

**TOWN OF HACKETTSTOWN ZONING BOARD OF ADJUSTMENT**

**RESOLUTION OF MEMORIALIZATION**

**Approved: May 15, 2018**  
**Memorialized: June 19, 2018**

**IN THE MATTER OF  
MARS CHOCOLATE NORTH AMERICA, LLC  
EXTENSION REQUEST – PRELIMINARY AND  
FINAL MAJOR SITE PLAN AND VARIANCE APPLICATION  
LOT 1, BLOCK 4  
APPLICATION NO. ZB 14-05**

**WHEREAS,** Mars Chocolate North America, LLC, (hereinafter known as the “Applicant”) filed for a “d” variance and preliminary and final major site plan application with bulk variances and waivers with the Town of Hackettstown Zoning Board of Adjustment (hereinafter known as the “Zoning Board”) on October 21, 2014, and

**WHEREAS,** public hearings were held which resulted in an approval of the application on November 18, 2014, which was memorialized on December 16, 2014. The approval included an upgrade of an existing wastewater pretreatment facility. The approval included a condition for the demolition of the existing pretreatment facility. This was to occur within six (6) months from the start of operations of the new facility. The Applicant is seeking a modification of Condition No. 3 for an additional two (2) years to allow the Applicant to demolish the existing pretreatment facility on or before March 31, 2019.

The Applicant submitted testimony of a Senior Process Engineer, Kam Fierstine, for the Applicant. He testified that the new pretreatment facility came on line on March 1, 2017. He noted, however, that the delay in the demolition of the existing pretreatment plant had to do with several factors; one was the discovery of asbestos material in the buildings. That slowed the demolition process in order to assure safe removal of that material. He testified that it was also

found that there was sludge in the tanks that had to be properly removed. Finally, he testified that there was intent on the part of the Applicant to repurpose the site in a manner that had not yet been fully decided. They recognized that any repurposing of the site would require an additional site plan review and possible variance application. He therefore indicated that these delays resulted in the need for the request for an extension through March 31, 2019.

When questioned, the representative indicated that the demolition itself would take an additional four (4) months.

The meeting was open to the public. No public comment was received.

**WHEREAS**, the Zoning Board, in reviewing the foregoing testimony and documentary evidence, makes the following findings of fact and conclusions:

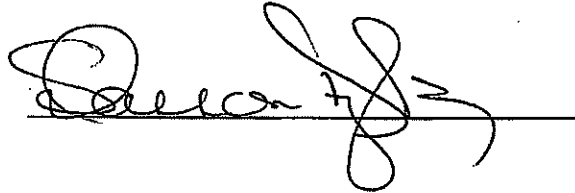
The Board finds that there have been legitimate delays with regard to the implementation of Condition No. 3 of the prior Resolution. They included safety concerns with regard to asbestos in the buildings as well as the safe removal of sludge. Given the fact that there is a four (4) month demolition timeframe, the Applicant is reasonably requesting an extension.

**NOW, THEREFORE, BE IT RESOLVED** that the Zoning Board of Adjustment of the Town of Hackettstown does hereby agree to modify Condition No. 3 and allow for the demolition of the preexisting pretreatment plant to occur on or before March 31, 2019.

This approval is subject to the following terms and conditions:

1. All of the conditions of the prior approval remain in force and effect.
2. In the event that the Applicant seeks to repurpose the area, the Applicant shall submit a site plan on or prior to the March 31, 2019 date. However, the site plan shall not be element for further delay of the demolition beyond March 31, 2019.
3. This approval is subject to the payment of all appropriate fees and taxes.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Zoning Board of Adjustment of the Town of Hackettstown at its regular meeting of May 15, 2018.



RWT 5-24-18, 5-25-18  
6-1-18

**TOWN OF HACKETTSTOWN ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION**

Approved: November 18, 2014  
Memorialized: December 16, 2014

**IN THE MATTER OF  
MARS CHOCOLATE NORTH AMERICA, LLC  
VARIANCE APPLICATION  
PRELIMINARY AND FINAL MAJOR SITE PLAN  
LOT 1, BLOCK 4  
APPLICATION NO. Z-14-05**

WHEREAS, Mars Chocolate North America, LLC (hereinafter known as the "Applicant") filed a D-Variance and Preliminary and Final Major Site Plan application, with bulk variances and waivers, with the Town of Hackettstown Zoning Board of Adjustment (hereinafter known as the "Zoning Board") on October 21, 2014, and

WHEREAS, a public hearing was held on November 18, 2014, with notice, at which time the Zoning Board deemed the application complete in accordance with the requirements of N.J.S.A. 40:55D-10(g), and at the public hearing, the Applicant was represented by Jason Rittie, Esq., and

WHEREAS, it has been determined that the Applicant has complied with all of the rules, regulations and requirements of the Zoning Board and that all of the required provisions of compliance have been filed with the Zoning Board, and

WHEREAS, the Zoning Board has received as part of the hearing process the following testimony and documentary evidence submitted by the Applicant and its Consultants, the Zoning Board Staff, and members of the public.

The Applicant is an affiliate of the owner of property known as Lot 1 Block 4 on the tax map of the Town of Hackettstown. The property consists of 60.18 acres of property and is located in the Limited Manufacturing Zone. The site currently is

developed and contains the Mars Chocolate Manufacturing Plant Corporate Office and manufacturing facility along with a wastewater pretreatment plant.

The Applicant seeks to obtain an approval for a Preliminary and Final Major Site Plan along with a D-Variance approval, and related bulk variances and waivers, for the upgrade of the existing wastewater pretreatment facility. At the time of the hearing, Jason Rittie, Esq., represented the Applicant. The current facility was constructed in the early 1990s.

The testimony indicated that the facility is now outdated. The purpose of the project is to provide state-of-the-art pretreatment facility. The project will include multiple tanks, a building, a buried lift station, vault and associated piping and equipment, as well as driveway access, parking and lighting. The existing pretreatment facility will be decommissioned and removed following the completion of the new system.

The Applicant's representatives testified that the function of the pretreatment facility is to remove the fat, oil and grease required in the candy manufacturing process before it enters the Municipal System. There was also testimony that the life expectancy of the existing pretreatment plant has been exceeded. It was also noted that there will be a reduction of the energy used in the new facility and the footprint of the new facility will be less than what had been in existence. There will also be a reduction in the maintenance requirement since the facility will only require two people for maintenance. The Plant will be operating 24 hours a day, seven days a week. The facility will not be open to the public. There will be cameras and security along with gates and fences.

The Applicant's representative, Mr. Frank Gauthier, a Mars employee, testified that the area will be more buffered by trees and the railroad line than the existing facility.

Mr. Christopher Lockett, Professional Engineer on the behalf of the Applicant, testified about the purpose of the proposed three tanks. The treatment building would have a lab and office, and maintenance will be by a Certified Licensed Operator.

It was indicated that the Applicant would obtain all appropriate and necessary outside agency approvals.

With regard to the construction, Mr. Lockett suggested that the construction should take about 6 to 7 months and the demolition of the old facility would take 4-5 months. There was discussion about when the demolition will occur. The Applicant agreed that the demolition would occur within six months from the start of operation of the new Plant.

Mr. Lockett further testified that there will be an emergency generator onsite and that the generator would be tested approximately once a month. He agreed that the testing will take place during the day, Monday through Friday. He further noted that the Pretreatment Plant would only process industrial waste. He testified that the truck traffic would be limited Monday through Friday.

In discussing the road access, the Applicant agreed to revise the plans to show a 3 foot shoulder on each side, subject to the Town Engineer's Review. It was also agreed that there would be cutouts along the drive to allow for the bypass of two vehicles. This would generally be in the area that would initially be reserved for construction vehicles.

Mr. Joseph Sparone, a Professional Engineer, testified on behalf of the Applicant. He indicated that the Applicant was proposing a detention basin to hold a 100 year storm. He also noted that they were seeking a driveway access of only 15 feet versus 24 feet. He indicated that the use of the driveway access would be extremely limited. He further described the buildings to be proposed on-site.

Mr. John McDonough, the Professional Planner on behalf of the Applicant, testified that the Applicant's application met variance standards as required by the Municipal Land Use Law. He testified that the project would be located further into the site. Therefore, there was greater buffering from the public. He also noted that the area was flat and was well-suited for the project. He did indicate that this pretreatment facility is an inherently beneficial use pursuant to caselaw and that the balancing test was one established in the *Sica* case. He believed that the benefit to the project will be to ensure the ongoing operation of the Municipal Wastewater Plant. This is provided by the upgraded technology in the Pretreatment Facility proposed by the Applicant. He did not find any detriment. Therefore, he did not believe that there was any particular balance to offset any negative impacts.

The Board took into account and made a part of the record the reports of its engineer Mr. Sterbenz dated November 13, 2014 and its planner Mr. Madden whose report is dated November 18, 2014.

In addition to the testimonial evidence the Applicant submitted the following documentary evidence:

- A-1 Photo Board dated 11/18/14
- A-2 An aerial dated 11/18/14
- A-3 Rendered Site Plan dated 11/18/14
- A-4 Planning Exhibit 3 sheets with aerial and photos

The meeting was open to the public and there was public comment raised, which was clarifying certain issues regarding the plan.

WHEREAS, the Zoning Board in reviewing the foregoing testimony and documentary evidence, makes the following findings of fact and conclusions:

The Applicant seeks both a Preliminary and Final Major Site Plan and a D-Variance, together with related bulk variances and waivers, all as set forth in the Application and at the time of the hearing. The Board acknowledges and takes judicial notice that a prior approval for the Pretreatment Plant was rendered by the Zoning Board on November 1991 and memorialized on January 21, 1992. The Board acknowledges that this Pretreatment Facility is an upgrade from the prior existing facility. The Board further acknowledges, as indicated by Mr. Madden that the project can be considered an inherently beneficial use. Therefore, the positive criteria is met by the installation of the upgraded system. Further, the negative criteria as required by statute, is a balancing test under Sica. The Board finds that the balancing test requires that the benefit of installing the new facility will be to upgrade the facility, reduce its footprint and to improve technology which will ultimately make the facility more efficient and will provide continued assurance that the Municipal Wastewater Treatment Facility will not be adversely affected by the operations of the Applicant. The Board finds the benefits of the variance outweigh the detriment, subject to the conditions that were outlined as part of the hearing process.

The Board also finds that the Applicant satisfies the requirements of both the Preliminary and Final Major Site Plan ordinances and statutes subject to conditions.

**NOW THEREFORE BE IT RESOLVED**, that the Zoning Board of Adjustment of the Town of Hackettstown does hereby approve the Preliminary and Final Major Site Plan and the D-Variance, together with the related bulk variances and waivers, as more particularly described in the plan entitled "Preliminary and Final Site Plan for Mars Chocolate North America, LLC Water Pretreatment System" prepared by Dynamic



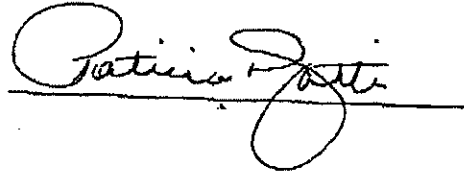
Engineering of Chester, New Jersey, consisting of 22 sheets. This plan set is dated October 15, 2014. This approval is subject to the following terms and conditions:

- 1) Facility shall be maintained by a Certified Licensed Operator.
- 2) This approval is subject to all outside agency reviews and approvals.
- 3) Demolition of the existing pre-treatment facility shall occur within six months from the start of operation of the new facility.
- 4) The Board acknowledges the installation of an emergency generator. Said generator shall be tested not more than once per month and the testing shall occur during daylight hours Monday through Friday only.
- 5) The Applicant shall arrange for all truck traffic to access the facility during daylight hours Monday through Friday.
- 6) The Applicant shall revise the plans to show a 3-foot wide shoulder on either the side of the access drive. Said shoulder shall be subject to the review of the Town Engineer.
- 7) The Applicant shall also convert the area where the construction trailer will be located to provide an emergency bypass for two vehicles on the driveway.
- 8) The approval herein is subject to the Paul Sterbenz engineering report, November 13, 2014 including technical comments 2.01 through 2.08 regarding site layout and dimension plan; comments 3.01 through 3.11 regarding grading drainage and utilities; 4.01 and 4.02 re: landscaping and lighting; 5.01 to 5.06 re: miscellaneous comments and 6.0 regarding approval fees and guarantees.

This action is subject to the payment of all appropriate fees and taxes.

The undersigned does hereby certify that the foregoing is a true copy of the action.

taken by the Zoning Board of Adjustment of the Town of Hackettstown at its regular meeting of November 18, 2014.

A handwritten signature in cursive script, appearing to read "Patricia J. Zotti", is written over a horizontal line.

RWT 11-18-14  
Rev. 1-8-15

TOWN OF HACKETTSTOWN  
ZONING BOARD OF ADJUSTMENT  
RESOLUTION OF MEMORIALIZATION

Approved: November 19, 1991  
Memorialized: January 21, 1992

IN THE MATTER OF M & M MARS,  
PRELIMINARY AND FINAL MAJOR  
SITE PLAN AND VARIANCE APPLICATION  
LOT 1, BLOCK 4  
APPLICATION NO.

WHEREAS, M & M Mars (hereinafter known as the "Applicant") applied to the Hackettstown Zoning Board of Adjustment (hereinafter known as the "Zoning Board") for preliminary and final major site plan and variance approval on October 4, 1991, and

WHEREAS, the application was deemed complete on November 19, 1991, and

WHEREAS, a public hearing was held on November 19, 1991, notice being required, at which time the Zoning Board rendered its decision on the application, and

WHEREAS, it being determined that the Applicant has complied with all of the rules, regulations and requirements of the Town of Hackettstown Land Use Ordinance and that all of the required provisions of compliance have been filed with the Zoning Board, and

WHEREAS, the Zoning Board has made the following findings and conclusions based upon the testimony and documentary evidence produced by the Applicant and by the Zoning Board Staff:

1. The Applicant is the owner of property known as Lot 1, Block 4 on the Tax Map of the Town of Hackettstown. The Applicant had previously applied for and received an interpretation regarding the development it proposed. That interpretation indicated that the height variance being sought for the anaerobic

reactor tank did not constitute a use variance pursuant to the Municipal Land Use Law requirements. However, the Zoning Board of Adjustment did find that the expansion and modification of the waste water treatment facility was not an authorized accessory use in the LM Zone and therefore was the subject to the (D) variance.

2. The Applicant presented testimony with regard to the modification of the wastewater treatment facility. The Applicant presented testimony from the Site Engineer-Manager. He advised that the original wastewater treatment facility when constructed was a state of the art plant. However, as the technology advanced, the Applicant found that additional technology will further reduce the amount of sludge being produced by the existing facility. The current process includes an aerobic system. The Applicant proposes to construct modifications to the facility that will allow for an anaerobic process. This anaerobic process will reduce the possibility of plant upset. There is no intent on the part of the Applicant to increase the capacity of the plant, but rather to provide additional resiliency.

The Applicant advised the Zoning Board that the existing waste water facility currently meets all DEPE standards. However, they seek to increase the safety and flexibility of the system so as to provide a greater latitude in meeting those standards. By doing so, the Applicant will assist the Hackettstown Municipal Utilities Authority (HMUA) by producing an effluent which the HMUA will more easily process.

Testimony was presented by the Applicant that the amount of sludge to be removed will be dramatically reduced. At the present time six to seven trucks per week are required to remove the sludge, whereas the proposed system will reduce the volume to one truckload per week or every two weeks. Additionally,

testimony was presented that the noise level of the system will be reduced by eliminating the requirement to engage fans to provide the air for the aerobic system. The anaerobic system will not require the fans for the operation, thereby reducing the decibel level of the overall system.

3. The Applicant presented additional testimony that the existing landscaping on site will effectively screen the additional structures. An existing buffer exists along the parking lot. The Applicant testified that the new facilities will not substantially change the view of the property from abutting property owners. The new facilities will include a 38-foot diameter steel tank; a 30-foot diameter steel tank; a concrete block building and a bio-gas burner. The height of the facilities will not exceed the height of the existing office facility.

4. The Applicant presented testimony regarding the noise differential between the existing system and the proposed system. A report submitted by the Applicant suggested that a five decibel reduction in noise will be anticipated by the installation of the new system.

5. The Applicant's Technical Engineer Wastewater Consultant testified that the amount of sludge will be dramatically reduced. He described the proposed process as including an anaerobic tank system which would remove approximately 90% of the sludge. He further indicated that because of the anaerobic nature of the system, no blowers would be necessary. He also testified that the proposed system would produce methane gas. This methane gas would be recycled to provide fuel within the plant. He further indicated that the second clarifier being proposed would provide additional safety for the system. He indicated further that the overall system would be more reliable than that which is in existence. He

also suggested that the sludge production would be reduced due to the dewatering process that would be incorporated as part of the proposal.

6. The Applicant produced planning testimony from Mr. Jeffrey Stiles, who testified that he believed the Applicant had provided special reasons for the use variance by upgrading the quality of the process and reducing the volume of sludge being produced. He also testified that the purposes of the Municipal Land Use Law are fostered by providing benefit to the public health, safety and welfare by encouraging the appropriate and efficient expenditure of public funds; by promoting energy conservation, by promoting the utilization of renewable energy sources and by improving transportation routes by the reduction of truck traffic due to the reduction of sludge production. He also testified that there would be no adverse negative impact to surrounding properties or the zone plan due to the fact that the visual impact will not be substantially different from that which is observed at the present time.

7. The Township Planner, Mr. Joseph Layton, rendered a report dated October 23, 1991. In that report, he indicated that the maximum building height authorized in the ordinance will be exceeded by the anaerobic reactor. The height will be 57' 9", pointing out that all other structures comply with the height requirements. It should be noted that the proposed tank is 650 feet from High Street. The landscaping on High Street will partially screen the tank.

8. The Applicant submitted the following documentary evidence.

A-1 Colored site plan.

A-2 A blowup of the site plan regarding improvements.

9. The Zoning Board reviewed the testimony and documentary evidence submitted by the Applicant and found that the Applicant had satisfied the requirement for special reasons by the reduction of the sludge production by the proposed facilities. The Applicant will reduce sludge production from six to seven trucks per week to one truck per week or one truck every two weeks. Additionally, the Zoning Board finds that the proposed improvements will increase the flexibility and resiliency of the wastewater facility. This will reduce the potential of plant upset which will improve the ability of the HMUA to meet all N.J. DEPE standards. Additionally, the proposal will reduce the noise decibel level to surrounding properties. The Board of Adjustment finds additionally that the proposal will encourage renewable energy sources by the production of methane gas which it will use for purposes of power production.

The Zoning Board also finds that the application will not negatively affect the zone plan or surrounding properties since the wastewater facility is already in existence and the expansion will not be substantially more visible than that which is already in existence. The Zoning Board finds, as was suggested by the Township Planner, that the location of the tank is 650 feet from High Street and will be partially screened by the existing landscaping. The Zoning Board also finds that the report of its engineer dated October 23, 1991 should be incorporated by reference, and that the suggestions for conditions contained in Section C of that report shall be incorporated as part of the approval for preliminary and final major site plan.

NOW THEREFORE BE IT RESOLVED that the Zoning Board does hereby approve the application of the Applicant for preliminary and final major site plan approval in accordance with the

submitted plans entitled "Preliminary and Final Minor Site plan for Wastewater Treatment Plant Upgrade" prepared by Martin J. Feely, Professional Engineer, dated November 5, 1991, consisting of nine sheets. Additionally, the Zoning Board does hereby approve the variances requested by the Applicant including a use variance for the expansion of the nonconforming use and the bulk height variance for the tank appurtenances proposed by the Applicant to be 57'9". This approval is subject to the following terms and conditions:

1. The Planning Board approves the requested variances for the reasons expressed hereinbefore.

2. This approval will be subject to the following outside agency review, if required. In the event that the Applicant determines that said outside agency reviews are not required, the Applicant shall submit certification from its Engineer verifying same:

A. Hackettstown Municipal Utilities Authority for wastewater treatment plant improvements;

B. New Jersey Department of Environmental Protection and Energy for a treatment works permit for the wastewater treatment plant improvements;

C. All state and federal permits required to construct and operate the bio-gas boiler and bio-gas burner;

D. Stream encroachment permit or waiver letters from the New Jersey Department of Environmental Protection and Energy;

E. Wetland transitional area waiver from the New Jersey Department of Environmental Protection and Energy;

F. Warren County Planning Board approval;



G. Such other outside agency reviews and approval as may be required.

3. This approval is subject to the payment of all appropriate fees and taxes prior to the issuance of building permits pursuant to this approval.

4. The following construction mitigation measures shall be imposed:

A. The following construction mitigation measures shall be imposed during the course of construction and shall be required to remain in full force and effect until a certificate of occupancy is issued:

1. Elimination of anti-vandalism horns on equipment.

2. Work hours shall be limited from 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. No work shall take place on Sundays or holidays except on an emergency basis. The holidays which shall be observed for purposes of this condition shall be New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. The Applicant shall maintain personnel on site to whom incidents of noise disturbance shall be reported and said personnel shall be authorized to take measures to minimize said disturbances.

3. Anti-litter regulations shall be imposed on site.

4. The Applicant shall establish regulations for the safe and proper transfer and transport of fuel on site, if required.

5. Track mats shall be located by the Warren County Soil Conservation District and the Town Engineer in such places as to minimize the tracking of dirt and mud onto High Street.

6. Clean-up and wash down of trucks and equipment shall be required before leaving the construction site.

7. Adequate provisions for safe control of employee parking including employees of the contractors and subcontractors shall be required on site during construction.

8. All construction traffic shall enter and exit the site from High Street.

9. Violation of any of these construction mitigation measures may result in a stop work order, which order shall remain in full force and effect until the condition is remedied to the satisfaction of the Town Engineer.

B. Prior to construction, including site work activity, a pre-construction meeting shall be required to include the Town representatives, the Applicant and its engineers and contractors. The pre-construction meeting shall not be held until a copy of the engineer's opinion of probable costs has been submitted to the township to compute engineering inspection fees.

C. This approval is subject to the completion of a successful nightlight test to be conducted if required by the Town Engineer's Office. Said test shall be conducted prior to the issuance of certificates of occupancy for the site or if the site is constructed in phases prior to the issuance of certificates of occupancy for each phase.

D. This approval is subject to the approval of the Warren County Soil Conservation District. The Applicant shall install soil sedimentation control measures prior to any

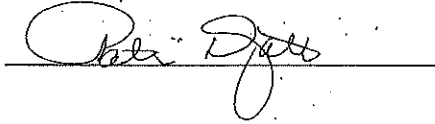
disturbance on site. Failure to so install said measures shall result in a stop work order that may only be lifted by the Planning Board. Continued maintenance of the soil erosion and sedimentation control measures shall be required during construction and failure to maintain said plan shall result in a work stoppage until the condition is corrected and the damage resulting therefrom is repaired.

E. Should blasting be required on site, the Applicant shall, in addition to any State permits that may be required, notify all owners within two hundred (200) feet of the property line two (2) weeks prior to the date of said blasting and shall conduct a meeting with the property owners at least one (1) week prior to blasting. The purpose of the meeting shall be to inform the residents and to advise them of such mitigation measures as may be appropriate. The Applicant shall be required to comply with all applicable Hackettstown Town ordinances.

F. Cut sheets shall be provided to the Town Engineer's Office directly and to the on-site inspector during construction. As-built drawings shall be forwarded to the Town Engineer's Office prior to the issuance of certificates of occupancy for any structures.

5. All of the conditions contained herein shall be incorporated into four (4) sets of revised plans that shall be submitted to the Town Engineer prior to any construction or disturbance of the site. Certification from the Applicant's design engineer that the plans are in accordance with this approval shall be required on the revised maps.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Zoning Board of Adjustment at its regular meeting of November 19, 1991.



RWT 49

12/06/91

Rev. 12/16/91; 12/17/91; 1/20/92