

# Remo A. Caputo

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January 12, 2021

Ms. Karen Coffey, Board Secretary  
Borough of Morris Plains Planning Board  
Borough Annex  
Morris Plains Borough Hall  
531 Speedwell Avenue  
Morris Plains, N.J. 07950-0305

***Re: Morris Plains Holding UE LLC - Application for:  
Removal of a Condition of Planning Board Resolution dated July 10, 1984;  
Preliminary and Final Site Plan Approval with Variances,  
Design and Checklist Waivers; Soil Disturbance and Importation of Soils Permit;  
Borough of Morris Plains Planning Board  
Block 161 Lots 1, and 3 and Block 161.05 Lot 3.01 Borough of Morris Plains  
1701, 1705 and 1711 Route 10 East & Littleton Road, Morris Plains, New Jersey***

Dear Ms. Coffey:

Please be advised that this office represents Morris Plains Holding UE LLC, with regard to the above referenced Application for (a) removal of a condition of a Planning Board Resolution dated July 10, 1984; (b) Preliminary and Final Site Plan Approval with Variances and Design and Checklist waiver requests; and (c) Application for Soil Disturbance and Importation of Soils Permit.

Please deem this letter as both a clarification and, to the extent necessary, an Amendment of the Application in the above referenced matter submitted to The Borough of Morris Plains Planning Board on December 29, 2020.

In a telephone conversation on January 5, 2021 with Leon Hall, he indicated that there was some lack of clarity in the Application as presently submitted. He indicated the following:

(a) The "Change of User" application for Chopt was not appropriate because a "Change of User Application is, in essence, a minor site plan which only proposes interior improvements (except signage) and no variances. He indicated that because there is a parking variance associated with the Chopt portion of the Application (the 2,599sf unit designated as New Restaurant Space "A" as shown on the Site Plan Drawings<sup>1</sup>), the Chopt Application must be incorporated into the Preliminary and Final Site Plan Application;

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Drawings entitled " Preliminary and Final Site Plan Briarcliff Commons, Block 161 Lots 1 and 3 - Block 161.05 Lot 3.01- Tax Map # 16 - Borough of Morris Plains, Morris County, New Jersey, prepared by Paul W. Anderson, N.J. Professional Engineer, License Number 33410, Anderson Consulting Services, LLC, 40 Miller Drive, Boonton, New Jersey 07005, dated December 22, 2020 consisting of Sixteen (16) sheets, hereinafter referred to as "Site Plan Drawings".

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(b) The two remaining vacant retail spaces proposed to be converted to future restaurant uses namely: (i) the 1,401 sf foot remnant from the creation of the proposed Chopt space and designated as New Restaurant Space "B" on the Site Plan Drawings and (ii) the 1,600sf former GNC space designated as New Restaurant Space "C" on the Site Plan Drawing must also be incorporated into the Preliminary and Final Site Plan Application;

(c) The parking variance required for the 3,500 sf Proposed New Restaurant Pad Site D, (which is being deemed a restaurant use for purposes of this Application, though no tenant has been identified), and New Restaurant Spaces "A" "B" and "C" as shown on the Site Plan drawings submitted must all be calculated into the Preliminary and Final Site Plan Application submitted;

(d) That parking calculations must include lot 2.04 (BottleKing) notwithstanding it is not part of the Application because Bottleking and Briarcliff have cross easements for parking;

In response to the foregoing, I respectfully request on behalf of the Applicant that the Application for Preliminary and Final Site Plan Approval submitted on December 29, 2020 be deemed amended as follows:

1. The Application for Preliminary and Final Site Plan Approval shall be deemed to include the application to locate and operate a Chopt restaurant in the 2,599 sf foot space shown and designated as "New Restaurant Space A" on sheets SP-2 and SP-3 of the Site Plan Drawings. Supporting documentation regarding the Chopt operation and use has been submitted with the original application;

2. The Application for Preliminary and Final Site Plan Approval shall be deemed to include the application to locate and operate a future restaurant or food handling operations in the 1,401 sf foot space shown and designated as "New Restaurant Space B" on sheets SP-2 and SP-3 of the Site Plan Drawings and in the 1,600 sf space shown and designated as "New Restaurant Space C" on sheets SP-2 and SP-3 of the Site Plan Drawings.

3. The Application for Preliminary and Final Site Plan Approval for the construction of a 3,500 sf new building at the site identified as "Proposed New Restaurant Site Pad D" on SP-2 and SP-3 of the Site Plan Drawings together with ancillary appurtenances thereto including a drive-through component, to be occupied and operated by a yet to be identified restaurant use, shall remain unchanged except that the site plan application now will be deemed to also include New Restaurant Spaces "A", "B" and "C" as shown on SP-2 and SP-3 of the Site Plan Drawings.

4. In conjunction with the all of the foregoing, the Applicant in the original Application requested certain variances, deviations and waivers, including, but not limited to, front yard setback variances, a parking variance pursuant to N.J. S.A. 40:55D-70(c)1 and 2 as well as a design waiver for parking space size as well as certain checklist waivers all of which have been requested in conjunction with the original Application and the attached Rider thereto . The variances, design waivers and checklist waivers previously requested remain unchanged as all proposals set forth herein were taken into account in the Site Plan Drawings submitted including any variance and waiver relief which might be necessary;

5. In view of this request to amend the Preliminary and Final Site Plan Application to include the proposed Chopt restaurant use and the proposed future restaurant uses of New Restaurant Spaces "B" and "C" as shown on SP-2 and SP-3 of the Site Plan Drawings, into the Preliminary and Final Site Plan Application, it is respectfully requested that the Application for Change of User/Minor Site Plan Application be either withdrawn or be deemed merged with the Preliminary and Final Site Plan Application;

6. With regard to Mr. Halls's indication that Lot 2.04 must be included in parking calculations because of cross/shared parking easements between Briarcliff and the Bottleking (Lot 2.04 owned by Fayette Street Trust,) site I believe that Mr. Hall is referring to the cross easements with Lot 2.04 which provides shared access for ingress and egress only and does not include a shared or cross parking easement. The cross easements for shared access are included in the application package and referenced in Paragraph 16(h) of my submission letter of December 29, 2020 as Agreements as set forth in Deed Book 2794 page 150; Deed Book 2794 page 160 and Deed Book 2870 page 368; Therefore, barring any other easements regarding shared parking with lot 2.04 of which I am unaware, I do not believe the parking calculation requires the inclusion of Lot 2.04;

7. The portion of the Application previously submitted as it relates to the request that the Board remove a condition (Paragraph 3.E.d.i., on page 6) set forth in a certain Resolution of the Planning Board of the Borough of Morris Plains adopted July 10, 1984, remains unchanged. The condition sought to be removed reads:"no restaurant or food preparation use shall be permitted to occupy Phase I". The request is to remove or waive its applicability to the 2,599 sf space to be configured from 1,600sf of the former Gamestop store and 999 sf of the former 2,400 sf Village Spa Space (New Restaurant Space "A", as shown on SP-2 and SP-3 of the Site Plan Drawings). Both of these spaces are presently vacant. The original Application also seeks to have the condition removed/waived as it would apply to the adjacent 1,401 sf space remainder area of the former Village Spa space and also for a 1,600sf vacant space adjacent to the currently existing Chipotle restaurant and formerly occupied by a GNC store (New Restaurant Spaces "B" and "C" respectively as shown on SP-2 and SP-3 of the Site Plan Drawings). These requests remains unchanged.

8. The Application for Soil Disturbance and Importation of Soils Permit also remains unchanged.

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It should be noted that all the information which would be required for the all the Amendments to the Application requested herein has been submitted to the Board and has been included in the original Site Plan Drawings and related application documents (subject to same being deemed complete). This Amendment to the Application is, in essence, one of form over substance. It will also, however, serve as a clarification of purposes of the Application as set forth in the original Application and as confirmation that the Site Plan Drawings and other supporting documentation submitted have taken into account all requests for approvals and relief sought therein.

I respectfully request that the Application for Preliminary and Final Site Plan Approval previously submitted in this matter be deemed amended as set forth herein and that the Application for Change of User previously submitted be deemed either merged with the Preliminary and Final Site Plan Application or be deemed withdrawn.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

Remo A. Caputo

RAC/rc  
Enclosures

cc: Morris Plains Holding UE LLC  
Paul W. Anderson, N.J. P.E., Anderson Consulting Services, LLC