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**RESOLUTION NO. 2022-PB-06  
EVESHAM TOWNSHIP PLANNING BOARD  
IN THE MATTER OF EVESHAM TOWNSHIP  
ROUTE 73 PROPERTY LLC  
APPLICATION NO. P22-04  
DECIDED ON JUNE 2, 2022  
MEMORIALIZED ON JULY 21, 2022  
MINOR SITE PLAN APPROVAL WITH  
ANCILLARY VARIANCE**

**WHEREAS**, an application for minor site plan approval with ancillary variance and submission waiver relief has been made to the Township of Evesham Planning Board (hereinafter referred to as the "Board") by Route 73 Properties LLC (hereinafter referred to as the "Applicant") on lands known and designated as Lot 1.01 in Tax Block 20 as depicted on the Tax Map of the Township of Evesham (hereinafter "Property"), and more commonly known as 200 Route 73 North in the Commercial 1 (C-1) Zone District and Evesham Crossroads Overlay (EVCO) District; and

**WHEREAS**, a remote public hearing was held on June 2, 2022 after the Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Robert S. Baranowski, Jr., Esq.; and

**WHEREAS**, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that proper notice has been published and the jurisdiction and powers of the Board have been properly invoked and exercised

**NOW, THEREFORE**, the Board makes the following findings of fact based on evidence presented at its public hearing, at which a record was made.

1. The subject Property contains 1.63 acres and is located on Route 73, north of its intersection with Baker Boulevard, within the Commercial-1("C-1") District and Evesham

Crossroads Overlay (“EVCO”) District. The subject Property is improved with a one-story, 7,225 s.f. diner/restaurant with associated parking, lighting, landscaping, utilities, and sidewalks.

2. The subject Property is located along Route 73 North. A Chick-fil-A restaurant is located to the west. These two restaurants share a driveway with right in-right out access from Route 73. The shared access to Route 73 is under the jurisdiction of the NJDOT. Additional access is from Baker Boulevard to the south.

3. The Applicant is seeking minor site plan approval to permit the construction of a 20 ft x 100 ft, 48 ft x 142 ft, and 48 ft x 94 ft solar arrays within the parking lot of the diner/restaurant. One light fixture/pole is proposed to be removed. The proposed solar arrays have under lights that will be used to provide the lighting required as a result of the pole removal. The Applicant plans to remove any dead trees and shrubs and landscape with new trees and shrubs.

4. Counsel for the Applicant, Robert S. Baranowski, Jr., Esq. explained that the Applicant is the owner of Olga’s Diner and is seeking a minor site plan with ancillary bulk variance relief. He explained that the Applicant is proposing to construct three (3) solar canopies in the parking lot of Olga’s Diner. Mr. Baranowski stipulated that the Applicant would comply with the Board professionals’ letters from 5/20/22 and 5/24/22. This would include, but not be limited to, landscaping. He further explained that there would be slight increases to the height of the canopies to comply with comments from the Fire Official.

5. Mr. Baranowski also explained that the Applicant was seeking ancillary variance relief for the following:

- a. A corner lot definition per the Evesham Township Zoning Ordinance is a lot on the junction of an abutting two or more intersecting streets where the interior angle of intersection does not exceed 135-degrees. Each corner lot shall have two front yards, one side yard and one rear yard, the side a rear yard to be designated at the time of application for a construction permit. Considering this definition, the rear yard is designated to be that lot long opposite the Route 73

frontage with the lot line at Chick-fil-A, opposite the Baker Boulevard frontage, considered a side yard. In accordance with §160-68.1F, a side yard setback is 20 ft and a rear yard setback is 50 ft. Thus, the project meets the setback requirement for the side yard setback but will require a variance from the rear yard setback. The Applicant is proposing to locate the solar panels 35 ft from the property line.

- b. Per §62-35F, the solar panel height shall not be subject to the maximum height regulations of the district, but their height shall not exceed 20% of the maximum height permitted. The permitted structure height in this zoning district is 40 ft; thus, the solar panel permitted height is 8 ft. The Applicant is proposing a solar panel height of 18 ft.

6. Mr. Baranowski stated that the permitted height is 20% of the primary structure, which would be approximately 8 feet in height. He explained that the Applicant had proposed a 14 foot height, but the Fire Official requested higher than 14 feet. Mr. Baranowski asserted that there are other solar arrays within the municipality at a similar height. He also stated that the rear setback is the same as the existing parking lot, which was permitted by the Board when the Diner was initially built. Mr. Baranowski also stated that the rear of the subject Property is 89 Baker Boulevard, which is a residential use. He asserted that a robust screen of a double fence and deciduous trees are located along the property line of 89 Baker Boulevard. He stated that the Applicant could supplement the buffer with more plantings if requested. Mr. Baranowski introduced a Google Streetview image of 89 Baker Boulevard as Exhibit A-1. Exhibit A-1 shows the buffer as described.

7. Mr. Baranowski also asserted that the canopies and solar arrays advance the Municipal Land Use Law (MLUL) by promoting renewable energy. He stated that the solar arrays are also inherently beneficial.

8. Mr. Baranowski then stated that the Applicant agreed with the comments regarding lighting. The Applicant would comply with using 3,000 Kelvin lights instead of the proposed 4,000

Kelvin lights. The lights would be set to turn off two (2) hours after closing. The Diner is open 8am-10pm seven (7) days a week.

9. The Applicant's Professional Solar Expert, John Scorsone, testified that he is the President of Solare America which has experience in installing solar array canopies, and is a "preferred vender" for Wawa. He testified that solar energy needs a large footprint, which is why the Applicant needs to use the parking lot. There will also be solar arrays on the roof of the Diner. The roof was designed for solar arrays when it was built in anticipation of the opportunity to generate all on-site energy. He testified that the total output of the solar arrays is 242kw, which is 90-95% of the Diner's power needs. He testified that the solar array would reduce CO2 by an equivalent to 10,000 trees.

10. Mr. Scorsone further testified that the canopies at the entrance and the back of the Diner will be "Y" shaped. The "Y" shape allows appropriate height for fire trucks. After comments from the Fire Official, he stated that the Applicant was now proposing a 25 foot height, which would be subject to review and approval of the Township Fire Official as a condition of approval. The "Y" shape is proposed for the two (2) canopies closest to the building. The third canopy is at the back of the parking lot and is a "L" shape.

11. Mr. Scorsone introduced a Solar Plans Package as Exhibit A-2.

12. In response to questions from the Board, Mr. Scorsone clarified that the height of the canopy is 14 feet from the base and then angles up to 25 feet. The initial proposal was to angle up to 22 feet, but the Fire Official requested 25 feet to allow space for a ladder from a fire truck to reach the roof of the building. The footprint is the same as had been proposed.

13. In response to further questions from the Board, Mr. Scorsone testified that the lighting would not affect the residential neighbors, rather it would be an improvement from the

currently lighting. The proposed lighting focuses the light downward. The canopies help block light from reaching the residential neighbors. The lights are LED and can be adjusted if there are complaints from neighbors.

14. Principal of the Applicant, Vasilious Dovas, added to Mr. Scorsone's testimony stating that there are currently no issues with the neighbors and that an employee of the Diner lives at 89 Baker Boulevard.

15. In response to further question from the Board, Mr. Scorsone testified that the Applicant could add some safety lights, if the Board requests, but that the lighting is sufficient for safety even at 3,000 Kelvin. The "Y" shape allows light to go outward, whereas the light under the "L" shape is more focused.

16. The Board Planner added that the issue with the initial proposed lighting plan was that the footcandles were high. The initial proposal had 2 footcandles, where 0.5 to 1.0 footcandles is preferred.

17. Mr. Scorsone continued to testify that the solar arrays would connect to the current utility. He stated that an agreement with PSE&G provides interconnectors for solar arrays. The inverters are already installed at the utility. Mr. Scorsone also testified that the solar arrays do not create any glare and absorb sunlight. He then stated that the landscaping plan would not change. The solar canopies allow enough sunlight for the landscaping. No parking is to be removed. He also stated that his company, Solare America, will manage the construction. The company is experienced having done 110 Wawas and the company will work with the Applicant on management. There will be minimal impact during construction and will last approximately three (3) weeks. There is also no change to the grading.

18. The Board Engineer, Rakesh Darji, PE, PP, CME, addressed the comments in his May 24, 2022 review letter. He stated that the concern for lighting was the intensity and glare. The lights are proposed to be under the canopy, which mitigates the impact on the neighboring properties. He was satisfied with the quantity of lights proposed and that they are adjustable. The Applicant will work with the Township on adjusting the lights so as to not effect the neighbors.

19. In response to questions from the Board Engineer, Mr. Scorsone testified that the construction would not impact Chick-fil-A. They will work with Chick-fil-A so as to not impact their operations. The construction would not block the access driveway. The construction would also stay within the parking spaces and the drive aisles will be maintained.

20. In response to further questions from the Board Engineer, Mr. Scorsone testified that the Applicant would submit a decommission plan to remove the solar panels. The solar panels have 30-year warranty and the lifespan of solar panels is 45 years. The solar panels may be replaced sooner then their lifespan as improvements in solar technology become available. The Applicant agreed to submit a decommission plan to remove the solar panels within 12 months of becoming non-operational.

21. The Board Planner, Scott Taylor, LLA, AICP, PP, stated that the majority of the comments in his review letter were addressed. He recommended that the trees currently on the parking islands be relocated elsewhere on the subject Property. Mr. Taylor also recommended changing the vegetation on the parking islands to river rock. He advised that vegetation on parking islands under solar canopies die within 3-4 years due to the lack of water and too much shade.

22. The Township Fire Official addressed the comments in his 5/12/22 review letter. He stated that the height of the lower part of the canopy is acceptable for travel of fire trucks. He stated that the maximum height of the angled canopy by the building of 25 feet was acceptable.

23. In response to questions from the Board, Mr. Dovas testified that he does not intend to continue outdoor eating. The outdoor eating was only due to COVID restrictions.

24. In response to question from the Board, Mr. Scorsone testified that there will not be any loss of parking. He would coordinate with the Applicant on timing of construction to have the least amount of impact on the business. No construction equipment or material will be stored on the site. His construction crew can install solar panels at a rate of 300 panels a day. The three (3) week timeframe includes installing the solar panels on the roof, which will be first panels installed.

25. In response to further questions from the Board, Mr. Scorsone testified that the lights will be recessed in the canopy. The structure of the canopy is standard galvanized finish, but it can be other colors to better fit with the existing "Marlton" lights and the aesthetic of the town. The Applicant agrees to work with the Township on using black or brownish finish so the aesthetics fit with the area.

26. In response to further questions from the Board, Mr. Dovas testified that the driveway access is shared with Chick-fil-A. Although he has yet to confer with Chick-fil-A about the Application, he did not anticipate any effect on their operation. Mr. Scorsone added that no construction equipment or materials will use Chick-fil-A's parking spaces. The shared access driveway will not be blocked as he intends to use the Baker Boulevard driveway to enter the site, not the Route 73 shared access driveway. The Board Attorney advised that Chick-fil-A were noticed as part of the 200-foot notice letters.

27. In response to further questions from the Board, Mr. Scorsone explained that the line on the plans marked "line to Chick-fil-A" is not the line for the drive thru. It is the electrical

line to Chick-fil-A. Handicapped parking spaces will also not be blocked. The trash enclosure will not be covered by the canopies and trash trucks can still access the trash enclosure.

28. In response to further questions from the Board, Mr. Scorsone testified that the power generated, and size of the solar arrays is determined by PSE&G. The Applicant requested 100% power from PSE&G, but was only approved for 90% of the power of the Diner. He explained that the power will over produce as the Diner will not use all of the power all the time. The solar arrays will constantly be producing power. When power is overproduced, the extra power goes to the grid and provide power to the neighboring properties.

29. No members of the public expressed an interest in the application.

**NOW, THEREFORE**, the Board makes the following conclusions of law, based on the foregoing findings of fact.

The application before the Board is a request for minor site plan approval with ancillary variances and submission waiver relief in regard to Lot 1.01 in Block 20 of the Tax Assessment Map of the Township of Evesham. The subject Property is located within the Commercial-1 ("C-1") Zone District and Evesham Crossroads Overlay ("EVCO") Zone District.

The Applicant is seeking minor site plan approval pursuant to N.J.S.A. 40:55D-46.1 along with ancillary variance relief pursuant to N.J.S.A. 40:555-70c.

The Board finds that it has enough information to consider the application and submission waiver relief is appropriate.

The Board finds that the Applicant has proposed a permitted use but requires variance relief. The Board will address the variance relief collectively. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in

the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds that the Applicant has satisfied the positive criteria. The Applicant proposes to use alternate solar energy on the subject Property. The Board finds that the Municipal Land Use Law identifies solar facilities as an inherently beneficial use. The Township Ordinance further identifies solar facilities as a permitted use in the Evehsam Crossroads Overlay District.

The Board finds that a purpose of the Municipal Land Use Law is to promote utilization of renewable energy resources. This promotes the goals of planning as enumerated at N.J.S.A. 40:55D-2. The Applicant has therefore satisfied the positive criteria.

The Board further finds that the Applicant has also satisfied the negative criteria. The variance relief will not result in increases in traffic, noise, odors or density not already contemplated by the ordinance. The Board therefore finds that the grant of variance relief will not result in substantial detriment to the public good or substantial impairment to the zone plan or zoning ordinance. The negative criteria has therefore been satisfied.

The Board concludes that the positive criteria substantially outweighs the negative criteria and variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

With the exception of the above relief, the Applicant complies with all other zoning, site plan and design ordinance requirements. Minor site plan approval is therefore appropriate pursuant to N.J.S.A. 40:55D-46.1.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board that the application of the Township of Evesham for property known and designated as Lot 1.01 in Block 20 on the Tax Assessment Map of the Township of Evesham requesting land use relief and checklist waivers is determined as follows:

- A. Minor site plan approval pursuant to N.J.S.A. 40:55D-46.1;
- B. Variance relief pursuant to N.J.S.A. 40:55D-70c(2); and

**IT IS FURTHER RESOLVED** that the above approvals are granted subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved.

2. The Applicant shall comply with any terms and conditions contained in any reports of the Board professionals as may be modified herein.

3. The Applicant represents that all its representations and stipulations made either by the Applicant or on its behalf to the Township of Evesham Planning Board are true and accurate and acknowledges that the Land Use Board specifically relied upon said stipulations in the Board's granting of approval. If any representation or stipulation is false, this approval is subject to revocation.

4. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of hearing on June 2, 2022.

5. The Applicant shall develop a landscaping plan subject to the review and approval by the Board's Professionals.

6. The Applicant shall provide revised plans for review with the height of the canopy at 25 feet subject to the review and approval of the Township Fire Official.

7. The Applicant shall coordinate with Chick-fil-A so as to not impact its business during construction.

8. The Applicant shall provide a decommission plan to the Board. The decommission plan shall require removal of solar panels within twelve (12) months of becoming non-operational.

9. The Applicant shall relocate the trees on the parking islands elsewhere on the subject Property or add to the buffer subject to the review and approval by the Board's Professionals.

10. Dead or dying trees shall be removed subject to the review and approval of the Board's Professionals.

11. Construction materials and equipment shall not be stored on the subject Property.

12. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.

13. Certificate that taxes are paid current to date of approval.

14. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Evesham, County of Burlington, State of New Jersey or any other jurisdiction.

<b>RECORD OF VOTE FOR ACTION TAKEN</b>						
<b>BOARD</b>	<b>AYE</b>	<b>NAY</b>	<b>Abstain</b>	<b>Absent</b>	<b>Motion Made By</b>	<b>Second</b>
Gene Friedman, Chairperson	X					
Mayor Jaclyn Veasy	X					
Councilman Eddie Freeman, III	X					
Elizabeth Costello, Vice Chairperson	X				X	
Lisa Killion-Smith	X					X
Craig Higginbotham				X		
Dennis Mehigan				X		
Robert Sullivan	X					
David Touri	X					
Stephen Kavalkovich				X		
Paul Cortland				X		

I, Jennifer A. Newton, Secretary to the Planning Board of the Township of Evesham, County of Burlington, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the action taken by the said Board at a meeting held at the Municipal Building, 984 Tuckerton Road, Marlton, New Jersey, on the 2nd of June, 2022.

  
 Jennifer A. Newton, Secretary  
 EVESHAM TOWNSHIP PLANNING BOARD

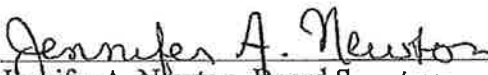
<b>RECORD OF VOTE ON RESOLUTION</b>						
<b>BOARD</b>	<b>AYE</b>	<b>NAY</b>	<b>Abstain</b>	<b>Absent</b>	<b>Motion Made By</b>	<b>Second</b>
Gene Friedman, Chairperson				X		
Mayor Jaclyn Veasy	X					
Councilman Eddie Freeman, III	X					
Elizabeth Costello, Vice Chairperson	X					
Patricia Everhart				X		
Craig Higginbotham				X		
Lisa Killion-Smith	X				X	
Robert Sullivan	X					
David Touri	X					X
Stephen Kavalkovich				X		
Victoria Smith				X		

I, Jennifer A. Newton, Secretary to the Planning Board of the Township of Evesham, County of Burlington, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the action taken by the said Board at a meeting held at the Municipal Building, 984 Tuckerton Road, Marlton, New Jersey, on the 21<sup>st</sup> day of July, 2022.

  
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 JENNIFER A. NEWTON, Secretary  
 EVESHAM TOWNSHIP PLANNING BOARD

**CERTIFICATION**

The undersigned secretary certifies that the within Resolution was adopted by the Township of Evesham Planning Board on June 2, 2022 and memorialized herein pursuant to N.J.S.A 40:55D-10(g) on July 21, 2022.

  
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 Jennifer A. Newton, Board Secretary