

Mannington Township Planning Board
Regular Meeting
June 9, 2022

Present:

Donald Asay, William DeCinque, Richard Eber, Donald Richman, John Sakewicz, Jessica Lynne Winkers, Michael Colletti, Gaynel Schneeman, Robert Schmid, Corey Gaskill and Michael Aimino

Absent:

David Cadwallader, Luke Patrick, Nicholas Culver, John Emel, Carl Gaskill, Michael Sullivan

The meeting was called to order at 7:01 PM by John Sakewicz, Chairman.

The Sunshine Law Statement was read.

The Pledge of Allegiance to the Flag of the United States of America was recited.

Roll Call was taken to justify that there was a quorum in attendance.

The secretary of the planning board has given adequate notice of the meeting.

Donald Richman made a motion to approve the April 2022 minutes. Jessica Lynn Winkers seconded the motion.

All in Favor.

Doanld Asay stepped down from the board at this time.

Resolution 09-2022 Resolution Regarding An Application from Harris Properties, LLC Seeking a Determination as to the Need For A Use Variance, A Use Variance if Required and Bifurcation or Required Site Plan Approval for Property Located at 204 Route 45, Designated as Block 61, Lot 16

Motion was made by William DeCinque to approve the resolution. Richard Eber seconded the motion.

Roll call listed on the resolution below:

RESOLUTION 09-2022
RESOLUTION OF THE PLANNING/ZONING BOARD OF THE TOWNSHIP OF
MANNINGTON REGARDING AN APPLICATION FROM HARRIS PROPERTIES, LLC
SEEKING A DETERMINATION AS TO THE NEED FOR A USE VARIANCE, A USE
VARIANCE IF REQUIRED AND BIFURCATION OF REQUIRED SITE PLAN
APPROVAL FOR PROPERTY LOCATED AT 204 ROUTE 45,
DESIGNATED AS BLOCK 61, LOT 16

WHEREAS, an application has been submitted by Harris Properties, LLC, (the "Applicant"), 204 Route 45, Mannington, New Jersey 08079, for an interpretation/determination from the Planning/Zoning Board, sitting as a Zoning Board of Adjustment, that a Use Variance is not required for its planned development. In the alternative, should the Board determine that a Use Variance is required, the Applicant seeks Use Variance Approval and authorization to return to the Board on a bifurcated application for Site Plan Approval, for property known as Block 61, Lot 16, on the Tax Map of the Township of Mannington, commonly known as 204 Route 45, Mannington, New Jersey 08079, which property is owned by the Applicant; and

WHEREAS, the application was deemed complete by the Mannington Township Planning/Zoning Board, sitting as a Zoning Board of Adjustment, by unanimous vote of seven (7) in favor and zero (0) opposed, at its meeting on April 14, 2022. As to Schedule "A" General Requirements, the Board determined that Item #5 was not required as the Applicant is the owner of the Property and granted a waiver of Item #10 with respect to the present application, with the information to be provided at the time of site plan review. The Board further agreed to a bifurcation of the application, allowing the Applicant to submit a separate application for site plan review approval.

WHEREAS, the Applicant has given legal Notice as required by and in accordance with N.J.S.A. 40:55D-12, by serving proper Notice to property owners within 200 feet of the site, serving Notice on all required governmental agencies and public utilities and by publishing a proper Notice in the newspaper, all at least ten (10) days prior to the hearing; and

WHEREAS, in support of the presentation, the Applicant provided the following:

1. Application for Development Review & Application for Variance (Use), dated March 30, 2022; and
2. Request for Certified List of Property Owners within 200 feet, dated January 15, 2022; and
3. Certified List of Property Owners within 200 feet, with utilities, from the Office of the Mannington Township Tax Assessor, dated January 24, 2022; and
4. Schedule "A" (General Requirements), Schedule "B" (Site Plan Application) with bifurcation request; and
5. List of Corporate Stockholders, Witness List, Requested Waiver List, no date; and
6. Printout from Mannington Township website showing taxes paid up to February 1, 2022; and
7. Project Overview prepared by Boston & Seeberger, PC, dated March 31, 2022; and

8. Mannington Township Planning Board Resolution 2009-09 Granting Approval of a Use Variance to the Applicant, D.E. Harris Service, Inc., dated September 10, 2009; and

9. Proposed Building Concept Plan, prepared by Robert J. Seeberger, PE and Dale E. Boston, PLS, PP of Boston Seeberger, PC, 5 Ferry Road, Pennsville, New Jersey 08070, two (2) pages as follows:

- A. Project Site Base Map, page 1 of 2, dated March 31, 2022; and
- B. Variance Plan, page 2 of 2, dated March 31, 2022.

WHEREAS, the Mannington Township Planning/Zoning Board, sitting as a Zoning Board of Adjustment, has made its determination in this matter based on the following:

1. The documents set forth above; and
2. The representations made by the Applicant in its application and by the Applicant's attorney, Frank J. Hoerst, III, Esq., and the Applicant's representatives, Debra Harris and David Harris, at the time of the hearing before the Board on April 14, 2022; and
3. A letter from the Board's Engineer, Corey Ronald Gaskill, PE, CME, CFM, dated April 13, 2022, which is incorporated and made a part of this resolution by way of reference; and
4. Comments made by Corey Ronald Gaskill, PE, CME, CFM, the Board Engineer, and by Walter B. Dennen, Esq., the Board Solicitor, at the time of the hearing on April 14, 2022; and
5. At the time of the hearing no one from the public spoke.

WHEREAS, based upon the information provided at the time of the hearing and in the application, the Mannington Township Planning/Zoning Board, sitting as a Zoning Board of Adjustment, makes the following findings of fact and conclusions of law:

1. The Applicant has filed an application for an interpretation/determination from the Board as to whether a Use Variance is required regarding the expansion of the current facilities located at Block 61, Lot 16. In the alternative, the Applicant seeks a Use Variance. Applicant is proposing to demolish the existing office building (1,950 sq.ft.) and one storage building (2,760 sq.ft.) and replace them with a new 10,000 sq.ft. structure. The Conceptual Plan also indicates that the existing LP tank enclosure will be relocated and that new parking and stormwater management are to be provided. The Applicant requested that Site Plan Review Approval be bifurcated from the Use Variance portion of the application.

2. The property is located in the MD – Medium Density Residential Zoning District. The Applicant was granted a Use Variance on November 12, 2009 and memorialized in Resolution 2009-09, adopted September 10, 2009 to construct a plumbing and propane distribution business, including two (2) 30,000 gallon propane storage tanks.

3. The Applicant's attorney, Mr. Hoerst provided the Board with an overview of the relief requested and the proposed development on the property. The Applicant is currently operating a plumbing and propane distribution business on the property pursuant to a Use Variance approval that was granted on September 10, 2009 and memorialized in Resolution 2009-09, on November 12, 2009. The Applicant intends to demolish an existing office building and an existing storage building and replace them with one consolidated building that will house both activities. The new building will provide office space, conference rooms, and a training facility for new employees. The building will also provide a storage area for the plumbing operation. The existing septic system will be closed and a new septic system installed. Improvements to the parking lot will also be done.

4. Mr. Hoerst indicated that the Applicant is seeking a determination from the Board that under the particular facts and circumstances of this application and proposed development, the Applicant does not require a new Use Variance approval. Citing case law, Mr. Hoerst contended that as there is no change in the use that is occurring on the property, the mere expansion of that use would not trigger the need for a new Use Variance approval. It is his contention that the previously granted Use Variance runs with the land and absent a change in use, a new Use Variance is not required. It should be noted that the original resolution granting the Use Variance noted in Paragraph 10, on Page 2, that an expansion of the business on site was contemplated depending on demand. Mr. Hoerst acknowledged that the Applicant would be required to file an application for an amended site plan review, which he requested that the Board permit the Applicant to file as a bifurcated application.

5. The Board's solicitor, Mr. Dennen noted that there are varying legal opinions on whether a new Use Variance would be required in connection with what is essentially the expansion of a previously granted Use Variance approval. Mr. Dennen indicated that there is legal authority that would support the need for a new Use Variance approval where there is an expansion of a previously granted Use Variance, thus increasing the intensity of the use on the property. The concern is that the Board may not have granted the initial Use Variance had it been considering the more intensive use that would be presented by the expansion. Mr. Hoerst acknowledged that there are differing legal opinions on this issue, but believes that under the facts and circumstances of this application a new Use Variance approval is not warranted.

6. The Board determined that under the particular facts and circumstances of this application, the Applicant was not required to obtain a new Use Variance in order to pursue the proposed development as set forth in the Concept Plan submitted to the Board. There is no change in use or in the activities that will take place on the property. The Applicant's plans show an expansion in the size of the buildings that will house the activities taking place on the property, in order to accommodate the growth in the business, but no additional uses or activities will take place on the property. Expansion of the business on the site was contemplated as contained in the approving resolution from 2009. The Board determined that any issues regarding the expanded facilities can be adequately and properly addressed through a formal site plan review. As such, the Board conditioned the determination that no Use Variance would be required on the condition that the Applicant file a formal site plan review application, which substantially conforms to the Concept Plan submitted to the Board. The Applicant is permitted to file the site plan application as a bifurcated application.

WHEREAS, upon motion duly made and seconded to Grant the "Application for Land Development" for a determination that a Use Variance is not required in connection with the proposed development and that the Applicant is permitted to file a bifurcated application for Site Plan Approval, the Board, by a vote of 7 in favor, 0 opposed and 0 abstentions, (Voting for: DeCinque, Eber, Richman, Winkers, Schmid, Colletti and Culver), voted to **GRANT** the application; and

NOW, THEREFORE, BE IT RESOLVED, by the Planning/Zoning Board of the Township of Mannington, sitting as a Zoning Board of Adjustment, the application of Hamis Properties, LLC of 204 Route 45, Mannington, New Jersey 08079 requesting a determination that a Use Variance is not required in connection with the proposed development and that the Applicant is permitted to file a bifurcated application for Site Plan Review Approval, for property located at 204 Route 45 and known as Block 61, Lot 16, is **HEREBY APPROVED**, subject, however, to the testimony, representations and stipulations of the Applicant and their representatives, professionals and witnesses at the time of the hearing and in their submissions, and further specifically, subject to the following terms and conditions:

1. Under the facts presented under this application, the Applicant is not required to obtain a Use Variance in connection with the proposed development as set forth in the Concept Plan submitted to the Board; and

2. The Applicant is required to file an application for Site Plan Review Approval as a condition of the determination that a Use Variance is not required for the proposed development, said site plan to be in substantial conformance with the Concept Plan which was submitted to the Board and which application may be filed as a bifurcated application; and

3. The Applicant shall pay all escrows, costs and professional fees associated with the application pursuant to the Mannington Township ordinances and the MLUL within thirty (30) days of notice of said fees and costs, absent any challenge by the Applicant as to the correctness or amounts of such fees and costs; and

THE PLANNING/ZONING BOARD OF THE
TOWNSHIP OF MANNINGTON


JOHN SAKEWICZ, Chairman

ATTEST:

The foregoing Resolution was a memorialization of action taken at a regular meeting of the Planning/Zoning Board of the Township of Mannington held on the 14th day of April 2022; and such resolution was adopted by the Planning/Zoning Board of the Township of Mannington at a regular meeting held on June 9, 2022, by a vote 5 to approve, 0 to oppose and 0 to abstain.


REBECCA FERGUSON, Secretary

In favor of the resolution: Donald Richman, William Bechinique, Jessica Lynn Winkes,
Michael Colletti & Robert Schmid

Opposed to the resolution: 0

Abstained: 0

Donald Asay returned to the board at this time.

Tang Friendly Property, LLC
Application
Block 64, Lot 11 & 11Q
98 Old Kings Highway
Mannington, NJ

Howard Melnicove, attorney for the applicant, thanked the board for attending the meetings virtually. He went on to say that they are here to correct the project. These were buildings without site plans approval. The applicant did not notice for the meeting tonight. The applicant does not feel as though they need to provide notice. The building that was modified is already in the right of way.

Mr. Aimino stated that the board does not have jurisdiction to hear the application because it has not been noticed.

Mr. Melnicove waives all statutory timeframes that would be required. They will notice for the next meeting.

The planning board meeting was open to the public.
The planning board meeting was closed to the public.

The meeting was adjourned at 7:16 PM.

Respectfully Submitted,

Rebecca Gower Ferguson
Planning Board Secretary