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APR 17 2026

P26-09

RESOLUTION NO. PB 00-02A9

TOWNSHIP OF EVESHAM

PLANNING BOARD

RE: APPLICATION NO. PB 00-02A9

- |  |   |
|--|---|
| <input type="checkbox"/> Minor Subdivision             | <input checked="" type="checkbox"/> Approved              |
| <input type="checkbox"/> Major Subdivision Preliminary | <input checked="" type="checkbox"/> General Conditions    |
| <input type="checkbox"/> Major Subdivision Final       | <input checked="" type="checkbox"/> Additional Conditions |
| <input type="checkbox"/> Minor Site Plan               | <input type="checkbox"/> Denied                           |

- Major Site Plan, Preliminary
- Major Site Plan, Amended Preliminary
- Major Site Plan, Final
- Bulk Variances
- Amendment to Major Site Plan, Final
- Modification of Condition of Approval

Application No. PB 00-02A9

Applicant: Davis & Associates, LLC  
d/b/a Davis Enterprises  
8000 Sagemore Drive, Suite 8201  
Marlton, New Jersey 08053

Owner: Davis & Associates, LLC  
d/b/a Davis Enterprises  
8000 Sagemore Drive, Suite 8201  
Marlton, New Jersey 08053

Block 33.11, Lot 1 (P.I.Q.)  
Action: May 1, 2014  
Memorialized: June 5, 2014  
Plan Name: The Promenade at Sagemore

**WHEREAS**, the applicant has applied to the Evesham Township Planning Board (ETPB) for the following primary approval(s): Amended Final Major Site Plan Approval to allow for outdoor seating for all restaurants and/or eating establishments at The Promenade at Sagemore shopping center.

**WHEREAS**, the applicant has applied for the following ancillary approval(s): NONE

**WHEREAS**, the application was considered by the ETPB on May 1, 2014 in sworn testimony by (1) Mitchell Davis, the applicant's representative and (2) by the legal representation of Robert S. Baranowski, Jr., 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) Township of Evesham Land Development Application filed April 9, 2014, prepared by Robert S. Baranowski, Jr., Esquire, consisting of twelve (12) pages.

**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:

- ( ) Engineer reports(s) dated \_\_\_\_\_;
- ( ) Planner report dated \_\_\_\_\_;
- ( ) Traffic Consultant report dated \_\_\_\_\_;
- ( ) Environmental Consultant Report dated \_\_\_\_\_;
- ( ) Evesham Township Environmental Commission Report(s) dated \_\_\_\_\_;
- (X) Other: Evesham Township Department of Community Development Report dated April 24, 2014;

a copy of which is attached hereto and made a part hereof as Exhibit A; and

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

### FINDINGS OF FACT AND CONCLUSIONS

1. This application seeks amended final major site plan approval regarding The Promenade at Sagemore shopping center which is located on Block 13.11, Lot 1 on the Township of Evesham Tax Map and contains approximately 44.8 acres within the C-1 Zoning District (P.I.Q.).

2. Robert S. Baranowski, Jr., Esquire summarized the application on behalf of the applicant. He indicated the original site plan was approved in or about 2000 and has been amended from time to time thereafter. He stated the applicant is seeking to amend the approvals to permit outdoor seating for all restaurant and/or eateries now existing and which may be opened in the future. He indicated that currently Redstone, Brio, Panera Bread and Zoe's Kitchen were approved for outdoor seating. He further indicated that all other eateries or food establishments are subject to an annual permit process to allow outdoor seating. He also indicated that currently 25% of the gross floor area of the shopping center retail space is permitted to be restaurant uses without increasing the parking requirements. He indicated further that even with the proposed new "b.good" restaurant, the percentage of restaurants within the shopping center was around 11% which was much less than permitted. Mr. Baranowski also indicated the applicant proposed no changes to site layout or to the footprints of the existing buildings. He also stated the applicant had reviewed and agreed with all of the comments and conditions set forth in the report of the Evesham Township Department of Community Development.

3. Mitchell Davis, the applicant's representative testified on behalf of the applicant. He described the shopping center and indicated that the applicant sought to amend the approvals to permit outdoor seating for all existing and future restaurant uses within the shopping center so as to avoid the need to seek a permit for outdoor seating on an annual basis for each restaurant which had not received approval for outdoor seating. Mr. Davis indicated no changes were proposed to the site layout or the building footprints. Upon comment from the Evesham Township Director of Community Development,

Mr. Davis indicated the applicant was willing to agree to the comments and conditions outlined in the Department's report.

4. The ETPB reviewed and considered the April 24, 2014 report of the Evesham Township Department of Community Development, prepared by Nancy Jamanow, PE, CME, PP. (Exhibit "A")

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

**WHEREAS**, upon motion duly made and seconded to grant the application for Amended Major Final Site Plan Approval to allow outdoor seating at all restaurants within The Promenade at Sagamore shopping center, the Board voted in favor of granting the application subject to certain conditions mentioned hereinafter.

**NOW, THEREFORE, BE IT RESOLVED** by the Evesham Township Planning Board that the said application for Amended Major Final Site Plan Approval shall be and is hereby granted subject to the following conditions:

**SPECIFIC CONDITIONS OF APPROVAL**

1. The applicant shall fully comply with and satisfy all of the items set forth in the Evesham Township Department of Community Development's report dated April 24, 2014 (Exhibit "A").

2. The applicant shall be permitted to have outdoor seating for all restaurant uses at the P.I.Q. so long as the percentage of restaurants and/or eating establishments within the shopping center does not exceed 25% of the shopping center's gross floor area. The applicant shall not have outdoor seating at any restaurant and/or eating establishment which exceeds the aforesaid limitation, however, outdoor seating shall not be used in the calculation of gross floor area for purposes of determining whether the applicant has exceeded the 25% limitation. In the event the total combined floor area of all restaurants and/or eating establishments exceeds 25% of the said gross floor area, the Applicant will be

required to return to the Planning Board for further approvals consistent with this resolution and consistent with all previous approvals and conditions of said approvals pertaining to the P.I.Q.

3. Prior to commencement of use of outside seating for any restaurant and/or eating establishment within the P.I.Q., the applicant shall obtain a zoning permit for all proposed outdoor seating areas at any restaurant and/or eating establishment which has not already received Planning Board approval. The DCD will review the permit and proposed layout to insure that handicap accessibility is not impeded, that there is a demarcation of the seating area from the walking public and that other code items are addressed. The restaurants and/or eating establishments which previously received approval for outdoor seating, and are therefore excluded from satisfying this condition, are Redstone American Grill, Brio, Panera Bread, and Zoe's Kitchen only.

4. Prior to commencement of use of outside seating for any restaurant and/or eating establishment within the P.I.Q., the applicant shall obtain approval from the Evesham Township Department of Community Development of all proposed outdoor seating at any restaurant and/or eating establishment which has not already received Planning Board approval. The DCD will review the layout to insure that handicap accessibility is not impeded, that there is a demarcation of the seating area from the walking public and that other code items are addressed. In the event the applicant and the Department of Community Development cannot agree on any proposed outdoor seating layout, the applicant shall be required to apply to the ETPB for relief from this condition. The restaurants and/or eating establishments which previously received approval for outdoor seating, and are therefore excluded from satisfying this condition, are Redstone American Grill, Brio, Panera Bread, and Zoe's Kitchen only.

5. This approval does not permit any changes to the existing site layout or building footprints.

6. All other terms and conditions of the previous approvals granted for the subject property 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 subject property.

**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:

(X) 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.

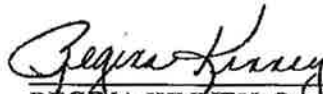
21. The applicant must maintain an escrow account with the Township and pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Township's land development ordinances, zone codes and any other applicable municipal codes, and 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.

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.

<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>
Jay Parikh, Chairperson	X					
Mayor Randy S. Brown/Robert DiEnna, Mayor's Designee	X				X	
Councilman, Steven Zeuli	X					
Alicia Marrone, Vice Chairperson	X					X
William McGoey, Alt. Vice Chairman						
Jerry Menichini	X					
Lla Vassallo	X					
Paul Cortland	X					
Sandy Student	X					
Dominick Marandolo						

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 1<sup>st</sup> day of May, 2014.

  
 REGINA KINNEY, 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>
Jay Parikh, Chairperson	X					
Mayor Randy S. Brown/Robert DiEnna, Mayor's Designee	X					
Councilman, Steven Zeuli	X					X
Alicia Marrone, Vice Chairperson						
William McGoey, Alt. Vice Chairman						
Jerry Menichini						
Lla Vassallo	X					
Paul Cortland						
Sandy Student	X				X	
Dominick Marandolo						

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 19<sup>th</sup> day of June, 2014.



REGINA KINNEY, Secretary  
EVESHAM TOWNSHIP PLANNING BOARD