

**Mannington Township Planning Board
Regular Meeting
October 12, 2023**

Present:

Donald Asay, Michael Colletti, Jessica Lynne Winkers, William DeCinque, Richard Eber, John Sakewicz, Dory Emel, Gaynel Schneeman, Robert Schmid, Corey Gaskill, Michael Sullivan, Michael Aimino and William Horner (Township Solicitor)

Absent:

Donald Richman, David Cadwallader, Kenneth Dunham, Nicholas Culver and Carl Gaskill

The meeting was called to order at 7:00 PM by Rebecca Gower Ferguson, Secretary. 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.

Richard Eber made a motion to approve the September 2023 minutes. Willaim DeCinque seconded the motion.
All in Favor.

**Block 60, Lot 4
75 Mannington Mills Road
Resolution Site Plan Waiver**

Richard Eber made a motion to approve the Resolution. William DeCinque seconded the motion.

Roll call vote.
YES: W.D., R.E., J.S., D.E. & R.S.
NO: (none)
Abstain: (none)

Resolution follows:

RESOLUTION 12-2023
RESOLUTION OF THE PLANNING/ZONING BOARD OF THE TOWNSHIP OF
MANNINGTON REGARDING AN APPLICATION FROM MANNINGTON MILLS INC.
GRANTING USE VARIANCES AND WAIVER OF SITE PLAN APPROVAL FOR
PROPERTY LOCATED AT 75 MANNINGTON MILLS ROAD,
DESIGNATED AS BLOCK 60, LOT 4

WHEREAS, an application has been submitted by Mannington Mills Inc., (the "Applicant"), 75 Mannington Mills Road, Mannington, New Jersey 08079, for Use Variance Approval and Waiver of Site Plan Approval to allow two (2) existing buildings to be used by a third party as storage warehouses on property known as Block 60, Lot 4, on the Tax Map of the Township of Mannington, commonly known as 75 Mannington Mills Road, 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 a vote of six (6) in favor, zero (0) opposed and zero (0) abstentions, at its meeting on September 14, 2023. No waivers were required or granted with the exception of the Applicant's request for Waiver of Site Plan Approval, however as a condition of deeming the application complete, the Applicant agreed to provide proof of taxes paid to the Board Secretary.

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) with Site Plan Waiver, dated July 25, 2023; and
2. Statement in support of Use Variance; and
3. Affidavit of Ownership; and
4. Stockholder Disclosure Statement; and
5. Aerial and Site Photos; and
6. Schedule A (General Requirements) form.

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 representatives, David Kitts, the Tenant's representative, Kevin Elder and the Applicant's Attorney, Adam I. Telsey, Esq., at the time of the hearing before the Board on September 14, 2023; and

3. A letter from the Board's Engineer, Corey Ronald Gaskill, PE, CME, CFM, dated September 13, 2023, 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 Michael A. Aimino, Esq., the Board Solicitor, at the time of the hearing on September 14, 2023; and

5. At the time of the hearing the following members of the public spoke:

A. Donald Asay. Mr. Asay inquired about insuring that the building was not used by the tenant to house hazardous materials.

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 Use Variances and for a Waiver of Site Plan Approval in order to utilize two (2) existing buildings for use by a third party as a storage warehouses. One large building will be partially used by the third party tenant, SMS Rail Service, Inc. ("SMS"), for storage of sunflower oil and wheat gluten. The Applicant was granted a similar approval for the storage of sunflower oil and wheat gluten in another unused building at the facility on July 13, 2023, with the memorializing Resolution 09-2023 having been adopted on August 10, 2023. The Applicant intends to lease out another building for use by SMS for storage of lumber or in the alternative the storage of small equipment such as lawnmowers, etc.

2. The property is located in the Industrial Zoning District. A warehouse is not a permitted use in this zone. Additionally, the use of the two (2) buildings as warehouses would constitute a second principal use on the property which also requires a Use Variance. The Applicant needs and has requested two Use Variances: (1) a Use Variance for the use of the buildings as warehouses; and (2) a Use Variance to allow two principal uses on the site. Both Use Variances were ultimately granted by the Board.

3. The Applicant's attorney, Adam Telsey, Esq. gave the Board an overview of the project and the approvals being sought. The Applicant is seeking Use Variances and Waiver of Site Plan Approval to utilize two (2) existing buildings on site as storage warehouses to be used by a third party. A portion of a large main building, identified in an aerial photo as the building with a large white roof, will be used for the storage of sunflower oil and wheat gluten. The Applicant is seeking approval to lease the entire building for storage although at the present time only a portion of the building will be leased by SMS. A second building, which is a small metal building located near the railroad tracks will be used by SMS for the storage of lumber by one of its clients or in the alternative will be used by SMS to store small equipment that the company utilizes on site.

4. Mr. Telsey noted that the buildings are particularly suited for the use as a warehouses. The buildings have been under-utilized for some time. The proposed use does not require any changes to the building or the outside surrounding area. He noted

that the current tenant is SMS but that could change over the years, however, the type of product being stored in the warehouse would be similar in nature. Mr. Telsey noted that the proposed use is very similar to other uses which are permitted in the Industrial Zoning District and in many ways less intensive. There will be no negative impact as the building is located within the 500 acre Mannington Mills complex, with no visibility to the general public. The Applicant is seeking a Waiver of Site Plan Approval as there are no changes being proposed or made to the outside of the building.

5. The Applicant's representative Mr. Kitts gave the Board an overview of the Applicant's requested approvals. The Applicant's tenant, SMS, has been using the building that the Board previously granted approval for warehouse use, but has determined that it needs additional space. A portion of the building identified in the aerial photos as having a white roof will be leased to SMS for the storage of the same material, namely sunflower oil and wheat gluten. The Applicant requested that the approval be extended to allow the entire building to be used by a third party tenant for storage should the need arise in the future. The Board ultimately granted that request, subject to the condition that the materials stored be substantially similar to the product currently being stored and that the third party tenant not be permitted to store any hazardous materials. The use of the building will be similar to the use of the other building that SMS is using, Monday through Friday during the daytime, with no weekend or night time hours. SMS expects to only hire up to three (3) additional employees with respect to this building.

6. The second building the Applicant is seeking approval for is a small metal building located near the railroad tracks. The plan is for it will be used by SMS for the storage of lumber by one of SMS's customers. If that occurs the lumber would be brought in by rail and then distributed off the site by tracker trailer. If the building is not used for the storage of lumber, it will be used by SMS for the storage of a pickup truck and small equipment, such as a riding lawnmower, etc. which are used by SMS on the site. The use of the building will also be Monday through Friday, daytime hours, with no weekends or night time use. No additional employees will be needed. Kevin Elder from SMS testified that the existing SMS employees will service this building and that they would not be employing any additional employees in regards to this second building.

7. The Board weighed the positive and negative criteria and determined that special reasons exist for the granting of the Use Variances requested. The use of the two (2) buildings as storage warehouses, on this very large 500 acre complex, is substantially similar to the uses that are permitted in the Industrial Zoning District, such as wholesalers or distributors, baking food and dairy processing. Utilizing a building which would otherwise remain vacant is a positive use of an existing building. There will be no negative impact to the surrounding community as the use will be less intensive than previously occurred in the building and the operations will take place on the large Mannington Mills complex which will be out of sight of the general public. There is no substantial impact to the zoning code or master plan as the proposed use is substantially similar to the permitted uses in the zoning district.

8. The Board further determines that a Waiver of Site Plan Approval is appropriate for the situation in question, as there are no proposed changes to the site. As such, the Board determined that the criteria for the granting of a site plan waiver were

met and the Board granted the Waiver of Site Plan Approval, subject to the conditions set forth herein.

WHEREAS, upon motion duly made and seconded to Grant the "Application for Land Development" to GRANT the Use Variances and for Waiver of Site Plan Approval, the Board, by a vote of 6 in favor, 0 opposed and 0 abstentions, (Voting for: Eber, Culver, Sakewicz, Emel, DeCinque and Schmid), 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 Mannington Mills Inc., 75 Mannington Mills Road, Mannington, New Jersey 08079 requesting Use Variances and Waiver of Site Plan Review Approval, to allow two (2) existing buildings to be used as storage warehouses to a third party tenant, for property located at 75 Mannington Mills Road and known as Block 60, Lot 4, 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. Subject to the Applicant complying with and obtaining any and all necessary approvals from any other local, county, state and/or federal government or administrative body, having jurisdiction over all or part of this land use development approval; and
2. In accordance with the code provisions of the Township of Mannington, no permits, approval or certificate shall be issued until all contingencies provided for herein are satisfied and no Certificate of Occupancy shall be issued, until all other contingencies provided for herein are satisfied and all bills and escrows relating to this property have been paid in full; and
3. The Applicant will comply with all provisions of the Township Engineer's letter of September 13, 2023, unless specifically modified herein or on the record at the time of the hearing; and
4. The Board Engineer shall review all plans and amended plans and inspect the site of the development (inspections by the Twp. Engineer as appropriate) in order to determine compliance with the terms and conditions of the Board approval. Any shortcomings noted by either shall be addressed to the satisfaction of the professionals before the issuance of a Certificate of Occupancy. The Applicant shall submit appropriate escrow amounts, as determined by the Board Engineer or Township Engineer and applicable law, for inspections; and
5. The Applicants will comply with all of the representations, findings and agreements set forth in the Board's findings of facts set forth above, as well as, all agreements and representations made by the Applicant on the record at the time of the hearing; and
6. 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

7. The Use Variance Approvals extends to permit the Applicant to rent out the entirety of both existing buildings for use as storage warehouses, subject to the requirements that the buildings cannot be refrigerated, the tenant may not store any hazardous material and the product stored must be substantially similar to the type of products represented by the Applicant and the tenant at the time of the hearing.

THE PLANNING/ZONING BOARD OF THE
TOWNSHIP OF MANNINGTON



JOHN SAKIEWICZ, 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 September 2023; and such resolution was adopted by the Planning/Zoning Board of the Township of Mannington at a regular meeting held on October 12, 2023, by a vote 5 to approve, 0 to oppose and 0 to abstain.



REBECCA FERGUSON, Secretary

In favor of the resolution: W.D., R.E., J.S., D.E. & R.S.

Opposed to the resolution: 0

Abstained: 0

Informal Presentation – Vittori Holdings

Vittori Family members Joel, Amy, Faith and John attended the meeting. Jamie Atkins also attended from First State Solar Partners. The family explained that they were interested in a dual use for a solar array and agricultural use. The site is capable and viable. The family stated that the property would be fenced and landscaped. This would be 50 acres of solar acres but they do have capacity to build on the total 135 acres of solar arrays and there would be 14 feet between the arrays. The presenters would also adhere to all setbacks and permits. This would be a 25 year lease with the option to renew. The individuals would also post a bond.

There was some discussion about the ability to ensure that a property was farmed. This type of application would require two use variances.

The panels would face due south and would be roughly 1 foot off of the ground. The panels would not be movable on the ground. They do track the sun east to west. The tallest point would be 9 to 10 feet tall.

This developer does not have any additional adjacent properties in the works. There was some discussion regarding the impact to neighboring properties.

Miscellaneous Business

Presentation by Mr. Horner and Mr. Sullivan: Special Occasion Events

The new SOE Program. Mr. Horner shared a copy of the new law. Special Occasion Events are now allowed on preserved farms. It is a property owner's permission.

Mr. Horner explained property owners rights and limitations when rights are separated out. The idea of having nonagricultural events on preserved farmland created a conundrum. This law does not mean that the municipal land use law does not apply.

These events are not protected by the Right to Farm Act.

The law is not written as clearly as explained. It is vague. There is a new type of use that might be coming to the board. This law is designed to give a lot of protections to the preserved land. An approval runs with the land, not the owner. The area for SOE's is locked in at 10 acres or 10% of the property. Events could be two days concurrent. This is not related to ag events on farmland.

Mr. Asay asked if the applicant would be coming to the board for a variance? Yes, that is the understanding I it is not a permitted use.

Mr. Sullivan explained the SADC is happy to help but the planning board will need to have standards that can be used for a review. There is a lot to think about because the types of events vary widely. Is it appropriate in every zone? Is it for every property within each zone? There are so many pieces that need to be considered. The standards that should be considered should be local and specific. The operational conditions are difficult to articulate in the ordinance and are also difficult to enforce.

Mr. Sullivan shared an example regarding a local brewery in Northern New Jersey.

Mr. Sullivan and Mr. Horner recommend taking a wait and see approach before developing regulations.

Corey Gaskill brought up the stormwater regulations.

There can be no “implied repealer.”

The planning board meeting was opened to the public.

The planning board meeting was closed to the public.

The meeting was adjourned at 8:23 PM.

Respectfully Submitted,

Rebecca Gower Ferguson
Planning Board Secretary