

**FRANKLIN TOWNSHIP
ZONING BOARD OF ADJUSTMENT
RESOLUTION NO. ZB 23-04**

WHEREAS, NORIA CHABERTON JV LLC has applied to the Zoning Board of Adjustment of the Township of Franklin seeking use variances and preliminary and final site plan approval to construct a floating accessory solar energy system and commercial solar energy system; and

WHEREAS, the property in question is located on Coles Mill Road and known as Lots 9 and 11, Block 6103, on the tax map of Franklin Township, said property being in the PR-R (Pinelands Rural Residential) Zone; and

WHEREAS, the Zoning Board of Adjustment, after carefully considering the evidence presented has made the following factual findings and statements of reason:

1. All notices of the public meeting were properly served in compliance with New Jersey State Statute and the Franklin Township Land Use Ordinance and the application was deemed complete.

2. Robert S. Baranowski, Jr., Esquire appeared on behalf of the applicant. The applicant seeks to construct floating solar arrays on a body of water created by an active mining operation situated on a 156-acre parcel situated in Franklin and Monroe Townships. The applicant proposes an accessory solar array to provide supplemental electric for the operation of the resource extraction facility. This array is situated completely in Franklin Township and covers approximately 1.5 acres. An additional commercial solar energy system is situated in both Franklin and Monroe Townships. The portion in Franklin Township consists of approximately 2.25 acres. The applicant has received approval from the Monroe Township Land Use Board and has a Pinelands Certificate of Filing.

3. The applicant requires 3 use variances. A use variance is required for the commercial solar energy system as it is not a permitted use in the zone. A use variance is necessary for the accessory solar energy system as it is an expansion of a non-conforming use. A use variance is necessary as the commercial solar energy system will constitute a second principal use on the parcel. The applicant also seeks a variance from providing an 8-foot high fence installed around the entire perimeter of the installation, from providing a maintenance plan and from providing a 50-foot landscape buffer.

4. The applicant provided the testimony of Dyanna McMullen, Professional Engineer. She testified that the solar panels would create minimum noise and no glare and that they have received FAA approval for the project. There will be no changes to the mining operation nor to site grading or lighting. There will be no increase in staffing

or traffic. The site will be inspected two times per month. The applicant's engineer certified that all performance standards required by Township Ordinance regarding wind velocities, hazardous materials and noise will be met. Also, all abandonment and decommissioning requirements shall be met and a performance bond which complies with the requirements of Township Ordinance shall be provided. She stated that a person in the water touching the solar panel would not receive an electric shock.

5. The commercial solar energy system will generate power to be distributed by Atlantic City Electric through a New Jersey Community Solar Program and will generate approximately 4 megawatts of power. The accessory solar array will generate approximately 1 megawatt of power and provide approximately 77% of the power necessary to operate the mining operation. Other than the floating solar arrays, the only construction will be a concrete equipment pad of approximately 10 x 10 feet for the inverter enclosed by a 7-foot high fence.

6. Regarding safety and security, the applicant submitted as A-3 in evidence a letter of September 25, 2023 from Sahara Sand of Franklin, Inc. setting forth the security measures that are presently in place.

7. The applicant requires a variance from the requirement to provide a 50-foot landscaping buffer. As justification for the variance, the applicant indicates that natural buffers presently exceed 300 feet.

8. The applicant seeks a variance from the requirement to provide an 8-foot high fence around the perimeter of the property based upon the fact that the mining operation has been approved and renewed every 5 years without requiring fencing. Also, due to the size of the property, trespassers would likely find an isolated location to get through the fence.

9. The applicant requires a variance from the requirement to provide a maintenance plan. Their justification for the variance is that there is a maintenance plan in place for the mining operation and the floating solar array and equipment pad will only require an inspection/maintenance visit 2 times per month.

10. The applicant presented the testimony of Professional Planner, Tiffany A. Morrissey who addressed the applicant's satisfaction of the burden of proof regarding the positive and negative criteria for all three use variances indicating, in part, that the proposed use is an inherently beneficial use, is consistent with the New Jersey Master Plan goals and objectives and constitutes a creative use which will not result in the loss of farmland or forest.

11. The Board carefully considered the review letter of July 13, 2023 prepared by Zoning Board Professional Engineer and Professional Planner, David S.

Scheidegg.

12. Members of the public stated concerns primarily related to water quality and security. Adjoining property owner William Blaney, who owns approximately 17 acres of vacant land, spoke in opposition to the proposal indicating that he believed it was prohibited by statutory regulations related to development in the Pinelands. However, the Board found that if that was the case, the issue would have been raised in the Pinelands Certificate of Filing, which it was not.

13. The Board determined that the applicant had satisfied its burden of proof regarding the positive and negative criteria for all 3 use variances. The use is an inherently beneficial use which will constitute an insignificant change in the activity occurring on site at this time. Therefore, it will not have a substantial negative impact upon adjoining property owners and will not be contrary to the zoning plan or zoning ordinances. The Board found that the variances/waivers for buffering, landscaping, fencing and a maintenance plan were justified for the reasons set forth by the applicant on the record. The only remaining concern of the Board related to people trespassing in order to access the body of water. They believed that concern could be alleviated by requiring the applicant to present a security plan for monitoring of the area 24 hours per day, 7 days per week with the plan subject to review and approval by the Township of Franklin Police Department.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Franklin this 5th day of December, 2023, confirming action heretofore taken, that the application of Noria Chaberton JV LLC seeking use variances and preliminary and final site plan approval to construct a floating accessory solar energy system and commercial solar energy system is hereby granted, subject to the following conditions:

1. The applicant shall obtain all other necessary governmental approvals from State, County, Federal and Municipal governmental agencies or bodies.

2. The applicant shall satisfy all outstanding fees and escrows prior to the granting of construction permits or issuance of a Certificate of Occupancy.

3. The applicant shall be responsible for the payment of any and all Affordable Housing Development Fees due pursuant to Franklin Township Ordinance, Chapter 138 within the time required by the Ordinance.

4. Variances/waivers are granted from the requirement to provide landscaping/buffering, an 8-foot high fence, and a maintenance plan.

5. The applicant shall prepare and submit a plan for 24-hour, 7 days per week monitoring for trespassers with the plan subject to review and approval by the

Franklin Township Police Department.

6. The applicant shall meet all conditions of approval imposed by the Monroe Township approval.

7. The applicant shall obtain Pinelands approval.

8. The applicant shall comply with all performance standards, abandonment and decommissioning requirements and performance bonds required by Ordinance.

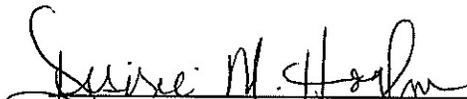
9. The applicant shall comply with all comments and conditions set forth in the review letter of July 13, 2023 prepared by Planning Board Engineer and Planner, David S. Scheidegg which have not already been addressed herein.

**FRANKLIN TOWNSHIP
ZONING BOARD OF ADJUSTMENT**



JOHN GRAVENOR, Chairman

ATTEST:



DESIREE M. HOGBIN, Secretary