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June 25, 2021
70589 00

Southampton Township Zoning Board of Adjustment
5 Retreat Road
Southampton, NJ 08088-3591

Attn: Ms. Maryalice Brown, Secretary

Re: **149 Eayrestown Road: Fesco**
Block 2201, Lot 6.02
Use Variance
Industrial (I) Zone and Airport Runway End Overlay Subzone

Dear Board Members,

We have reviewed an application for a use variance to erect a single-family detached dwelling, which is not a permitted use in Industrial (I) zone where the above property is located. The proposed development is also within the Township's Airport Safety Area overlay zone. The application includes the following documents:

1. Application Cover Letter prepared by Stephen R. Nehmad, Esq. of Nehmad Davis & Goldstein PC dated 6/7/21;
2. Planning Board and Zoning Board Application with Use Variance Checklist form received 6/8/21; and
3. Site [sic] Plan, prepared by Joseph D. Hanrahan, PE of Hammer Engineering in Manasquan, NJ dated 05/21/21.

General Information

Applicant: Robert Fesco
178 Morning Glory Lane
Manchester, NJ 08759

Owner: Forza Group, Inc.
438 Dreshertown Road
Fort Washington, PA 19304

Applicant's Attorney: Stephen R. Nehmad, Esq.
Nehmad Davis & Goldstein PC
4030 Ocean Heights Avenue
Egg Harbor Township, NJ 08234

Applicant's Engineer: Joseph Hanrahan, PE
Hammer Engineering
1707 Atlantic Avenue, Suite B2
Manasquan, NJ 0876-1147

Applicant's Planner: Leah Furey Bruder AICP PP
PO Box 262
Medford, NJ 08055

Completeness

Because the application included all the required submission checklist items in the Board's Use Variance Checklist, we would recommend that the Board find the application COMPLETE and ready for its review and consideration.

Zoning Requirements

Use Requirements: Industrial (I) Zone (§12-3.7)

1. *Because single-family detached dwellings are not a permitted use in this zone, a d(1) use variance is required.*
2. *Because detached garages, pools, and patios are not permitted accessory use in this zone, a c(2) use variance is required.*

Use Requirements: Airport Safety Area Overlay Zone (§12-4.2)

3. Lot 6.02 is within the Runway End Subzone section of the Red Lion Airport Safety Area Overlay Zone. The proposed single-family detached dwelling is on a lot of more than 3 acres in size and outside the Clear Area Subzone. *Because §12-4.2.c.1. and d.1 prohibit all residential uses unless they are also permitted in the underlying zoning district, which in this case is the Industrial (I) zone, a second d(1) use variance is required.*
4. Solar energy systems are permitted uses in the Industrial (I) zone, subject to the standards of §12-5.22.d. The Applicant should provide testimony whether the proposed 1,440 SF solar array complies, such as whether it will be surrounded by a 6'-high fence, have underground power lines, be removed after abandonment, etc. *Plan revisions or c(2) bulk variances may be required.*
5. *Because the proposed solar array is within the Airport Safety Area Overlay Zone, its installation is conditioned on final approval by NJDOT's Aeronautics Division and/or the Federal Aviation approvals, per §12-5.22.d.1(v).*

The Applicant has the burden of proof to present "positive" and "negative" criteria to justify the use variance. The Applicant should provide testimony indicating that:

- a. There are "special reasons" to grant the requested relief (e.g., is it "inherently beneficial");
- b. The site is particularly suited to the proposed use OR would be zoned into inutility without the variance;
- c. The proposed will advance the purposes of the NJ Municipal Land Use Law (NJSA 40:55D-2) and the Township's Master Plan and Zoning Ordinance;
- d. The variance can be granted without substantial detriment to the public good; and
- e. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

The Applicant has the burden of proof to justify bulk variances, by testimony or other means, by using the c(2) proofs. For c(2) variances, the Applicant must demonstrate:

- a. That the purposes of the Municipal Land Use Law (MLUL) would be advanced by a deviation from strict application of the zoning requirement;
- b. That the variance can be granted without substantial detriment to the public good;
- c. That the benefits of the deviation would substantially outweigh the detriment; and
- d. That the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Area, Bulk, and Height Requirements: Industrial (I) Zone (§12-3.7)

6. The last column in the following table indicates that the existing lot and proposed dwelling conforms to the zone’s area and bulk requirements. Please note that the identified setbacks are likely measured at the foundation line and not at the eave line; however, they are substantially greater than required. The Applicant should provide testimony clarifying whether the lot coverage figure includes the proposed solar panel array, which is exempted under NJSA 40:55D-38.1.

Lot	Required	Proposed	Status
Min. Lot Area (Acres)	2	15.001	C
Min. Lot Frontage (Feet)	200	200	C
Min. Lot Width (Feet)	200	200	C
Min. Lot Depth (Feet)	300	> 300	C
Max. Total Lot Coverage (Percent)	50	≈ 5	C
Single Family-Detached Dwelling			
Min. Front Yard Setback (Feet)	75	489.33	C
Min. Rear Yard Setback (Feet)	40	1,214.81	C
Min. One Side Yard Setback (Feet)	25	134.99	C
Min. Both Yards Setback (Feet)	50	348.33	C
Max. Building Height (Feet)	45	< 45	C
Max. Floor Area Ratio (Percentage)	50	.03	C

C = Conforming.

Height Requirements: Airport Safety Area Overlay Zone (§12-4.2.e)

7. Because the proposed single-family detached dwelling is will be less than 45’ tall and is more than 900’ from the end of the runway, no height variances are required.

General Comments

8. NJ RSIS §5:21-4.14 requires that a single-family detached dwelling to provide a minimum of 2 parking spaces for a 3-bedroom dwelling and 3 parking spaces for a 4- or 5-bedroom dwelling. The Applicant should provide testimony indicating the number of proposed bedrooms and NJ RSIS-compliant parking spaces to be provided. ***A de minimus exception may be required.***
9. The proposed detached garage, pool and patio, and solar array are all within the required setbacks. Although the §12-4.1.c. garage restrictions do not apply in industrial districts, the proposed 1,232 SF garage is less than the maximum 1,260 SF permitted in residential districts.

10. The Applicant should provide testimony indicating:
 - a. Whether the garage will have electrical, plumbing, or other utility services;
 - b. The locations and types of any proposed exterior lighting for the garage's vehicular and pedestrian doors and provisions to ensure there will be no glare to adjacent properties; and
 - c. The Applicant should provide testimony whether there will be any commercial or industrial business activity associated with the proposed dwelling, garage, and site other than a home occupation, as permitted by §12-4.14 garage in a residential district. We recommend that this restriction be a condition of any Board approval.
11. The proposed amount of clearing of this wooded parcel appears to be that only necessary for the physical construction of roads, improvements, and building, which complies with §12-5.16.a.2.
12. The plan should be revised to show a sufficiently clear sight triangle and site triangle easement, per §12-5.17.b.
13. §12-5.18.b. requires private swimming pools to be provided with a barrier which completely surrounds the swimming pool and obstructs access to the swimming pool. The plan does not show any such barrier. *A plan revision of design waiver is required.*
14. Because the property does not have access to public water and sewer service, the proposed development should be conditioned upon the Burlington County Health Department's approval of a private well and septic system.
15. The plan's title block should be changed from "Site Plan" to "Variance Plan".
16. The approval signature block should be changed to be an approval block for the Zoning Board Chairman, Secretary and Engineer and must remove references to "Final Plat".
17. The applicant proposes to disturb greater than 1.0 acres and proposes greater than 0.25-acre net increase new impervious cover. Accordingly, this application is classified as a major project for the purposes of stormwater management and must comply with the requirements of NJAC 7:8 (March 2021) and Southampton Township's Stormwater Control Ordinance, meeting water quantity, water quality, groundwater recharge and green infrastructure requirements. Thus, the project must meet the following requirements:
 - a. Address the rate and volume of runoff from the project site. This may be done in one of three ways as outlined in NJAC 7:8:
 - i. Reduce the peak rate of runoff from the project area by 50%, 25%, and 20% for the 2 year, 10 year, and 100 year storms, respectively; or
 - ii. Demonstrate that the rate of runoff for the project is not increased from the pre-developed condition at any point along the post-developed condition hydrograph; or
 - iii. Demonstrate that the peak rate of runoff is not increased and that the increase in volume and variation in timing will not have an adverse downstream impact.
 - b. Reduce the Total Suspended Solids (TSS) loading in stormwater by 80% for new motor vehicle surfaces.

- c. Demonstrate that the amount of groundwater recharge in the post-developed condition is equal to or greater than the pre-developed.
 - d. Achieve requirements a, b, and c above, via the implementation of green infrastructure as recognized by the NJDEP.
18. Appropriate soil testing must be performed in accordance with the NJDEP Stormwater Best Management Practices Manual (BMP) to support the required stormwater management design.
 19. A stormwater management maintenance manual specific to the measures to be designed for this site, must be submitted to the Board and its professionals for review. The manual must meet the requirements of the NJDEP Stormwater BMP.
 20. Should the Board act favorably on this application, the applicant must record a deed restriction requiring that the owner of the property maintain the system in accordance with the manual in perpetuity. The restriction shall provide the Township of Southampton the right, but not the obligation, to enter upon the property to perform the required maintenance and lien the property for the related costs, in the event that the responsible party fails in its obligation to maintain the system.

Administrative

21. All future re-submissions of the plans shall clearly indicate a revision date and be accompanied with a point-by-point response letter to the comments of the Board's professional staff.
22. Any approval is subject to applicant obtaining all required permits and approvals, including the following, and satisfying the review letters of the Board's Professionals.
 - a. NJDOT Aeronautics Division (solar panels in an Airport Safety Area Overlay Zone)
 - b. Burlington County Board of Health (private well and septic system),
 - c. Southampton Township Construction Office
 - d. Any and all others that may be required.

Given the significance of the comments offered herein, we recommend that this matter not be scheduled for a Zoning Board hearing until such time as the comments are sufficiently addressed via the submission of revised documents and supporting data.

We reserve the opportunity to further comments as additional information becomes available. Should you or the applicant have any questions, please feel free to contact the undersigned.

Sincerely yours,



Rakesh R. Darji, PE, CME, PP
Zoning Board Engineer



Edward Fox, AICP, PP
Zoning Board Planner

RRD/EF

- cc: Robert Fesco, 178 Morning Glory Lane, Manchester, NJ 08759 (Applicant)
ec: Stephen R. Nehmad, Esq., Applicant's Attorney via email snehmad@ndlegal.com
Joseph Hanrahan, PE, Applicant's Engineer via email jhanrahan@hammerengineering.com
Leah Furey Bruder AICP PP, Applicant's Planner via email leah@lfblandplanning.com
Thomas Coleman, Esq., Board Attorney tomecoleman@rclawnj.com