

**RESOLUTION
TOWNSHIP OF EDISON PLANNING BOARD
MIDDLESEX COUNTY, NEW JERSEY
RESOLUTION OF MEMORIALIZATION
PRELIMINARY SITE PLAN APPROVAL
WITH ANCILLARY VARIANCE
AND DESIGN WAIVER RELIEF**

**Approved: November 20, 2023
Memorialized: January 29, 2024**

IN THE MATTER OF: YASHRAJ5 REALTY, LLC

APPLICATION NO.: P11-2023

WHEREAS, an application for preliminary site plan approval along with ancillary variance and design waiver relief has been made to the Edison Township Planning Board (hereinafter referred to as the “Board”) by YASHRAJ5 Realty, LLC (hereinafter referred to as the “Applicant”) on lands known and designated as Block 692.04, Lot 30.02, as depicted on the Tax Map of the Township of Edison (hereinafter “Township”), and more commonly known as 39 Thomas Place in the Route 1 and Thomas Place Redevelopment Area Zone; and

WHEREAS, public hearings were held before the Board on August 14, 2023 and November 20, 2023, with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicant, witnesses and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised.

NOW, THEREFORE, does the Edison Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 0.63 acres and located with 218 feet of frontage along the western side of Thomas Place and +/-120 feet of frontage along the Route 1 off-ramp into Central Avenue (westbound) into Metuchen within the Route 1 and Thomas Place Redevelopment Area Zone. The subject Property does not, however, have any driveway connection to Route 1. The subject Property has a depth of approximately 100 feet. The subject Property was previously improved with a motel building constructed in the 1950s which has been removed.

2. The Applicant is proposing to clear the subject Property and construct an age-restricted apartment building containing 12,496 square feet. The proposed building would contain four (4) stories with a ground-level parking structure under three (3) floors of living space. An underground parking level is also proposed. The proposed structure would include forty-seven (47) apartment units with a mix of studio, one-bedroom, and two-bedroom units. The parking levels is proposed to contain a total of eighty-five (85) physical parking spaces, a total credit of eighty-nine (89) parking spaces will exist with the EV parking credit. A lobby, elevator, trash, delivery package room, and utility rooms will exist on the ground floor and will allow residents to travel to the upper floors. The proposed structure will have a height of forty-five (45) feet and have a repetitive pattern of windows similar to a hotel/motel. The Applicant proposes a connection to the public right-of-way of Thomas Place via one proposed driveway.

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3. Counsel for the Applicant, Tim Arch, Esq., stated that the subject Property was vacant although it had previously been improved with a motel. He explained that the motel had become dilapidated, which motivated the Township to designate the subject Property as an area in need of redevelopment. Mr. Arch stated that the Applicant was seeking preliminary and final site plan approval with ancillary variance relief to develop a permitted age-restricted apartment building. He

noted that the Applicant had noticed for three (3) variances, however, one (1) had been eliminated. Mr. Arch stated that the variance relief that the Applicant was seeking was for minimum front yard setback from Thomas Place and Route 1. Mr. Arch explained that the required minimum front yard setback was twenty (20) feet whereas 5.76 feet was proposed from Route 1 and one (1) foot from Thomas Place. He explained that the setback to Route 1 was the result of the irregular shape of the lot and the curve of the off-ramp of Route 1 which was measured from the corner of the building. Mr. Arch further explained that the setback from Thomas Place was measured from the entry ramp to the underground parking level. He then stated that the Applicant was also seeking variance relief from the required number of parking spaces noting that sixty-three (63) were proposed with an EV credit for a total of sixty-seven (67), whereas a minimum of eighty-eight (88) were proposed.

4. Mr. Arch further stated that the Applicant was proposing an age-restricted, forty-seven (47) unit apartment building. He stated that the proposal would comply with the Affordable Housing obligation by providing a 15% set aside which would amount to eight (8) units. Mr. Arch represented that the Applicant would comply with the tree replacement requirements and the comments within the Board Engineer and Board Planner's reports. He also agreed that the architectural plans would be revised so that the superintendent unit would not be designated as an affordable housing unit.

5. The Applicant's Engineer, Paul Fletcher, P.E., P.P, testified that the subject Property was designated as Block 692.04, Lot 30.02 and more commonly known as 39 Thomas Place. He stated that the subject Property contained approximately 27,000 square feet (0.63 acres) and was presently vacant. Mr. Fletcher explained that the subject Property was previously improved with a one-story motel and associated parking but had been demolished. He stated that only the asphalt of the parking remained.

6. Mr. Fletcher further testified that the Applicant was proposing to construct a four-story, forty-seven (47) unit, age-restricted apartment building. He stated that the plan included two (2) levels of parking and three (3) levels of living space. Mr. Fletcher proceeded to explain that one (1) parking level would be accessed by a ramp located at the front of the building and one (1) parking level would be at ground level. He also stated that sixty-three (63) parking spaces were proposed, but that the EV credit would result in a total of sixty-seven (67) parking spaces.

7. Mr. Fletcher highlighted that the impervious coverage would be reduced by 1,700 square feet. He identified that there was an existing stormwater basin located at the front of the subject Property which was proposed to remain. Mr. Fletcher noted that the roof leaders would connect to the basin. He also stated that an existing swale was located at the south side of the subject Property which connected to a stormwater inlet within Albert Avenue. Mr. Fletcher further testified that because less than 0.5 acres were being disturbed and that the impervious coverage was being reduced, the proposal was not a major development under the stormwater management regulations.

8. Mr. Fletcher further testified that existing water, sewer, and gas utilities were located within Thomas Place. He also agreed that the Applicant would comply with the comments contained in the Reports of the Board Professionals. Mr. Fletcher stated that the Applicant was seeking variance relief for the front yard setback and the number of parking spaces.

9. In response to questions from the Board Attorney, Mr. Fletcher testified that the amenity space required by the Redevelopment Plan had been added to the architectural plans. He also stated that the parking setback variance had been eliminated. Mr. Arch confirmed that the Applicant was seeking a *de minimis* exception from the Residential Site Improvement Standards (RSIS) parking requirement.

10. The Board Engineer stated that the Applicant would need to provide specific numbers regarding the stormwater management and utilities.

11. The Applicant's Architect, Satyen Rawal, R.A. testified that the first floor would contain the lobby, elevators, and parking. He stated that a delivery package room had been added at the request of the Board's Professionals. Mr. Rawal explained that the second floor, third, and fourth floors would contain the residential units. He also stated that each residential floor would contain sixteen (16) units. Mr. Rawal identified the 1,000 s.f. amenity space on the fourth floor. He also confirmed that the mechanical equipment on the roof would be screened by the parapet.

12. Mr. Rawal further testified that the Applicant had worked with the Township Affordable Housing Planner on the affordable housing units. He stated that the superintendent unit could be changed and not be designated as affordable housing. Mr. Rawal also testified that eight (8) affordable housing units were proposed which would include two (2) studio units, four (4) one-bedroom units and two (2) two-bedroom units.

13. In response to a question from the Board Attorney, Mr. Arch stated that the Applicant would comply with the Township regulations regarding designating the affordable housing units as low income and moderate income.

14. In response to questions from the Board, Mr. Arch represented that two (2) EV charging spaces would be located on the upper parking level with two (2) on the lower parking level. The Board expressed its concern with fire safety considering the EV spaces would be located within the garage. Mr. Arch stated that the Applicant could work with the Fire Bureau on the location of the EV charging spaces. He also stated that the Applicant could consider adding additional EV charging spaces. Mr. Arch also confirmed that the rear setback of the building was compliant at twenty (20) feet.

15. The Applicant's Planner, John P. DuPont, P.E., P.P., testified that the subject Property had previously been improved with a motel but was now vacant. He stated that the subject Property was designated as an area in need of redevelopment by the Township and was part of the Route 1 and Thomas Place Redevelopment Area.

16. Mr. DuPont further testified that the Applicant was proposing to develop a four (4) story apartment building with one (1) underground level of parking, one (1) ground level of parking, and three (3) levels of living space above. He stated that the building would contain forty-seven (47) residential units which would include a mix of studio, one-bedroom, and two-bedrooms. Mr. DuPont explained that the sixty-three (63) parking spaces were being provided with an EV credit totaling sixty-seven (67) parking spaces.

17. Mr. DuPont also stated that the proposed use was compliant with the Redevelopment Plan, however, the Applicant required some variance relief. He stated that the Applicant was seeking variance relief from the minimum front yard setback on Thomas Place, which required a minimum of twenty (20) feet whereas one (1) foot was proposed from the parking garage access ramp. Mr. DuPont also stated that the Applicant required variance relief from the minimum front yard setback on Route 1, which required a minimum of twenty (20) feet whereas 5.76 feet was proposed from the southeast corner of the building. He explained that the variance relief for the setbacks was a result of the irregular shape of the subject Property created by the curve of the Route 1 off-ramp. Mr. DuPont also confirmed that the setback deviations were not located near any residential uses and were necessary to ensure the maximum number of parking spaces. He opined that the deviations would not be perceivable from Route 1 and would not have any impact on Route 1.

18. Mr. DuPont also stated that the Applicant was seeking variance relief from the number of parking spaces where a minimum of eighty-eight (88) parking spaces were required, whereas a

total of sixty-seven (67) were proposed. He testified that age-restricted apartments did not require as many parking spaces as non-restricted facilities. He also stated that the area was walkable to commercial and retail uses.

19. Mr. DuPont opined that the proposal would have a positive impact by revitalizing an area in need of redevelopment. He stated that the age-restricted apartment building would also meet the demand for such housing in the community. Mr. DuPont further testified that the grant of variance relief would not result in any detriment to the redevelopment plan, master plan, of the public good. He also confirmed that the Applicant would comply with the Board Planner's Report.

20. The Board expressed its concern that the number of parking spaces would be insufficient even for an age-restricted facility and asked if any studies had been performed to determine the sufficiency of the parking. Mr. DuPont stated that age-restricted units typically were only occupied by one (1) or two (2) adults. He explained that the State had determined that age-restricted facilities had lower parking demands, however, the Redevelopment Plan did not account for the lower parking demands of age-restricted facilities. He also testified that based on his experience, one (1) parking space per unit was sufficient for an age-restricted facility. He also stated that the majority of the units were one-bedroom or studio, which was not conducive for families.

21. The Board Planner stated that the Applicant should seek a waiver from obtaining a certification from the utility company that there are no pipelines within seventy-five (75) feet of the subject Property. He explained that Mr. Fletcher had submitted a letter confirming that status but stated that Mr. Fletcher should provide a signed and sealed map certifying that there were no pipelines within seventy-five (75) feet.

22. The hearing was then opened to the public, at which time, Tosin Ajiboro, 15 John Street expressed his concern that the number of units was too intense for the area. He believed that

other uses would be better suited for the subject Property. He also expressed his concern with the sufficiency of the parking and that it would lead to parking on the public street. Mr. Ajiboro also questioned the quality of life of elderly residents of the proposed apartment building living in close proximity to Route 1. He also expressed his concern with traffic volume and general quality of life in the area.

23. Bolande Ajiboro, 15 John Street, stated that she agreed with her husband's, Mr. Ajiboro's statements. Ms. Ajiboro expressed her concern that the age of 55 years old as the minimum age was not very old considering the advancements in medicine. She explained her concern that residents at the age of 55 years old would still be active, working, and would need parking for more than one (1) vehicle and that the proposed parking was insufficient. She also expressed her concern with traffic volume and overpopulation. She anticipated adult children living in the age restricted apartment building and the need for additional parking. She also expressed her concern with the adequacy of the sewer capacity.

24. Urania Albania, 67 Thomas Place, opined that the proposed apartment building would not be in harmony with the neighborhood because the scale of the building. She also expressed her concern with traffic volume and safety. She also stated that she agreed with Ms. Ajiboro's statements regarding 55 years old not being very old.

25. Sandeep Nijhawan, 66 Thomas Place, stated that he agreed with the comments of the other members of the public. Mr. Nijhawan stated that he had a special needs child and was concerned with safety. He also expressed his concern with overflow parking. He opined that the proposed height was excessive for the area. He also expressed his concern with the setback variance relief. He also stated that he disagreed with the characterization of the area being walkable.

26. Sue Malone-Barber, 85 Pleasant Avenue, expressed her concern with the impact that the scale of the building would have on the neighborhood. She opined that the proposal would be a detriment to the quality of life of the area. She also disagreed with the characterization of the area as being walkable, especially considering that the residents would be seniors. She also expressed her concern with parking overflow to the streets.

27. Nick Fagan, 42 Edgewood Road, asked if the Application was deemed complete without the reports from the police department and fire department. Mr. Fagan also believed that the density and height of the proposed building was too intense for the area and asked for the Applicant to reduce the size of the building by half.

28. Tosin Ajiboro, 15 John Street, returned to ask if age-restricted would include children. Mr. Arch stated that there were only five (5) two-bedroom units, whereas the remainder were one-bedroom and studio units, which were not conducive for a parent and child.

29. There were no other members of the public expressing an interest in this application.

30. In response to a question from the Board, the Board Planner explained that the area in need of redevelopment process with the Board and the Governing Body was already complete. He stated that the redevelopment plan permitted a height of four-stories and forty-five (45) feet, which the proposal was compliant.

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31. Counsel for the Applicant, Tim Arch, Esq., stated that the Applicant had made revisions to address the Board's concerns regarding parking. As a result, the need for variance relief from the required number of parking spaces had been eliminated. He explained that eighty-six (86) parking spaces were required and a total of eighty-nine (89) parking spaces were now being provided. Mr. Arch also stated that the additional parking had been achieved by stacking parking spaces, which

would be assigned to specific units. He also stipulated that the Applicant would voluntarily provide a shuttle service to area commercial and retail uses for the residents. Mr. Arch also stated that the superintendent unit was no longer designated as affordable housing.

32. Mr. DuPont testified that the original plan included sixty-seven (67) parking spaces, whereas the revised plan now provided eighty-nine (89) parking spaces which was achieved by stacking parking spaces.

33. Mr. DuPont further testified that the Applicant was seeking design waiver relief from the width of the parking garage ramp which was reduced from twenty (20) feet to eighteen (18) feet. He stated that design waiver relief was also required for the drive aisle width which had been reduced from twenty-four (24) feet to twenty-three (23) feet. Mr. DuPont explained that design waiver relief was also required for the length of the parking spaces, which were reduced from eighteen (18) feet to seventeen (17) feet. He testified that the design waivers were *de minimis* because the parking garage would only be used by the residents who would be familiar with the surroundings. He also stated that the shuttle service would reduce parking turnover.

34. Mr. DuPont confirmed that the variance relief for the minimum front setbacks remained unchanged. He stated that the grant of variance relief would have a positive impact because it would result in a property within an area in need of redevelopment.

35. In response to questions from the Board, Mr. DuPont stated that the stacked parking spaces would be assigned to a single unit and function like a residential driveway. He also confirmed that the apartment building would be age-restricted, and that school age children would not be residents.

36. In response to questions from the Board Planner, Mr. DuPont agreed to provide a deed restriction requiring the shuttle service be provided by the owner of the subject Property.

37. The hearing was then opened to the public, at which time Sue Malone-Barber, 85 Pleasant Avenue, expressed her concern with the intensity of the building and traffic volume. She also expressed her concern with children living with parents that were 55 years or older.

38. There were no other members of the public expressing an interest in this application.

39. The Board has received, reviewed and considered various exhibits and reports with regard to this application. Those exhibits and reports are set forth on the attached Exhibit List, and all exhibits and reports as set forth on said Exhibit List have been incorporated herein in their entirety.

WHEREAS, the Edison Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Edison; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicant's request for preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 and 50 along with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 should be granted.

The Board finds that the Applicant has proposed a permitted use in the Zone but does require variance relief. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence

that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Board finds that the positive criteria has been satisfied pursuant to N.J.S.A. 40:55D-70c(2). The Board finds the setback of the corner of the building from Route 1 and the setback of the entry ramp to Thomas Place are necessary to provide a sufficient number of parking spaces. The Board also finds that the setback deviations only exist at small portions of the lot. The irregular shape of the subject Property also creates challenges in developing a completely conforming development. The Board finds these deviations promote appropriate use, sufficient space, and an efficient use of land. The Board also finds that the proposed building creates a

desirable visual environment. The Board specifically finds that the grant of variance relief will result in the successful redevelopment of a vacant underutilized and unattractive lot which has been declared an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law. This promotes the interests of the entire community and not just the Applicant. The goals of planning enumerated at N.J.S.A. 40:55D-2 have been advanced and the positive criteria has been satisfied.

The Board also finds that the negative criteria has also been satisfied. The subject Property will contribute to the aesthetics of the entire neighborhood. The grant of variance relief also will not result in an increase in traffic, noise or odors not already contemplated by the Ordinance. The grant of variance relief will therefore not result in substantial detriment to the public good or substantially impair the intent of the Zone Plan and Zoning Ordinance. The negative criteria has therefore been satisfied.

The Board finds that the positive criteria substantially outweighs the negative criteria and concludes that variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

The Board now addresses the required design waiver relief. The Board finds that the Applicant is seeking design waiver relief from the width of the parking garage entrance ramp where a minimum of twenty (20) feet is required whereas eighteen (18) feet is proposed. The Board also finds that the Applicant is seeking design waiver relief from the drive aisle widths where a minimum of twenty-four (24) feet is required whereas twenty-three (23) feet is proposed. The Board also finds that the Applicant is seeking design waiver relief for the length of the parking spaces where a minimum of eighteen (18) feet is required whereas seventeen (17) feet is proposed. The Board finds that deviations from the parking design standards are the result of providing a compliant number of parking spaces which results in a superior design and eliminated some

variance relief. The Board finds that the irregular shape of the subject Property would make strict compliance unduly difficult. The Board also finds the deviations to be *de minimus*. Strict enforcement of the Ordinance requirement would therefore result in practicable difficulty in developing the site for its permitted use. The Board finds that relieving the Applicant of the parking area dimension requirement is therefore appropriate and reasonable and that design waiver relief pursuant to N.J.S.A. 40:55D-51 is therefore appropriate.

The Board now addresses the request for preliminary site plan approval. The Board first addresses the concerns expressed by some members of the public regarding the size and overall scope of the development. The Board recognizes that its jurisdiction in site plan review is tightly circumscribed. The MLUL as well as the New Jersey Supreme Court dictate that a planning board has the limited power to review site plan applications to determine compliance with Ordinance standards. The law expressly prohibits a planning board from usurping the legislative power exclusively conferred upon a governing body to exercise the zoning power. This means that a planning board is prohibited from denying an application because it disagrees that a particular use should be permitted or that a permitted use will result in increased traffic. The concerns expressed by some of the members of the public therefore cannot legally support a denial of this application.

The Board finds that this application complies with all zoning, site plan, design criteria and redevelopment plan regulations with the exception of the above enumerated relief. The Board therefore finds that preliminary site plan approval pursuant to N.J.S.A. 40:55D-46 is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Edison on this 29th day of January 2024, that the action of the Planning Board taken on November 20, 2023, granting application no. P11-2023 of YASHRAJ5 Realty, LLC, for preliminary site plan

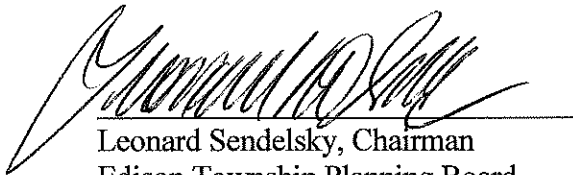
approval pursuant to N.J.S.A. 40:55D- 46 with ancillary variance relief pursuant to N.J.S.A. 40:55D-70c(2) and design waiver relief pursuant to N.J.S.A. 40:55D-51 is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. All site improvement shall take place in the strict compliance with the testimony and with the plans and drawings which have been submitted to the Board with this application, or to be revised.
2. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with all recommendations contained in the reports of the Board professionals.
3. The superintendent unit shall not be designated as an affordable housing unit.
4. The Applicant shall provide the calculations for the stormwater management system and utility capacities subject to review and approval by the Board Engineer.
5. The Applicant shall comply with all Township requirements for deed restricting units as low income and moderate income.
6. The location of the EV charging spaces shall be subject to the review and approval of the Township Fire Bureau,
7. The Applicant's Engineer shall submit a certification that no pipelines are located within seventy-five (75) feet of the subject Property subject to review and approval by the Board Planner and Board Engineer.
8. The Applicant shall provide a shuttle service to local commercial and retail amenities. This requirement shall be recorded in a deed subject to the review and approval of the Board Planner and Board Attorney.
9. All stacked parking spaces shall be assigned to a single unit.
10. This application has been approved as an age restricted development which comply with all applicable regulations.
11. The Board Engineer shall review all plans, submissions, bond calculations, and shall make all inspections of the Application.
12. The Board Engineer shall sign off on all plans, submissions, bond calculations, and final approvals of the Application.
13. The Board Planner shall inspect all landscaping, irrigation, and lighting.

14. The Applicant shall comply with the Reports of the Board's Professionals.
15. Any changes to the plan not approved herein shall require either new or amended approval.
16. The Applicant shall provide a certificate that taxes are paid to date of approval.
17. Payment of all fees, costs, escrows due and to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
18. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Edison, County of Middlesex, State of New Jersey or any other jurisdiction.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.


Leonard Sendelsky, Chairman
Edison Township Planning Board

ON MOTION OF:

SECONDED BY:

ROLL CALL:

YES:

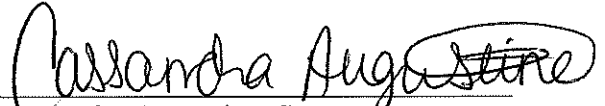
NO:

ABSTAINED:

ABSENT:

DATED:

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Edison Township Planning Board, Middlesex County, New Jersey at a public meeting held on January 29, 2024.


Cassandra Augustine, Secretary
Edison Township Planning Board

3436752.1 EDISONPB-069E YASHRAJ5 Realty, LLC Resolution For Preliminary Site Plan Approval and Ancillary Variance And Design Waiver (P11-2023) 1.29.24