

**RESOLUTION OF THE COMBINED PLANNING/ZONING BOARD OF
ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER,
STATE OF NEW JERSEY, GRANTING A USE VARIANCE TO COPART OF
CONNECTICUT, INC., REGARDING PROPERTY LOCATED AT 735 & 749
JACOB HARRIS LANE AND BEING FURTHER SHOWN AS BLOCK 66, LOTS
1.02 & 1.03 ON THE TAX MAPS OF THE TOWNSHIP OF ELK,
APPLICATION NO.: ZB-20-02**

WHEREAS, Application No.: ZB-20-02 (the “Application”) was submitted to the Combined Planning/Zoning Board Adjustment of the Township of Elk, County of Gloucester, State of New Jersey (the “Board”) by Copart of Connecticut, Inc., 138 Christian Lane, New Britain, CT 06051-4123 (the “Applicant”) for Use Variance approval to permit an auto salvage yard, regarding property located at 735 & 749 Jacob Harris Lane, (the “Subject Property”) and being further shown as Block 65, Lots 1.02 & 1.03 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 August 19, 2020, said meeting being held virtually due to the Covid-19 Pandemic, at 7:00 P.M., time prevailing, at which time were the following present on behalf of the Applicant: Jennifer Johnson, Esquire, Siciliano & Associates, LLC, 16 S. Haddon Avenue, Haddonfield, N.J. 08033 (the Applicant’s Attorney); Charlie Eichman, Copart Regional Manager, 138 Christian Lane, New Britain, CT 06051; and Clifton Quay, Professional Planner, Stantec, 10000 Midlantic Drive, Suite 300W, Mt. Laurel, N.J. 08054 (the Applicant’s Professional Planner); and

WHEREAS, Mr. Quay entered into the record his licensing, experience and professional background, after which it was stipulated on the record, without objection, that Mr. Quay was entitled to testify on behalf of the Applicant as an expert in the field of planning; and

WHEREAS, Messrs. Eichman and Quay were sworn as to any testimony that they would give on behalf of the Applicant;

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 deemed to be complete, subject to the Board acting on certain requests for waivers from submission requirements. As such, the Board had

jurisdiction to act on the Application. Because the Application involved a “use” (d.1) variance, the Class I Board member (Mr. Poisker) and the Class III member (Ms. Nicholson) recused themselves from the hearing. Thereafter, the Board was constituted as a 7-member Zoning Board of Adjustment.

2. The Board’s professional planner, Candace Kanaplue, P.P., A.I.C.P, 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, the Board’s Professional Engineer, 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, Escrow Agreement, Escrow Deposit, Notice of Hearing, Affidavit of Service, Affidavit of Publication, Certification of Taxes Paid on the Subject Property, and Certified List of Property Owners within 200 ft. of the Subject Property, Affidavit of Ownership, Authorization for Contract Purchaser, and Disclosure Statement.

B. Submission checklist.

C. Site Concept Plan for Glassboro West Expansion, prepared by Westwood , dated 3/19/20;

D. Survey showing existing conditions for Block 735 and 749 Jacob harris Lane (New Jersey Avenue), prepared by Gary P. Yuro, P.L.S., dated May 4, 2020;

E. Zoning Plan for Copart Elk Township Block 66, Lots 1.01, 1.02 and 1.04, prr4pared by Clifton W. Quay, P.E., P.P., Santec, dated July 1, 2020;

F. Wetlands Statement prepared by Clifton Quay, P,E., P.P., dated July 1, 2020;

G. List of waivers dated July 1, 2020;

H. Deed Documents;

I. Tax Map Sheet 32;

J. Ten 10” x 12 “ photographs of the Subject Property.

4. The Board entered into the record the following:

A. Letter dated July 2, 2020 from Candace Kanaplue, P.P., A.I.C.P., Bach Associates, PC, the Board's professional planner, to the Board, regarding Ms. Kanaplue's review of the Application.

B. Letters dated July 2, 2020 and August 19, 2020 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.

5. The Subject Property consists of two parcels, totaling 12.45 acres, and is located adjacent to the north of an existing salvage yard, a pre-existing, nonconforming use, owned by the Applicant on the east side of Jacob Harris Lane (Lot 1.01, 781 Jacob Harris Lane) within the M1 Light Manufacturing zoning district. Lot 1.03 is approximately 5 acres, wooded and currently contains the remains of a small foundation, a small amount of wetlands and floodplain in the rear, and a drainage easement line. Lot 1.02 is approximately 7.45 acres and is wooded, with a high tension utility tower and power lines traversing the site, along with wetlands at the rear of the parcel. The Subject Property is surrounded to the north, south, west and east by other properties also in the M1 zoning district. The adjacent uses are predominantly comprised of light industrial uses and vacant woodland.

6. There are no existing water or sewer utilities within or adjacent to the tract. The site is not within the Elk Township Sewer Service Area (SSA) served by G.C.U.A. Multiple requests to the County and NJDEP have been made since 2015 to restore this area to the SSA. The most recent request in 2020 has not been approved or denied yet.

Zoning and Use

7. Zoning. In accordance with section 96-78 the M-1 Light Manufacturing Zone District permits production, processing, cleaning, testing, repair, storage and distribution of materials, goods, foodstuffs and products not involving retail activity on the lot; contractors' establishments not engaging in any retail on site; laboratories; public utility installations; agricultural uses; and golf courses. Several uses including retail businesses, residential dwellings, and the manufacture of heavy chemicals, cement and other similar products. The processing, sale, storage or reclamation of junk, including automobile wrecking and storing; are specifically prohibited. The Application indicates that the proposal is to park/store salvaged cars on the Subject Property, which is a specifically prohibited use. The Applicant has not provided a plan or requested site plan approval at this time. The proposed use is not permitted in the M-1 Zone District. A d.(1) use variance is required to permit a use or principal structure in a district restricted against such use or structure.

8. Use. The Applicant indicates that the site will be used to expand the adjacent salvage yard, parking cars until they are moved for auction. The Applicant also indicates that the proposed hours are 8 AM to 5 PM, with an increase from 15 "assignments" to 35 per day and an increase to approximately 11 total employees. Eighteen to twenty

incoming trucks per day are anticipated with this expansion, according to the Application. The Application included a concept site plan.

Bulk Standards:

<u>Section</u>	<u>Required</u>	<u>Existing Lot 1.01</u>	<u>Existing Lot 1.02</u>	<u>Existing Lot 1.03</u>	<u>Proposed Lot 1.01</u>	<u>Compliance</u>
96-78F(1)(a) Min. Lot Size	2 acres	26.18 acres	7.45 acres	5.0 acres	38.6 acres	Complies
96-78F(1)(b) Min Lot Frontage	200 feet	1,615.48 feet	484.67 feet	391.48 feet	2,491.63 feet	Complies
96-78F(1)(c) Minimum Lot Depth	200 feet	773.18 feet	601.04 feet	511.65 feet	511.65 feet	Complies
96-78F(1)(d) Max. Bldg. Coverage	20 %	0.3%	0	0	0.2%	Complies
96-78F(1)(e) Front Yard	100 feet	211.93 feet	N/A	N/A	211.93 feet	Complies
96-78F(1)(f) Side Yard	50 ft. each	262.24 ft.	N/A	N/A	262.24 feet	Complies
96-78F(1)(g) Rear Yard	75 feet	638.99 feet	N/A	N/A	638.99 feet	Complies
96-78F(1)(i) Max. Bldg. Height	40 feet	<40 feet	N/A	N/A	<40 feet	Complies

9. The Applicant requested waivers from certain submission requirements, as follows:

#8 requires copies of applications to and certification of approvals from all outside agencies with jurisdiction. The Applicant is bifurcating the use variance from the site plan application. A waiver is recommended for the use variance review, but the Applicant may need to make applications to the Gloucester County Planning Board and potentially for the Gloucester County Health Department for the well and septic system. The Applicant acknowledged the same.

#41 location of existing wells and septic systems and distances between them, and on adjacent properties where required by the Board. *A waiver is recommended by the Board's Planner.*

#53 location of historic features within 200 feet. *A waiver is recommended by the Board's Planner.*

#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. *A waiver is recommended by the Board's Planner 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. *A waiver is recommended by the Board's Planner for completeness only.*

#77 requires the size and location of proposed signs. *A waiver is recommended by the Board's Planner for completeness only.*

WHEREUPON a motion was made by Board member Schmidt, which was seconded by Board member White, to grant the above waivers from submission requirements, on a conditional basis, based on the agreements and acknowledgements made by the Applicant, with the following Board Members voting in the affirmative: Shoultz, Hughes, Afflerbach, Schmidt, White, McKeever, and Richardson (Alternate # 1). There were no votes in the negative, and no abstentions. Board Members Poisker and Nicholson had recused themselves as the hearing involved a use variance and the Board had reconstituted itself as a Zoning Board of Adjustment. Board members Clark and Swanson (Alternate # 2) were absent.

10. Ms. Johnson provided a brief overview of the Application, consistent with the above information.

11. Mr. Eichman provided background information regarding Copart. Mr. Eichman testified that Copart did not serve as an typical automobile auction, rather, it obtained cars from insurance companies, private vehicle sellers, car dealers, etc., and arranged for sales of same by way of an on-line auction. The Subject Property would be merged with their existing property so that additional vehicles could be stored for processing and sale. Two fences would secure the Subject Property. There would be no trash or recyclables on the Subject Property. The present property has been operating for over approximately 19 years, and there are approximately 1,400 cars presently on the adjacent property. Hours of operation are Monday through Friday, 8 AM – 5 PM.

12. Mr. Quay testified as to both the “positive” and “negative” criteria as to why the Applicant’s Use Variance should be granted, as follows:

The “positive” criteria.

Mr. Quay testified that, in his professional opinion, the proposed use met the purposes of zoning. In particular, the proposed use would be adjacent to the same use which has existed for over 19 years, thereby making the Subject Property particularly suited for the use (N.J.S.A. 40:55D-2.g). Furthermore, the Subject Property was near Ellis Mill Road, with direct access to Route 55. The proposed use would also provide

adequate light, air and open space (N.J.S.A. 40:55D-2.c); and it would not conflict with the development of neighboring municipalities, the county or the state as a whole (N.J.S.A. 40:55D-2.d). As to the “negative criteria”, Mr. Quay testified that the proposed use is less intensive than many of the permitted uses in the M1 Zone District. Therefore, the proposed use would not have a substantial detriment on the zone plan, the master plan, or the surrounding area. The vehicles to be parked would undergo an inspection prior to being transported to the Subject Property, and would be monitored for any leaks or other problems on the Subject Property, with the Applicant following a clean-up protocol in the event of any leakages or other problems associated with the vehicles parked thereon. Mr. Quay testified as to the almost 19 years of the same use on the adjacent property, with no significant problems occurring.

13. The Board’s Professional Planner, Candace Kanaplue, P.P., A.I.C.P., reviewed with the Board and the Applicant her letter of July 2, 2020 regarding the Application.

A. The Applicant should describe the proposed business and operation. Mr. Eichman had responded accordingly.

B. The Applicant should describe the type of cars that are being stored and how any chemical leaks will be minimized. Mr. Eichman testified that vehicles were inspected prior to being sent to the Subject Property for leaks and other damage. In addition, vehicles parked on the Subject Property would be monitored for leaks, and a leakage protocol would be followed in the event of a problem.

C. The Applicant should describe the anticipated circulation and timing of trucks into and out of the site. Mr. Eichman had testified as to the same.

D. The Applicant should describe the number of cars that will be anticipated to be parked on the site. Mr. Eichman had testified as to the same.

E. The Applicant should indicate on a plan where the cars will be stored. Mr. Eichman had testified as to the same. The Applicant testified that, if use variance approval was granted, it would submit a formal Major Site Plan application for approval, which will contain more detailed information.

F. The Applicant should indicate whether any structures are being proposed. The Applicant testified that no new structures were planned at this time.

G. Trash and Recyclables. The Applicant should indicate what type of trash is anticipated for this use, especially how tires, motor oil and other fluids will be disposed of. The Applicant testified that no trash or recyclables would be disposed of at the site.

H. Easement. The survey indicates a drainage easement on both Lots 1.02 and 1.03. In addition, a 120 foot wide Atlantic Electric easement for transmission lines traverses the Subject Property. The Applicant should indicate how this easement impacts

use and development of the Subject Property. For example, is the Applicant permitted to park cars within the easement and is the Applicant permitted to make improvements within the easement? A copy of the easements should be provided. The Applicant testified that this matter is currently being addressed with Atlantic City Electric, and further information will be provided at the time a formal Major Site Plan application is submitted to the Board.

I. Signage. The Applicant should be prepared to discuss any site identification signage that may be proposed. All signage must conform to the Elk Township sign regulations (Section 96-60). The Applicant testified that no new signage is proposed at this time, and any signage requested would be addressed at the time of a Major Site Plan submission.

J. Site Plan. Typically in a situation such as this, the Application may be “bifurcated”, meaning that the use variance may be considered first, and if approved, the applicant would return to the Board for a site plan prior to occupying the Subject Property. Additional information is needed in order to inform the Board’s decision on the use, but many details such as parking, access, lighting, landscaping, signage, etc could be deferred to site plan review. The Applicant acknowledged the same.

14. The Board’s Professional Engineer, Stan M. Bitgood, P.E., C.M.E., Federici & Akin, P.A., reviewed with the Applicant and the Board, his letter of August 19, 2020, as follows:

Technical Review

A. The revised plans, which was received 7/2/20, depict new expanded parking areas with aisles extending throughout most of the two lots. The notes, call outs and table of bulk requirements are satisfactory. The Board’s Engineer offered the following comments in considering the Application:

1. Bulk requirements: The plans include a table of bulk requirements that is satisfactory. The current M-1 zone data is shown. No bulk variances are proposed.

2. Plan Requirements: As the proposed use is an expansion of an existing non-conforming use in Lot 1.01, the survey should be revised to show all existing features and utilities with Lot 1.01. The Applicant has committed to providing an updated survey of lot 1.01. The Applicant acknowledged the same.

3. As the lots 1.02 and 1.03 will have no principal business building on them, and will be operated from the existing offices in lot 1.01, the plans should be revised to consolidate the three lots, or an additional use variance should be requested to permit operation of primary business from off site. In addition, if the lots are not consolidated, drainage and access easements will be required between the three lots. The Applicant agreed to consolidate the lots, when its Use Variance approval has been fully consummated; (see next paragraph).

4. Driveways. Access appears to be no new access to either lot. Therefore lot consolidation or access easements will be required. Testimony should confirm that the Applicant will prepare and submit a deed of consolidation if the Use Variance is granted, prior to Memorialization of the approval. The Applicant requested to address this at the time that a site plan is submitted, as it does not now have ownership of the Subject Property, and it can't take ownership until a memorialization of the use variance approval has taken place, a Notice of Adoption of the Resolution has been published, and the statutory 45-day appeal period has run its course.

i. If new access driveways are desired, the Applicant shall submit a street opening permit or site plan application immediately. The Township has a grant with which resurfacing of the road will be done this fall. The proposed location and drainage of the driveway area must be coordinated with the roadway design. The Applicant agreed to comply.

ii. If a gate is to be provided for the utility access, it shall be shown on a site-plan with Knox box, and lighting and set back at least 20 feet from the right of way line. The Applicant agreed to comply.

5. Fencing. A fence appears to be proposed around the perimeter. A fence, and particularly a solid fence, may not be appropriate for the environmentally sensitive area. If approved, NJDEP should be consulted for guidance in this regard before submission of a Site Plan Application. Copies of correspondence with NJDEP shall be submitted. The Applicant agreed to comply.

6. Landscaping. As a non-conforming use, landscaping should be considered, especially along the frontage to shield the view from the street. A commitment to provide an effective vegetated buffer should be required now as a condition of any Use Variance. The details can then be developed into the required site plans. The Applicant agreed to comply, and will incorporate any landscaping into the site plan application.

7. Lighting. No lighting is proposed. Lighting can be considered at Site Plan review. The Applicant acknowledged the same.

8. Parking. The plans show adequate parking quantity in compliance with Township ordinances. Subsequent Site Plans should include a table to show the actual number of spaces proposed versus the required. The Applicant agreed to comply.

9. Handicap Parking. To be addressed at Site Plan review.

10. Pedestrian Access. To be addressed at Site Plan review.

11. Grading. To be addressed at Site Plan review. If approved, the subsequent site plan shall include grading and drainage improvements along the frontage as the Board or Municipal Engineer may request. The Applicant agreed to comply.

12. Stormwater Management. To be addressed at Site Plan Review. A blanket drainage easement shall be provided to the Township to receive and maintain runoff and stormwater conveyances from Jacob Harris Lane. The Applicant agreed to comply.

13. Sequence. To be addressed at Site Plan Review.

14. Sewage disposal. If approved, the Applicant shall provide documentation that the existing or proposed sanitary sewage disposal system is approved for the proposed staff increase of 4 to 5 employees, with the required Site Plan application. The Applicant agreed to comply.

15. Utilities. No new buildings or utilities are proposed.

Recommendations

The plans should be revised to address the underlined comments.

If approved, clear and appropriately scaled plans and deeds of consolidation shall be submitted and approved by the Board's Planner, Attorney and Engineer. The Applicant shall agree to a specific time period in which to provide said plans and for the memorialization. The Applicant requested that the scaled plans and deeds of consolidation be submitted for review after the appeal period has run its course for the use variance approval, but prior to, or commensurate with, the Major Site Plan application submission (whichever comes first).

14. The hearing on the Application was opened to the public, at which time the following member of the public was sworn and testified on the Application: Mr. Scott Campanile, of the Scott Realty Group, read a letter into the record from Heidi Creta, owner of the Subject Property and a Contract Seller with the Applicant, in which Ms. Creta supported a granting of the use variance. There being no other members of the public giving testimony, the public portion was closed.

CONCLUSIONS

The Board concluded that the requested use variances shall be granted on the basis of the plans submitted, the testimony given by the Applicant and the Applicant's experts, and the testimony rendered in support of the "positive" criteria (the purposes of zoning are met), and the "negative" criteria (i.e., that there will not be a substantial detriment to the zone plan or the master plan if the use variance is approved). In particular, the Board finds that the Subject Property is particularly suited for the proposed use; that the proposed use will provide adequate light, air and open space; the proposed use will not conflict with the development and general welfare of the neighboring municipalities, the county and the state; and that the requested use provides sufficient space in an appropriate location. The Board further recognizes that the adjacent property, owned by

the Applicant, has been used by the Applicant for the same purpose for up to 19 years or more, and there has never been a substantial detriment resulting from the use thereon.

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.

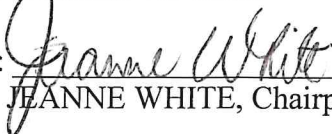
6. The Applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on this Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and 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 relief granted herein is conditioned upon a formal Major Site Plan being submitted to the Board within ninety (90) days of the memorialization of this approval, or any extension of time applied for by the Applicant and approved by the Board

WHEREAS, a motion was made by Board member Schmidt, and was seconded by Board member Shoultz, to grant Use Variance Approval to the Applicant, based on the representations, acknowledgments and agreements made by the Applicant as are more fully set forth above under Findings of Fact, at a meeting following a public hearing held on the Application on August 19, 2020 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approval: Shoultz, Schmidt, Afflerbach, McKeever, and Richardson (Alternate # 1). Board member Hughes voted "No". Board member White abstained. Board members Poisker and Nicholson had recused themselves. Board Members Clark and Swanson (Alternate # 2) were 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 September 16, 2020, as a memorialization of the approval granted in the above referenced matter by the Board at its regular meeting held on August 19, 2020 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 16th day of September 2020 at the Township Municipal Building, 680 Whig Lane, Monroeville, N.J. 08343 at 7:00 PM, time prevailing, as a memorialization of the action taken by the Board at the Board's meeting and public hearing held on August 19, 2020 on the above cited Application.


ANNA FOLEY, Secretary