

**LAND USE PLANNING BOARD OF THE
TOWNSHIP OF EASTAMPTON**

RESOLUTION # -2019

**ON THE APPLICATION OF JR PROPERTIES, LLC, T/A
REDMOND'S MULCH AND STONE WORLD, FOR AN
INTERPRETATION AS TO THE USES PERMITTED AT THE
RETAIL GARDEN CENTER LOCATED AT BLOCK 400, LOT 23
(1347 MONMOUTH ROAD)**

WHEREAS, Nancy Wigmore, and her husband Richard Arbocus, are the owners ("Owners") of the property known as Block 400, Lot 23, having the address of 1347 Monmouth Road ("Property"), where they had operated a retail garden center known as Perennial Gardens; and

WHEREAS, the Owners entered into a lease with JR Properties, LLC, trading as Redmond's Mulch and Stone World, wherein John Redmond is the sole member, to operate a retail garden center on the Property; and

WHEREAS, separate complaints were filed by Zoning Officer Kathy Newcomb in the Eastampton Township Municipal Court against Richard Arbocus and John Redmond regarding the operation of the business known as Redmond's Mulch and Stone World on the Property; and

WHEREAS, by letter dated March 8, 2018, Rhonda R. Feld, Esquire, on behalf of Mr. Arbocus noted that in response to an OPRA request to the Township of Eastampton certain critical information had not been received:

..., the most important information we are seeking, and which was included in our request, was the 1980s approval of Perennial Gardens and, in particular, the Resolution approving same and the conditions which were part of the

approval including, but not limited to, any review letters of the Township professionals which might explain such conditions. We did not receive this information and, to the extent the violation against our client alleges an expansion of a pre-existing non-conforming use, this information is critical. Can you please provide same as soon as possible?; and

WHEREAS, further search of municipal records did not result in the location of the records requested by Ms. Feld; and

WHEREAS, on behalf of JR Properties, LLC (“Applicant”) Michael S. DiCroce, Esquire, with the Owners consent, filed an application with the Township of Eastampton Land Use Planning Board (“Board”), which he described as being for the purpose of seeking “all avenues of relief which are to include an appeal pursuant to N.J.S.A. 40:55D-70a from a decision of Zoning Officer; 40:55D-70b (interpretation); 40:55D-70d(1) (use); or, (2) (expansion of nonconforming use) and/or that the use is a continuation of a nonconforming use, which was not abandoned;” and

WHEREAS, the Applicant provided notice for the public hearing held on December 7, 2018, wherein the Applicant appeared before the Board represented by Mr. DiCroce, and sworn testimony was provided by Richard Arbocus and John Redmond; and

WHEREAS, Mayor Apgar and Councilman Springer recused themselves from the hearing, and Board members Bayles, Blair, Chieco, Johnstone, Maluchnik, Santillo and Taylor participated in the hearing; and

WHEREAS, Mr. DiCroce represented that the Applicant's operation of the retail garden center was a continuation of the Perennial Gardens retail garden center, as Perennial Gardens sold mulch and stone; and

WHEREAS, Kathy Newcomb, in her capacity as Zoning Officer, testified as follows:

1. The Property has been for sale and she has received inquiries from interested parties. Mr. Redmond moved in without seeking any input from the Township.
2. The violations have continued for over a year as she initially received complaints from a neighbor in August of 2017 that the business had expanded and that the noise level had become intolerable.
3. She had reached out to the Burlington County Engineer's Office to locate an approved site plan but had been unsuccessful in her efforts.
4. A timely appeal was never taken from the violation notice she had served in 2017.
5. Based upon her observations from Google maps the use of the Property has significantly intensified following the Applicant's use of the Property. Numerous Jersey barriers are now visible. The number of trucks has increased and significantly more materials are stored on the Property.
6. Most of her visits to the Property have been on Sundays.
7. There are references to an approval granted by the Zoning Board of Adjustment in 1987, however, she has been unable to find any proof that an approval was granted.
8. She had never visited the Perennial Gardens garden center; and

WHEREAS, Richard Arbocus testified pursuant to oath as follows:

1. The four acre Property had been a used car lot which his wife transformed into the garden center known as Perennial Gardens, selling garden

supplies, trees, shrubs, bulk and bagged mulch, stone, topsoil and ornaments. There were 6 to 8 employees. Perennial Gardens delivered mulch.

2. The Property has been listed for sale for five years, and in 2017 it was leased to the Applicant.
3. The maximum number of trucks used when the Property housed Perennial Gardens was five consisting of a box truck, a front end loader, a backhoe and a solid body truck.
4. Perennial Gardens never received a noise complaint.
5. It is his recollection that in 1987 a use variance was granted and the submission of a site plan had been waived. The existing fence was installed in 1987.
6. Perennial Gardens would receive two truckloads of mulch and two truckloads of topsoil and plants per week, as well as a monthly delivery of trees and shrubs.
7. Perennial Gardens operated between the hours of 9:00 A.M. to 6:00 P.M. seven days per week. The business closed for at least a month after Christmas.
8. Perennial Gardens never delivered sand to asphalt plants, never made heating oil deliveries or operated dump trucks; and

WHEREAS, John Redmond testified pursuant to oath as follows:

1. He is the sole owner of the Applicant and operates the business from 7:00 A.M. to whenever he closes.
2. The Applicant sells mulch, stone, flowers, trees, topsoil, grass seed and home goods.
3. No change has been made to the fence or tree line.
4. There are four fulltime and up to six part-time employees.
5. There are ten trucks utilized in the business. They are a mixture of gas and diesel and can start as early as 6:00 A.M.
6. Traffic has increased to the Property. In the spring there are ten to twenty truck trips per day. He has

endeavored to modify truck routes to reduce noise impacts on the adjoining residential property.

7. He added three hundred Jersey barriers to separate the stone, mulch and other materials into piles.
8. Stone and sand are delivered weekly to asphalt plants. Heating oil is also delivered from the Property; and

WHEREAS, the hearing was opened to the public and Janine Ilinitich testified pursuant to oath as follows:

1. She resides with her husband Larry at 1343 Monmouth Road. Perennial Gardens was a quiet neighbor. In contrast the Applicant's trucks leave as early as 4:15 A.M. She testified as to several dates, December 22, 26, 29, 2017, and January 3, 10 and 14, 2018, when the trucks started between 5:30 A.M and 6:50 A.M. They run for longer than three minutes and cause their house to vibrate. Trucks can be heard as late as 10:30 P.M. When deliveries are made the tailgates often slam to the ground.
2. In 1987 she testified in favor of a variance for the garden center.
3. Perennial Gardens did not operate dump trucks.
4. The Jersey barriers are an eyesore.
5. She does not recall Perennial Gardens storing piles of loose mulch.
6. Perennial Gardens closed in the winter and reopened in the spring.
7. The Applicant has bucket trucks at the Property; and

WHEREAS, Larry Ilinitich testified pursuant to oath as follows:

1. Perennial Gardens was a "natural garden center" specializing in garden supplies.
2. The noise is extreme from the operation of the Applicant's business; and

WHEREAS, Mr. DiCroce suggested that the noise in large part emanated from the adjoining road network and that the concerns expressed by Mr. and Mrs. Ilinitich could be addressed by buffering and modification to the hours of operation; and

WHEREAS, Mr. Arbocus offered to locate a copy of the resolution which granted the variance for the use of the Property as a garden center; and

WHEREAS, the photographs presented by Mrs. Ilinitich were made part of the record, and the hearing was continued with the consent of the Applicant to extend the period for the Board to complete its review; and

WHEREAS, Mr. Arbocus, through the efforts of his attorney, Rhonda Feld, Esquire, on December 21, 2018, provided an unsigned copy of the Zoning Board of Adjustment April 2, 1987, resolution ("Resolution") memorializing the use variance which had been granted to the Property on March 5, 1987, to permit two greenhouses and a retail garden center in the B2 zone; and

WHEREAS, the Resolution is attached hereto and incorporated herein; and

WHEREAS, the Resolution reflects that Nancy S. Wigmore had "proposed to pave part of the lot and to place railroad ties along the frontage;" to install a "chainlink fence;" to employ two persons, and to

construct an "access road" for her "use to a proposed greenhouse behind the existing building;" and

WHEREAS, additionally Nancy S. Wigmore proposed twelve to thirteen parking spaces, with one pickup truck owned by her to be parked at the Property, and not to sell "hardware" from the Property; and

WHEREAS, the Resolution waived "the submission of a formal site plan," and grant[ed] final site plan approval based on "satisfactory resolution of the conditions to the use variance" including: approval of the Burlington County Planning Board; advising the Zoning Board of Adjustment of the types of pesticides to be stored on the Property; providing the Zoning Board of Adjustment with Nancy S. Wigmore's "certification as a pesticide applicator;" acquisition of the Property; satisfactory fire inspection; providing one handicapped parking space; receipt of a certificate of occupancy, and submission of a "revised site plan" detailing the "[l]ocation of the fence 54 feet from the street line," the "parking spaces," "[a]ccess to Rt. 541 and internal traffic patterns," and "[l]ocation of all existing and proposed paving and fill;" and

WHEREAS, no one has been able to locate the "revised site plan" which was made a condition of the 1987 approval, although the record reflects that a submission had been made to the Burlington County Planning Board; and

WHEREAS, at the Applicant's request the hearing was continued to March 20, 2019, and Mayor Zeno and Councilman Santillo were recused; and

WHEREAS, newly appointed Board member Adams certified that he had listened to the tape of the December 7, 2018, hearing; and

WHEREAS, at the commencement of the hearing Board Attorney David M. Serlin advised that the production of the 1987 resolution removed from the Board's consideration any questions pertaining to the nature of a nonconforming use as the use was permitted subject to the conditions of approval, and it limited the scope of the proceeding to the Board's determination as to how the Applicant's use fit both within the approval that had been granted in 1987, and the common understanding of what constitutes a retail garden center in 2018; and

WHEREAS, Mr. DiCroce submitted that the Applicant was entitled to continue the uses which had been approved in 1987, specifically a garden center selling mulch, stone, garden supplies, plants and landscaping; and

WHEREAS, Mr. DiCroce emphasized that the Applicant would discontinue those activities which had not been approved in 1987 and which did not comport with the common understanding of a garden center activity such as the sale of heating oil and the delivery of materials to an asphalt plant on a recurring basis; and

WHEREAS, on behalf of the Applicant Mr. DiCroce offered that a limitation of five trucks onsite would be acceptable; hours of operation from

7:00 A.M. to 7:00 P.M; additional buffering with non-deciduous plantings, and trucks being parked as far as possible from the adjoining residential property; and

WHEREAS, the hearing was opened to the public and Philip Negroni, who has resided for three years within the vicinity of the Property testified in support of the Applicant stating that he has no noise complaints and believes the use is similar to the use conducted on the Property by Perennial Gardens; however, he noted that he rises at 3:30 A.M. and generally is on the road before the Applicant's business opens, nor are trucks visible from his residence; and

WHEREAS, in response to Board inquiries Mr. Redmond testified that:

1. There are five vehicles parked at the Property. Four tri-axles and one single axle truck. There are no bucket trucks.
2. Between 80-85% of the business consists of sales to retail customers and 15-20% of sales are to commercial customers.
3. The business will no longer deliver materials from the Property to industrial users such as asphalt plants.
4. The request is for permission to park two gasoline powered trucks and three diesel powered tri-axle trucks at the Property.
5. The trucks will be parked as far as possible from any residential properties; and

WHEREAS, Mr. and Mrs. Ilinitch presented additional photographs for the purpose of demonstrating trucks operating throughout the day;

testified that snow plows were particularly disruptive, and that in the summer the noise from the operation of the garden center was far more intense than when the business was operated as Perennial Gardens; and

WHEREAS, Zoning Officer Newcomb shared her observation that the Applicant's business is more intense than the prior garden center, and stated that she was seeking guidance from the Board as the municipal court enforcement proceedings had been adjourned pending the Board's action with regard to the Application; and

WHEREAS, there being no further public comment, the hearing was closed.

NOW THEREFORE BE IT RESOLVED by the Land Use Planning Board of the Township of Eastampton as follows:

1. The above preamble clauses are adopted as the findings of fact and conclusions of law.

2. The Board finds that the retail garden center use was approved in 1987. With the passage of time the common understanding of the services provided by a retail garden center has expanded to include many of the activities proposed by the Applicant including the sale and delivery of plants, landscape materials, mulch, sand, and garden supplies, and commercial activities such as snow plowing. The Applicant's use of the Property is limited to what was expressly permitted by the use variance granted in 1987 and to what is commonly understood to be encompassed within the activities of a

retail garden center in 2018.

3. The Board finds that a retail garden center does not sell heating oil or deliver materials including sand and/or gravel to industrial users and these uses are prohibited. Nor does it include the parking of bucket trucks and vehicles unrelated to the operation of a retail garden center.

4. The Board finds that the Applicant's hours of operation departed dramatically from the common understanding of the normal business hours of a retail garden center and from the operation of the Perennial Gardens retail garden center; that there is a legitimate concern as to certain of the commercial aspects of the Applicant's business which clearly depart from the understanding of the operations of a retail garden center, and that certain modifications have been made to the Property without required site plan review and approval.

5. The Board accepts as credible the Applicant's expression of his desire to be a good neighbor, and based upon the record, hereby imposes the following conditions for the purpose of reducing negative impacts resulting from the intensified retail garden center use:

- A. The hours of operation from March 1 to October 31 are from 7:00 A.M. to 7:00 P.M.
- B. The hours of operation from November 1 to February 28 are from 8:00 A.M. to 7:00 P.M.
- C. No noise generating activities are to be conducted before or after the approved hours of operation.

- D. No more than three 22 yard tri-axle trucks, two 12 yard single-axle and two front-end diesel loaders may be stored on the Property.

6. The Applicant shall submit a modified site plan to the Board on or before November 1, 2019, detailing the proposed areas for storage of materials, parking, landscaping for buffering, and such other information as the Board Engineer may require to address the aspects of the intensified retail garden center use. Failure to submit a site plan may result in the Board taking action to void this approval and requesting that the Zoning Officer take enforcement action.

Members voting in favor of granting the approvals on March 20, 2019: Adams, Bayles, Blair, Chieco, Chairperson Johnstone, Maluchnik, and Vice-chairperson Taylor.

Members voting in favor of adopting this resolution of memorialization on April 17, 2019:

The foregoing is a true copy of a resolution adopted by the Land Use Planning Board of the Township of Eastampton at its meeting held on April 17, 2019, memorializing action taken at its meeting held on March 20, 2019.

LAND USE PLANNING BOARD OF
THE TOWNSHIP OF EASTAMPTON

Jill Torpey, Administrator

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