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RESOLUTION NO. 15-09

TOWNSHIP OF EVESHAM

PLANNING BOARD

RE: APPLICATION NO. PB 15-09

- Minor Subdivision
- Major Subdivision Preliminary
- Major Subdivision Final
- Minor Site Plan
- Major Site Plan, Preliminary
- Major Site Plan, Amended Preliminary
- Major Site Plan, Final
- Bulk Variances

- Approved
- General Conditions
- Additional Conditions
- Denied

Application No. PB15-09

Applicant: Marlton 73 Restaurant, LLC
15 Presidential Drive
Berlin, New Jersey 08009

Owner: Marlton 73 Restaurant, LLC
15 Presidential Drive
Berlin, New Jersey 08009

Block 20, Lot 1 (P.I.Q.)
Action: November 12, 2015
Memorialized: December 3, 2015
Plan Name: Marlton 73 Restaurant

WHEREAS, the applicant has applied to the Evesham Township Planning Board (ETPB) for the following primary approvals: Minor Subdivision Approval to create two commercial lots for financing purposes at the shopping center located at 200 Route 73 North in order to provide for the demolition of an existing restaurant and the construction of a new restaurant on the property identified as Block 20, Lot 1;

WHEREAS, the applicant has applied for the following ancillary approvals:

- (a) A variance from Section 160-68.1(F) to permit a lot with street frontage of 149.44 feet where 150 feet is required; and

WHEREAS, the application was considered by the ETPB on November 12, 2015; (1) in sworn testimony of Peter Lazaropoulos, P.E. P.P., the applicant's engineer and planner, and Hristos Kolovos on behalf of the corporate applicant; and (2) by the legal representation of Jeffrey I. Baron, Esquire.

WHEREAS, a public hearing () was not required; or

WHEREAS, a public hearing (X) was required and the ETPB has considered that public comments

- (X) were not made by the public
- () were made in favor of all or some aspect of the application
- () were made against all or some aspect of the application; and

The following documents and exhibits were incorporated herein by reference:

- (a) A Township of Evesham Land Development Application filed September 23, 2015, prepared by Jeffrey I. Baron, Esquire, consisting of twelve (12) pages;
- (b) A Township of Evesham Land Development Checklist filed September 23, 2015;
- (c) A Plan entitled, "Minor Subdivision Plan," dated February 1, 2015, last revised September 17, 2015, prepared by Peterman Maxcy Associates, LLC, consisting of one (1) page;
- (d) A Plan entitled, "Plan of Survey and Partial Topography," dated February 11, 2015, last revised September 17, 2015, prepared by Peterman Maxcy Associates, LLC, consisting of one (1) page; and
- (e) A Plan entitled, "Preliminary and Final Site Plan Proposed Restaurant," dated September 9, 2015, prepared by P.Lazaropoulos, AIA, PE, PP, Leed AP, consisting of ten (10) pages;
- (f) A Plan entitled "Conceptual Floor Plans Proposed Restaurant," dated September 9, 2015, prepared by P.Lazaropoulos, AIA, PE, PP, Leed AP, consisting of two (2) pages;
- (g) A Report entitled, "Traffic Engineering Assessment," dated September 18, 2015, prepared by Shropshire Associates, LLC, consisting of five (5) pages plus appendices; and
- (h) A Report entitled, "Drainage Report," dated August 10, 2015, prepared by NOTIS Architects/Engineers, consisting of three (3) pages plus appendices; and
- (i) Unrecorded parking and reciprocal cross-access easements prepared by Jeffrey I. Baron, Esquire; and

WHEREAS, it appears that all jurisdictional and procedural requirements of the applicable Township Ordinances have been met; and

WHEREAS, the ETPB has considered the application and the evidence and arguments submitted by the applicant in support thereof; and

WHEREAS, the ETPB has considered the recommendations and comments of its professional staff and the following written reports:

- (X) Engineer report(s) dated November 10, 2015;
- () Planner report(s) dated _____;
- () Traffic Consultant report(s) dated _____;
- () Environmental Consultant Report dated _____;
- (X) Evesham Township Fire Marshal Report(s) dated October 8, 2015;
- () Other: _____;

Copies of which are attached hereto and made a part hereof as Exhibits A-B; and

WHEREAS, the ETPB has made the following Findings of Fact and Conclusions:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant is the new owner of the subject 3.25 acre property located at 200 North Route 73 and identified as Block 20, Lot 1 on the Evesham Township Tax Map (the "P.I.Q."). The P.I.Q. is located in the C-1 Commercial zoning district and the Evesham Crossroads Overlay ("EVCO") zone. The site contains a commercial retail shopping center and two stand-alone restaurant buildings, including a Chick-Fil-A drive-thru restaurant and the former Carollo's restaurant. The applicant has applied for minor subdivision approval to subdivide Lot 1 into two commercial lots, including proposed Lot 1.01 containing 1.63 acres, and proposed Lot 1.02 containing 1.62 acres, with one restaurant building to be located on each new lot. The purpose of the subdivision is to enable the applicant to procure financing in order to demolish the defunct Carollo's restaurant building and to construct a new restaurant building in the same location. The applicant has not applied for site plan approval for the contemplated demolition/construction but understands and agrees that the applicant will must obtain site plan approval prior to performing any such construction and/or development.

2. Hristos Kolovos testified on behalf of the corporate applicant. He is the one of the owners of the corporate applicant. He also owns Luciens banquet facility in Berlin Borough. Mr.

Kolovos testified that the applicant purchased the P.I.Q. out of the bankruptcy proceedings of the prior owner. The applicant wants to demolish the now-defunct Carollo's restaurant building and rebuild a new restaurant. In order to do so, the applicant must separate the lot into 2 lots to be able to obtain financing for the demolition and construction work. One of the proposed new lots will contain the Chick-Fil-A building which business will continue to operate pursuant to a long-term lease between the applicant and Chick-Fil-A. The other lot will contain the Carollo's restaurant building until the applicant obtains the necessary approval to demolish it and construct a new restaurant building. Mr. Kolovos indicated that if the subdivision is approved and the applicant is able to secure the necessary financing, the applicant will file a site plan application for the contemplated improvements and/or development work.

3. Peter Lazaropoulos, PE, PP, the applicant's engineer, planner and architect, testified on behalf of the applicant. Mr. Lazaropoulos was qualified as an expert in the fields of engineering, planning and architecture and he testified under oath. Mr. Lazaropoulos introduced Exhibit A-1, which was a colorized rendition of the minor subdivision plan dated September 19, 2015. He testified that the proposed lot line placement corresponded with the lease line in the long-term lease with Chick-Fil-A and also with the Planning Board approvals previously granted for the Chick-Fil-A restaurant. For this reason, the proposed lot with the Carollo's restaurant building would only have 149.44 feet of street frontage along Route 73 where 150 feet was required, thereby requiring a *de minimis* variance. Mr. Lazaropoulos also indicated the 2 new lots would be owned by separate albeit related entities and that both lots would be subject to a cross-parking easement and reciprocal cross-access easement. Mr. Lazaropoulos indicated the applicant requested a waiver from the Environmental Impact Study requirements of the Code because the site is fully-developed and the subdivision does not impact environmental concerns. He also reviewed the variance criteria in support of the street frontage

deviation. He opined that the existing development on the P.I.Q. created a hardship with respect to the applicant's ability to satisfy the street frontage requirement. He opined further that since the deviation was only about 7 inches, it was so minimal it would not negatively impact the public good. Likewise, he opined that granting the variance would result in a substantial detriment to the zone plan or zoning ordinance.

4. The ETPB reviewed and considered the November 10, 2015 report of the ETPB engineering consultant, prepared by Chris R. Rehmann, P.E., C.M.E. (Exhibit "A").

5. The applicant agreed, as a condition of approval, to fully comply with and satisfy all of the comments set forth in the ETPB Engineer's November 10, 2015 report.

6. The ETPB reviewed and considered the October 8, 2015 memorandum from the Evesham Township Fire Marshal (Exhibit "B").

7. The applicant agreed, as a condition of approval, to fully comply with and satisfy all of the comments set forth in the Evesham Township Fire Marshal's October 8, 2015 memorandum.

8. The ETPB opened the hearing on this application to the public and no members of the public testified as to the application.

WHEREAS, upon motion duly made and seconded to grant the application for minor subdivision approval, together with the requested variance, the Board voted in favor of granting the application subject to certain conditions mentioned hereinafter; and

WHEREAS, in support of its determination, the Board found that the street frontage variance was necessitated due to the fact that the lot was fully developed and as a result of the location of the lawfully existing structures thereon pursuant to Section (c)(1) of the Municipal Land Use Law; and

WHEREAS, in support of its determination, the Board found further that the variance for a 7-inch deviation from the street frontage requirement of the Code posed no detriment to the public good

and could be granted without substantially impairing the intent and purpose of the zoning plan and the C-1 and EVCO zoning ordinances.

NOW, THEREFORE, BE IT RESOLVED by the Evesham Township Planning Board that the said application for minor subdivision approval, together with the requested variance to permit one of the lots to have street frontage of 149.44 feet where 150 feet is required, shall be and is hereby granted specifically subject, however, to the testimony, representations and stipulations of the applicant, its attorney and witnesses at the time of the hearing and is further subject to the following conditions:

SPECIFIC CONDITIONS OF APPROVAL

1. This approval grants a street frontage variance to permit 149.44 feet of street frontage where 150 feet is required.
2. The applicant agreed, as a condition of approval, to record cross-access and cross-parking easements between both new lots which are created as a result of the subdivision approval granted herein. The ETPB recognizes that the ETPB Solicitor has reviewed and approved the form thereof. The applicant shall submit recorded copies of both easements to the ETPB Secretary and Solicitor prior to the issuance of any building and/or construction permit for any future development of the P.I.Q. In the event the applicant seeks relief from this condition of approval, the applicant shall be required to file an appropriate application with the Board regarding same.
3. The applicant shall fully comply with and satisfy all of the items set forth in the ETPB Engineer's report dated November 10, 2015 (Exhibit "A").
4. The applicant shall fully comply with and satisfy all of the comments and recommendations of the Evesham Township Fire Marshal's memorandum dated October 8, 2015 (Exhibit "B").

5. The approvals herein are limited to the minor subdivision application and associated variance that is the subject hereof. The applicant shall be responsible for obtaining site plan approval for any future development of the site to the extent required by law.

6. All other terms and conditions of any previous approvals granted for the P.I.Q. shall remain in full force and effect and applicant is advised nothing herein shall be construed as a waiver of the requirements of Evesham Township Code site plan requirements as applicable to the applicant's continued use of the P.I.Q.

GENERAL CONDITIONS OF APPROVAL

1. A brief notice of this decision shall be published in the official newspaper of the Township, at the applicant's expense. The aforementioned notice shall be sent to the official newspaper for publication within ten (10) days of the date this decision is memorialized (Code Section 15-19). A proof of publication shall be filed with the Administrative Officer of the ETPB within thirty (30) days of the date the decision is memorialized.

2. The applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.

3. These General Conditions of Approval shall be binding upon the applicant, the owner, and any successors and/or assigns of either.

4. The Specific Conditions of Approval, if any, shall be binding upon the applicant, the owner and any successors and/or assigns of either.

5. The applicant shall be required to obtain all outside agency approvals

6. The applicant shall be responsible for and shall satisfy, in accordance with the Evesham Township Land Use Ordinance, the following fees and charges:

() Mandatory Development fees

() Floor Area Ratio Fees in the amount of \$ _____.

7. Any improvement(s) to be constructed as a result of the ETPB approving this application shall be constructed and operated in full compliance with the Code of Evesham Township, the Revised Statutes of the State of New Jersey and any other applicable county and/or Federal law.

8. Unless specifically waived in whole or in part and noted in the Specific Conditions of this Approval, if the above application involves the granting of a final major subdivision approval or a final site plan approval or the approval for the issuance of a zoning permit, the applicant, in order to assure the installation and maintenance of all required improvements required by the preliminary approval or as a condition to the issuance of a zoning permit, shall furnish written performance guarantees and written maintenance guarantees in the form(s) which comply with the provisions of N.J.S.A. 40:55D-53, et seq. and the Evesham Township Code. The amount of each performance guarantee shall equal 120% of the amount estimated by the Township Engineer as the cost of installing the required improvements. The maintenance guarantee shall equal 15% of the cost of the improvements and shall cover a period of two (2) years after final acceptance of the improvements.

9. If the above application involves the granting of a final subdivision or final site plan approval, the Chairperson and Secretary of the ETPB shall not sign the Final Subdivision Plat or Final Site Plan nor shall any zoning permit issue until the applicant has posted the required performance guarantee and the applicant has demonstrated that all conditions of the final approval have been satisfied.

10. Applicants seeking site plan or preliminary and/or final subdivision approval shall:

- A. Submit five (5) copies of a complete survey of the property (except for streets) to be dedicated, which survey shall be performed and certified by a licensed surveyor.

- B. Submit a topographic survey showing contour intervals of two (2) feet at a scale no larger than one (1) inch equaling one hundred (100) feet.
- C. Submit five (5) copies of complete (as-built) plans of any improvements, except for streets, on the dedicated property.
- D. Submit a deed of conveyance, approved as to form, content and description by the Township Attorney. The said deed shall contain provision for the signature of the Mayor and attestation by the Township Clerk. Where streets are offered for acceptance, a legal description by metes and bounds describing the centerline shall be included.
- E. Obtain title insurance naming the Township of Evesham as the insured party in an amount equal to the fair market value of the dedicated property; this requirement shall not pertain to streets. In the case of drainage easements not shown on or generated after the final plan is filed in the County Clerk's Office and property having a fair market value of one thousand dollars (\$1,000.00) or less, a title search indicating marketable title shall be sufficient, provided said search is certified by a title insurance company authorized to do business in the State of New Jersey.

11. If a minor subdivision approval has been granted, such approval shall lapse unless within 190 days from the date the approval has been granted the applicant either files a plat in conformity with the approval and the "Map Filing Law" (N.J.S.A. 46:23-99, et seq.) or records a deed with the County

Clerk which clearly describes the approved minor subdivision and files a copy of the deed with the Township's Engineer and the Township's Tax Assessor. Such deed shall also be signed by the Chairman and Secretary of the ETPB.

12. If a final approval has been granted, the applicant shall submit to the ETPB Engineer for his review a minimum of eight (8) complete sets of plans which shall incorporate all of the revisions that have been made conditions of this approval.

13. As part of the first application for final approval, the applicant shall provide a construction schedule as required by the Evesham Township ordinances which must be satisfactory to the ETPB Engineering Consultant.

14. The applicant shall comply with Title 39 of the New Jersey Statutes.

15. The applicant shall construct all drainage basins or alternate drainage facilities upon the P.I.Q., including inflow and outflow structures, prior to the commencement of any construction upon the P.I.Q.

16. The Board presumes that the applicant's application, all exhibits, maps and other documents submitted and relied on by the applicant, are true and accurate representations of the facts relating to the applicant's request for relief. In the event that it appears to be the Board, on reasonable grounds, that such Application, exhibits, maps and other documents submitted are not accurate, are materially misleading or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought by the applicant, the Board may rescind its approval and rehear the Application, either upon application of an interested party or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

17. At any time after the adoption of this resolution of memorialization, should a party of interest appeal to the Board for an order vacating or modifying any term or condition as set forth herein, upon proper showing of a materially misleading submission, material misstatement, materially inaccurate information, or a material mistake made by the applicant, the Board reserves the right to conduct a hearing with the applicant present, for the purpose of fact-finding regarding the same. Should the facts at said hearing confirm that there had been a material fault in the Application, the Board shall take whatever action it deems appropriate at that time, including but not limited to a rescission of its prior approval, a rehearing, a modification of its prior approval, or such other action as appropriate.

18. The applicant shall indemnify and hold the Township harmless from any claims whatsoever which may be made as a result of any deficiency in the Application, or as to any representations made by the applicant, including but not limited to proper service and notice upon interested parties and publication of the notice of public hearing in this matter in accordance with the law.

19. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Subject Property which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.

20. The applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief. The applicant is solely responsible for fore determining which governmental and/or public agencies, if any, such approvals are required of. The applicant is

further required to submit a copy to the Board's Secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner.

21. The applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and the N.J. Municipal Land Use Law. The applicant's escrow account must be current prior to any permits being issued, or construction or other activity commencing on the approved project.

22. The applicant must obtain and all other construction or other municipal permits required with respect to the relief as granted herein.

23. The Applicant agrees, as a condition of approval, that any Resolution approving an application for preliminary and/or final major subdivision and/or site plan review will not be memorialized or adopted until the Applicant and the Township execute a Developers Agreement in a form reviewed by the ETPB Solicitor and approved by the Evesham Township Solicitor, to be recorded in the Office of the Burlington County Clerk with the cost of recording the Developers Agreement or a Memorandum thereof to be paid by the Applicant. A recorded copy of the Developers Agreement shall be provided to the ETPB Secretary and Evesham Township Clerk at the time of memorialization and adoption of any approving Resolution and prior to issuance of any building and/or construction permits for the P.I.Q.

24. This minor subdivision approval shall elapse unless within 190 days from the date the approval has been granted, the applicant either filed a plat in conformity with the approval, and the "Map Filing Law" (N.J.S.A. 46:23-99 et seq.) or records appropriate Deeds with the Burlington County Clerk which clearly describes the approved minor subdivision, and files a copy of the Deed with the

Township's Engineer and the Township's Tax Assessor. Such Deed shall also be signed by the Chairman and Secretary of the Evesham Township Planning Board.

BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be forwarded to the applicant, Township Clerk, Township Construction Official, Township Tax Assessor and Township Zoning Administrative Officer.

RECORD OF VOTE FOR ACTION TAKEN						
BOARD	AYE	NAY	Abstain	Absent	Motion Made By	Second
Alicia Marrone, Chairperson	X					
Mayor Randy S. Brown/Robert DiEnna, Mayor's Designee	X					
Councilman, Steven Zeuli				X		
William McGoey, Vice Chairperson	X					
Jay Parikh, Alternate Vice Chairperson	X				X	
Jerry Menichini				X		
Ila Vassallo				X		
Paul Cortland	X					X
Dominick Marandolo				X		
Sandy Student				X		
Jeff Foster				X		

I, Regina Kinney, 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 12th day of November, 2015.


 REGINA KINNEY, Secretary
 EVESHAM TOWNSHIP PLANNING BOARD

RECORD OF VOTE ON RESOLUTION

BOARD	AYE	NAY	Abstain	Absent	Motion Made By	Second
Alicia Marrone, Chairperson						
Mayor Randy S. Brown/Robert DiEnna, Mayor's Designee	X					X
Councilman, Steven Zeuli						
William McGoey, Vice Chairperson	X					
Jay Parikh, Alternate Vice Chairperson						
Jerry Menichini						
Ila Vassallo						
Paul Cortland	X				X	
Dominick Marandolo						
Sandy Student						
Jeff Foster						

I, Regina Kinney, 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 a Resolution adopted by the said Board at a meeting held at the Municipal Building, 984 Tuckerton Road, Marlton, New Jersey, on the 3rd day of December, 2015.



 REGINA KINNEY, Secretary
 EVESHAM TOWNSHIP PLANNING BOARD