

Resolution No.: 2017-10

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A "D" USE VARIANCE TO JAMES J.
GAGLIANONE REGARDING PROPERTY LOCATED AT 719 WHIG LANE
(COUNTY ROUTE 619), AND BEING FURTHER SHOWN AS BLOCK 33, LOT
12.01 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: ZB-15-09**

WHEREAS, Application No.: ZB-15-09 (the "Application") was submitted before the Combined Planning/Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the "Board") by James J. Gaglianone, Millville, N.J., (the "Applicant") for a "D" Use Variance so as to permit mixed commercial uses on property located at 719 Whig Lane (County Route 619), (the "Subject Property") and being further shown as Block 33, Lot 12.01 on the Tax Maps of the Township of Elk (the "Township"); and

WHEREAS, the Applicant did appear at a meeting and public hearing held by the Board on the Application on December 21, 2015 at 7:30 P.M., time prevailing, at which time was the following present on behalf of the Applicant: William F. Ziegler, Esq., Holston, MacDonald, Uzdevinis, Ziegler & Myles, 66 Euclid Street, Woodbury, NJ 08096 (the Applicant's Attorney); and

WHEREAS, Mr. Ziegler represented to the Board that the Applicant could not be present due to an illness and that it was the Applicant's purpose to at least get the Application deemed complete, after which it would be carried to another meeting of the Board for the Board to weigh the merits of the Applicant's request for a use variance and site plan waiver;

NOW, THEREFORE, BE IT RESOLVED by the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, as follows:

FINDINGS OF FACT

1. The Application was subject to action by the Board on completeness only, after which a separate hearing would be held by the Board on a separate date, at which time the Board would act on the merits of the Applicant's request for a use variance to permit mixed commercial uses, and waiver of site plan, on

the Subject Property. Because the Application involved a Use Variance, under the New Jersey Municipal Land Use Law, the Board had to reconfigure itself into a seven-member Zoning Board of Adjustment, as only a Zoning Board of Adjustment can grant or act on a Use Variance. As such, Mayor Poisker and Township Committeewoman Nicholson were absent and did not participate in hearing the Application. In addition, Board member Hughes lived within 200 feet of the Subject Property. As such, he was conflicted from hearing the Application and had to recuse himself as well. Accordingly, the Board had jurisdiction to act on the Application.

2. The Board's professional planner, Steven M. Bach, PE, RA, PP, CME, Bach Associates, PC, 304 White Horse Pike, Haddon Heights, NJ 08035 and the Board's professional engineer, Stan Bitgood, P.E., C.M.E., Federici and Akin, P.A., 307 Greentree Road, Sewell, NJ 08080, were both sworn as to any testimony that they would give on behalf of the Board for the purposes of the Application.

3. The Applicant submitted and the Board entered into the record the following:

A. Application, Application Fee, Application Checklist, Escrow Agreement, Escrow Deposit, Notice of Public Hearing, Certification of Taxes Paid on the Subject Property, Affidavit of Service, Affidavit of Publication, Affidavit of Ownership, various colored and black and white photos of the Subject Property; and Certified List of Property Owners within 200 ft. of the Subject Property.

B. Plan of Survey & Topography, dated 10/13/16, signed and sealed by James A. Clancy, P.L.S.; Zoning Plan and Site Plan Waiver Request by James A. Clancy, P.E., dated 10/31/16; sketch of building floor plan room numbering, dated 11/9/16; Statement in Support of Variance Relief by William F. Ziegler, Esq., dated November 8, 2016; Letters dated Aug. 4, 2015 from Michael Lindner, Esquire; Board Resolution # 7-1995 dated 4/19/95; and Board Resolution # 01-30 dated 10/18/01.

C. Letter dated October 7, 2015 from Leah Furey Bruder, P.P., A.I.C.P., on behalf of Steven M. Bach, PE, RA, PP, CME, Bach Associates, the Board's professional planner, regarding her review of the Application.

D. Letter dated December 6, 2016 from Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., the Board's professional Engineer, to the Board regarding his review of the Application.

E. Letter dated January 31, 2017 and two letters dated February 1, 2017 from James A. Clancy, P.E., the Applicant's engineer.

4. The 7 acre Subject Property is located on the north side of Whig lane (CR 619) and also has frontage on Clems Run Road (CR 623) within the RE Residential Zone District. The site contains a masonry warehouse building, parking and outdoor storage areas. The Subject Property is surrounded in all directions by other properties in the RE Zone District. The property to the immediate east contains the Aura school. Other surrounding uses include residential dwellings, farmland and recreational fields.

5. Standard of Proof for “D” Variances

For “D” variances it is the Applicant’s obligation to present the “Positive” and “Negative” criteria to justify the variance. The Applicant must prove to the satisfaction of the Board that there are “special reasons” for the Board to exercise its jurisdiction to grant the requested relief, demonstrating that the site is particularly suited to the proposed use and that the proposal will advance the purposes of Municipal Land Use Law (N.J.S.A. 40:55D-2) and the Township’s Master Plan and Zoning ordinances (**POSITIVE**). The Applicant must also show that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance (**NEGATIVE**). The Applicant should provide testimony demonstrating that the proposal will meet the variance criteria.

6. The Applicant was requesting the following waivers from submission requirements:

* **#8** requires copies of applications to and certification of approvals from all outside agencies with jurisdiction. It appears that the Applicant is not proposing any site improvements at this time. If no site improvements are proposed, a waiver is recommended for the use variance review since no other agencies would have jurisdiction. However, if a site plan is required the Applicant will need approval from the Gloucester County Planning Board and potentially for the Gloucester County Health Department for well and septic system.

***#18** The Tax Map sheet should be submitted on the plans.
The Applicant agreed to comply.

* **#43** requires the use of existing and proposed structures, including lighting, grading and signage for each building. The usage breakdown has been provided by the Applicant, in a hand drawing. This is helpful information, however more information is needed regarding signage and lighting. A waiver is not recommended. If the use is granted conditioned upon site plan approval, this information may be provided with the site plan.

The Applicant will comply, and requests a conditional waiver for completeness only.

* #53 requires structures of historic significance within 200 feet to be identified. The Applicant has not provided this information. Due to the nature of the application a waiver is recommended.

* #55 requires the Applicant to provide contours at 20 foot intervals on the tract and within 100 feet of the tract in accordance with the grading plan requirements. The waiver is recommended for the use variance review. If a site plan is required, this information may be provided with the site plan application. If any new structures, pavement, or grading are needed then a grading plan will be required as part of a site plan application.

The Applicant agreed to comply, and is requesting a conditional waiver for completeness only.

* #67 requires that if on-site sewerage disposal is required, the results and location of all percolation tests and test borings must be provided. The Applicant should indicate if there are sanitary facilities on the site as well as the needs for utilities related to the change of use. In addition to the need to facilities for employees and customers, where does the water used in the course of business (for the board repair) drain?

The Applicant is requesting a conditional waiver for completeness only.

* #73 requires the Applicant to submit a NJDEP LOI for wetlands or a statement/certification from an expert stating that there are no wetlands on or in close proximity to the site. The waiver is not recommended. The Applicant should at a minimum provide a signed statement from the Applicant's expert in accordance with the checklist requirement.

The Applicant is requesting a conditional waiver for completeness only, and will provide a statement certification.

* #77 requires information on proposed signage, if applicable. The Applicant should be prepared to discuss signage at the hearing. If not signage is proposed a waiver is recommended.

The Applicant is requesting a conditional waiver for completeness only, but will supply a signage package.

7. **WHEREUPON**, a motion was made by Board Member Swanson, which was seconded by Board Member Clark, to grant the above referenced submission waivers, based on the representations and agreements made by the Applicant as are set forth immediately above, with the following Board members voting in favor of the motion to approve:

Clark, McKeever, Shoultz, White, Barbaro, Goss (Alternate Member #1) and Swanson (Alternate Member #2).

Mayor Poisker and Board Members Nicholson, and Schmidt were absent. Board member Hughes had recused himself.

8. The Application was carried to the Board's meeting and public hearing held on February 15, 2017. At that time, the Board once again reconfigured itself into a seven member Zoning Board of Adjustment, with Board members Mayor Poisker and Township Committeewoman Nicholson recusing themselves. Board member Hughes also recused himself since he lived within 200 feet of the Subject Property and was therefore conflicted from acting as a Board member on the Application. Appearing on behalf of the Applicant was William F. Ziegler, Esquire, the Applicant's attorney, James A. Clancy, P.E., P.L.S., P.P., the Applicant's professional engineer, planner and land surveyor, and James J. Gaglianone, the Applicant. Mr. Clancy was stipulated as an expert in the fields of engineering, planning and land surveying, and was entitled to testify as an expert in said fields on behalf of the Applicant for the purposes of the Application. Thereafter were Messrs. Clancy and Gaglianone sworn and provided testimony on the Application.

9. Mr. Ziegler, both by way of verbal representations and in reliance on his written *Statement in Support of Variance Relief* dated November 8, 2016, which was entered into evidence, as follows:

The Subject Property is currently improved with a 37,376 sq. ft. masonry building. Based upon the documentary record it was apparently originally built to serve as a cold storage facility. Reference is made to the floor plan submitted in support of the Application wherein rooms 1 and 2 are currently susceptible to use for cold storage. The Subject Property is likewise improved with a loading dock and various other spaces susceptible to warehouse and office use.

The Applicant (James Gaglianone) has a proposed new tenant (Sea Isle Ice Co.) which has not yet taken delivery but which intends to take delivery of rooms 1 & 2 for the storage of ice in this cold storage facility. Sea Isle Ice also intends to occupy room 3 as a small office and will employ one Warehouse Manager and approximately 5 deliverymen in wintertime and 10 deliverymen in the summertime. The delivery people will only be on site approximately 5% of the day as they will otherwise be making deliveries and the cold storage facility will be utilized as a distribution point. No ice manufacturing will be done on site as it is all performed in Woodbine, NJ. No external improvements are proposed relative to this potential new tenant.

The Subject Property is also occupied by Doughty's Furniture which utilizes rooms 4, 6, 7, 9 and 10 and which was approved by a previous application. That business employs one Warehouse Manager and one part-time summer employee. No changes to the site are anticipated as a result of the continued occupation by this tenant.

The Subject Property is also occupied as to rooms 13, 14 and part of 12 by a company known as Open Builds, owned by Mark Carew. That business is engaged in Internet sales of various components associated with the 3-D printing industry. The business employs seven people and has no retail sales whatsoever with all sales being done by way of the Internet and deliveries by way of recognized carriers such as UPS and Federal Express.

The Subject Property is also utilized by Steve's Mobile Trailer Repair which occupies rooms number 5 and part of 7 and which employees one owner and as far as the lease is concerned, allows for three trailers awaiting service to be parked behind the existing building.

The Subject Property is also currently utilized by Mike's Mobile Marine repair business which employs one owner, one employee and one part-time employee all of which are on site approximately 60% of the time. This business occupies rooms 8 and 11 and has access to the attached, pre-existing concrete pad on the north side of the existing building. The business typically provides off-site boat repair services but occasionally is required to store boats awaiting repair on site behind the building. There is no long-term storage of boats as the only vessels on site are those that are currently in the process of being repaired.

JR Landscaping occupies a portion of room number 12 for the storage of equipment utilized in the landscaping business. Typically, lawnmowers are stored over the winter and snow removal equipment is stored during the summer. There are typically no employees on site.

The building itself has two separate bathroom facilities and certain common areas which are utilized by all tenants.

The existing building long predates modern zoning. Whether it be treated as a pre-existing nonconforming use or group of uses, or whether or not use variances are required for new tenants under any analysis, the Subject Property, having been originally created as a warehouse, is particularly well-suited to the multiple uses for which it is currently and proposed to be utilized. Because of its particular suitability for multiple uses the Board has the inherent authority to recognize the structures as pre-existing and nonconforming or in the alternative to grant use variances pursuant to N.J.S.A. 40:55D-70(d)(1). Since the Subject Property and its affiliated structures have existed in this location for many years there can be no question but that the continued existence of these business uses at this location will not cause a substantial detriment to the public good.

Moreover, prior approvals in 2001 did not result in the expansion anticipated at that time nor have the improvements contemplated at that time been completed. The building and grounds remain as they were in 1995 when the current owner acquired the Subject Property.

There are no wetlands on the site pursuant to the Applicant's engineer certification. All trash and recyclable materials associated with the various uses are bundled, bailed and stored inside the existing structure. Old paint cans noted in prior reviews have been removed.

10. Mr. Joe Romano, owner of Sea Isle ice Co., a tenant in the building that this is the subject of the Application, was sworn and testified as to information about his company, its operating hours, operations, employees, etc., consistent with the representations made in Mr. Ziegler's presentation set forth immediately above. Mr. Romano testified that he felt that the Subject Property was particularly well suited for this business.

11. Mr. Gaglianone was sworn and testified as to the various tenants that he had in the building on the Subject Property, and the operations of Doughty's Furniture, consistent with the representations made by Mr. Ziegler. Mr. Gaglianone described the operation of JR Landscaping, and testified that, as to all of his tenants on the Subject Property, there were no retail sales made to the public.

12. Mr. and Mrs. Mark Carew, owners of "Open Builds" were sworn and testified as to the operations of their company, consistent with Mr. Ziegler's representations. Mr. and Mrs. Carew testified that there were no sales to customers on site as sales were conducted on-line, and that they found the building on the Subject Property to be particularly well suited for their business, which was enjoying much success.

13. Mr. Steven Kulb, owners of Steve's Mobile Trailer Repair, was also sworn and testified as to the operations of his company, consistent with the representations made by Mr. Ziegler. Mr. Kulb testified that most of his business was conducted off-site.

14. Mr. Michael Reakus, owner of Mike's Mobil Marine, was sworn and testified as to the operations of his business, which was consistent with the representations made by Mr. Ziegler. Mr. Reakus also testified that no retail sales to the public were conducted on-site, and that the Subject Property was particularly well suited for his business.

15. Mr. Clancy testified as to site issues raised by the Board's Planner and Engineer, as are set forth in their letters attached to this resolution. Mr. Clancy testified that, in his professional opinion, the Applicant satisfied both the "positive" and the "negative" criteria required for a use variance. In particular, Mr. Clancy testified that the site was particularly well suited for the various uses and, since there were no public sales taking place on the Subject Property, there was minimal impact to the zone code and adjacent properties as to noise, hours of operations, traffic, and employees. Mr. Clancy also testified that, for these reasons, there would not be a substantial detriment to the zone code or the master plan of Elk Township if the use variance was approved.

16. The Board's professional engineer and planner testified as to their concerns with respect to the Application. As to trash from the operations on site, Mr. Gaglianone testified that all recyclables were bundled and transported off-site. Common household-type trash was placed in bags and left at the curb for local trash pickup. As a condition of use variance approval, the Applicant agreed to provide trash containers that were to be used by his tenants for household-type trash to be placed at the curb for municipal pick-up.

17. The hearing on the Application was opened to the public, at which time the following member of the public were sworn and provided testimony on the Application:

Mr. Jay Hughes, who lives adjacent to the Subject Property, testified as to his observations of the businesses being conducted on the Subject Property. He provided background information as to the building on the Subject Property, supported the various businesses operating there, addressed the issue of lighting on the building, described traffic conditions at the site, was concerned about the noise that sometimes took place, questioned the ice business activities and landscaping business activities on the site, and stressed that all tenants on the Subject Property needed to comply with normal operating hours. In response, Mr. Gaglianone testified that the normal hours of operation of the various businesses on the Subject Property was 6 AM – 7 PM.

18. There being no further members of the public wishing to testify, the public portion was closed.

19. The Board's engineer, Mr. Bitgood, and the Board's Planner, Mr. Bach, both testified that while they supported a grant of the use variance, they felt that they could not support a waiver of site plan approval. In particular, issues such as grading, traffic circulation, parking, lighting, landscaping, noise levels, stormwater management, wastewater, fire access, loading, etc., needed to be addressed. They testified that a full site plan was not necessary, that a modified site plan would do, and that the Applicant's engineer should consult them as to what issues needed to be addressed on a modified site plan submittal.

20. After much discussion between the Applicant and the Board, the Applicant agreed to comply, and withdrew his request for a waiver of site plan requirements.

CONCLUSIONS

The Board concluded that the Applicant has met its burden with regard to both the "positive" and "negative" proofs pursuant to the NJ Municipal Land Use Law, for use variance approval. In particular, the Board concludes that the Subject Property is uniquely suited for the proposed use in that it provides ample space in an appropriate location to accommodate the proposed uses, and is well situated with regard to local roads and larger highways to conduct such

businesses as are now being conducted. The Board concludes that there would be adequate light, air, and open space in which to conduct the proposed businesses and that the Subject Property is particularly suited based on its location, size, and topographical features as well as access to local roads in which to conduct the business. The Board also concludes that there will not be a substantial detriment to the zone plan, the master plan, or the neighboring properties, based on the representations made by the Applicant, which will be further stipulated to at the time that a site plan is submitted to the Board, and site issues are resolved based on a hearing of same.

CONDITIONS

1. The Board presumes that the Applicant's Application, all maps, Exhibits, and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the Applicant's request for relief. In the event that it appears to the Board, on reasonable grounds, that the Application, exhibits, maps, and other documents submitted are not accurate, are materially misleading, or are the result of mistake, and the same had been relied on by the Board as they bear on facts that were essential in the granting of the relief requested by the Applicant, the Board may rescind its approval and rehear the Application, either upon the request or application of an interested party, or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

2. At any time after the adoption of this resolution of memorialization, should a party on interest appeal to the Board for an order vacating or modifying any term or conditions as set forth herein, upon the proper showing of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the Applicant, the Board reserves the right to conduct a hearing with the Applicant present, for the purpose of fact-finding regarding the same. Should the fact(s) at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems to be appropriate at that time, including but not limited to a rescission of its prior approval, a rehearing, a modification of its prior approval, or such other action, as appropriate.

3. The Applicant shall indemnify and hold the Township harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the Applicant, including but not limited to proper service and notice upon interested parties made in reliance upon the certified list of property owners and other parties entitled to notice, said list having been provided to the Applicant by the Township pursuant to N.J.S.A. 40:55D-12.c., and publication of the notice of public hearing in this matter in accordance with law.

4. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.

5. The Applicant must obtain all approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required of. The Applicant is further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Attorney, Engineer and Planner.

6. The Applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on this Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law. The Applicant's escrow account must be current prior to any permits being issued, or constructions or other activity commencing on the approved project, or any certificate of occupancy being issued.

7. The Applicant must obtain any and all other construction or municipal permits, inspections, etc., required with respect to the relief as granted herein.

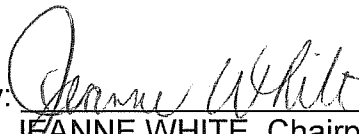
8. The approval granted herein is subject to the Applicant filing a Major Site Plan Application to the Board which will finalize the nature of the use and manner the use can properly exercised given sound planning and engineering principals.

WHEREUPON, a motion was made by Board member Afflerbach, which was seconded by Board member Schmidt, to grant the above referenced Use Variance, subject to the conditions, representations, and agreements as set forth above under Findings of Fact above, and based on the Applicant's testimony at a meeting following a public hearing held on the Application on February 15, 2017, with the following Board members voting in favor of the motion to grant approval: Clark, McKeever, White, Schmidt, Afflerbach, Goss (Alternate # 1) and Swanson (Alternate # 2). There were no abstentions or votes in the negative. The following Board Members had recused themselves since the Board had configured itself into a seven-member Zoning Board of Adjustment: Poisker, and

Nicholson. Board Hughes recused himself since he lived within 200 feet of the Subject Property. Board Member Shoultz was absent.

THIS RESOLUTION WAS ADOPTED at a regularly scheduled meeting of the Combined Planning/Zoning Board of Adjustment of the Township of Elk, County of Gloucester, State of New Jersey, on March 15, 2017 as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on February 15, 2017 on the above referenced Application.

**COMBINED PLANNING/ZONING
BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF ELK**

By: 
JEANNE WHITE, Chairperson

ATTEST:

By: 
ANNA FOLEY, Secretary

CERTIFICATION

I hereby certify that the foregoing resolution is a true copy of a resolution adopted at a regularly scheduled meeting of the Elk Township Combined Planning/Zoning Board of Adjustment, County of Gloucester, State of New Jersey held on the 15th day of March 2017 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:30 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on February 15, 2017 on the above cited Application.


ANNA FOLEY, Secretary