

RESOLUTION NO. 02-2022B

**RESOLUTION OF THE COMBINED LAND USE BOARD OF BELLMAWR
CONDITIONALLY GRANTING USE VARIANCE APPROVAL CONCURRENT WITH
SEPARATELY GRANTED MINOR SUBDIVISION APPROVAL FOR BELLMAWR
REAL ESTATE ASSOCIATES LLC, 101 HAAG AVENUE, BLOCK 173.04, LOT 4,**

WHEREAS, on January 10, 2022 consideration was given to the applicant in the above-captioned application for various items of relief during public hearings conducted in person; and

WHEREAS, the relief sought was for a use variance and minor subdivision approval together with any other required relief. This resolution memorializes only the conditional approval of the use variance. A separate motion was adopted and will be memorialized by separate resolution for the minor subdivision approval; and

WHEREAS, the applicant was represented by Victoria Siegel, Esquire and the Board heard testimony from Brittany L'Esperance, PE and Samuel Renauro, PE, PP together with testimony from Scott Mertz, principle with the applicant and the Board having heard testimony from Steven Bach, the Board Engineer and Planner and no public appearing to testifying and now therefore, the Board makes the following factual findings in conditionally approving the subject use variance.

1. The Board had available to it the following exhibits many of which were the topic of substantial explanation by the Board Solicitor and Board Planner:

(1) Resolution of the Planning Board of the Borough of Bellmawr granted to Amazon.com Services Incorporated pursuant to hearings on June 1, 2020, September 14, 2020 and October 19, 2020.

(2) Resolution of the Borough of Bellmawr Zoning Board arising out of a public hearing on October 20, 2020.

(3) The present application with statement of reasons under cover letter of Archer Law dated December 12, 2021 with subsequent revisions supplied under cover of letter by Archer Law dated on December 14, 2021 and further revised and transmitted under Archer cover letter dated December 17, 2021.

(4) Review of letter of Board Planner and Engineer of Steven Bach dated December 22, 2021.

(5) Response letter of Archer Law dated January 7, 2022.

(6) Plans as follows:

<u>Sheet</u>	<u>Title</u>	<u>Date/Last Revision</u>
1	General Information Plan	12-16-19 / 12-04-20
2	Existing Conditions and Demolition Plan	12-16-19 / 12-04-20
3	Site Plan	12-16-19 / 12-04-20
4	Staging Plan	12-16-19 / 12-04-20
5	Grading & Utility Plan	12-16-19 / 12-04-20
6	Soil Erosion & Sediment Control Plan	12-16-19 / 12-04-20
7	SESC Notes & Details	12-16-19 / 12-04-20
8.	Detail Sheet	12-16-19 / 12-04-20
9.	Detail Sheet	12-16-19 / 12-04-20
10.	Lighting & Landscaping Plan	12-16-19 / 12-04-20

2. The extensive resolutions memorializing the factual findings underpinning the action of both Boards were reviewed and considered by the Board herein acting favorably on the use variance and concurrently approved subdivision approval. The factual findings of those two actions were discussed between the applicant and the Board during the hearing, and are incorporated herein as if set forth in full, as they were referenced throughout the hearing. Importantly, the applicant agreed to comply with all terms and conditions for each of those resolutions as a specific condition of use variance approval granted herein and the minor subdivision approval granted by separate resolution, except to the extent specifically modified herein.

3. The record from those two resolutions and as developed during the subject application generally and clearly establishes that the Amazon facility located at 281 Benigno served by the standalone parking lot had reached a critical crisis with respect to parking even

before the Amazon expansion was sought and conditionally approved by the Bellmawr Planning Board. The early hearings before the Planning Board focused on how the substantially deleterious consequences of the lack of parking at the 281 Benigno tract could best be mitigated particularly given that the expansion was going to eliminate areas of parking at the Amazon facility at the main tract.¹

4. The intent and purpose of both prior Board actions was that the continued availability of the standalone parking lot on the satellite lot granted by the Zoning Board was an expressed condition of the site plan and other relief granted by the Planning Board on the main lot for Amazon at 281 Benigno across the street to solve the critical parking crisis that had developed there so as to allow the combined operations and the expansion of that facility. The applicant before the Planning Board was Amazon.com Services Inc., who was a tenant at 281 Benigno Boulevard, Block 173.02, Lot 4. The applicant before the Zoning Board for the "standalone parking lot" was United Supply Company, with an address of 101 Haag Avenue, Block 173.04, Lot 4, who held the status of tenant/optionee.

5. The subject application now comes before the combined Board through the application of Bellmawr Real Estate Associates, LLC who proposes to own the satellite lot, Block 173.04, Lot 4, located at 101 Haag Avenue presently under lease from the owner of the entire lot of which the satellite lot to be subdivided out is a part. That owner is Green Horse Properties LLC.

6. The Solicitor placed upon the record that provisions for the continued availability of the standalone parking facility were critical considerations of the Planning Board, as evidenced by the memorializing resolution (Exhibit A) and the attached conditions for off street

¹ The Zoning and Planning Boards were subsequently combined into a single Board under the MLUL by action of Council via ordinance. The combined Board presided over the subject application.

parking the application for which was then pending before the Zoning Board. Those conditions were substantially and detailed and the Solicitor indicated they were the subject of an exchange of redlined versions between the Planning Board Solicitors and the Amazon attorney before the final meeting on October 19, 2020. The final version was attached to the Resolution after the applicant specifically agreed to accept same at the hearing.

7. These conditions were to apply to the standalone parking facility, the application for which was then pending before the Zoning Board.

8. The conditions manifest how critical the continued availability of the parking facility was as follows:

1. Planning Board action is contingent upon the pending Zoning Board approval of use variance for parking facility located at 200 Hall Avenue ("Hall Avenue Lot" or "parking facility") for 88 parking stalls limited to supplemental employee automobile parking for the Amazon distribution facility located at 281 Benigno Boulevard.

2. Planning Board approval for this off-site parking facility is required per Ordinance and the Hall Avenue Lot shall be exclusive to Amazon associate employee parking of automobiles only and not used to park tractor trailers, delivery vans, outdoor storage of materials or any other use or storage. There shall not be any permitted subleasing of the portion of the property upon which the off-site parking and vacated improvements are located as hereinafter described.

3. Amazon shall provide a fully executed lease as a condition of this Approval for the aforesaid parking facility and any addendums or extensions to same shall require amended approval from the Planning Board unless administrative approval may be granted due to such addendums being minor or inconsequential in nature in the opinion of the Planning Board Solicitor, which shall be in writing.

4. In the event that Amazon triggers a default in the aforesaid off-site parking lease or Amazon takes any action to terminate the aforesaid lease, Amazon shall provide notice of same to the Borough Planning Board on the conditions herein described and Amazon shall take all necessary steps to immediately replace the parking facility with a nearby facility which replacement facility shall be subject to Planning Board approval such that there shall be no interruption of the

provision of off-site parking as approved herein or such nearby replacement parking approved by the Planning Board.

5. A description of the parking facility is further described in the exhibit attached hereto as "Exhibit A" which demonstrates 88 parking stalls for automobiles along with appropriate paving, curbing, entrance, striping, and drainage facilities and the approval for which shall proceed before the Zoning Board of Adjustment for the Borough of Bellmawr, presently pending for October 20, 2020.

6. Upon site plan approval by the Zoning Board of Adjustment, the approved site plan shall be substituted for Exhibit A as the description of the facility hereunder it being the intent of the parties that Exhibit A is a preliminary depiction of the parking facility that will be described with more finality upon receipt of a final site plan approval by the Zoning Board of Adjustment.

7. The applicant/tenant of the off-site parking facility shall provide immediate notice to the Borough of any proposed or threatened termination or notice of termination by the landlord of the parking facility. Such notice shall be provided as follows:

To Borough:

Fran Wright, Borough Clerk, Borough of Bellmawr, 21 East Browning Road, Bellmawr, NJ 08031

Howard C. Long, Jr., Esquire, Borough Solicitor, Borough of Bellmawr, 21 East Browning Road, Bellmawr, NJ 08031

To Planning Board:

Margaret Sandrock, Planning Board Secretary, Borough of Bellmawr, 21 East Browning Road, Bellmawr, NJ 08031

Michael J. McKenna, Esquire, Planning Board Solicitor, 648 Longwood Avenue, Cherry Hill, NJ 08002

9. The Zoning Board approval resolution (Exhibit B) manifested an appreciation of the importance of this issue, describing the non-permitted parking lot as a "standalone parking area" 14 times in the Zoning Board of Adjustment resolution. The testimony before the Zoning Board of Adjustment also made clear that the basis for the extraordinary use variance relief was the solution of the extreme problems generated by the inadequacy of parking at 281 Benigno as paragraph 7 separate fact findings 1) 10d, 2) 10f, 3) 11(d), 4) 12(f), 5) 12(g), 6) 12(h), 7) 12(i).

10. Although the Zoning Board of Adjustment action reflected a lease had already been provided, a new lease reflective of the concerns and conditions of both Boards was accepted by the applicant (Fact finding para. 10(e)) and this condition was imposed by the Zoning Board as an express condition.

11. Due to an apparent disconnect between the nearly simultaneous actions by the two Boards the applicants of failure to submit the required lease provisions to the Borough went unnoticed until the subject application was offered, as was explained by the Solicitor (of the now combined Boards) at the subject hearing on January 10, 2022.

12. After discussion with the applicants it was agreed that the condition of the lease provisions ensuing the continued availability of the Haag Avenue parking lot being subdivided and granted new use variance relief shall be a continued condition of this new subdivision and use variance approval.

13. Such provisions shall be subject to the review and approval of the Board Solicitor and Engineer prior to signing the subdivision plans or deed.

NOW, THEREFORE BE IT RESOLVED considering the foregoing facts, the Board concludes the application for use variance has substantial merit and shall be approved subject however to the following conditions:

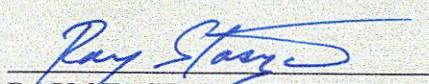
1. The applicant must contact the Combined Land Use Board office to settle any outstanding review escrow accounts prior to the issuance of building permits.
2. Approval of all appropriate reviewing agencies including without limitation, the MUA, County Planning Board, Traffic Commander, Fire Marshall, Soil Conservation District, Department of Transportation and Police Department, Water and Sewer Department. (If required).
3. Compliance with all Borough, County, State and Federal rules, regulations and ordinances.
4. Compliance with the Board Engineer's report and comments at the public hearing.
5. Compliance with all representations made by the applicant at all public hearings.
6. Compliance with all terms and conditions of all prior approvals except as is specifically modified herein.

7. Provision of a compliance plan depicting all original improvements with subsequent amendments identified by date of approval.
8. Posting of any required additional performance and maintenance bonding.
9. Provision of the lease with specified conditions identified with the P.1 of subdivision.

The Board further concludes, after considering the foregoing facts, and subject to satisfaction of the conditions imposed, the applicant has satisfied the positive and negative criteria of N.J.S.A. 40:55D-70d(1), by ensuring the continued availability of the Haag Avenue parking lot to the 281 Benigno property; such availability led to the Zoning Board prior action and conclusions regarding the positive and negative criteria as set out in Exhibit B, which findings and conclusions the Board determines remain applicable and are incorporated herein as if set forth in full.

Those Eligible to Vote	Those in Favor	Those Opposed
DiRenzo	5	0
Murray		
Staszak		
Haas		
Mecca		

ATTEST:

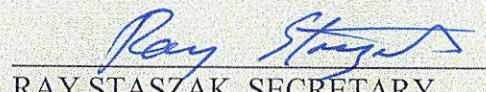

RAY STASZAK, SECRETARY

BOROUGH OF BELLMAWR
COMBINED LAND USE BOARD:


DANIEL DI RENZO, CHAIRMAN

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Borough of Bellmawr Combined Land Use Board at a meeting held on the day of 4th day April, 2022.


RAY STASZAK, SECRETARY