

**Resolution No.: 2022-12**

**A CORRECTED RESOLUTION OF THE COMBINED PLANNING / ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF ELK, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY, GRANTING FINAL MAJOR SITE PLAN APPROVAL TO COPART OF CONNECTICUT, INC., REGARDING PROPERTY LOCATED AT 735 & 749 JACOB HARRIS LANE AND BEING FURTHER SHOWN AS BLOCK 66, LOT 1.01 ON THE TAX MAPS OF THE TOWNSHIP OF ELK, APPLICATION NO.: SP-20-12**

**WHEREAS**, Application No.: SP-20-12 (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 Final Major Site Plan approval for an automobile storage and transfer facility, regarding property located on Jacob Harris Lane, (the “Subject Property”) and being further shown as Block 66, Lot 1.01 (formerly Lots 1.01, 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 October 19, 2022 at 7:00 P.M., time prevailing, at which time were the following present on behalf of the Applicant: William L. Horner, Esquire, Horner & Horner, 67 Market Street, Salem, N.J. 08079 (the Applicant’s Attorney); Matthew C. Strother, P.E., Program Manager, Valfair Construction, (testifying as a fact witness on construction issues, if needed); Michelle Marynowicz, General Manager of Copart’s Elk Township and Glassboro facilities; and Clifton Quay, P.E., P.P., Stantec, 10000 Midlantic Drive, Suite 300W, Mt. Laurel, N.J. 08054 (the Applicant’s Professional Engineer and Planner); and

**WHEREAS**, Mr. Quay had previously entered into the record his licensing, experience, and professional background, at a hearing held by the Board on the Applicant’s application for a use variance, that took place on August 19, 2020, after which it was then stipulated on the record, without objection, that Mr. Quay was entitled to testify on behalf of the Applicant as an expert in the fields of engineering and planning, and did the Board, without objection, again stipulate on the record as to the present hearing and Application as to Mr. Quay’s qualifications as an expert in planning and engineering; and

**WHEREAS**, Messrs. Quay and Strother, and Ms. Marynowicz, 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 Applicant had previously applied for and was approved for a “use” (d.1) variance, the Class I Board member (Mr. Lucas) 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, and the Board remains so as to the present Application.

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, Certified List of Property Owners within 200 ft. of the Subject Property, and Disclosure Statement.

B. Various other submissions as follow:

<u>Title</u>	<u>Date</u>
Resolution No. 2021-16: Preliminary Site Plan Approval	07/21/21
Stormwater Management Narrative – REVISED	08/10/22
Pre-Development Watershed Plan – REVISED	03/28/22
Post-Development Watershed Plan – REVISED	06/08/22
Stormwater Management Maintenance Manual-REVISED	07/08/22
Soil Testing Location Plan by Earth Engineering, Inc.	12/02/20
Preliminary/Final Major Site Plan Set	-
REVISED	08/10/22
Environmental Impact Study by Stantec	12/09/20
Phase 1 Environmental Site Assessment	8/31/2020
NJDEP LOI –Verification Application	07/2021
Stantec Review Letter Comments Response - REVISED	12/06/21
Truck Turning Exhibit	05/11/21
Copart FM 186-2 Program Manual for Hydrocarbon Spill Clean Up	n/a
Copart Drip Prevention and BMP’s for Ground/Storm Water Protection	n/a
Copart Prohibited Activities List	n/a
Copart Environmental Management Program	2020
Septic System Verification Calculations	12/06/21

NJDEP Wetlands LOI	05/06/22
LOI Wetlands Delineation Plan – REVISED	02/01/22
License Agreement between AC Electric & Copart	04/13/22
Email Approval of Jersey Barriers by ACE	03/15/22
Sanitary Approval Email – GC Dep. Of Health	03/07/22
Draft Declaration of Covenants and Restrictions and Deed of Easement	09/08/22
Exhibit A – Lot 1.01 Block 66 Legal Description	n/a
Exhibit C – Stormwater Management Area	07/08/22
Exhibit D – Landscape Buffer Areas	09/02/22
Basin Slope Protection calculations	n/a
Sediment Basin Volume Calculations	n/a

4. The Board also entered into the record the following:

A. Letter dated October 11, from Candace Kanaplue, P.P., A.I.C.P., Bach Associates, PC, the Board’s professional planner, to the Board, regarding her review of the Application.

B. Letter dated September 8, 2022 from Stan M. Bitgood, P.E., C.M.E., Bryson & Yates, Consulting Engineers, LLC, 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 (formerly Lot 1.01, 781 Jacob Harris Lane) within the M1 Light Manufacturing zoning district. Former 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. Former 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. Former Lots 1.01 & 1.02 and 1.03 have now been merged and are shown as Lot 1.01.

6. 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. The Applicant had received use variance approval to expand the automobile facility and consolidate lots 1.01, 1.02 & 1.03 into what is now newly configured Lot 1.01. A copy of a recorded deed of consolidation has been submitted.

7. 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.

8. The Applicant now seeks Final Major Site Plan approval to expand its business operations onto the 12.45-acre portion of the property that was formerly designated as Block 66, Lots 1.02 and 1.03. The Applicant has received use variance approval for this expansion (memorialized in the Board’s Resolution No. 2020-10, dated September 16, 2020), as well as preliminary major site plan approval with a bulk variance for fence height (memorialized in the Board’s Resolution 2021-16, dated July 21, 2021). These resolutions set forth numerous conditions that must be satisfied prior to the applicant’s request for, or receipt of, final major site plan approval.

9. **Zoning:** Bulk Standards:

<u>Section</u>	<u>Required</u>	<u>Prior Lot 1.01</u>	<u>Prior Lot 1.02</u>	<u>Prior Lot 1.03</u>	<u>Now Lot 1.01</u>	<u>Application’s 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

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

The Applicant was granted completeness with waivers for completeness only at time of Preliminary Approval. The Application is incomplete. The following items must be submitted.

- **#8 requires copies of applications to and certification of approvals from all**

**outside agencies with jurisdiction. The Applicant must submit all approvals from the County and State.** The Applicant agreed to comply as a condition of approval.

- **#33 requires statement demonstrating compliance with affordable housing requirements** as applicable including section 70-4. The Applicant agreed to comply with all applicable requirements of Section 70-4.E.(1)(b).
- **#50** requires a tree protection plan and the limits of clearing. This waiver is not recommended. **The Applicant has not submitted this information.** The Applicant testified that this has now been submitted.
- **#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 for completeness only. **The Applicant must submit the County Health approval.** The Applicant testified that this has now been submitted.

**If the waiver is granted for completeness only, the information shall be provided as part of the compliance submission.**

**The following comments are provided for the Board's and the Applicant's consideration:**

1. The Applicant should submit a tree protection plan per the checklist and ordinance requirements. **This has now been completed.**
2. Lighting should be added to the landscaping plan. The Applicant should also identify where security lighting is proposed. **This has now been completed.**
3. The Applicant should replace the proposed landscaping with native species. Black Dragon Japanese Cedar, Christmas Jewel Holly and Herzi Columnar Juniper should be replaced with Atlantic White Cedar, American Holly or Common Winterberry, and Green Giant Arborvitae. The proposed Eastern Red Cedar is acceptable. **The Applicant has agreed to comply.**

**WHEREUPON** a motion was made by Board member McKeever, which was seconded by Board member Swanson, to grant the above waivers from submission requirements, on a conditional basis, based on the representations made by the Applicant as are set forth above, with the following Board Members voting in the affirmative: Afflerbach, Shoultz, White, Clark, McKeever, and Swanson (Alternate # 2). There were no votes in the negative, and no abstentions. Board Members Lucas and Nicholson had recused themselves as the hearing involved an application previously granted a use variance, and the Board had to remain constituted as a Zoning Board of Adjustment to hear the present Application. Board members Hughes, Schmidt, and Richardson (Alternate # 1) were absent.

11. Mr. Horner provided a brief overview of the Application, consistent with the above information.

12. Mr. Quay testified as to the prior approvals, the Applicant's spill prevention plans, signage, and the Atlantic City Electric Easement that runs through the Subject Property,

13. The Board's Professional Engineer, Stan M. Bitgood, P.E., C.M.E., reviewed with the Applicant and the Board, his letter of September 8, 2022, as follows:

**Prior Approvals:**

Resolution #2020-10 granted a use variance for lots 1.02 and 1.03 for the purpose of expanding the existing auto storage and transfer yard. Resolution #2021-16 granted Preliminary Site Plan approval, a bulk variance to permit an 8 foot high fence, and a design waiver from curbing and pavement. Preliminary Site Plan Approval was granted with conditions on July 21, 2021.

Conditions of the prior approvals have been met in that the plans were revised to move the gate access back 20 feet from the Right-of-Way line and landscaping has been shown along the frontage. Additionally the deed of lot consolidation has been received, the blanket drainage easement has been received, the Applicant has presented documentation of approval of the sanitary sewage disposal system, NJDEP has verified the LOI area to be accurate, and the updated easement with Atlantic City Electric has been received.

**Technical Review**

The revised plans depict new expanded parking areas with aisles extending throughout most of the proposed site improvements. Four stormwater basins are proposed in the rear of the lot and accommodations are made for Atlantic City Electric to gain access to their existing electric tower.

The Applicant has addressed all technical comments from the Board engineer's prior letters and has submitted all items required by the use variance approval. The Board's engineer has advised the Applicant to submit the software and CAD files, final plans signed by the owner and signed and sealed by the engineer, and the final stormwater documents signed and sealed by the engineer. The Applicant agreed to comply.

The Applicant's attorney has submitted a draft Declaration of Covenants and Restrictions and Deed of Easements to the Township to grant access and inspection of the stormwater facilities and blanket drainage rights from Jacob Harris Lane. Subject to the Township's Solicitor finding the document acceptable as to form, the Board's engineer finds it acceptable and recommends that the document be executed by the Applicant upon final approval by the Township's attorney and prior to release for construction. The Applicant agreed to comply.

14. The hearing on the Application was opened to the public, at which time no

member of the public present wished to testify on the Application:

## CONCLUSIONS

The Board concluded that the requested Final Major Site Plan approval should 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 Site Plan. The Board made it clear all matters still to be addressed by the Applicant, as are set forth above, had to be accomplished before any permits could be issued and construction taking place.

## 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 in 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 all requirements made by the Board's professionals being met.

**WHEREAS**, a motion was made by Board member Clark, and was seconded by Board member Afflerbach, to grant Final Major Site Plan approval, based on the representations, acknowledgments, understandings and agreements made by the Applicant, as are more fully set forth above under Findings of Fact and Conclusions above, at a meeting following a public hearing held by the Board on the Application on October 19, 2022 at 7:00 PM, time prevailing, with the following Board members voting in favor of the motion to grant the approval: Afflerbach, Clark, Shoultz, White, McKeever, and Swanson, (Alternate # 2). Board members Lucas and Nicholson had recused themselves. Board Members Hughes, Schmidt, and Richardson (Alternate # 1) 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 December 21, 2022, as a correction to a prior Resolution adopted November 16, 2022, to memorialize the approval granted in the above referenced matter by the Board at its regular meeting held on October 19, 2022 on the above referenced Application.

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

By:   
JEANNE WHITE, Chairperson



**ATTEST:**

By   
ANN MARIE WEITZEL, 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 21st day of December 2022 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 October 19, 2022 on the above cited Application, and to correct a prior Resolution of Approval in this matter that was passed on November 16, 2022.

  
ANN MARIE WEITZEL, Secretary