

Resolution No.: 23-2023

RESOLUTION OF THE BOROUGH OF CLAYTON LAND USE BOARD

GRANTING USE VARIANCE

FOR BLOCK 1512, LOT 25 (709 N. DELSEA DRIVE)

APPLICANT- NJ SOLAR POWER, LLC

WHEREAS, NJ Solar Power, LLC (the “Applicant”), located at 325 W. Water Street, Floor 3, Toms River, New Jersey, 08753, submitted an application to the Clayton Land Use Board (the “Board”) for a use variance under N.J.S.A. 40:55D-70d(1); and

WHEREAS, the subject property, located at 709 N. Delsea Drive, also known as Block 1512, Lot 25 on the Borough of Clayton Tax Map (the “Property”), is owned by LCA Properties, LLC; and

WHEREAS, located in the “CO” Commercial Office District and “R-B” Medium/ High Density Residential District, the Property is rectangular in shape, bordered by residential uses on two sides, a commercial use on one side, and a church on the other side of North Delsea Drive; and

WHEREAS, the Property currently contains a two-story single family dwelling, a single-story commercial building with a laundromat and hair salon, a parking lot, and a stormwater management basin; and

WHEREAS, the installation of a ground mounted solar array within a stormwater management basin is not expressly permitted by Section 88-40.1.A(2) of the Borough Code, and therefore, the Applicant seeks a use variance to construct the array on the embankment of the stormwater management basin at the rear of the Property; and

WHEREAS, the Applicant appeared before the Board on Monday, October 23, 2023 (the “Hearing Date”); and

WHEREAS, pursuant to N.J.S.A. 40:55D-25c, the Board heard the use variance application as a seven-member Zoning Board of Adjustment; and

WHEREAS, Wayne L. Roorda, Jr., PE, PP, CME, the Board’s engineer and planner, was present on the Hearing Date and duly sworn; and

WHEREAS, Peter M. Rhodes, Esq., an attorney with Cahill, Wilinski, Rhodes & Joyce, P.C., presented the application on behalf of the Applicant; and

WHEREAS, William C. Hoey, owner of NJ Solar Power, LLC, was present on behalf of the Applicant, and was duly sworn to testify on behalf of the application; and

WHEREAS, Leo Abrahamian, owner of LCA Properties, LLC, was present, and was duly sworn to testify on behalf of the application; and

WHEREAS, the Applicant met all jurisdictional requirements enabling the Board to hear and act on the application, and appeared before the Board on the Hearing Date, as specified above; and

WHEREAS, the following reports were prepared by the Board's professionals, and considered by the Board:

Memorandum of the Board's planner and engineer Wayne L. Roorda, Jr., PE, PP, CME dated September 20, 2023; and

WHEREAS, during the public hearing, the Applicant was given the opportunity to present testimony and legal argument, and the Board's professionals and members of the public were given an opportunity to comment on the application; and

WHEREAS, the following exhibits were marked into evidence during the hearing:

Exhibit A: Photographs of site and existing stormwater pipes and drains,

Exhibit B: Illustration of solar panels on photograph of current site, and

Exhibit C: Photograph of proposed solar array; and

WHEREAS, Mr. Rhodes, the Applicant's attorney, presented a brief overview of the application, where he explained that the Applicant seeks use variance approval for the installation of a ground mounted solar panel system on the embankment of the Property's stormwater management basin. Mr. Rhodes also provided that the proposed improvement, a solar array, is an inherently beneficial use.; and

WHEREAS, Mr. Abrhamian testified that since his purchase of the Property in 2013, he has never seen water accumulate in the stormwater management basin, even during the worst of storms. He also testified that the solar array would be installed inside of the existing fence line, and that no part of the structure would infringe on the basin's gravel. Mr. Abrhamian testified that the church across North Delsea Drive also has a ground mounted solar array.; and

WHEREAS, Mr. Hoey provided detailed testimony on the proposed improvements, where he explained that even if the basin were completely full, water would not reach the array since the lowest electrical component will be 48 inches above the highest point on the ground. Mr. Hoey testified that the Applicant will install a 6 1/2-foot chain link fence around the array, which will include a locked gate. The 6 1/2-foot fence exceeds the tallest point on the solar array.

Mr. Hoey testified that the Applicant will post signage for rapid shutdown of the system, and he indicated that the emergency shutoff lever will be adjacent to the array's electrical meter. The Applicant intends for no vegetation under the solar array. To prevent growth, Mr. Hoey testified that weed fabric and stone will be placed under the solar arrays.

Although not subject to this use variance application, Mr. Hoey testified that solar panels will also be installed on the roof of the Property's commercial building.

In response to concerns about glare, Mr. Hoey testified that the panels are designed to absorb light, and will not create glare for the nearby residents or drivers in the Property's parking lot. This is especially true at the panels will face away from the Property's parking lot.; and

Mr. Hoey also testified that the panels have a 25 year warranty, with at least 80% efficiency. The Board voiced concerns about disposal upon the panels' expiration and/ or replacement. Mr. Hoey agreed to a condition of approval that the panels will be recycled consistent with current industry standards upon their expiration and/ or replacement.

WHEREAS, Wayne L. Roorda, Jr., PE, PP, CME, the Board's engineer and planner, reviewed his report. Mr. Roorda testified that solar energy facilities are an inherently beneficial use, and that the infiltration basin does not hold water long term. Despite being satisfied with the height of the panels, Mr. Roorda voiced concerns about the electrical equipment. Mr. Roorda requested that the Applicant provide a manual to the Borough that includes the emergency shutoff instructions with a diagram. A copy of the manual must also be kept in the commercial building on the Property.; and

WHEREAS, the meeting was opened to the public, and no one from the public appeared in support of or against the application; and

WHEREAS, Mr. Rhodes reiterated that solar energy facilities, like the proposed improvements, are an inherently beneficial use under the Municipal Land Use Law, and thereby meets the positive criteria for the requested use variance. Mr. Rhodes summarized the negative criteria. He stated that the proposed use promotes the highest and best use of the land since the location currently has no other use besides a stormwater management basin. The solar facility also helps reduce carbon emissions, and provides clean energy to the community. There will be little to no impact on the surrounding properties since the panels will not produce glare, the basin is surrounded by trees and bushes, and the basin is located at the rear of the Property. In addition, a similar solar array already exists at the church across the street. Mr. Rhodes provided that there will be little to no adverse impact on the zone plan, but instead, the proposed improvements will support it.; and

WHEREAS, the Board has considered and incorporates herein the review letter submitted by Board engineer and planner Wayne L. Roorda, Jr., P.E., P.P., C.M.E., and the Board has carefully considered all the documents submitted and the testimony of all the witnesses; and

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The Applicant seeks a use variance under N.J.S.A. 40:55D-70d(1) to construct a ground mounted solar array on the embankment of the stormwater management basin at the rear of the Property.
2. Since the proposed solar array is not expressly permitted within a stormwater management basin by Section 88-40.1.A(2) of the Borough Code, and all uses not expressly permitted are prohibited pursuant to Section 88-50(A) of the Borough Code, the Applicant was required to seek said use variance; and

3. The Property is located in the "CO" Commercial Office District and "R-B" Medium/High Density Residential District. It is a rectangular lot, bordered by residential uses on two sides, a commercial use on one side, and a church on the other side of North Delsea Drive. The Property currently contains a two-story single family dwelling, a single-story commercial building with a laundromat and hair salon, a parking lot, and a stormwater management basin.
4. The stormwater management basin is located at the rear of the Property, and is surrounded by trees, bushes, and an existing fence. The proposed ground mounted solar panels will be installed inside the existing fence, on the embankment of the Property's stormwater management basin, and will be enclosed by a 6 1/2-foot chain link fence, secured with locked, gated access. The solar array's electrical components will be at least 48 inches above the ground.
5. Signage will be installed to illustrate rapid shutdown of the system, and the emergency shutoff lever will be adjacent to the array's electrical meter. A manual will be provided to the Borough, and kept onsite, to explain the emergency shutdown process.
6. To prevent any vegetation or grass, weed fabric and stone will be installed to prevent growth under the array.
7. Pursuant to N.J.S.A. 40:55D-4, solar energy facilities or structures are inherently beneficial uses.
8. An applicant requesting a use variance under subsection "d" of N.J.S.A. 40:55D-70 must prove that it has satisfied the positive and negative criteria. For applications that involve an inherently beneficial use, said use satisfies the positive criteria. The applicant must then establish the negative criteria under the "Sica Test", established in Sica v. Bd. of Adjustment of Twp. of Wall, 127 N.J. 152 (1992). The Sica Test has four parts: (1) the public interest served by the inherently beneficial use; (2) any adverse consequences of granting variance; (3) consideration of conditions that would mitigate the adverse consequences; (4) balancing the public interest in granting the variance against the adverse impacts.
9. The Board finds that the Applicant satisfied the positive and negative criteria for a use variance under N.J.S.A. 40:55D-70d(1) and the Sica Test. Since the proposed use as a solar facility is an inherently beneficial use, the use establishes the positive criteria.
10. For the negative criteria, the Board finds that the use as a solar energy facility promotes the public interest as it will provide clean energy for the community, and will make more efficient use of an underutilized portion of the Property. The Board finds that there are very few potential adverse impacts for several reasons: (1) the proposed array is located at the rear of the Property, (2) the existing stormwater management basin is substantially surrounded by vegetation, (3) the electrical

components of the solar arrays will be installed 48 inches above the ground, (4) the array will be enclosed by a 6 1/2-foot fence with a locked gate, (5) the structure will utilize a portion of the Property previously only used for stormwater management, (6) it will not create a glare for neighbors or drivers, and (7) the Applicant agreed to provide a manual for shutoff procedures in case of an emergency. The Board finds that the significant public interest of clean energy and efficient use of land, outweighs the very limited adverse impacts, especially when nearly all of the adverse impact are mitigated in some way. Based upon the foregoing, the Board finds that the use variance can be granted without substantial detriment to the public good and without substantial detriment to the zone plan and the Borough's Ordinance.

WHEREAS, after deliberation, a motion was made to grant approval of the use variance, subject to certain conditions, as set forth herein, and was approved by a vote of 7 yeas to 0 noes.

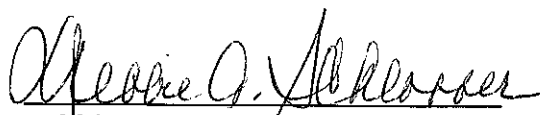
NOW, THEREFORE, BE IT RESOLVED based upon the foregoing findings of fact and conclusions of law, the Borough of Clayton Land Use Board, acting in its capacity as a Zoning Board of Adjustment, hereby approves the application for a use variance under N.J.S.A. 40:55D-70d(1), as set forth above, and is contingent upon the following conditions:

1. The Applicant shall provide the Borough a safety manual which describes the procedure of emergency shutoff of the solar array. Said manual shall include a diagram. A copy of the manual shall be kept onsite, in the commercial structure.
2. Upon expiration and/ or replacement, the solar panels shall be recycled consistent with the current industry standards.
3. The Applicant shall comply in all respects with the review letters submitted by the Board's professionals, with the exception of waivers and/or variances granted.
4. The Applicant shall obtain the necessary approvals of all other governmental agencies having appropriate jurisdiction.
5. The Applicant shall post all performance bonds and inspection escrows and pay in full all review escrows prior to the approvals taking effect.

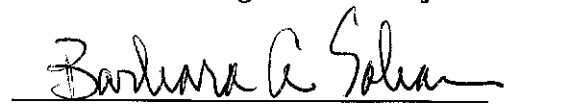
BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be forwarded to the Applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and the Borough Zoning Officer.

THIS RESOLUTION DULY ADOPTED at a regular meeting of the Borough of Clayton Planning Board held on Monday, November 27, 2023.

Attest:


Debbie A. Schlosser, Secretary

**Borough of Clayton Combined Planning
Board and Zoning Board of Adjustment**

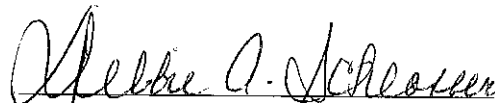

By: ~~Joe Abate, Chairman~~
Barbara Saban, Vice Chair

ROLL CALL VOTE

THOSE IN FAVOR	<u>4</u>
THOSE OPPOSED	<u>6</u>
THOSE ABSTAINED	<u>0</u>

CERTIFICATION

I hereby certify that the foregoing Resolution is a true copy of a Resolution adopted by the Borough of Clayton Combined Planning Board and Zoning Board of Adjustment at a regularly scheduled meeting of the Board held on November 27, 2023 at the Borough of Clayton Municipal Building, 125 Delsea Drive, Clayton, New Jersey 08312 at 7:00 p.m. and memorializes the decision reached by said Board on the herein application at the Board's October 23, 2023 meeting and public hearing.


Debbie A. Schlosser, Secretary

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