

LAND USE BOARD OF THE TOWNSHIP OF MANSFIELD

RESOLUTION NO. 2021-3-6

**CONCERNING THE APPLICATION OF
MILLSTREAM ENTERPRISES, LLC
FOR WAIVER OF SITE PLAN/CHANGE OF USE**

WHEREAS, Millstream Enterprises, LLC (the “Applicant”) has applied to the Land Use Board of the Township of Mansfield (the “Board”) for a Waiver of Site Plan Approval for a change of use for property located at 5238 Route 130 North, known as Block 65, Lot 5.01 (the “Property”), on the Official Tax Map of the Township, and

WHEREAS, the Mansfield Zoning Board of Adjustment granted use variance and site plan approval to the Applicant, as memorialized by Resolution 2018-11-7, to construct a 4,416 square foot pole barn on the Property for the Applicant’s landscaping business, a non-permitted use in the Township’s Light Industrial (LI) Zoning District; and

WHEREAS, the application was deemed complete by the Board on February 22, 2021; and

WHEREAS, a public hearing to consider the application was held by the Board on February 22, 2021¹; and

WHEREAS, the Applicant presented evidence to the Board through testimony, plans, and other evidence; and

WHEREAS, the Board after carefully considering the evidence presented by the Applicant in support of the Application for waiver of site plan approval/change of use, and after the meeting was opened to the public for their questions, comments and input, has made the following findings of fact:

1. The Applicant is the owner of the Property located at 5238 Route 130 North, known as Block 65, Lot 5.01, and located in the Township’s LI Zone. The Property is approximately 1.23 acres and is improved with a 4,496 square foot pole barn, 12 off-street parking spaces, a two-family dwelling and other improvements.

¹ The February 22, 2021 Public Hearing was conducted as a virtual hearing in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., as amended by A-3850 to permit electronic meetings, and in consideration of the Executive Orders issued by Governor Murphy and Guidelines issued by the Department of Community Affairs, to protect the public during the COVID-19 emergency. The virtual meeting progressed with the consent of the Applicant.

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2. The existing pole barn is occupied by the Applicant's landscaping business, the use, together with site plan approval, was approved by the Mansfield Zoning Board of Adjustment and memorialized by Resolution No. 2018-11-7.

3. The Applicant is now proposing to divide the pole barn into three (3) sections and to lease two (2) sections, retaining the third section for its landscaping business.

4. Zoning Permits have been issued for the two proposed tenants, a mobile commercial truck tire business and an on-line sports equipment business.

5. The Applicant submitted an Application for site plan waiver for the change of use of the Property, providing the Board with a Land Development Application and the previously approved Site Plan, prepared by William H. Nicholson, PE, William H. Nicholson Associates, PA, dated 09/04/18, revised 03/27/19.

6. The taxes on the Property are current.

7. The Applicant has paid and/or posted all required fees and agreed to keep the review escrow current.

8. The Applicant was represented at the February 22, 2021 Hearing by Jonas Singer, Esquire, who represented to the Board that the Applicant consents to the virtual meeting. Mark D'Imperio, Jared Robinson and Chris Nelson testified on behalf of the Applicant.

9. Mr. D'Imperio provided the following sworn testimony during the February 22, 2021 Hearing:

- a. He owns 100% of the LLC Applicant.
- b. COVID has negatively impacted the Applicant's landscaping business and the Applicant now only requires a portion of the pole barn and not the entire building.
- c. The only improvements proposed are to the interior of the pole barn with pre-fabricated partitions to divide the interior into three (3) sections.
- d. Each proposed tenant will occupy approximately 1,400 square feet of the pole barn with the Applicant retaining the balance.
- e. No new water service, bathrooms or heat will be added to the pole barn.
- f. Each unit of the duplex has two (2) bedrooms.
- g. There is sufficient parking on site for the residential use, the Applicant's business and the two proposed tenants.

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10. Jared Robinson provided the following sworn testimony during the February 22, 2021 Hearing:

- a. His business, Jackson & Robinson, is the proposed tenant for one of the new sections of the pole barn.
- b. The business is a mobile tire service, that is, they go to the customers site to change tires.
- c. The business will not conduct any retail activity at the Property, they need the site for storage purposes only.
- d. They currently operate one (1) box truck and have three (3) employees.
- e. During the day, they will have 2 cars utilizing the parking area.
- f. The business will not get any deliveries at the site as they go to the supplier and bring inventory back to the site to be stored inside the pole barn.
- g. No repairs will be performed on site.
- h. The hours of operation will be 7:00 a.m. – 6:00 p.m.
- i. The business generates low noise and all trash will be removed from the site for disposal.

11. Mr. Nelson provided the following sworn testimony during the February 22, 2021 Public Hearing:

- a. His business, NJPS Sports Online, is also one of the proposed tenants for the existing pole barn.
- b. The business sells home athletic equipment.
- c. The site will be utilized for storage of the athletic equipment prior to delivery to customers' homes.
- d. Deliveries of the equipment to the site will be made once or twice a week.
- e. All equipment will be stored inside the pole barn.
- f. A box truck is utilized to deliver the equipment to the customers.
- g. The business does not have established hours, though he will be on site 1 to 2 times per week.
- h. The building is too cold to conduct business, it was designed for storage only.

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- i. He will take with him for disposal all trash generated by the business.
- j. No repairs will be conducted on site, but there may be some assembly of equipment prior to delivery to customers.

12. The Board Professionals reviewed their respective review letters for the Board and the Applicant. The Board Engineer testified that the testimony provided by the Applicant's witnesses satisfied the requirements for a site plan waiver. The Board Planner testified that the proposed uses are permitted uses, he has no objection to the site plan waiver and that he supports the waiver that an Environmental Assessment Report be submitted. The Board Traffic Engineer testified that based on the testimony provided, the truck traffic entering the site will not create traffic concerns.

13. During the public portion, John O'Callahan questioned whether an approval would grandfather future uses.

AND WHEREAS, based upon the above factual findings, the Board has come to the following conclusions:

1. The Applicant has satisfied the requirements of Section 44A-4 of the Township Zoning Ordinance for a waiver of site plan approval.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Mansfield, on the 22nd day of February, 2021, that this Board hereby grants to the Applicant a Waiver of Site Plan approval for the change of use of the Property for the division of the existing pole barn into three (3) sections for occupancy by the Applicant's landscaping business, the mobile tire service and the home athletic equipment business, in accordance with the application, plans and testimony submitted by the Applicant, subject to the following:

1. Proof that the Applicant has applied for the necessary approval(s) from all other agencies having jurisdiction over the Applicant's use of the Property shall be filed with the Township of Mansfield.

2. The fulfillment of the conditions precedent shall forthwith be reported in writing to the Township of Mansfield, which may cause such reports to be verified in an appropriate manner. Only upon the fulfillment of all conditions shall the site plan be signed or any required building permit, certificate of occupancy or zoning permit be issued.

3. Nothing herein contained shall be deemed to waive or modify the requirement that the Applicant obtain from any and all other agencies having jurisdiction in this matter, any

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and all approvals required by law and this approval is specifically conditioned upon the Applicant obtaining those approvals.

4. Subject to the sworn testimony and representations of the Applicant’s witnesses and representatives at the February 22, 2021 Public Hearing, whether formalized in this Resolution or not.

5. Subject to the Applicant receiving all required permits prior to any work commencing on the pole barn. Waiver of site plan approval does not guaranty the issuance of the required permits as the Applicant is subject to the applicable codes and regulations.

6. Subject to Waiver of Site Plan for the Change of Use of the Property not being authorization for the construction of any improvements to the Property, other than the division of the pole barn into three (3) sections for the uses as testified do during the February 22, 2021 Public Hearing.

7. Subject to Zoning Board Resolution No. 2018-11-7, except as modified herein for the change of use of the Property.

ROLL CALL VOTE

Those in Favor: 9
Those Opposed: 0
Those Abstaining: 0

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CERTIFICATION

I hereby certify that this foregoing Resolution is a true memorializing resolution, as adopted by the Land Use Board of the Township of Mansfield in accordance with its decision at its regular meeting on February 22, 2021.

**LAND USE BOARD
OF THE TOWNSHIP OF MANSFIELD**

Attest:

By: _____
EFTHIMIOS TSIKNAKIS, CHAIRMAN

LINDA SEMUS, RMC, CMR

Dated: 3/22/2021

Date of Approval: 2/22/2021

Date of Memorialization: 3/22/2021