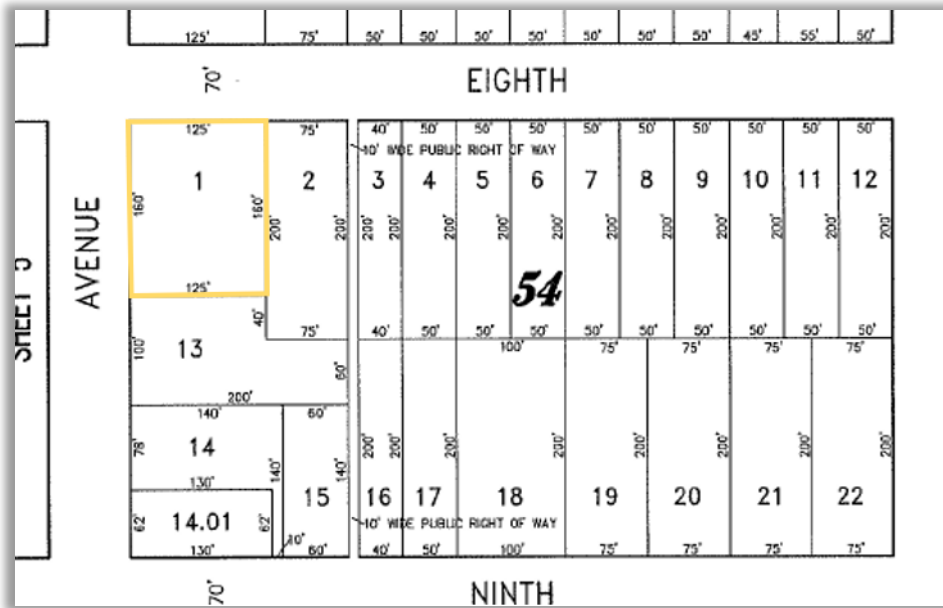


first of which provides ingress/egress to Station Avenue and the second to 8th Avenue. Landscaping appears to be present on the site.

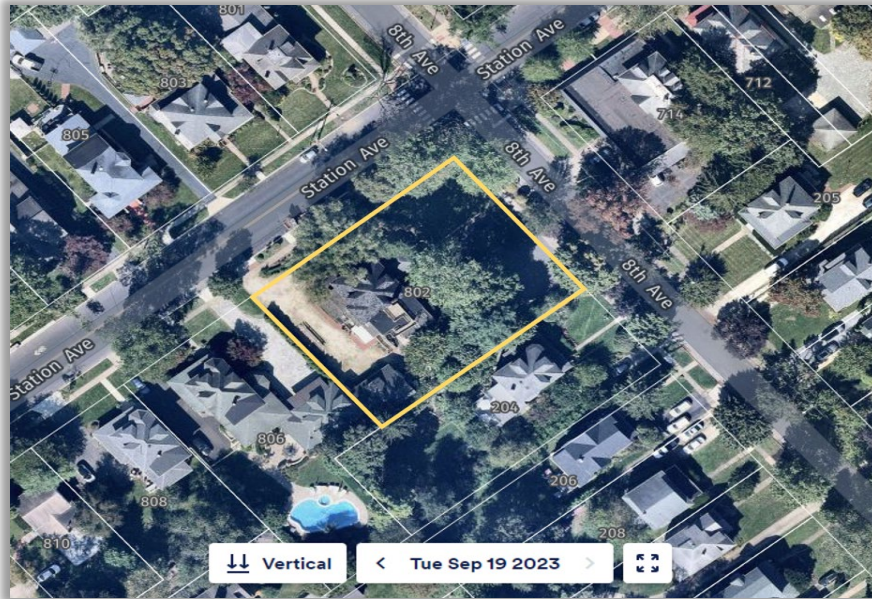
The existing dwelling currently serves as a rooming house operated by Interfaith Homeless Outreach Council (IHOC) and contains a total of 14 rooms. The rooming house is licensed pursuant to N.J.A.C. 5:27-1.6, "Regulations Governing Rooming and Boarding Houses." IHOC is currently the contract purchaser of the subject property, whereas the subject property owner is Joseph D. Duffin, Jr., who has authorized the current application submission on behalf of IHOC. The current MOD IV land use classification of the subject property is Class 4A - Commercial.

Provided below are images of the subject property's location on the Borough Tax Map, along with recent aerial and Streetview imagery of the subject property.

Borough Tax Map (Sheet 6) Outline of Subject Property – 802 Station Avenue; Block 54, Lot 1



NearMap Satellite Imagery – Outline of Subject Property



Google StreetView Imagery of Subject Property from Station Avenue (Image Captured July, 2022)



2. Surrounding Area. The subject property lies within a predominantly residential neighborhood located approximately one block to the southwest of the Borough's central business district. The following table provides a list of all properties adjacent to the subject property, along with their respective zone district and land use classification according to the Borough Zoning Map and 2022 Camden County tax records, respectively.



Surrounding Properties – 802 Station Avenue; Block 54, Lot 1; R-2 Residential Zone					
Adjacent to:	Address	Block	Lot	Zone (Borough Zoning Map)	MOD IV Land Use Classification (2022 County Tax Records)
Northwest (Opposite Station Ave.)	805 Station Avenue	43	23	R-2 Residential	Class 2 – Residential (1 dwelling)
	803 Station Avenue	43	22	R-2 Residential	Class 2 – Residential (1 dwelling)
	801 Station Avenue	43	21	R-2 Residential	Class 4A – Commercial
North (Opposite Station Ave. & 8 th Ave.)	715 Station Avenue	41	39	PO Professional Office	Class 2 – Residential (1 dwelling)
Northeast (Opposite 8 th Ave.)	714 Station Avenue	51	12	PO Professional Office	Class 4A – Commercial
Southeast	204 8 th Avenue	54	2	R-2 Residential	Class 2 – Residential (1 dwelling)
Southwest	806 Station Avenue	54	13	R-2 Residential	Class 2 – Residential (1 dwelling)

B. Proposal Description

As outlined in the submitted Application Summary, the Applicant (IHOC) proposes to purchase the subject property and continue its operation as a rooming house. The proposed number of units in the existing building will be reduced from 14 to 10. Additionally, according to the application materials, IHOC proposes to “...reduce the intensity of the use by operating the rooming house with strict house rules governing its occupants, as well as limiting occupancy to individuals who have successfully completed IHOC's Homeless Hospitality Network program or have agreed to abide by IHOC's rules as a condition of living in the home.” IHOC intends to operate the home as Class F rooming house licensed under N.J.A.C. 5:27-1.6. Aside from the interior renovations proposed to reduce the number of rooms, the subject property and existing building footprint will remain as-is, with no exterior site improvements proposed.

The applicant seeks a certification from the Board pursuant to N.J.S.A. 40:55D-68 that the preexisting, nonconforming use of the property may be continued lawfully, together with an interpretation that IHOC's intended use, as discussed above, constitutes a continuation of the preexisting use of the property. Alternatively, if the Board does not grant the requested relief, then IHOC shall seek a use variance to utilize the property as a 10-unit rooming house.

C. Relationship to Borough Master Plan

The July 1987 Master Plan includes the following goal on Page 3, “Provide a wide range of housing types to meet varied income and age levels as well as to protect and preserve the character of established residential areas.”



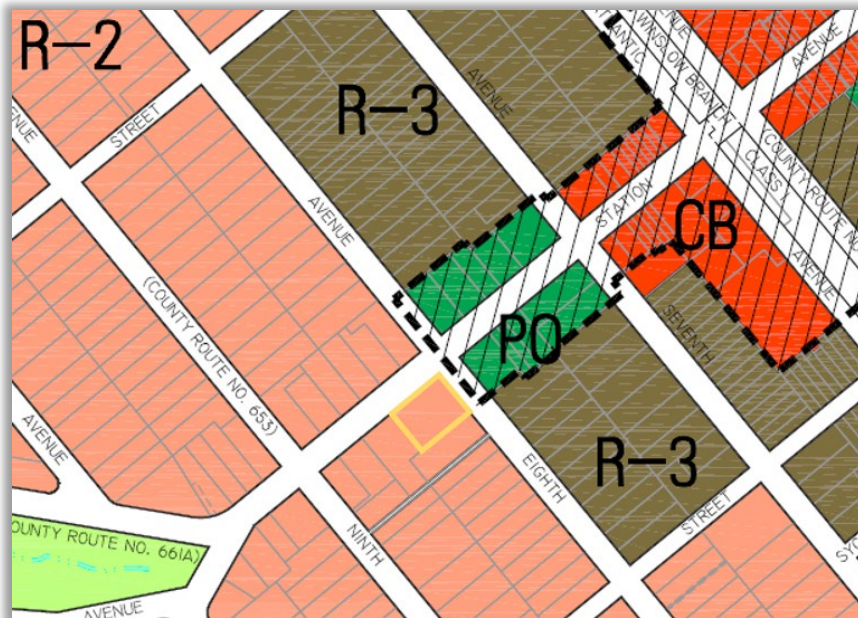
The 2016 Reexamination Report also includes the following on Page 28, “In order to seize on opportunities to foment the foundations of a vibrant community over the long term, Haddon Heights will need to: encourage the maintenance and modernization of the existing housing stock so that it remains relevant and desirable in the real estate market, encourage the emergence of a unified design scheme in the commercial areas, enhance pedestrian amenities, and reinforce a sense of place that separates sought-after communities from those that are more nondescript. At the same time, the Borough is mindful of the financial constraints faced by homeowners and business owners, and wishes to retain its residents and businesses without placing undue financial strains upon them. The Master Plan Reexamination seeks to set the stage for the necessary balance.”

The applicant shall provide testimony detailing conformance with the Borough’s master planning documents.

D. Permitted Uses – R-2 Residential Zone

As noted in the property description above, and as shown in the Borough’s Zoning Map (below), the subject property lies within the Borough’s R-2 Residential Zone. In accordance with Chapter 450, subsections 25 through 27 of the Borough’s Zoning and Land Development Ordinance, the following uses are permitted within the R-2 Residential Zone:

Borough Zoning Map - Approximate Outline of Subject Property (In Yellow)



1. § 450-25 - Permitted Principal Uses.

In the R-2 Residential District, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one of the following uses:



- a. *A single detached one-family dwelling house, in connection with which there may be a detached garage if consistent with § 450-26D. There shall not be more than one single detached one-family dwelling on a single lot. An attached garage is not permitted.*
 - b. *Accessory uses incidental or subordinate to a single detached one-family dwelling.*
 - c. *Public parks, playgrounds and gardens and private parks, gardens and greenhouses not larger than 240 square feet and outdoor storage buildings not exceeding 100 square feet.*
 - d. *Public recreation and community center buildings and grounds.*
2. § 450-26 - Permitted Accessory Uses.
- a. *Private residential swimming pools (in accordance with the applicable requirements § 450-96)*
 - b. *Fences and walls (in accordance with the applicable requirements of § 450-96).*
 - c. *Signs (in accordance with the applicable requirements of § 450-135).*
 - d. *A detached garage of not more than a two-car capacity, used solely by the persons living in the dwelling house, and a building for housing garden tools, provided that such garage or building is on the same lot as the dwelling house or on a lot contiguous thereto. No such accessory building shall be constructed upon a lot until the construction of the dwelling house has been commenced, nor shall an accessory building be used unless the dwelling house has been completed and put into use. No such accessory building shall exceed 450 square feet, and it will be a maximum height of not more than 16 feet to the peak of the roof.*
3. § 450-27 - Conditional Uses
- a. *Public and private day schools of elementary and/or high school grade licensed by the State of New Jersey.*
 - b. *Family day-care homes (in accordance with the applicable requirements of § 450-92)*
 - c. *Public utility installations, subject to the following special requirements:*
 - (1) *There shall be no storage of materials and trucks and no repair facilities or staging of repair crews except within completely enclosed buildings.*
 - (2) *The exterior of any structure shall be in keeping with the other structures in the immediate neighborhood.*

In accordance with Borough Ordinance subsections 450-25 through 450-27 above, rooming homes are not listed as a permitted use with the R-2 Residential Zone and are therefore not permitted.

E. Certification of a Nonconforming Use

With a request for a Certification of a Nonconforming Use, the applicant has the burden of proof in demonstrating that the existing use either predates zoning in the Borough or was legal at its inception.



The applicant has provided an August 7, 1990 letter from the Borough Solicitor to the Borough Zoning Officer for the Board members' consideration. The applicant also indicates that further evidence will be provided at the public hearing.

Other important considerations for the Board include:

1. The applicant is applying for a certification of a nonconforming use pursuant to N.J.S.A. 40:55D-68. The burden of proof is on the applicant and notice is required.
2. The applicant should attempt to show that: (a) the existing use was lawful at its commencement; and (2) that the lawful use was neither sporadic nor occasional. A common question with certification applications is: did the use exist on the property when the zoning ordinance was adopted?
3. If a nonconforming use was found to be lawful at its commencement, the applicant must also show that the use has continued without abandonment since its inception.
4. If a nonconforming use was found to be lawful at its commencement, the applicant must also show how the proposed parking aligns with the existing nonconforming use.
5. Variances and design waivers may be required should the Board find that the existing uses on the subject property are not preexisting nonconforming uses.

However, should the Board not act favorably to the certification of a non-conforming use, then a "d(1)" Use Variance will be required. In this case, the applicant must consider the following proofs required for a "d(1)" Use Variance.

F. "d(1)" Use Variance

A use variance pursuant to N.J.S.A. 40:55D-70d(1) is required when the proposed use is not permitted in the zone district. A use variance requires the applicant to show special reasons for the Board to approve the application. Special reasons are said to exist where the applicant has shown that the proposed project promotes one of the purposes of zoning that are listed in N.J.S.A. 40:55D-2 or, alternatively, where denying the variance would result in an undue hardship on the applicant.

The zoning purpose most often relied on to prove special reasons is the promotion of the general welfare. An applicant for a use variance must demonstrate that special reasons are satisfied by either showing that the use is an inherently beneficial use or that the proposed use promotes the general welfare because the proposed site is particularly suitable for that use. Promotion of the general welfare requires "particular suitability" and a showing that the property in question must be the location in which the proposed use is to be located. The applicant must show that there is a need for the use in the municipality or in the region.

Additionally, all use variance applications must satisfy the conventional negative criteria, which is a showing that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. For the first prong of the negative criteria, the "detriment to the public good," the focus is on the impact of the variance on nearby properties. The Board should evaluate the impact of the proposed use



variance upon the nearby properties and determine if it will cause damage to the neighborhood character that establishes a substantial detriment to the public good.

For the second part of the negative criteria, “impairment of the zone plan and zoning ordinance,” the applicant must show that the use sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. As an added requirement, for all d(1) variances, such as the current application, an enhanced quality of proof is necessary. The enhanced quality of proof reconciles the proposed variance with the zoning ordinance’s omission of the use among those permitted in the zoning ordinance. This additional proof reflects the required periodic review of the municipal master plan and zoning ordinance.

Inherently Beneficial Use:

Should the Board find the proposed use to be an inherently beneficial use, the following standards apply relative to the positive and negative criteria.

The positive criteria for an inherently beneficial use is presumptively satisfied because inherently beneficial uses are assumed to meet the “promotion of the general welfare” purpose of zoning.

The Court ruled in the Sica v. Wall Township Board of Adjustment, 127 N.J. 152 (1992) case that a four-step balancing test should be used when analyzing the negative criteria for an inherently beneficial use. There is no “enhanced quality of proof” requirement. Instead, the Board must balance the positive and negative criteria and determine whether, on balance, the “d” variance can be granted without causing substantial detriment to the public good and substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Sica court identified the following four-step balancing test:

1. *Identify the public interest at stake.*
2. *Identify the detrimental impacts that would result from granting the variance.*
3. *The Board should determine whether it can reduce any detrimental impacts by imposing reasonable conditions on the use; and*
4. *The Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good or substantial impairment of the intent and purpose of the zone plan and zoning ordinance.*

Additionally, the applicant must demonstrate the subject property’s conformance with the area and bulk regulations of the R-2 Residential Zone, pursuant to § 450-28 of the Borough Ordinance and any other applicable Ordinance requirements.

G. General Planning Comments

1. A property survey was not submitted with the application.
2. The applicant should confirm in testimony that no changes to the building footprint, the exterior of the building, or to other areas on the lot are proposed.
3. Testimony should be provided on the existing onsite parking and lighting.



4. Proof of the following outside agency approvals, as applicable, should be provided:
- a. Borough Fire Official
 - b. Borough Building Code Official
 - c. Any other applicable agencies having jurisdiction over the application.

Should you have any questions or require any additional information, please do not hesitate to contact our office.

Very truly yours,

T&M ASSOCIATES

ROBERT HUNTER, PE, PP, CME
BOARD ENGINEER

CAROLINE Z. REITER, PP, AICP
T&M PLANNING GROUP MANAGER

Applicant's Team

1. Applicant: Interfaith Homeless Outreach Council (IHOC) c/o Craig Bickel; 1989 Route 70 East, Cherry Hill, NJ 08003. Telephone (856) 906-7890.
2. Subject Property Owner: Joseph D. Duffin, Jr.

cc: Suzanne Ritter, Board Secretary; sritter@haddonhts.com

G:\Projects\HDPB\R0010\Correspondence\First Review _Case No. 23-10-1P_802 Station Avenue_B 54, L 1