

**BEFORE THE ZONING HEARING BOARD OF  
MILLERSVILLE BOROUGH, LANCASTER COUNTY, PENNSYLVANIA**

IN RE: :  
APPLICATION OF : Case No. 26-02  
JOHN HERR'S :  
VILLAGE MARKET :  
:

**DECISION OF THE  
MILLERSVILLE BOROUGH ZONING HEARING BOARD**

**A. FINDINGS OF FACT**

1. Applicant is John Herr's Village Market, 25 Manor Avenue, Millersville, PA 17551.
2. The property which is the subject of this application is located at 25 Manor Avenue, in the Borough of Millersville, Lancaster County, Pennsylvania.
3. Applicant is the owner of the property.
4. On March 24, 2026, Applicant filed a request for a use variance for an accessory use not specifically allowed, and a dimensional variance to reduce the number of required parking spaces.
5. The application was advertised, the property was posted, and adjoining property owners were notified.
6. A hearing was held April 23, 2026.
7. The Board consisted of Vicki Usiack, chair; Seth Johnston, vice-chair; Ed Hersh, and W. David Sykes, members; and Jennifer Engle, alternate.
8. The hearing was stenographically recorded.

9. At the beginning of the hearing the solicitor announced that the Board had conducted an executive session.

10. Robert Moyer, the zoning and codes enforcement officer, was sworn and testified that the agenda had been posted on the Borough website and on the Borough municipal building at least 24 hours before the hearing and that copies of the agenda were available for the public.

11. The witnesses testifying on behalf of the Applicant were Keith Eshleman, president of Applicant; and Chad Eshelman, vice-president.

12. The subject property consists of 9.3 acres and is improved with a 44,726 square foot supermarket, as well as an 8 foot by 12-foot shed.

13. The property currently meets the parking requirement of 220 spaces.

14. Applicant desires to convert the parking lot on the east side of the supermarket building to a solar array to provide electricity for the supermarket. The array would also cover areas currently leased out to a farmer. The parking lot would be removed, creating additional permeable surface.

15. The solar array would be located to the north and east of the supermarket and would be ground mounted. The array would consist of two sets of 90-inch by 45-inch panels, stacked to a height of 15 feet. Clearance of four feet underneath the array would be provided. The area around the array would be planted in grass and would be mowed. The array would meet all required setbacks.

16. The array would provide 50-60% of the electricity needs of the supermarket annually. Applicant testified that placement on the roof was not a realistic option due to the existence of HVAC equipment on the roof and the fact that the panel installation has

a considerably longer anticipated life than the existing roof. A solar array mounted on the roof would be unable to supply as much energy as a ground-mounted system.

17. The area of the array is bounded to the north by the borough park and the Eshleman Elementary School. A number of properties adjoin the area of the array to the south. The other adjoiners are a private house on Bender Avenue and the rear of an apartment building that fronts on Manor Avenue. In response to a question about the danger of balls from the baseball fields damaging the array, Mr. Keith Eshelman testified that the distance to the site of the array from home plate at the closest field was approximately 400 feet.

18. The array would be fenced with a chain link fence. Although Applicant originally proposed a six-foot-high fence, during the course of the hearing it agreed as a condition of approval to erect an eight-foot-high fence, in conformity with Borough zoning regulations regarding large solar arrays as a principal use.

19. Removal of the parking lot would reduce off-street parking from 220 to 175, a loss of 45 spaces.

20. The parking area in question was installed in 1988 but has seldom been used by any customers because parking in front of the supermarket has always been sufficient. The only use of the lot has been parking for occasional tractor-trailers and as a place to dump snow in winter.

21. Mr. Keith Eshelman reviewed the history of the site. It has been challenging to fully develop the property due in part to decisions made by the prior owner to site the supermarket building in roughly the center of the tract. He expressed his opinion that the supermarket should have been placed to one side, allowing room for a strip mall or

other commercial development. He further detailed a number of attempts to develop the parking lot area, all of which fell through.

22. Applicant introduced Applicant's Exhibit One, the bill for electricity from February 13 to March 17, 2026; Applicant's Exhibit Two, the bill for electricity from December 12, 2025 to January 14, 2026; and Applicant's Exhibit Three, a sketch plan showing the location of the proposed array.

23. Michael J. Weidinger, a member of the Millersville Borough Planning Commission, appeared and requested that the Board impose a condition that the solar array comply with all requirements of the Green Energy Overlay District, Section 380-30.3. The agreed-upon condition that the fence would be eight feet in height was in response to Mr. Weidinger's suggestion. The Board declined to adopt all of the requirements of the District.

24. Sherman Bukrholder, an adjoiner to the east, requested that some sort of landscape buffer be provided. This triggered a general discussion of the state of the boundaries of the affected area. Approximately twenty years ago, arborvitae were placed along the boundary. Some of them failed to thrive. Others have split and fallen over. Others are in place but are deteriorating due to age. Applicant intends to clear the fallen vegetation on the southern and eastern boundaries of the area of the solar array and to replace the remains of the old landscape screen in accordance with the wishes of each adjoiner. Applicant agreed as a condition of approval that it would erect either a landscape screen of arborvitae or similar plants, or install opaque screening in the fence, at the option of each of the adjoining property owners.

25. Following the conclusion of testimony, the record was closed and the Board voted unanimously to grant the two requested variances, subject to the agreed-upon conditions.

## **B. CONCLUSIONS OF LAW**

1. The property is located in the General Commercial Zoning District.
2. The property presently complies with applicable parking requirements.
3. The accessory uses allowed respecting nonresidential uses are enumerated in subsection (f) of the Table of Permitted Uses—Primarily Nonresidential Districts, Attachment 2 to Section 380.
4. A solar array is not listed as a specifically allowed accessory use, and the uses specifically allowed are not relevant to this application.
5. Uses not specifically permitted are not allowed. Table of Permitted Uses, Attachment 2:7.
6. Subsection (f) of the Table refers to Section 380-27.C, Permitted Accessory Uses in All Districts. Although most of the enumerated uses are not relevant, 380-27.C.11 allows accessory uses that are clearly customary and incidental to uses permitted by right.
7. Section 380-27.D allows certain enumerated accessory uses to by-right business uses, such as storage of fuel for employees, day care centers, cafeterias for employees, recreational facilities, and storage sheds.
8. The Downtown Overlay Zoning District allows solar panels on roofs but does not address ground mounted systems.

9. Because the solar array is not a principal use, it is not governed by Chapter 30.3. Further, the subject property is not located in the Green Energy Zoning District.

### **C. DISCUSSION**

Even though they are closely related, the case involves two distinct legal issues. The simpler one, the parking variance, will be considered first. This Board will strictly apply the parking requirements when necessary; however, the present case is unique. This is not a case where the Board has to speculate on whether 220 spaces are necessary. The spaces have been unused for more than 30 years. Also, this is not a case where an owner simply wants to delete the spaces—here, the applicant has a proposal for a reuse of the area, and removal of the spaces is necessary. To deny the parking variance would be to deny the proposed accessory use, or at least to restrict the use for no good reason. Further, this is not a case where the grant of a parking variance would eliminate an off-street parking requirement. Even with the grant of the variance, 175 spaces will still be provided. When a dimensional variance is at issue, the burden is not to show that the hardship makes the property unusable without relief. The burden is only to show that strict compliance is unreasonable. That burden has been met.

The request for the accessory use is more complex from a legal point of view. Our ordinance has never been updated to address ground mounted solar arrays as an accessory nonresidential use, although we do allow them as principal uses in the Green Energy Overlay District. The application did not request special exception relief as a Use Not Provided For, and such a request would be unavailing anyway, because a Use

Not Provided For can only be granted if the use is not specifically denied, and the Table of Permitted Uses for nonresidential uses denies any accessory use not specifically allowed.

That being said, the fundamental issue is whether the use is reasonable and whether the grant of the variance will harm the community health, safety and welfare. We do not discern any adverse impact to the community from the placement of the array on an underused parking lot out of sight from the general public. We also find that the site is burdened with unique physical hardships, including the original siting of the supermarket building, that restrict the reasonable use of the site. Another hardship is the unsuitability of the site for a roof-mounted system.

We feel that the imposition of the conditions regarding the height of the fence and landscaping adequately protect the community against any adverse impact. Although we have imposed a height requirement in accordance with the one applicable to solar arrays as a principal use, we decline to impose the corresponding landscape screening requirement. We find that the agreed-upon condition is more than adequate. We also decline to impose the substantial financial requirements relating to decommissioning of principal solar arrays. Such conditions would be onerous on a project of this size and are more appropriate to larger solar projects as principal uses.

#### **D. DECISION**

AND NOW, this 23<sup>rd</sup> day of April 2026, the decision is as follows:

Applicant is granted a variance from Section 380-27.D to allow a ground-mounted solar array as an accessory nonresidential use.

Applicant is granted a variance to reduce the number of required parking spaces from 220 to 175.

These approvals are conditioned upon the following conditions:

1. Applicant shall erect a chain-length fence eight feet in height around the perimeter of the solar array.

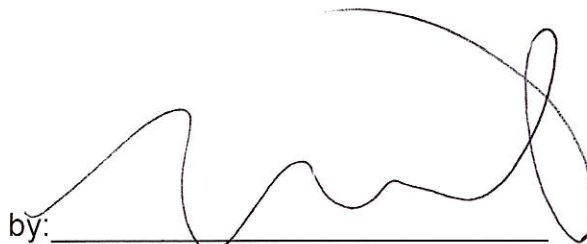
2. Applicant shall install either (1) a landscape screening, consisting of arborvitae or similar plantings, that will reach at least eight feet in height within five years, or (2) opaque screening within the fence, at the option of each adjoining property owner, for the properties to the south of the array and the property of Sherman Burkholder to the east. Other portions of the perimeter need not be fenced.

3. Applicant shall erect and maintain the solar facility in accordance with the testimony and exhibits offered at the hearing.

4. Applicant and the contractor installing the facility shall comply with all relevant construction and safety requirements respecting solar facilities.

THE MILLERSVILLE BOROUGH ZONING HEARING BOARD

May 4, 2025

by:   
Neil L. Albert, Solicitor