
BISGAIER HOFF

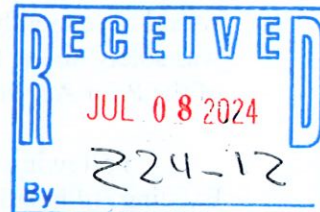
Attorneys At Law A Limited Liability Company

Richard J. Hoff, Jr.
Member of the NJ & PA Bar
E-mail: rhoff@bisgaierhoff.com
Direct Dial : (856) 375-2803
Main Phone : (856) 795-0150

July 8, 2024

VIA E-MAIL AND OVERNIGHT MAIL

Matthew B. Wieliczko, Esq.
Zeller & Wieliczko, LLP
120 Haddontowne Court
Cherry Hill, New Jersey 08034
E-mail: mwieliczko@zwattorneys.com



**Re: WA Outdoor Advertising, LLC
Use Variance and Minor Site Plan Application for
Billboard Conversion (the “Application”)
Block 36, Lot 1.07
631 Route 73 South, Marlton, New Jersey 08053 (the “Property”)**

Dear Mr. Wieliczko:

As you know, this firm represents WA Outdoor Advertising, LLC (“Applicant”) in connection with the above-referenced Application before the Evesham Township Zoning Board of Adjustment (“Board”). Please accept this letter as Applicant’s response to your e-mail dated May 6, 2024, regarding a potential *res judicata* issue with the Application.

Although the Board previously denied Applicant’s minor site plan and use variance application (“Prior Application”) for the conversion of the existing static billboard on the Property (“Existing Billboard”) to a digital billboard, the Board’s denial was not the final word on this issue. Applicant subsequently filed a prerogative writ action in Burlington County Superior Court challenging the Board’s denial, and Hon. Jeanne T. Covert, A.J.S.C. issued her ruling on this matter on January 23 2024.

In her opinion and order (enclosed), Judge Covert found that the Applicant had satisfied the positive criteria for the requested use variance “as a matter of law” because the Property is particularly suited for the proposed digital billboard use. Based on the “small size, irregular shape, location of the Property along a major thoroughfare, along with the fact that it has housed [the Existing Billboard] for over fifty years without issue,” Judge Covert found that the Applicant had met its burden, through the application and expert testimony, for the satisfaction of the positive criteria. She also found that the Board’s granting of the use variance for the digital billboard would not have constituted an improper abrogation of the Evesham Township Governing Body’s power to zone.

As to the negative criteria, Judge Covert did find that the Applicant had failed to meet the negative criteria, but this finding was based on the size of the proposed digital billboard. Judge

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Covert noted that the proposed digital billboard being “nearly 2.5x the size of [the Existing Billboard] in total sign area” would impair the Evesham Township Master Plan and Zoning Ordinance. In other words, if the proposed digital billboard had been smaller, the Applicant would have met the negative criteria, and the Court would have reversed the Board’s decision. It was solely on the basis of this negative criteria finding that the Court upheld the Board’s denial of the Prior Application.

Following the Court’s ruling, the Applicant revised its proposal for the conversion of the Existing Billboard to a digital billboard such that the proposed digital billboard set forth in the Application is now lower and has similar sign dimensions compared to the Existing Billboard. Please see the enclosed Variance Plan prepared by James Sassano Associates, Inc., dated November 23, 2022, last revised February 26, 2024, which compares the height and dimensions of the Existing Billboard with those of the new proposed digital billboard. The Application does not propose a digital billboard that is so large that it would, according to the Court, impair the Evesham Township Master Plan and Zoning Ordinance.

In addition, *res judicata* does not bar the Board from hearing the Application due to these changed circumstances. The new digital billboard proposed by the Application is significantly smaller than the previously proposed digital billboard and it is consistent with the Existing Billboard, which has been located on the Property for the last 50+ years. New Jersey Courts have found that *res judicata* does not apply where a new application proposes a less intensive use than that proposed as part of a prior denial. See Bressman v. Gash, 131 N.J. 517, 527-528 (1993) (finding that second application for the same variance was permitted where other changes to the application had been made); Tzeses v. Bd. of Trustees, 22 N.J. Super. 45, 54-55 (App. Div. 1953) (ruling that *res judicata* did not bar new variance application for two houses where a variance application for three houses had previously been denied). The Courts have also ruled that a *res judicata* issue should be decided liberally in favor of hearing the application. Russell v. Bd. of Adj. of Tenafly, 31 N.J. 58, 66-67 (1959); Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414-415 (App. Div. 1987).

For the above reasons, it is the Applicant’s position that the Application is materially different from the prior application for a changeable copy/digital billboard, and that *res judicata* does not apply.

Applicant welcomes the opportunity to formally present this *res judicata* issue to the Board for its consideration, as provided for in Mazza v. Linden Bd. of Adj., 83 N.J. Super. 494, 496 (App. Div. 1964). Please accept this letter and its enclosures as Applicant’s formal submission to the Board for such purpose.

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Thank you, and I look forward to hearing from you soon.

Very truly yours,

BISGAIER HOFF, LLC

A handwritten signature in blue ink, appearing to read "R. Hoff Jr.", is written over the company name.

Richard J. Hoff Jr.

Enclosures

cc: Kevin Rijs, Director of Community Development, Evesham Township
Jennifer Newton, Board Secretary, Evesham Township

PREPARED BY THE COURT

WA OUTDOOR ADVERTISING

Plaintiff,

vs.

TOWNSHIP OF EVESHAM ZONING
BOARD,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BURLINGTON
COUNTY
DOCKET NO. BUR-L-1497-23

ORDER

THIS MATTER being opened by the Court pursuant to a hearing with appearances by; Richard Hoff, Esq. on behalf WA Outdoor Advertising; Eric Riso, Esq, on behalf of the Township of Evesham Zoning Board; and the Court having considered the matter and having heard oral argument, and with good cause shown;

IT IS ON THIS 23rd DAY OF January, 2024;

ORDERED, that all of Plaintiff's requested reliefs are **DENIED** for the reasons stated in the accompanying opinion; and it is

FURTHER ORDERED that the Order will be deemed served upon the Court uploading it to ECourts.


HON. JEANNE T. COVERT, A.J.S.C.

PREPARED BY THE COURT

WA OUTDOOR ADVERTISING

Plaintiff,

vs.

TOWNSHIP OF EVESHAM ZONING
BOARD,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BURLINGTON
COUNTY

DOCKET NO. BUR-L-1497-23

Opinion

PROCEDURAL HISTORY & STATEMENT OF FACTS ¹

WA Outdoor Advertising, (“Plaintiff”), filed this timely action in lieu of prerogative writ on August 1, 2023, challenging Evesham Township Zoning Board’s (the “Board”) denial of its Application for zoning variances. Plaintiff owns real property located at Block 35, Lot 107 (“the Property”) in Evesham Township’s Commercial (“C-1”) zoning district. P’s Compl., p. 1. The C-1 zoning district does not permit billboards, but despite this restriction, Plaintiff’s static billboard (“Existing Billboard”) has been on the Property for over fifty (50) years. D’s Exhibit “A”; P’s Compl., p. 2-3. The Township Zoning Code prohibits billboards in any district except for the IP (Industrial Park) District, where Billboards are permitted only as a conditional use. D’s Exhibit “B”. The Township’s Sign Ordinance prohibits any new billboards other than those presently existing outside the Pinelands Area. D’s Exhibit “C”.

¹Plaintiff’s Complaint (“P’s Comp.”);
Plaintiff’s Trial Brief (“Ptb.”);
Defendant’s Trial Brief (“Dtb.”);
Township of Evesham Zoning Board of Adjustment Transcript from May 15, 2023 (“T1”)

Plaintiff's Application seeks variances allowing it to completely replace the Existing Billboard with an all new, larger, digital billboard ("Proposed Billboard"). P's Exhibit "D", p. 41. The Existing Billboard is mounted on a pole fifteen feet in overall height. P's Exhibit "D", p. 41 The face of the Existing billboard is double sided, and six feet high, and twelve feet in length, with a sign surface area of 144 square feet. Id.

The Proposed Billboard is double sided, and eighteen feet in overall height. Its face sits on a three-foot tall, twelve-foot-wide brick base, emblazoned with the Township crest in the middle and surrounded by new landscaping. Id. The face of the Proposed Billboard is fifteen feet high, and twelve feet in length, with a surface area of 360 square feet, 2.5 times the size of the Existing Billboard. Id. The Property is irregularly shaped, comprised of 187 square feet in total area. P's Compl., p. 3.

Plaintiff's Application seeks use variance pursuant to N.J.S.A. 40:55D-70d (1), bulk variance relief pursuant to N.J.S.A. 40:55D-70c (1) and/or (2), minor site plan approval pursuant to N.J.S.A. 40:55D-46.1. P's Compl., p. 3.

On May 15, 2023, at the public hearing on the Application, Plaintiff offered expert testimony from its civil engineer, Richard Clemson, P.E., who testified in relevant part that:

- the Proposed Billboard design allows the sign to display eight (8) different ads, rotating every eight (8) seconds, a design consistent with regulatory requirements and the permit the Applicant had already received from the New Jersey Department of Transportation ("NJDOT").
- Plaintiff would allow the Township to permanently use one (1) slot for any of its messaging needs. T1 44:1-45:2.
- the only viable use for the property is a Billboard. T1 9:7 to 18.

- the Proposed Sign “is compatible with [similar] on-premise signs [...] in the area.” T1 12:1 to 23.

Next, Plaintiff’s Traffic engineer, David Shropshire, P.E., testified in relevant part:

- about the requirements of applicable statutes and NJDOT regulations governing roadside signs; T1 17:1-20:8.
- that Plaintiff’s design complied with all aspects of those statutes and regulations and had already received the required permit from NJDOT. T1 17:1-20:8.
- that studies verify that the type of billboard Plaintiff’s application seeks poses “no more of a driving nuisance than the signs that you’re going to see on adjacent properties [...] and there’s no safety issues with regard to the provision of the billboard.” T1 18:9 – 19:7.

Plaintiff’s professional planner, Tiffany A. Morrissey, PP, AICP, explained that, as to positive criteria, that the Property is particularly suited for the proposed use because of unique characteristics of the site. T1 24:1-30:25. Morrissey noted, *inter alia*, the unique aspects of the property which promote the general welfare:

- its use for advertising for the past fifty years.
- its small size leaving no other viable use for the property.
- its location along route 73, in the township’s commercial zone.
- the Proposed Sign’s compliance with NJDOT regulations.
- the opportunity to promote multiple local businesses at once, thereby promoting goals of the master plan; e.g., to encourage economic development.
- that granting the variance promoted state policy objectives under the Roadside Sign Control and Advertising Act, and Purpose ‘G’ of the MLUL;

T1 25:1-30:25

As to the negative criteria, Morrissey opined:

- there is no other practical use for the Property.
- the proposal beautifies the Property.
- the Proposed Billboard is smaller in total signage area than other signs nearby.

- the Proposed Billboard would not substantially impair or impact the neighboring businesses, the master plan/ zoning ordinance, or cause a detriment to the public good.
- the Proposed Billboard is consistent with others you would see elsewhere in New Jersey.

T1 30:24-35:19.

In response to Morrissey's testimony as to positive and negative criteria, the Township's municipal engineer, Chris Dochney, CME, said in part that he was "in complete agreement" with Morrissey's testimony, and that he didn't believe there was anything else that could be done with the property," other than a guy with a shopping cart trying to sell water bottles on the side of the highway." T1 36:8-17.

Next, Plaintiff's experts fielded questions from Ms. Stacey Arcari, PE, PP, PTOE, CME, the Board's planner, related to various technical aspects of the sign not in dispute. T142:6-45:12. Arcari then inquired about how bright the LEDs in the proposed billboard would be and whether it was, a safety concern. T1 45:3-24. In response, Plaintiff presented testimony from the would-be manufacturer of the Proposed Billboard, Scotty Bland of Watchfire Signs. T1 49:12-50:25. Bland explained the Proposed Billboard:

- automatically adjusts brightness depending on conditions, like a cell phone.
- has the brightness equivalent to a "porch light at a hundred feet away" at night.
- is programmed to display eight separate, eight second advertisements.

T1 49:12-51:17.

Board members then asked questions of Plaintiff's experts, primarily related to concerns over the proposed Billboard potentially distracting drivers. Member Masson raised concerns over the "digital aspect of [the billboard ...] on Route 73 which is a very high traffic and very highly congested road", specifically the frequency advertisement

rotation. T1 52:21-54:13; 57:17-58:4. Member Thompson expressed similar concerns. T1 54:15-57:12.

At the conclusion of Plaintiff's witnesses' testimony, Mr. Thompson moved to deny Plaintiff's Application, and by a vote of 4-3, Plaintiff's Application was denied. N.J.S.A. 40:55D-70d (1). T1 70:25-71:16. The members of the Board that voted against the resolution (e.g., Smith, Masson, Thompson, and Ganju) stated their reasons on the record. T1 70:25-75:16.

On June 19, 2023, the Board issued a Resolution of Denial, ("ROD"), #2023-ZB-12, which offers a summary of the testimony presented at the hearing. See P's Exhibit F, p. 47-51, ¶1-18. ² The ROD reads in relevant part:

19. Based upon all foregoing testimony, the application and other documents **and the Board's familiarity with the P.I.Q.** [(Property In Question)], the Board finds in regard to the P.I.Q., the purposes of the Municipal Land Use Law, N.J.S.A. 40L55D-2, would **NOT** be advanced by the requested relief as detailed herein and that the benefits of approval would **NOT** substantially outweigh any detriment. Additionally the board finds that in regard to the P.I.Q., the positive criteria has **NOT** been satisfied.

20. The Board further finds the requested relief as detailed herein cannot be granted without substantial detriment to the public good and that it would substantially impair the intent and purpose of the Evesham Township Master plan and Land Use Ordinances. The negative criteria has also not been satisfied.

21. The Board, therefore, concludes that the approvals requested should be and hereby are **DENIED**.

² The ROD indicates the Board considered the evidence and arguments submitted by the Applicant, as well a review letter, dated March 15, 2023, by Zoning Board Engineer, Rakesh Darji, as well as a review letter dated April 20, 2023, by MT1 Dochney.

22. in conjunction with the vote to deny [...] each of the members that voted to deny the application placed on the record the basis for their denial. MT1 Thompson detailed that in conjunction with the Applicant's burdens of proof for all the requested relief as detailed in the CME review letter, incorporated here by reference, **by his evaluation he determined that the Applicant had not met its burdens of proof, including for the d(1) use variance. Initially he did not believe that this proposed signage was part of or consistent with the Township Master Plan or Master Plan reexamination reports. Also he expressed concerns about safety in the road and traffic corridor that is very congested with gaper delays. Mr. Masson also made the determination that the Applicant failed to meet its burdens of proof as detailed in the CME review letter and as noted by Mr. Thompson. He joined in the comments of Mr. Masson and went on to detail that he did not believe that the Applicant proved that the proposed digital billboard would not substantially negatively impact the character of the surrounding community. He also believed that the digital sign presented a danger to the public good. Ms. Smith agreed with and joined in with the comments of both Mr. Thompson and Mr. Masson with regard to the basis for denying the application and confirmed her determination that the Applicant had failed to meet its burdens of proof on all of the relief requested. She was also concerned with safety. Dr. Ganju agreed with and joined in with the comments of both Mr. Thompson, Mr. Masson, and Ms. Smith with regard to the basis for denying the application and confirmed her determination that the Applicant had failed to meet its burdens of proof on all the relief requested. She was also concerned with safety.**

Plaintiff's Exhibit F, p. 51-52. **(Underlined/bolded emphasis in original) (emphasis added)**

STANDARD OF REVIEW

The standard of review in any challenge to a municipal action is that such an action may be overturned by a court only if the action is "arbitrary, capricious or unreasonable." Charlie Brown of Chatham v. Board of Adjustment of Chatham, 202 N.J. 312, 321 (App. Div. 1985). A zoning board's decision carries a presumption of validity, Northeast Towers, Inc. v. Zoning Bd. of Borough of W. Paterson, 327 N.J. Super 476, 493 (App. Div. 2000), and is entitled to "substantial deference" from a reviewing court,

and may be reversed only if “arbitrary, unreasonable, or capricious.” N.Y. SMSA v. Bd. of Adjustment of Weehawken, 370 N.J. Super 319, 331 (App. Div. 2004). That deference is greater where, as here, a court is called upon to review a denial as opposed to a grant of a variance. Nynex Mobile Communications Co. v. Hazlet Twp. Zoning Bd. of Adj., 276 N.J. Super 598, 609 (App. Div. 1994). “That heavier burden requires the proponent of the denied variance to prove that the evidence before the board was “overwhelmingly in favor of the applicant.” Nextel of New York, Inc. v. Borough of Englewood Cliffs Bd. of Adjustment, 361 N.J. Super 22, 38 (App. Div. 2003) (internal citations omitted).

In reviewing a challenge to a municipal action, the Court is not charged with determining whether it would have made a different decision; but, rather, whether the challenged action “is supported by the record and is not so arbitrary, capricious or unreasonable as to amount to an abuse of discretion.” New Brunswick Cellular v. Bd. of Adjustment of South Plainfield, 160 N.J. 1, 14 (1999). Nor does the court review the application anew to determine if it agrees factually with the decision of the board. Demarest v. Mayor and Council of Hillsdale, 158 N.J. Super 507, 510-11 (App. Div. 1978).

Nonetheless, purely legal determinations are not entitled to a presumption of validity. Mount Hill v. Zoning Bd. of Middletown, N.J. Super 210, 234 (App. Div. 2008) *certif. denied*, 197 N.J. 475 (2009). Deference must be afforded to the Board’s interpretation of the Township’s zoning ordinance. Fallone Properties, LLC v.

Bethlehem Tp. Planning Board, 369 N.J. Super 552, 561 (App. Div. 2004). This is because “local officials are ‘thoroughly familiar with their communities’ characteristics and interests’ and are best suited to make judgments concerning local zoning regulations.” Ibid. (internal citations omitted). It is “because of their peculiar knowledge of local conditions” that land use boards “must be allowed wide latitude in the exercise of delegated discretion.” Kramer, 45 N.J. at 296.

The board decision must be accompanied by substantial evidence in the record to support the board’s factual findings. Cell South of N.J. v. Zoning Bd. of Adjustment, West Windsor Tp., 172 N.J. 75, 89 (2002) (internal citation omitted). A board decision should not be upheld if it does not “reflect a correct application of the relevant principles of land use law.” Lang v. Zoning Bd. of Adj. of Borough of North Caldwell, 160 N.J. 41, 58-59 (1999).

PARTY ARGUMENTS

Plaintiff’s Arguments

Plaintiff initially notes that the Board may not be unreasonable in its rejection of expert testimony and a Board may not reject such testimony based upon bare allegations or unsubstantiated beliefs. Ptb., p. 7-8 citing Cell South of N.J., *supra* 172 N.J. at 87; Kramer, *supra*, 45 N.J. at 288. “Proof of an adverse effect on adjacent properties and on the municipal land use plan, generally will require qualified expert testimony, citing Smart Smr v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 336 (1998). Ibid. Plaintiff suggests the Board failed to give sufficient weight to its expert testimony,

and notes the testimony was “not contradicted or challenged by the Board’s own expert witnesses.” Ptb., p. 7. ³

Next, Plaintiff suggests that it met its burden of establishing positive and negative criteria, and that the basis of the Board’s denial, concerns over safety and the proposal’s conformity with the Township’s master plan, are unsupported by the record. Ptb., p. 12-18. The proposed use, Plaintiff argues, would serve the general welfare, because “the proposed site is particularly suitable for the proposed use.” Saddle Brook Realty, LLC v. Twp. Of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super 67, 76 (App. Div. 2006).

As to positive criteria, Plaintiff argues the record demonstrates its experts established that the property is particularly well suited for the proposed use, and special reasons exist for granting the variance. Plaintiff points to the irregular shape and small area of the Property, and testimony from its experts asserting that the property’s only suitable use is a billboard sign, as it has been for the past fifty years. Plaintiff Cert., Exhibit B & C; Ptb., p. 14. Clemson testified that the Proposed Billboard would be an aesthetic improvement over the Existing Billboard, and would remain compatible, like the existing sign, with the surrounding office buildings, signs, offices, and retail uses.

³ Plaintiff notes that because the Board’s decision to deny the Application was based on the requested use variance, the brief focuses on the variance proofs, but says “to the extent Plaintiff’s requested bulk variance relief was not subsumed into the requested use variance; the analysis of the positive and negative criteria herein also applies to Plaintiff’s requested bulk variance relief.” Ptb., p. 7.

Ptb, p. 14. Clemson also highlighted the Proposed Billboard's ability to transmit Township messages, providing further benefit to the public. Ptb, p. 14.

Next, Plaintiff points to Morrissey's testimony, highlighting the same points as Clemson. Ptb, p. 14. Morrissey testified that the Proposed Billboard has already received its NJDOT permit, and would advance the purposes of the NJDOT statute and regulations for billboard signs, along with purpose "G" of the MLUL. Ptb, p. 14. Finally, Plaintiff notes the Township's planning expert agreed with the entirety of Morrissey's testimony on the record. Ptb, p. 14.

Plaintiff argues that its expert testimony established the Proposed Billboard will not result in any substantial detriment to the public good, as it is consistent with signs in the vicinity, and along the Route 73 corridor. Ptb., p. 12. Plaintiff's civil engineer claimed the Proposed Billboard has "essentially the same dimensions" as the Existing Billboard, with the only material difference being its digital nature, and increase of three (3) feet in height. Ptb., p. 12. Further, Plaintiff's traffic engineer and sign manufacturer stated there would be no adverse traffic safety for the motorists traveling on Route 73, or negative visual impacts on the surrounding properties. Ptb., p. 12. Additionally, Bland testified the Proposed Billboard would not produce any intense lighting or glare, and safety measures were in place to ensure it was not 'hacked'. Ptb., p. 12.

Plaintiff next claims it has satisfied the second prong of negative criteria, which requires a showing that the granting of the variance will not substantially impair the

intent and purpose of the zone plan and zoning ordinance. N.J.S.A. 40:55D-70 (d); Medici v. BPR Co., 107 N.J. 1 (1987) (describing the ‘enhanced quality of proof’ which must ‘reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.’) Id. at 21-22.

Plaintiff argues that Morrissey’s testimony established that the variance would not substantially impair the intent and purpose under the enhanced quality of proof standard. Ptb., p. 18. Morrissey testified the Proposed Billboard is an aesthetic upgrade, enhancing the brick base and landscaping, and meeting Township’s master plan goals of promoting economic development in commercial zones. Ptb., p. 18.

Next, Plaintiff suggests its expert testimony was contradicted only by the “subjective opinion” of the Board members. Ptb., p. 18. Plaintiff agrees the “zoning board may, at its discretion, reject expert testimony, [but] it ‘may not do so unreasonably, based upon only bare allegations or unsubstantiated beliefs.’” Ptb., p. 18. *citing* New York SMSA, L.P. v. Bd. of Adj. of Twp. of Weehawken, 370 N.J. 319, 338 (App. Div. 2004). Despite knowledge of local conditions, a board cannot reject expert opinion based upon perception or speculation which is unsupported by the evidence in the record. Reich v. Borough of Fort Lee Zoning Bd. of Adj., 414 N.J. Super 483, 504-507 (App. Div. 2010).

Plaintiff argues, that like Reich, the Board members comments contradicting Plaintiff’s experts consisted of the member’s subjective opinion, and were not supported by facts in the record, nor expert testimony contradicting the claims of safety or

conformity with the Master Plan. Ptb., p. 19. Instead, both the Township's engineering expert and its planning expert agreed with these assertions, like the instant matteT1 Ptb., p. 19.

Plaintiff concludes, to the extent that those concerns were legitimate, they were addressed by Plaintiff's expert testimony. Ptb., p. 19. And as such, the Board's reasoning for denial was subjective, and unsupported by the record before it. Ptb., p. 19.

Defendant's Arguments

Defendant first counters that the Board's decision must be upheld because granting the variance would have improperly abrogated the governing body's power to zone, e.g., granting the variance would exceed the authority of the Board. Dtb., p.10 *citing* Paruszewski v. Township of Elsinboro, 154 N.J. 45, 51-54 (1998). A land use board "may not, in the guise of a variance proceeding, usurp 'the legislative power reserved to the governing body of the municipality to amend or revise the [zoning] plan'" Feiler v. Fort Lee Bd. of Adjustment, 240 N.J. SuprT1 250, 255 (App. Div. 1990).

Defendant argues the intent of the Governing Body was made clear at the hearing, no billboards in the commercial district, and billboards in the IP District are conditional use only. P's Exhibit "B" & "C"; D's Exhibit. "D" at p.6, ¶11. Thus, Defendant concludes that the approval of Plaintiff's Application would constitute improper abrogation of the governing body's authority. Tp. of North Brunswick, 378 N.J. SuprT1 at 494.

Next, Defendant argues that Plaintiff improperly seeks to shift the burden of proof to Defendant. Dtb., p. 13. Defendant avers that “the absence of evidence in support of [a] denial does not in itself mean that the board’s determination is arbitrary [...]since the burden rests with the applicant.” Dtb., p. 13-14 *citing* Kenwood Associates v. Bd. of Adj. of City of Englewood, 141 N.J. Super 1, 5 (App. Div. 1976).

Defendant argues Plaintiff failed to establish the proposed use is “particularly suitable”. Medici, 107 N.J. at 4. Defendant claims Plaintiff did not demonstrate the ‘need’ for the use in the C-1 Zone specifically, particularly where there are zones in the Township that allow such uses. New Brunswick Cellular Tel. Co. v. Borough of S. Plainfield Bd. of Adjustment, 160 N.J. 1, 14 (1999).

Defendant argues Plaintiff presented no evidence that the site is particularly suited, nor did they establish the public welfare would be served by the Proposed Billboard, and suggests the lack of evidence is “not surprising [...] as it has been recognized that digital billboards ‘attract far more attention,’ and ‘are far more intrusive to communities’ than traditional billboards.” Dtb., p. 17 *citing* E & J Equities, LLC v. Bd. of Adjustment of the Twp. of Franklin, 226 N.J. 549, 567 (2016) (*quoting* Susan C. Sharpe, “*Between Beauty and Beer Signs*”: *Why digital Billboards Violate the Letter and Spirit of Highway Beautification Act of 1965*, 64 Rutgers L. Rev. 515, 517 (2012)). As such, having failed to satisfy the positive criteria, Defendant claims the Board properly denied Plaintiff’s Application. Dtb., p. 18

Next, Defendant argues Plaintiff failed to satisfy the negative criteria under the enhanced quality of proof standard, which requires proof that “the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance [and] will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” Dtb., p. 17, *citing* N.J.S.A. 40:55D-70(d); Medici, 107 N.J. at 21-22.

The Board found that Plaintiff’s Application could not be granted “without substantial detriment to the public good” because the relief requested would “substantially impair the intent and purpose of the Evesham Township Master Plan and Land Use Ordinances.” D’s Exhibit “D”, p. 8, ¶20. Defendant reiterates that Plaintiff bears the heavy burden of proof, and further that “[i]t [is] not the burden of the [B]oard (sic.) to find affirmatively that the plan would be substantially impaired (although it did so in the instant case). It was, rather, the burden of the applicant to prove the converse.” Leon N. Weiner & Assocs., Inc. v. Zoning Bd. of Adjustment of Borough of Glassboro, 144 N.J. SupeT1 509, 516 (App. Div. 1976), *certif. denied*, 73 N.J. 55 (1977).

Defendant argues safety and aesthetic concerns associated with billboards are both legitimate and reasonable. Dtb., p. 18 *citing* Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 509-10, 101 S. Ct 2882, 2893-94 (1981); Geft Outdoor LLC v. Consol. City of Indianapolis & County of Marion, Indiana, 187 F. Supp.3d 1002 (S.D. Ind. 2016).

Defendant concludes that it was well within the Board’s discretion to deny the application due to Plaintiff’s failure to satisfy the negative criteria. Dtb., p. 19 *citing* Salt & Light Co., 423 N.J. SupeT1 at 292.

Defendant argues the Board properly relied on its expertise and knowledge and did not rely on the subjective opinion of its members, and the Board is free to accept or reject expert opinions, and where such decisions are reasonably made, are conclusive on appeal. Dtb., p. 19 *citing* Kramer, 45 N.J. at 288 (*quoting* Reinauer Realty Corp. v. Nucera, 59 N.J. Super 189, 201 (App. Div. 1960).

Defendant additionally claims that Plaintiff's experts offered only net opinions, and therefore need not be accorded any weight. Dtb., p. 20 *citing* Nextel of New York, Inc., 361 N.J. Super 1 at 43.

Defendant then suggests Plaintiff's reliance on Reich is misplaced, as the matters are "easily distinguishable." Dtb., p. 20. Unlike Reich, Defendant argues, the instant matter does not involve parking, and the Board did not rely on any unfounded testimony of objectors.

Defendant concludes the Board was within its rights to rely on the knowledge of its members in making its findings and conclusions, and that it does not matter that no expert testimony was presented to refute Plaintiff's experts. Nextel, *supra* 361 N.J. Super 1 at 41. The Board is free to accept or reject expert opinions, and where done reasonably, the decision is conclusive on appeal. Hawrylo, 249 N.J. Super 1 at 571; Shim v. Washington Twp. Plan. Bd., 298 N.J. Super 1 395, 412 (App. Div. 1997)(*citing* Kramer, 45 N.J. at 288).

Findings of Fact and Legal Conclusions

1. Granting Plaintiff's Application for the use variance would not have been an improper abrogation of the Governing Body's power to zone.

Defendant's argument that granting Plaintiff's Application would have been an improper abrogation of the Governing Body's power to zone is unsupported. Although, as Defendant asserts, it is the Governing Body's "ultimate responsibility to establish, by the adoption of its zoning ordinances and amendments thereto, the essential land use character of the municipality", the Board is empowered by statute to grant relief from the zoning ordinance where the necessary criteria are established by a Plaintiff. TP. of Dover v. Board of Adjustment of Dover Twp., 158 N.J. Super 401, 411 (App. Div. 1978). The Court notes that the Township does not permit billboards in its commercial zoning district, where the Property is located, and further that the Township's Sign Ordinance prohibits any new billboards other than those presently existing outside the Pinelands Area. P's Exhibit "B"; D's Exhibit "C". Granting Plaintiff's Application would not amount to improper "re-zon[ing] by the indirect means of granting variances." Cox & Koenig, New Jersey Zoning and Land Use Administration, §16-1, p. 223 (Gann 2023) (citing Medici v. BPR Co., 107 N.J. 1, 5 (1987)).

2. Positive and Negative Criteria

a. Plaintiff satisfied the positive criteria as a matter of law because the record indicates the Property is, and has been for fifty years, particularly suited for advertisement.

Plaintiff met its burden, through its application and expert testimony, demonstrating the general welfare is served because the proposed use is particularly suitable, thereby satisfying the positive criteria. N.J.S.A. 40:55D-70(d); Medici v. BPR

Co., 107 N.J. 1 (1987); Saddle Brook Realty, LLC v. Twp. Of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super 67, 76 (App. Div. 2006).

Defendant's assertion that E&J Equities, *supra*, 226 N.J. 549, 567 (2016) stands for the proposition that digital billboards attract more attention and are far more intrusive to communities than traditional billboards is overstated. Ibid. In E&J, the New Jersey Supreme Court rejected that blanket notion, finding the record there provided "no basis to discern how three static billboards are more aesthetically palatable than a single digital billboard", and further "a governing body seeking to restrict expression cannot simply invoke [aesthetic and public safety] interests with scant factual support informing its decision making [...] the record provides no explanation of the qualitative differences between three static billboards and a single digital billboard." Id., 583, 585 (2016). The "particular suitability" standard does not require "proof [] there is no other potential location for the use, nor does it demand evidence that the project 'must' [or 'need'] be built in a particular location." Saddle Brook Realty, LLC, *supra* 388 N.J. Super 67, 76 (App. Div. 2006). Rather, the inquiry is whether the proposed development is "especially well suited for the location, in spite of the fact that the use is not permitted in the zone." Ibid. Indeed, the standard requires an evaluation of the "relative location of the proposed site and the community's need for the proposed use." Id. at 290. "[P]articularly suitable means that 'the general welfare is served because the use is peculiarly fitted to the particular location for which the

variance is sought.' [... and] strict adherence to the zoning requirements would be less beneficial to the general welfare." Price, *supra*, 214 N.J at 263

At the hearing, the parties' experts agreed that the property is particularly well suited for a billboard, and no other permitted use within the commercial zone is viable on that property. T1 36:8-17. Based on the small size, irregular shape, location of the Property along a major thoroughfare, along with the fact that it has housed a static billboard for over fifty years without issue, the Court agrees with Plaintiff that the Property is particularly suited for the proposed use, thereby satisfying the positive criteria.

b. Plaintiff failed to satisfy the negative criteria

Proofs for satisfying the negative criteria require a showing that the granting of the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. N.J.S.A. 40:55D-70 (d); Medici v. BPR Co., 107 N.J. 1 (1987). Where an appeal follows the denial of a variance, Plaintiff bears a 'heavier burden' requiring a showing that its application was so overwhelmingly in its favor as to amount to an abuse of discretion. Nynex, *supra* 276 N.J. SupeT1 598, 609 (App. Div. 1994); Nextel, *supra* 361 N.J. SupeT1 22, 38 (App. Div. 2003); New Brunswick, *supra* 160 N.J. 1, 14 (1999). Here, Plaintiff failed to bear the heavy burden of proving to the zoning board that granting the requested variances, in the face of the clear prohibitions against billboards, would not substantially impair the intent and purpose of the zoning plan.

Public bodies, because of their peculiar knowledge of local conditions, are thus allowed wide latitude in their exercise of the discretion delegated them under the Municipal Land Use Law. Pagano v. Zoning Bd. of Adjustment of Twp. of Edison, 257 N.J. Super 382, 388-89 (Law Div. 1992). The Board is entitled to rely upon its personal knowledge in making decisions. El Shaer v. Planning Board of the Township of Lawrence, 249 N.J. Super 323 (App. Div.), *certif. denied*, 127 N.J. 546 (1991); (“It is firmly settled that a board may and indeed is expected to bring to bear in its deliberations the general knowledge of the local conditions and experiences of its individual members.”); Baghdikian v. Bd. of Adjustment of Borough of Ramsey, 247 N.J. Super 45-51 (App. Div. 1991) (*citing Reinaur, supra* N.J. Super 201). “The burden of [...] persuasive proof [...] rests with Plaintiff [... t]he purpose of an expert witness is to assist a factfinder in understanding the evidence [... t]he fact that Plaintiff’s expert was unsuccessful in doing so is not the fault of the [B]oard.” Nextel, supra 361 N.J. Super 22, 41 (App. Div. 1994). The Board was free to accept or reject the[ir] opinions, and **where reasonably made, is conclusive on appeal.** Shim. V. Washington Twp. Plan Bd., 298 N.J. Super 395, 412 (App. Div. 1997) (emphasis added).

Plaintiff claims the Board acted unreasonably in making findings contrary to the testimony of Plaintiff’s experts. Plaintiff claims such findings “generally require” testimony from the Township’s own experts. Ptb., 7 citing Smart Smr v. Borough of Fair Lawn Bd. of Adjustment, 152 N.J. 309, 336 (1998). This reliance is misplaced. Smart is a

New Jersey Supreme Court case which offers guidelines to lower courts on how municipalities and lower courts should manage variance applications and/or appeals of applications for telecommunication facilities (e.g., cell towers), which is governed by both the MLUL and the federal Telecommunications Act. Smart, 152 N.J. 309, 336 (1998). Plaintiff draws its support directly from these guidelines, which are wholly inapplicable to the petition herein. See Northeast Towers, Inc. v. Zoning Bd. of Adjustment of Borough of West Paterson, 327 N.J. Super 476, 489 (2000) (applying the proof of adverse effect standard to a cell tower case); New Cingular Wireless PCS LLC v. Zoning Bd. of Adjustment, 469 F. Supp. 3d 262 (D.N.J. 2020) (same); Cell S. of N.J. v. Zoning Bd. of Adjustment, 172 N.J. 75, 90 (2002) (same).

In this case, Plaintiff seeks to replace the fifty-year-old Existing Billboard, with a new, illuminated billboard, measuring nearly 2.5x the size of their prior billboard in total sign area. In fact, Plaintiff does not even argue for a pre-existing non-conforming use, essentially conceding this is a new “animal” and asks for a variance instead. The Board’s Resolution of Denial found neither positive nor negative criteria were satisfied, and further, the Board was not persuaded by Plaintiff’s expert testimony that safety would not be impacted. Moreover, they determined that the Master Plan and Zoning Ordinance would be impaired, and as such, denied Plaintiff’s application. *Supra* p. 5-6, *ref. P’s Exhibit “F”*, p. 51-52 (emphasis added). While this Court has already found the lot is particularly suited to the Billboard use, Plaintiff has failed to meet their further burden.

The Board considered the Township's ordinance prohibitions on Billboard signs generally, and in the C-1 Zone specifically. They additionally evaluated the presence of an Existing Billboard on the Property for fifty years, along with various reports and the testimony of all experts. D's Exhibit "D", p. 4. The Board, guided by its interpretation of the Township Zoning Code, Master Plan, and Master Plan amendments, rejected Plaintiff's experts' testimony. Such a rejection must be accompanied by substantial evidence in the record to support the Board's factual findings. Cell South of N.J. v. Zoning Bd. of Adjustment, West Windsor Tp., 172 N.J. 75, 89 (2002) (internal citation omitted); the record supports the Board's conclusion on this point.

Plaintiff's proofs that the zoning ordinance and master plan would not be substantially impaired, nor the public good harmed, came in the form of testimony from its expert planner, Tiffany Morrissey. T1 33:1-9; 34:2-6. However, Morrissey did not offer any objective support for her stated proposition that granting the variance would not substantially impair the zoning ordinance or master plan, and although she testified as an expert, this amounted to a net opinion.

The net opinion rule "requir[es] that the expert 'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 410 (2014) *quoting* Polzo v. Cnty. of Essex, 196 N.J. 569, 583, 960 A.2d 375 (2008)). "[E]xpert's bare conclusions, unsupported by factual evidence [are] inadmissible." Ibid., *citing* Buckelew v. Grossbard, 87 N.J. 512, 525 (1981). Where, as here, an expert offers a mere "net opinion," a board need accord it

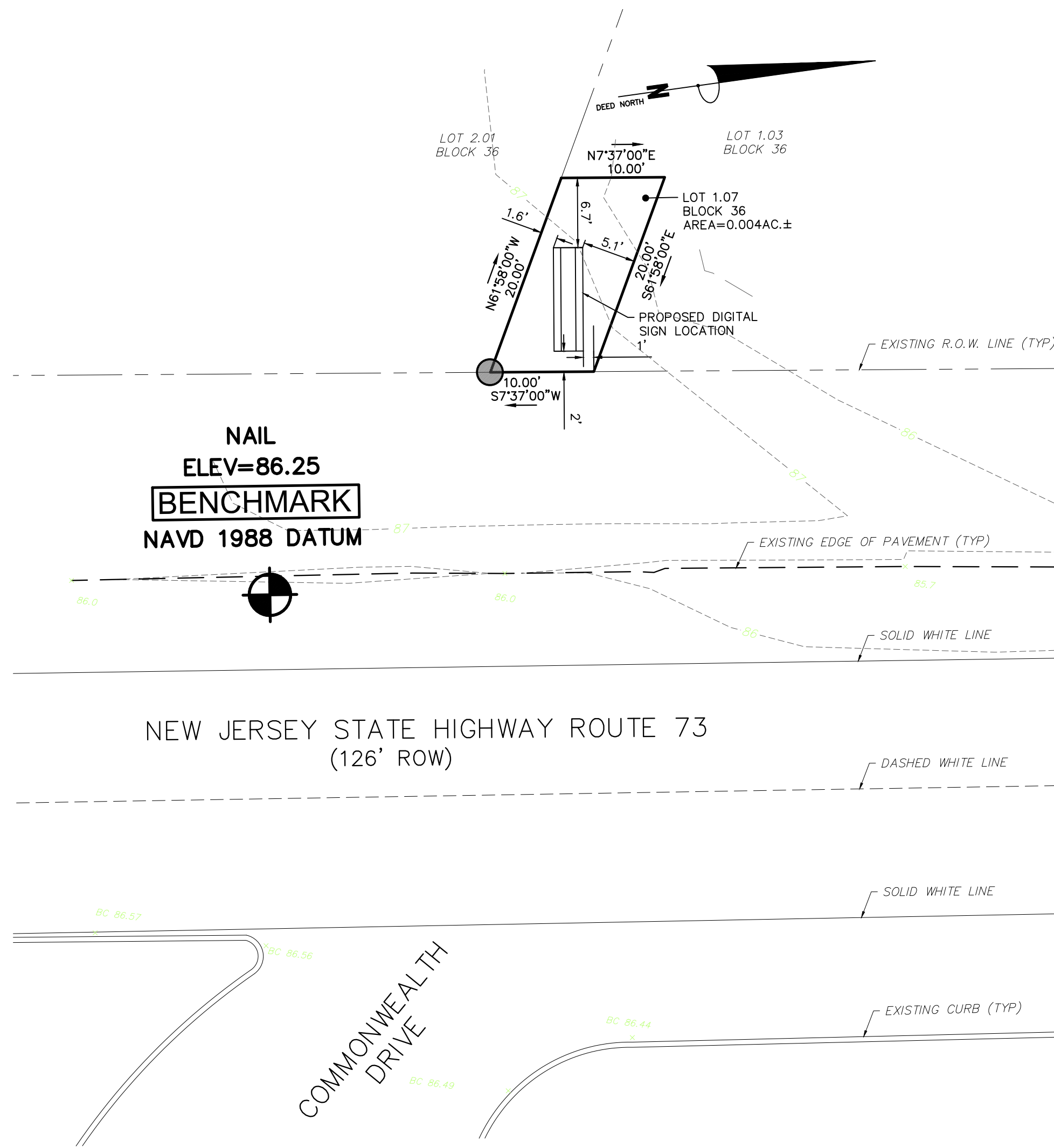
no weight. Nextel of New York, Inc., 361 N.J. Super 1 at 43. Therefore, the Board in Evesham was free to reject her testimony, and they did so.

The Board was not obligated to rely upon this opinion, because “[t]o hold otherwise would effectively divest the “Zoning Board” of its discretion by holding its legal determinations hostage to the opinions of expert witnesses.” Kinderkamack Rd. Assocs., LLC, 421 N.J. Super 1 at 21-22.

Next, the Board addressed the testimony of MT1 Dochney, and they incorporated their own familiarity with the PIQ, which they are permitted to do, and concluded that the intent of the Governing Body is to place all new billboards in the IP district. “MT1 Dochney then identified the zone in the Township where billboards are permitted as a conditional use (in the IP District) [...] He **confirmed that the Ordinance[’s] intent is that brand new billboard [is] supposed to be in the IP District, not this C-1 District.**” Id., p. 7 (emphasis added). The Board members reasonably relied on this interpretation, while considering all the evidence to the contrary, and determined that the Applicant had failed to meet its burden of proof. *Supra* p. 5-6, *ref. Plaintiff’s Exhibit “F”*, p. 51-52 (emphasis added).

Because the Board acted reasonably in rejecting the expert testimony of Plaintiff’s witnesses, and in concluding that a grant of this variance would very much impair the Master Plan and Zoning Ordinance, they did not behave in an arbitrary, capricious, or unreasonable manner, and Plaintiff’s requested relief to overturn their decision is **DENIED**.

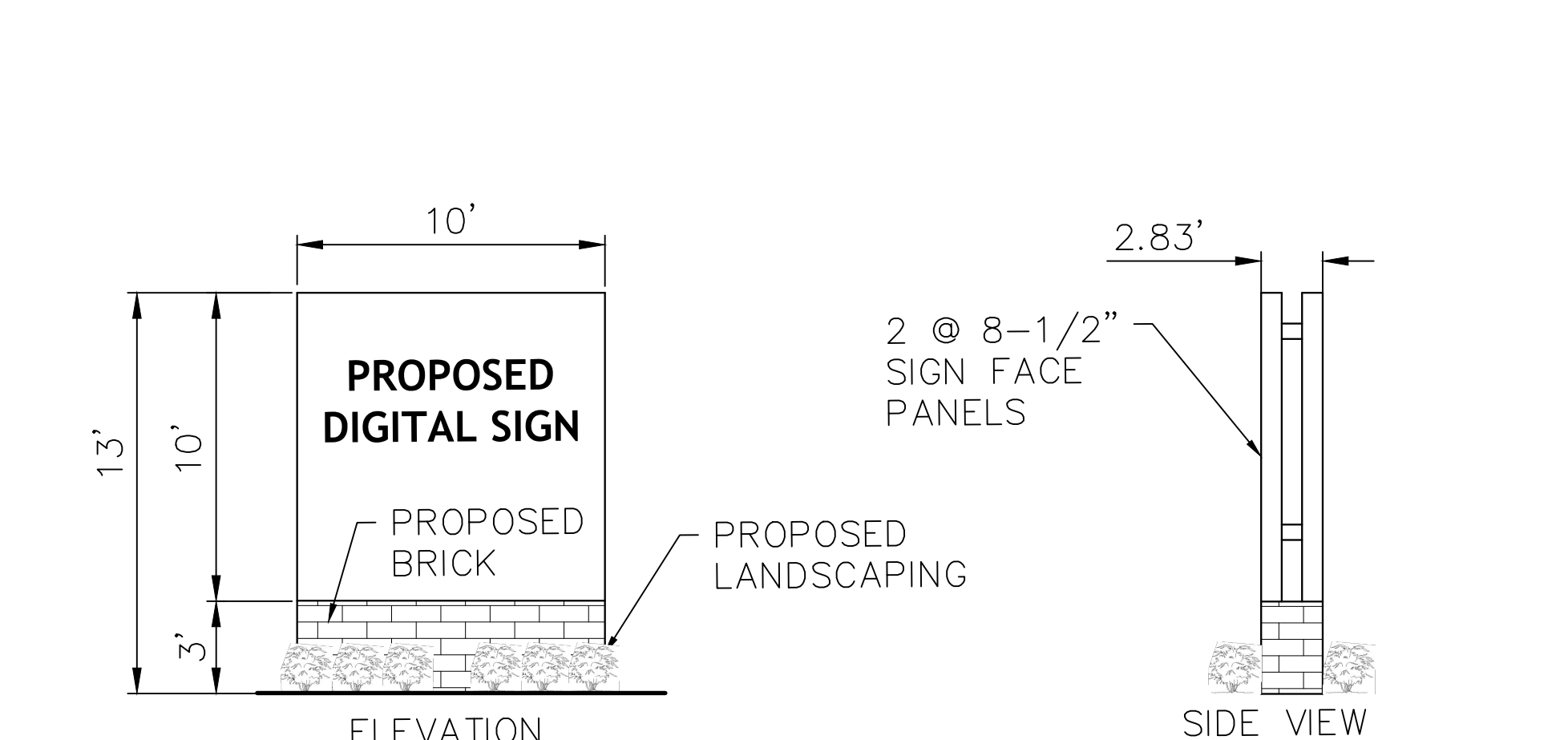
CREATED ON 02/27/2024, LAST MODIFIED ON 02/29/2024



SITE PLAN
SCALE: 1" = 10'



EXISTING SIGN PHOTOGRAPH
NTS



PROPOSED SIGN DETAIL
SCALE: NTS

ZONING SCHEDULE

SCHEDULE BELOW IS REFERENCED TO THE EVESHAM TOWNSHIP CODE BOOK. TRACT OF LAND IS ZONED C-1 COMMERCIAL DISTRICT

SECTION	USE/STANDARD	REQUIRED/PERMITTED BY ORDINANCE	EXISTING	PROPOSED	CONFORMS	VARIANCE	NOTE
CHAPTER 160: ZONING							
160.68(B)	SHOPPING CENTERS, DEPARTMENT STORES, MEDICAL OFFICES, RETAIL STORES, BANKS, DAYCARE FACILITIES	SHOPPING CENTERS, DEPARTMENT STORES, MEDICAL OFFICES, RETAIL STORES, BANKS, DAYCARE FACILITIES	ADVERTISING SIGN	ADVERTISING SIGN		X	EXISTING NON-CONFORMING CONDITION
160.68(E)(2)	MINIMUM LOT SIZE	2 ACRES EXCEPT LOTS PART OF A PLANNED COMMERCIAL DEVELOPMENT MAY BE 1 ACRE	187 SQUARE FEET 0.0043 ACRES	187 SQUARE FEET 0.0043 ACRES		X	EXISTING NON-CONFORMING CONDITION
160.68(E)(3)	MINIMUM STREET FRONTAGE	200 FEET	10 FEET	10 FEET		X	EXISTING NON-CONFORMING CONDITION
160.68(E)(3)	MINIMUM LOT WIDTH	200 FEET	10 FEET	10 FEET		X	EXISTING NON-CONFORMING CONDITION
160.68(E)(3)	MINIMUM LOT DEPTH	200 FEET	20 FEET	20 FEET		X	EXISTING NON-CONFORMING CONDITION
160.68(E)(3)	MINIMUM SIDE YARD	NONRESIDENTIAL 30 FEET EACH SIDE	N/A	N/A			NO BUILDINGS PROPOSED
160.68(E)(3)	MINIMUM FRONT YARD	100 FEET	N/A	N/A			NO BUILDINGS PROPOSED
160.68(E)(3)	MINIMUM REAR YARD	NONRESIDENTIAL 50 FEET EACH SIDE	N/A	N/A			NO BUILDINGS PROPOSED
160.68(E)(3)	MAXIMUM BUILDING COVER	15%	0%	0%		X	
160.68(E)(3)	MAXIMUM IMPERVIOUS COVER	55%	0%	15% (28 SF)		X	
160.68(E)(3)	CLEARING LIMIT	75%	0%	0%		X	
160.68(E)(4)	MAXIMUM PRINCIPAL BUILDING HEIGHT	40 FEET	N/A	N/A			NO BUILDINGS PROPOSED
160-75 B. (1) (a)	SIGNS GENERAL DESIGN	ONLY SIGNS WHICH PROMOTE OR DRAW ATTENTION TO A PRODUCT, BUSINESS, OR SERVICE ON PROPERTY WHERE THE SIGN IS LOCATED	ADVERTISING SIGN FOR PRODUCT, BUSINESS, OR SERVICE LOCATED OFF SITE	ADVERTISING SIGN FOR PRODUCT, BUSINESS, OR SERVICE LOCATED OFF SITE		X	EXISTING NON-CONFORMING CONDITION
160-75 B. (1) (f)	SIGNS GENERAL DESIGN	NO SIGN SHALL BE PLACED IN SUCH A POSITION AS TO ENDANGER TRAFFIC BY OBSCURING VIEW OR BY CONFUSING WITH OFFICIAL STREET SIGNS OR SIGNALS BECAUSE OF POSITION, COLOR, OR REFLECTIVE SURFACE.	SIGN PLACED SO AS NOT TO ENDANGER TRAFFIC	SIGN PLACED SO AS NOT TO ENDANGER TRAFFIC		X	
160-75 B. (1) (g)	SIGNS GENERAL DESIGN	NO SIGN SHALL PROJECT OVER A PUBLIC WALKWAY, EXCEPT WHERE A LOCAL RIGHT-OF-WAY ABUTS A STRUCTURE, OR FOR SIGNS OF GOVERNMENTAL AUTHORITY. FOR THOSE EXCEPTIONS WHERE A SIGN IS PERMITTED, THE LOWEST EDGE OF SIGN SHALL BE AT LEAST EIGHT FEET ABOVE THE SIDEWALK ELEVATION.	SIGN DOES NOT PROJECT OVER A PUBLIC WALKWAY	SIGN DOES NOT PROJECT OVER A PUBLIC WALKWAY		X	
160-75 B. (1) (i)	SIGNS GENERAL DESIGN	NO PORTION OF THE TOP EDGE OF ANY FREESTANDING SIGN SHALL BE GREATER THAN 22 FEET ABOVE THE ELEVATION AT THE CENTER LINE OF THE STREET IN FRONT OF THE PROPERTY ON WHICH THE SIGN SHALL BE SITUATED.	EXISTING SIGN HEIGHT IS 15 FEET HIGH AND IS UNDER 22 FEET ABOVE THE CENTER OF ROUTE 73	PROPOSED SIGN HEIGHT IS 13 FEET HIGH AND IS UNDER 22 FEET ABOVE THE CENTER OF ROUTE 73		X	
160-75 B. (1) (j)	SIGNS GENERAL DESIGN	EXCEPT WHERE OTHERWISE PROVIDED, NO SIGN OR ANY PART THEREOF SHALL BE LOCATED CLOSER THAN 10 FEET FROM ANY RIGHT-OF-WAY LINE OR LOT LINE. ANY NEW SIGN SHALL BE NOT LESS THAN A DISTANCE OF 50 FEET FROM ANY EXISTING ADJACENT FREESTANDING SIGN, EXCEPT AS OTHERWISE PROVIDED.	1.7 FEET SETBACK FROM ROUTE 73 ROW AND 0 FEET FROM SIDE LOT LINE	2' SETBACK FROM ROUTE 73 ROW AND 0 FEET FROM SIDE LOT LINE		X	EXISTING NON-CONFORMING CONDITION
160-75 B. (1) (l)	SIGNS GENERAL DESIGN	SIGNS MAY BE DOUBLE FACED	SIGN IS DOUBLE FACED	PROPOSED SIGN TO BE DOUBLE FACED		X	
160-75 B. (1) (m)	SIGNS GENERAL DESIGN	THE MAXIMUM DISTANCE BETWEEN FACES OF A DOUBLE FACED SIGN SHALL NOT EXCEED 18 INCHES	DISTANCE BETWEEN DOUBLE FACED SIGN = 12 INCHES	DISTANCE BETWEEN DOUBLE FACED SIGN = 17 INCHES		X	
160-75 M. (1) (a)	SQUARE FOOTAGE OF SIGN	80 SQUARE FEET	72 SQUARE FEET PER SIDE OR 144 SF	100 SF PER SIDE OR 200 SF		X	EXISTING NON-CONFORMING CONDITION
160-75 M. (1) (d)	SETBACK FROM STREET AND PROPERTY LINE	MINIMUM 10 FEET FROM STREET OR PROPERTY LINE	1.7 FEET SETBACK FROM ROUTE 73	2 FOOT SETBACK FROM ROUTE 73		X	EXISTING NON-CONFORMING CONDITION
160-75 E. (12)	PROHIBITED SIGNS	OTHER THAN THOSE PRESENTLY EXISTING OUTSIDE THE PINELANDS AREA, NO NEW BILLBOARD OR BILLBOARD-TYPE SIGNS SHALL BE ERRECTED	EXISTING SIGN	SIGN MODIFICATIONS		X	

PLANTING NOTES

1. ALL PLANT MATERIAL SHALL BE FURNISHED AND INSTALLED AS INDICATED INCLUDING ALL LABOR, MATERIAL, PLANTS, EQUIPMENT, INCIDENTALS AND CLEAN UP.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PLANTING AT CORRECT GRADES AND ALIGNMENTS. PLANTING OPERATIONS SHALL BE PERFORMED DURING PERIODS WITHIN THE PLANTING SEASON WHEN WEATHER AND SOIL CONDITIONS ARE SUITABLE AND IN ACCORDANCE WITH ACCEPTED LOCAL PRACTICES.
3. ALL PLANTS SHALL BE OF NURSERY-GROWN STOCK TYPICAL OF THEIR SPECIES AND VARIETY, HAVE NORMAL GROWTH HABITS, WELL DEVELOPED BRANCHES, DENSELY-FOLIATED VIGOROUS ROOT SYSTEM AND BE FREE FROM DEFECTS, INJURIES, INSECTS AND DISEASE. ALL ROOT BALLS SHOULD BE INSPECTED TO INSURE THAT THEY ARE UN-DAMAGED AND CONTAIN GOOD QUALITY SOIL AND THAT IT ENCOMPASSES THE ENTIRE ROOT SYSTEM.
4. THE CONTRACTOR SHALL REPORT ANY SOIL DRAINAGE CONDITION CONSIDERED DETRIMENTAL TO THE GROWTH OF PLANT MATERIAL.
5. ALL PLANT MATERIAL SHALL BE GUARANTEED UNDER A PERFORMANCE BOND, AND A TWO (2) YEAR MAINTENANCE BOND AS SET FORTH IN THE REDEVELOPMENT PLAN.
6. INsofar AS IT IS PRACTICAL, PLANT MATERIALS SHALL BE PLANTED ON THE DAY OF DELIVERY. IN THE EVENT THIS IS NOT POSSIBLE, THE CONTRACTOR SHALL PROTECT STOCK NOT PLANTED. PLANTS SHALL NOT REMAIN UNPLANTED FOR LONGER THAN A THREE (3) DAY PERIOD AFTER DELIVERY.
7. QUALITY AND SIZE OF PLANTS, SPREAD ROOTS, AND SIZE OF BALLS SHALL BE IN ACCORDANCE WITH AANI 260.1-2004 (OR CURRENT EDITION) AMERICAN STANDARD FOR NURSERY STOCK AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN.
8. ALL PLANTS SHALL BE PLANTED IN TOPSOIL THAT IS THOROUGHLY WATERED AND TAMPED AS BACK FILLING PROGRESSES. NOTHING BUT SUITABLE TOPSOIL, FREE OF DRY SOIL, STIFF CLAY, LITTER, ETC. SHALL BE USED FOR PLANTING.
9. PLANTS SHALL NOT BE BOUND WITH WIRE OR ROPE AT ANY TIME SO AS TO DAMAGE THE BARK AND BREAK BRANCHES. PLANTS SHALL BE HANDLED FROM THE BOTTOM OF THE BALL ONLY.
10. NO PLANT, EXCEPT GROUND COVERS, SHALL BE PLANTED LESS THAN TWO (2) FEET FROM EXISTING STRUCTURES AND SIDEWALKS.
11. SET ALL PLANTS PLUMB AND STRAIGHT AND AT SUCH LEVEL THAT, AFTER SETTLEMENT, A NORMAL OR NATURAL RELATIONSHIP TO THE CROWN OF THE PLANT WITH THE GROUND'S SURFACE WILL BE ESTABLISHED. LOCATE PLANT IN THE CENTER OF THE PIT.
12. ALL INJURED ROOTS SHALL BE PRUNED TO MAKE CLEAN ENDS BEFORE PLANTING. IT IS ADVISABLE TO PRUNE APPROXIMATELY 1/3 OF THE GROWTH OF LARGE TREES (2" CALIPER AND OVER) BY THE REMOVAL OF BRANCHES, THOSE WHICH CROSS, THOSE WHICH RUN PARALLEL, ETC. MAIN LEADER OF TREES MUST NOT BE CUT BACK, LONG SIDE BRANCHES, HOWEVER, MUST BE SHORTENED.
13. EACH SHRUB SHALL BE PRUNED IN ACCORDANCE WITH STANDARD HORTICULTURAL PRACTICE TO PRESERVE NATURAL CHARACTER OF PLANT. PRUNING SHALL BE WITH CLEAN SHARP TOOLS. CUTS OVER 3/4" IN DIAMETER SHALL BE PAINTED WITH SUITABLE TREE DRESSING.
14. THE DRAWINGS SHALL BE SCALED FOR PURPOSES OF LOCATING SOIL BERMS, PLANT MATERIAL, PLANTING BEDS, GROUND COVER AREAS AND OTHER SITE AMENITIES SHOWN. DRAWINGS ARE DIAGRAMMATIC; PLANT MATERIAL IS SUBJECT TO FIELD ADJUSTMENT.
15. ALL PLANT MATERIAL TO BE SET IN PREPARED MULCHED BEDS. FINAL BED LINES TO BE APPROVED IN THE FIELD BY THE LANDSCAPE ARCHITECT OR THE OWNER'S REPRESENTATIVE.
16. ALL PLANTING BEDS TO RECEIVE 3" OF HARDWOOD BARK MULCH AS INDICATED ON THE PLANTING DETAILS. FINAL LOCATION OF PLANT MATERIAL TO BE DETERMINED IN THE FIELD BY THE LANDSCAPE ARCHITECT OR THE OWNER'S REPRESENTATIVE.
17. THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO ANY EXCAVATION ACTIVITIES.
18. NO DECIDUOUS SHADE TREES WILL BE LOCATED CLOSER THAN 10 FEET TO ANY SANITARY SEWER MAIN OR STORM SEWER PIPE. LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR VERIFICATIONS OF ALL PLANTED MATERIAL QUANTITIES. ANY DISCREPANCY SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT. PLAN HOLDS PRECEDENCE.
19. THE CONTRACTOR SHALL COORDINATE ALL WORK WITH APPROPRIATE TOWNSHIP AGENCIES AND UTILITY COMPANIES AND SHALL REPORT ANY SOIL OR DRAINAGE CONDITION DETRIMENTAL TO THE GROWTH OF THE PLANT MATERIAL.
20. REPLACEMENT PLANTS SHALL CONFORM TO THE TYPE OF ORIGINALLY PLANTED TREE IN A GIVEN AREA, PROVIDED THAT, IF ANT DEVIATION IS ANTICIPATED, IT MUST BE DONE ONLY WITH WRITTEN PERMISSION FROM THE TOWNSHIP PLANNER OR LANDSCAPE ARCHITECT.
21. ONLY HARDWOOD BARK MULCH SHALL BE USED FOR PLANT MULCHING MATERIAL.
22. ALL BURLAP AND TWINE SHALL BE REMOVED FROM THE TOP OF THE ROOT BALL.
23. THE CONTRACTOR/APPLICANT SHALL CONTACT THE BOARD/TOWNSHIP LANDSCAPE ARCHITECT TO CONDUCT A PRECONSTRUCTION MEETING AND TO COORDINATE SITE CLEARING AND LANDSCAPE WORK.
24. ALL DEAD OR SEVERELY DECLINING PLANTS SHALL BE REPLANTED WITHIN THE NEXT GROWING SEASON FOR ONE (1) YEAR FROM THE TIME OF PLANTING.

PLANTING SCHEDULE

SHRUB PLANTINGS					
SYMBOL	QUANT.	BOTANICAL NAME	COMMON NAME	HEIGHT	ROOT COMMENTS
IC	8	ILEX CRENATA HOOGENDORN	JAPANESE HOLLY	15"-18"	#2 CAN FULL PLANTS
PA	4	PENISSETUM ALOPECUROIDES "HALEM"	DWARF FOUNTAIN GRASS		1 GAL. FULL PLANTS
TOTAL = 12					

ADJOINING OWNERS LIST (OFFICIAL ADJOINING OWNERS LIST SUPPLIED BY DARLENE D. CAMPBELL, CTA, EVESHAM TOWNSHIP ON DECEMBER 7, 2022).

EVEESHAM TWP 200 FOOT LIST FOR BLOCK 36 LOT 1.07 12/07/22 Page 1						
BLOCK	LOT	QUAL	CLA	PROPERTY OWNER	PROPERTY LOCATION	Ad'l Lots
33	3		1	Current Owner: MICHAEL COURT MARLTON, NJ	630 ROUTE 73 SOUTH	L4
36	1.01		1	Current Owner: 11 ROBIN LAKE DR CHERRY HILL, NJ	625 ROUTE 73 SOUTH	L1.03
36	2.01		4A	Current Owner: 5030 SKILLMAN ST 182A-269 DALLAS, TX	1-2 EXECUTIVE DRIVE	
36	2.04		1	Current Owner: 2301 EVESHAM ROAD STE 702 VOORHEES, NJ	3 EXECUTIVE DRIVE	

- In order to comply with Chapter 245, P.L. 1991, any Utility Company that affects your property should be properly notified. Following is a list of Utility Companies, which serve Evesham Township.
- Evesham Municipal Utility Authority**
100 Sharp Road
Marlton, NJ 08053
 - Conectiv Real Estate Department**
5100 Harding Highway, Suite 399
Mays Landing, NJ 08330
 - Public Service Electric & Gas**
Manager-Corporate Properties
80 Park Plaza, T63
Newark, NJ 07102
 - Verizon NJ**
PO Box 2749
Addison, TX 75001
 - Comcast Cable TV**
P.O. Box 5025
Cherry Hill, NJ 08034
 - South Jersey Gas**
1 So. Jersey Plaza, Route 54
Folsom, NJ 08037

CERTIFICATION OF APPROVALS

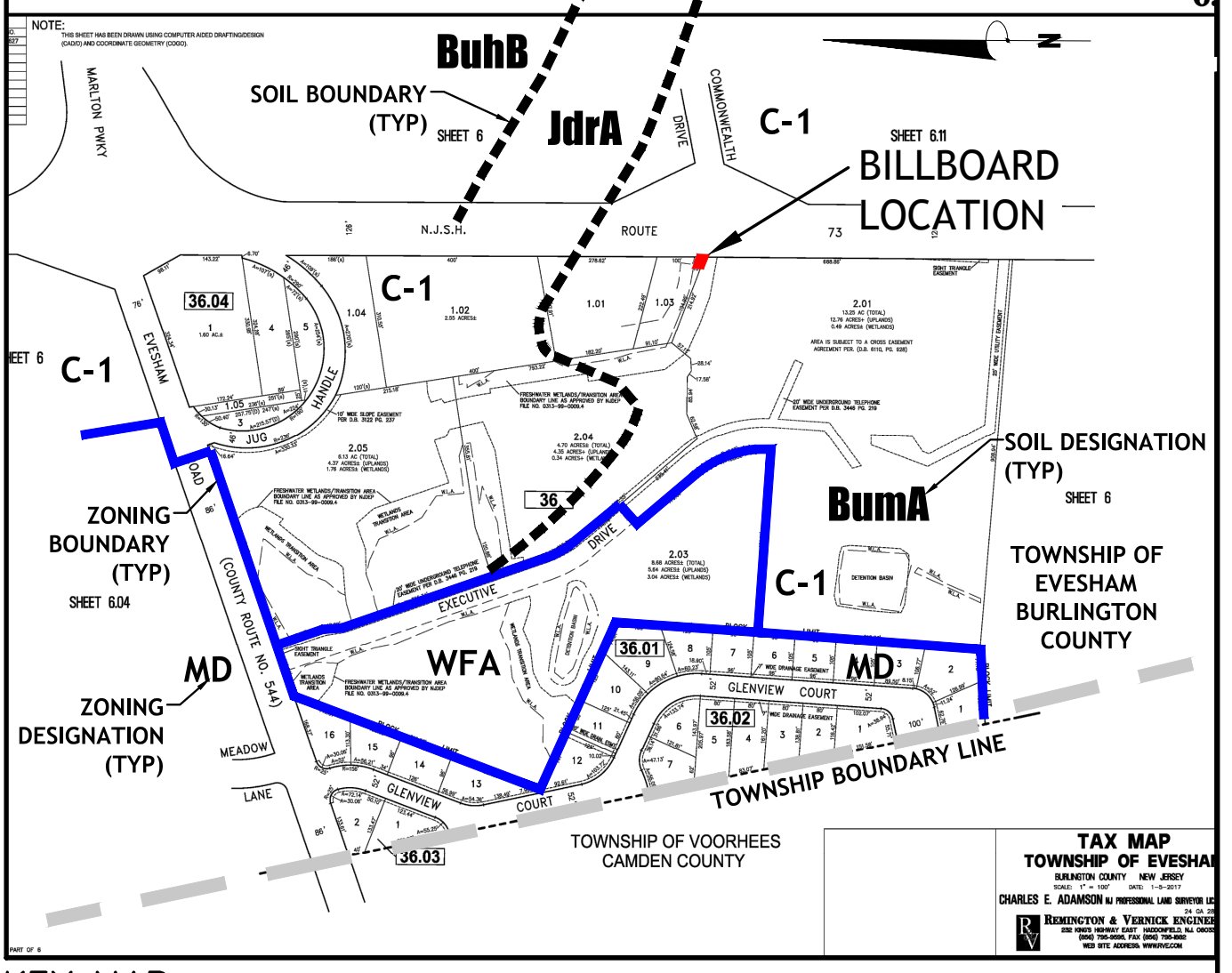
I CONSENT TO THE FILING OF THIS SITE DEVELOPMENT PLAN WITH THE EVESHAM TOWNSHIP ZONING BOARD.

OWNER:	DATE:	ZONING BOARD ENGINEER:	DATE:

IT IS HEREBY CERTIFIED THAT THIS SITE DEVELOPMENT PLAN HAS BEEN APPROVED BY THE EVESHAM TOWNSHIP ZONING BOARD.

CHAIRPERSON:	DATE:

SECRETARY:	DATE:



SHRUB DETAIL
N.T.S.

3" LAYER OF HARDWOOD BARK MULCH

REMOVE BURLAP AND TWINE FROM THE TOP OF THE ROOT BALL

MOUND SOIL 3" MINIMUM (ALL AROUND)

RETAIN LEADER - CENTRAL LEADER SHALL NOT BE CUT

THIN BRANCHES BY 1/3. PRESERVE NATURAL SHAPE.

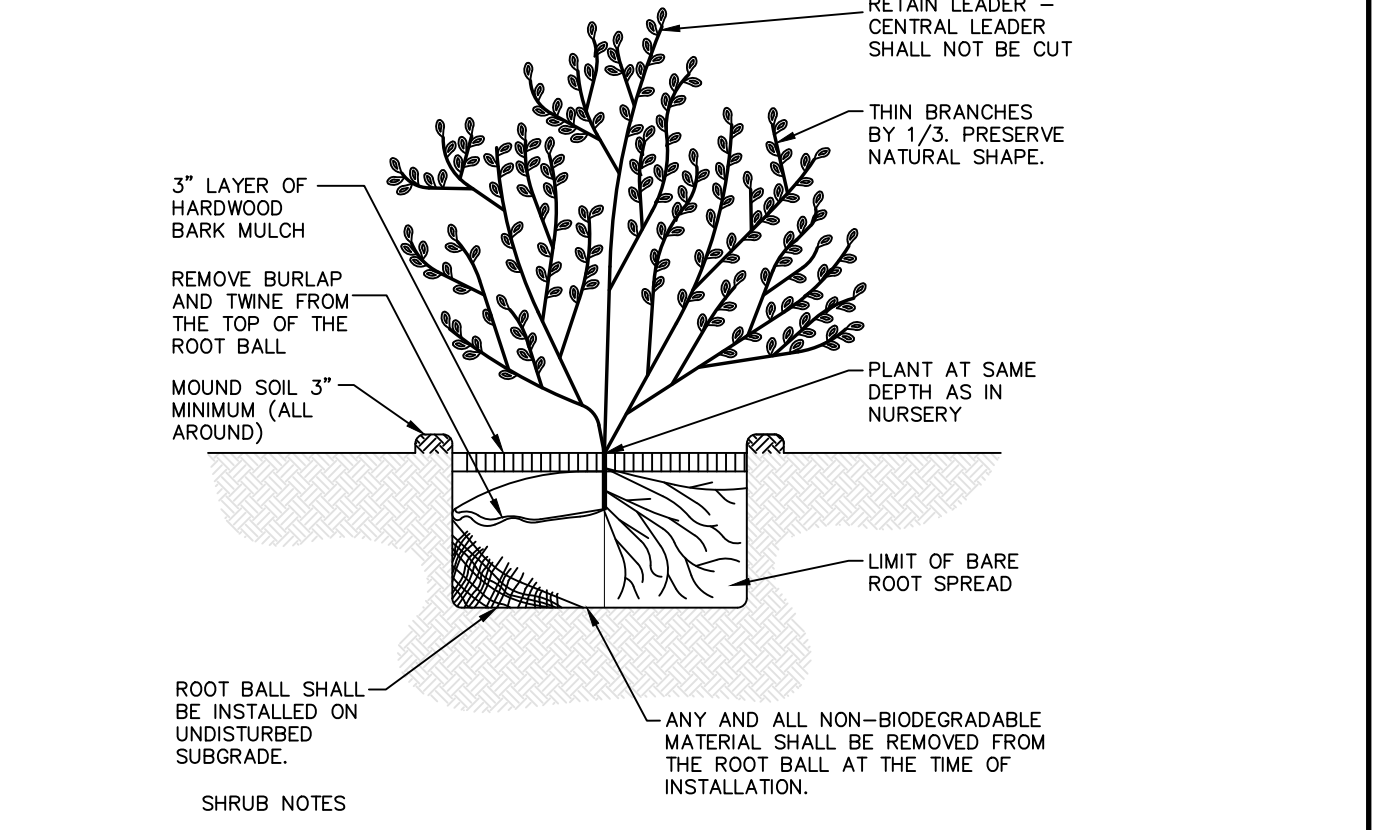
PLANT AT SAME DEPTH AS IN NURSERY

LIMIT OF BARE ROOT SPREAD

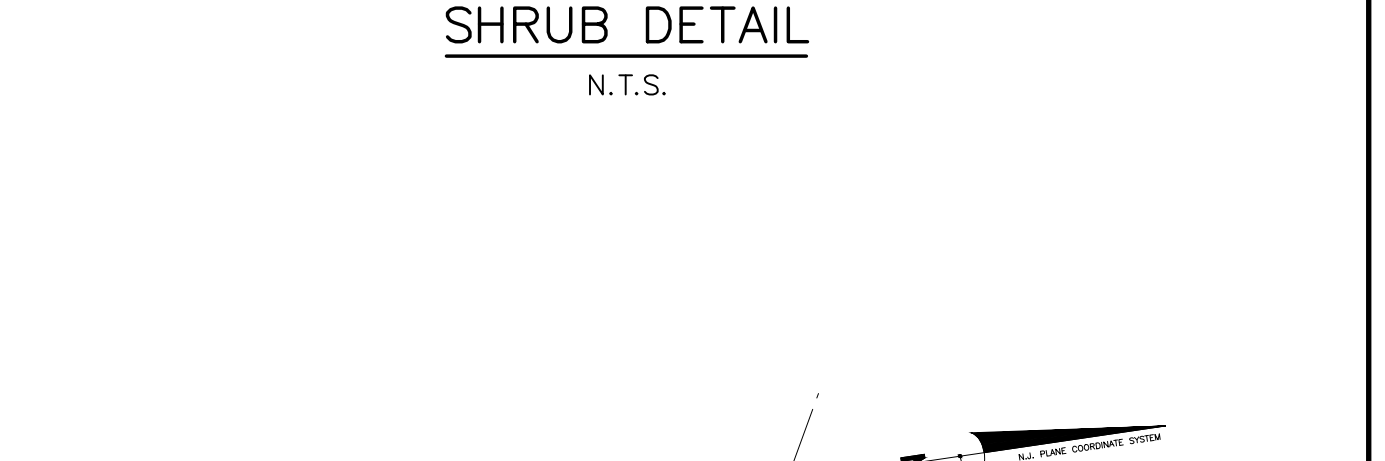
ANY AND ALL NON-BIODEGRADABLE MATERIAL SHALL BE REMOVED FROM THE ROOT BALL AT THE TIME OF INSTALLATION.

SHRUB NOTES

1. DIG HOLE 12 TO 18 INCHES LARGER THAN THE ROOT BALL.
2. BACKFILL WITH NATIVE/EXISTING SOIL, REMOVING ANY LARGE DEBRIS.
3. DO NOT MULCH AGAINST TREE TRUNK. PLACE MULCH 4"-6" AWAY FROM THE TREE TRUNK FLARE.
4. ALL SHRUBS SHALL HAVE MINIMUM PLANTING SITE HEIGHT OF 24"-30", EXCEPT AS NOTED, AT THE TIME OF PLANTING.



LANDSCAPING DETAIL PLAN
SCALE: 1" = 5'



GRAPHIC SCALE
1 INCH = 10 FEET



DATE	BY	REVISION
02/28/2024	JRC	2
11/23/2022	GMM	1

TELEPHONE (609) 704-1155
FAX (609) 704-1166
www.jaengineering.com

41 SOUTH ROUTE 73, BUILDING 1, SUITE 201
HAMMONTON, NEW JERSEY 08037

BILLBOARD SIGN CONVERSION
PLATE 6.06, BLOCK 36, LOT 1.07, 631 ROUTE 73 SOUTH
EVESHAM TOWNSHIP, BURLINGTON COUNTY, NEW JERSEY

VARIANCE PLAN

WA OUTDOOR ADVERTISING, LLC
298 KRESSON-GIBBSBORO ROAD
VOORHEES, NEW JERSEY 08043

RICHARD J. CLEMONS, P.E.
PROFESSIONAL ENGINEER
NEW JERSEY LICENSE NO. 24GE03911200

Richard J. Clemons 2/26/2024 DATE

JAMES SASSANO ASSOCIATES, INC.
ENGINEERING - SURVEYING - CONSTRUCTION LAYOUT
CERTIFICATE OF AUTHORIZATION NO. 24GC036017600

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