

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: October 29, 2013  
Memorialized: November 7, 2013

Re: Application No. 2010-25-PFSPV - Amended  
Applicant: Daven Avenue, LLC, successor in title to G&S Livingston Realty, Inc.

Premises: 530 West Mt. Pleasant Avenue  
Block: 100; Lots: 17 & 18  
CI Zone

WHEREAS, an Application has been filed by Daven Avenue, LLC, formerly known as G&S Livingston Realty, Inc., (hereinafter referred to as the "Applicant"), the owner of the subject premises (hereinafter referred to as the "Site"), commonly known as 530 West Mt. Pleasant Avenue, (also as N.J. State Route 10 and hereinafter referred to as "Route 10"), made to the Planning Board of the Township of Livingston (hereinafter referred to as the "Board") for Amended Preliminary and Final Site Plan Approval, with variances, to permit modifications to the Site Plan previously approved and variances granted by Resolution dated May 3, 2011 ( the "2011 Approvals"); and

WHEREAS, a completed Application has been filed, the fees required by the Township Code have been paid, and it otherwise appearing that the jurisdiction and powers of the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was heard before this Board on October 29, 2013 with regard to this Application; and

WHEREAS, the Applicant, represented by its attorney, Kevin J. Coakley, Esq., of Connell Foley LLP, has demonstrated that the Applicant is in compliance with all statutory requirements of publication and service of notice and has submitted proof that there are no taxes due or delinquent with respect to the Site; and

**WHEREAS**, the Board has heard and considered the testimony of the Applicant and its expert witnesses and gave members of the public an opportunity to ask questions and present evidence;

**NOW, THEREFORE**, the Board does make the following findings of fact and conclusions of law regarding this Application:

1. The Board on the motion of the Chairman and recommendation of the Township Engineer granted waivers from the requirement to provide an environmental impact statement, a stormwater management plan and drainage calculations as the Site Plan changes do not involve any of those matters.
  
2. The Applicant presented the testimony of Mr. Michael Lanzafama, admitted as an expert in engineering and planning, of the firm of Casey & Keller, Inc. Lanzafama was responsible for preparation of the Amended Site Plan and for revisions agreed to in the course of the hearing. He testified that in preparation for occupancy by two new tenants, Buy Buy Baby and Cost Plus World Market, certain changes were made to accommodate the use and occupancy of these two tenants in Building A, the building formerly occupied by Linens N Things. He noted that the proposed and approved expansion of Building C by a 7,150 square feet addition has been removed from the Amended Site Plan thereby decreasing the parking requirement according to the Ordinance to 625 spaces. The Amended Site Plan proposes 557 regular parking spaces (including 15 banked spaces for future use) and 16 handicapped spaces for a total of 573 spaces. Mr. Lanzafama noted that the parking ratio would now be greater than was approved by variance in the 2011 Approvals. The 2011 Approvals had 4.04 spaces per 1000 square feet and the new ratio was 4.126 spaces per 1000 square feet. He also noted that shopping cart carrels are not counted as parking spaces in the Amended Site Plan. The proposed Building B approved on the Site Plan remains on the Amended Site Plan, but has not been constructed as no tenant has yet committed for that Building or for Building C.

3. Mr. Lanzafama discussed the pedestrian sidewalks and marked crossings added to the Amended Site Plan to accommodate shoppers who may park other than directly in front of Building A, but closer to Building C, or who want to walk from one Building to another. He also noted that a ramp was created on the Amended Site Plan on the front of the Buy Buy Baby store running from west to east due to the change in grade and to make entrance by pregnant women and parents pushing strollers much easier than having to use stairs. He testified that the ramp is not ADA compliant as it need not be because there is handicap compliant access. Providing the ramp required that the landscaped islands and the parking field to the south of Building A needed to be moved in the southerly direction and relocated; which is reflected on the Amended Site Plan. A colorized version of Sheet 3 of the Site Plans was used as an Exhibit and marked as A-1 for Mr. Lanzafama's testimony.
4. Mr. Lanzafama also described two refuse areas where dumpsters are to be located on the western side of Building A; however, the Board encouraged and Mr. Lanzafama agreed to relocate the dumpsters to another location where loading and unloading of the dumpsters would not block traffic from Industrial Parkway which connects to Daven Avenue through the Site. The relocation would be subject to the approval of the Township Engineer.
5. Mr. Lanzafama also agreed to provide a construction sequencing of the ramp, sidewalks and relocation of the parking field in front of Building A to the Township Engineer for his review and approval.
6. The Board noted that Building A is on both lots and although counsel represented that the two conditions in the prior approval were complied with regarding recording deeds requiring both lots to be sold together if sold, and for cross-parking and access and egress easements, no setback variance for the encroachment on the lot line was granted. Mr. Lanzafama and counsel asked that this be remedied in this application.

7. On questioning by the Planner for the Township, Mr. Lanzafama noted that the westerly landscaped island on the Amended Site Plan was difficult to see and that he would correct the Amended Site Plan so its location would be ascertainable.
8. Mr. Lanzafama then described variances required for the proposed signage, but after testimony by the Applicant's architect, the Board decided to defer action on the signage variances requiring that the Applicant return December 3, 2013, without additional notice, to provide information on existing signage in the vicinity and on the originally approved Site Plan which was implemented when the Site was occupied so the Board could compare the proposed façade and screen wall signs to those other signs in the Township in the vicinity.
9. Mr. Lanzafama did describe the window boxes on the façade of the Buy Buy Baby store which would have graphics depicting parents and children, but no pictures, text or sale items. In this regard Mr. Lanzafama stated that the Applicant had requested a variance from the requirement of Code § 170-92.F.(l)(c) that a minimum of 60% of the storefront at a height of between 3 and 8 feet above grade be transparent glass; as Building A would have only 31% for the Cost Plus World Market store and 20% for the Buy Buy Baby store.
10. Scott Hoffland, AIA, from Cleveland, Ohio and licensed in New Jersey as an architect was recognized as an expert in architecture and testified for the Applicant. He noted that the tenants for Building A had required the proposed signage and that his job was to make the signage proportional to the façades on Building A and to segments of the screen wall facing Route 10, which screen wall segments were smaller than the façades on Building A.
11. The Board noted that although Building A is in compliance being 28 feet in height, the existing and proposed facades had parapet walls 40 feet in height, and a variance was presumed to exist in the original approvals, or this

condition was approved previously based on the prior Ordinance.

12. As indicated above, although Mr. Hoffman explained that the size of the signs could be reduced, the Board decided not to act on any sign variances until additional information was presented at the December 3, 2013 hearing on the matter.
13. The Board noted the current condition of the Site and required the Applicant to make repairs to the sidewalks, curbs, parking lot surfaces, striping, and landscaping at the Site.
14. Opportunity was provided for members of the public to ask questions of the witnesses and to testify as to the Application, but none came forward to ask questions or to testify.

**NOW THEREFORE, BE IT RESOLVED** by the Board, having duly considered the evidence presented by the Applicant, and having heard the testimony of the witnesses presented by the Applicant, and the public being given an opportunity to ask questions of the witnesses and to testify, and the Town Engineer and Planner having been given an opportunity to review the Amended Site Plan and advise the Board; the Board concludes as follows:

- A. The Application for Amended Preliminary and Final Site Plan approval be and is hereby approved to allow: elimination of the previously approved 7,150 square feet addition to Building C; the installation of a ramp in front of Building A; the relocation of the parking field and landscaped islands to the south of Building A; and the installation of sidewalks and cross-walks for pedestrians to and from Buildings A, B and C. The Board finds that the Application complies with the requirements of the CI Commercial Industrial District Zone, that the Plans as modified in the course of the hearing provide adequate buffers and parking, and that the terms and conditions agreed to by the Applicant and set forth herein are part of this approval. The two trash dumpsters now depicted on the west side of Building A will be relocated to a location, subject to the approval of the Township Engineer, where the trucks that will pick up the refuse will not block traffic to or from Industrial Parkway. .

B. The Board finds that the Applicant has satisfied the statutory criteria for the approval of the grant of the variances listed herein. The Board finds that said variances are necessary due to the existing conditions on the property, including the buildings previously constructed and the unusual configuration of the Site, and that a grant of the variances will not have any substantial impact on the public good, and can be granted without substantial detriment to the Township Zoning ordinance and Zone Plan.

C. The variances approved are as follows:

1. Township Code § 170-94.E.(1) requires 625 parking spaces. The Applicant requests approval of a total of 573 parking spaces; including 15 spaces to be banked for future use at locations shown on the Site Plan resulting in a variance of 52 spaces. The Board previously granted a variance of 67 parking spaces and finds the reasons for the prior variance apply herewith.

2. Township Code §170-92.F.(1)(c) now in effect require that 60% of Building A's facade between the heights of 3 feet and 8 feet above grade be transparent glass. There being significant additional glass at greater heights of the facade; the Applicant proposes a glass area of 31% for the Cost Plus World Market store and 20% for the Buy Buy Baby store; resulting in grant of the variance requests of 29% and 40% respectively.

3. A variance is requested to allow continuation of the existing condition wherein Building A is located on both Lots 17 & 18 because Building C violates the setbacks on both lots. The Board hereby grants a variance from the setback requirements on the two lots created by the locations of Buildings A and B.

D. The approvals and grants herein are subject to the following Conditions agreed to by the Applicant:

1. The Board retains jurisdiction over tenant signage until issuance of a certificate of occupancy for each tenant.

2. All the Conditions in the 2011 Approvals not complied with to-date remain applicable to the Site and the Applicant, except to the extent expressly modified by this approval of the Amended Site Plan and variances granted.

3. The Applicant shall enter into an amendment to the present Developer's Agreement in such form and on such terms as necessary to conform to this amended approval and as approved by the Township Attorney and containing provisions that the Township Engineer deems necessary.

4. The Applicant shall, subject to the Township Engineer's approval, relocate the waste areas on the west side of Building A to a location where the trucks that will pick up the refuse will not block traffic from Industrial Parkway.

5. The Applicant shall provide a sequencing plan, subject to the Township Engineer's approval, for the installation of the various improvements, ramps, walkways, sidewalks and crosswalks and the moving of the parking lot field to the south and east of Building A.

6. The Applicant shall make the repairs to the sidewalks, curbs, parking lot surfaces, striping, and landscaping at the Site noted on the record by the Township Engineer and by the Board.

7. The Applicant shall respond to all written comments of the Township Engineer and resolve those to the satisfaction of the Township Engineer, excepting signage matters to be resolved by the Board at a subsequent hearing.

8. The Final Amended Site Plan shall include all notes and requirements requested by the Township Engineer's letter of October 11, 2013.

9. The Applicant shall provide "As Built" Site Plan, survey and architectural plans to the Township Engineer and Construction Official before any certificate of occupancy is issued.

10. Conditions Numbered 1, 3, 4, 6-16, 18 and 19 of the Board's Model Conditions of Approval as modified therein and attached hereto are hereby incorporated herein.

11. Conditions 3, 4, 5, 7 and 8 above and Model Conditions of Approval Nos.

6, 11, and 18 are conditions precedent to issuance of any permits by the Township other than permits for internal demolition.

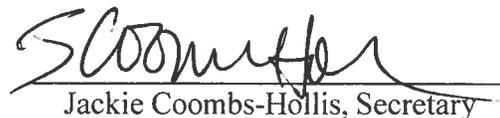
**NOW, THEREFORE,** for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that the Application for Amended Preliminary and Final Site Plan approval and the itemized variances set forth herein be and are hereby granted and approved subject to the limitations, exceptions, terms and Conditions set forth herein.

This is a memorialization of the decision of the Planning Board of the Township of Livingston made in a Special Meeting on October 29, 2013 wherein Board Members Kalishman, Santola, Anthony, Ratner, Kimmel, Klein, Leopold, Meade and Dinar, voted in favor of the Resolution; they being all of the Members.



Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston in Open Conference Meeting on November 7, 2013 memorializing the decision of the Planning Board on October 29, 2013.



Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval  
(As Amended through February 12, 2013)

Every application turns on its own facts and is judged on its own merits. Listed below are models of conditions which may be considered “standard”. A standard can be tailored to specific circumstances, and may not always apply. Other or additional conditions may be tailored for any application.

**1. Architecture**

- a. Rooftop ancillary structures and equipment (other than alternative small energy systems and communications equipment) shall be screened by material compatible with the exterior finish of the building and matching the exterior color of the building as closely as possible.
- b. Enclosures of trash bins, recycling bins or dumpsters shall be of the same type of materials and the same color as the exterior finish of the building.

**2. Blasting**

In the event that blasting be necessary on the Site, the following conditions shall apply in addition to all requirements of federal law or regulations:

- a. All blasting operations shall be performed in strict compliance with N.J.S.A. 21:1A-128 *et seq.* and N.J.A.C. 12:190-1.1 *et seq.*, or superseding requirements.
- b. A pre-blast inspection of all structures on all properties adjacent to the Site or within 200 feet of the intended blasting location (whichever is the greater distance) shall be conducted at Applicant’s expense. It shall be conducted no more than 60, nor less than 30, days before blasting commences. A written report of the inspection results shall be provided to the owner of each structure inspected within 10 days after completion of the inspection.
- c. Blasting shall occur only between 10:00 a.m. and 3:00 p.m. on Monday through Friday. Blasting during other hours may be permitted, temporarily, by the Township Engineer upon his finding that a condition constituting an emergency exists and necessitates such permission.
- d. Applicant shall coordinate all blasting with the Livingston Police and Fire Departments. If traffic control is required, it shall be provided at Applicant’s expense.

- e. Applicant shall give the Township Engineer, the Chief of Police, the Fire Chief, and all owners of structures required to be inspected under “b” above, written notice of scheduled blasting operations to be received not less than 20 days, nor more than 40 days, prior to their commencement. If scheduled blasting operations are delayed or suspended they shall not be resumed until new notice has been given and received. All notices shall include the name and telephone number of Applicant’s representative for purposes of receiving and responding to questions and comments.
- f. These conditions do not supersede any requirements of law or regulation that are more strict or restrictive.

### **3. Cleanliness During Demolition or Construction**

- a. At the close of each work day the Site shall be thoroughly cleaned and all trash and construction debris, including that within buildings under construction, shall be placed in covered dumpsters. Dumpsters shall be removed from the Site, and replaced, before they overflow.
- b. Not less often than weekly, and whenever else required by the Construction Official or the Township Engineer, the public streets adjacent to the Site shall be manually or mechanically broom swept to remove dirt, mud or debris originating from the Site and located within 500 feet of the Site.
- c. Dust suppression methods acceptable to the Construction Official and the Township Engineer shall be utilized on the Site.

### **4. Deeds & Easements**

- a. All conditions of approval that are continuing conditions shall be set forth within all deeds executed with regard to the Site.
- b. All deeds, easements, dedications or restrictions required by this approval shall be subject to review and approval by the Board Attorney prior to signing and shall be filed for recordation after such approval. The Applicant shall submit proof of such recordation to the Board Secretary, the Township Engineer and the Construction Official prior to the issuance of any permits.

### **5. Detention Basins**

- a. Stormwater management basins shall be established on lots created for that purpose only. No structures that are not an approved part of the stormwater management system shall be erected on any such lot. Such basins, together with

their required landscaping and fencing, shall be completed, and shall have been inspected and approved by the Township Engineer, prior to issuance of the first Certificate of Occupancy.

- b. If the approval of the Application calls for title to such a lot to be transferred to the Township; at such time as the Township accepts any new streets or roads on the Site, title to the lot shall be conveyed to the Township provided that the Township Engineer is then satisfied that the basin has been constructed in full compliance with all applicable requirements. The deed conveying such title shall be subject to prior approval by both the Board Attorney and the Township Attorney.
- c. A maintenance plan meeting the requirements of the Residential Site Improvement Standards or the Township's Stormwater Control Ordinance, or both, as applicable, shall be prepared by Applicant and shall have received the approval of the Township Engineer prior to issuance of any construction permit. Any future revisions to the maintenance plan shall not become effective until the Township Engineer's approval shall have been obtained.
- d. Unless maintenance of the basin is assumed by the Township or a public agency as its direct responsibility, (1) the maintenance plan and any future revisions of it shall be recorded upon the deed of record for the property in terms approved in advance by both the Board Attorney and the Township Attorney; and, (2) the Applicant shall provide a performance bond for such maintenance, including landscaping and cleanliness.

## **6. Final Plans**

Prior to the issuance of any Township permit for demolition of any structure, other than internal demolition of Building A, preparation of the Site, or construction of any improvement:

- a. The full text of all of the conditions of this approval, and all plan changes agreed to in the course of the hearing, shall be set out on final plans submitted to the Construction Official, the Township Engineer and the Board Secretary; and
- b. Such final plans shall have been reviewed by the Board Secretary or the Board's Planning Consultant for determination of whether the plans conform to the Board's approvals and shall then have been signed by the Board Chairman, the Board Secretary and the Township Engineer.
- c. Such final plans shall comply with the Uniform Construction Code and the Barrier Free Subcode as then in force in the State of New Jersey. If, during performance of work pursuant to the Board's resolution and permits that have been issued, field conditions indicate need for change(s),

such need shall be called to the attention of both the Construction Official and the Township Engineer for approval of any such change before it is implemented. If any such change is significant, permission to amend the Site Plan may have to be sought from the Planning Board. Until all requirements under approved plans and the Uniform Construction Code, including accessibility requirements, have been completed or bonded, any certificates of occupancy issued shall be temporary certificates only.

**7. Flood Hazards**

- a. Insert on the final site plan and/or subdivision map a metes and bounds description of all flood hazard areas located on the Site.
- b. Insert in all deeds for individual lots that contain or are adjacent to flood hazard areas, and on the preliminary and final subdivision maps or plats, the following covenant: “The lands designated herein contain flood hazard areas. There shall be no disturbance of any kind as to any flood hazard area unless permitted by N.J.D.E.P. pursuant to the Flood Hazard Control Act, N.J.S.A. 58:16A-50 *et. seq.* or superseding requirements.”

**8. Guarantees and Bonds**

- a. The approval of this Application is subject to the posting, with terms acceptable to the Township Engineer, of any and all required performance guarantees, bonds, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the issuance of any permits for commencement of site preparation or construction.
- b. This approval is also conditioned upon the Applicant’s providing, prior to issuance of the first Certificate of Occupancy, a performance guarantee acceptable to the Township Engineer for any aspects of the approved landscaping or fencing that has not been completed by the time of issuance of such certificate.

**9. Landscaping & Environmental Protection**

- a. All deciduous trees planted shall have a caliper of not less than 2.5 inches measured at a height of 4.5 feet above ground level. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.
- b. Street shade trees shall be planted as required by Township Code § 170-72 and shall not be included in the calculation of Replacement Trees required by the Trees Ordinance.

- c. Any tree or other planting installed in accordance with the plans which dies shall be replaced, within the current or next planting season, in kind and at the same size as it had reached at the time of death; except that if it died more than three years after planting its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to any tree or other planting installed in accordance with the plans if subsequently removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed unless removal is approved under the Trees Ordinance or by this Board. Every existing tree to be preserved shall be tagged and shall be shown on the Site Plan or Subdivision Plan. During site preparation and during construction, each such tree shall be protected by snow fencing or a more substantial means approved by the Construction Official. No soils, excavated materials, or any construction equipment or building materials, shall be stored or operated within a root protection zone that shall be the greater distance of (i) the crown drip line, or (ii) a distance equal to caliper multiplied by one (1) foot, (but never less than eight (8) feet from the trunk of a tree to be preserved), or anywhere else where such soil or materials can adversely affect the health of trees to be preserved. All work done within the root protection zone shall be accomplished with hand tools.
- e. The grade of land located within the root protection zone shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining wall methods; but in no event shall welling or retaining walls be installed less than eight (8) feet from the trunk of a tree.
- f. During site preparation or construction, no fuel storage, and no refueling, maintenance, repair or washdown of construction vehicles or equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, Chapter 306 of the Code of the Township of Livingston, that establishes a conflicting standard or requirement shall control.
- h. No mulch shall be placed, or allowed to accumulate, within six inches of the trunk of any tree or shrub planted on the Site in compliance with this resolution. Mulch shall not be applied, or allowed to accumulate, elsewhere within the drip line of the tree or shrub to a depth in excess of four inches.

## 10. Noise

- a. No site preparation, demolition or construction activity shall be performed on the Site on Sundays, or before 7:30 a.m. or after 5:00 p.m. on weekdays, or before 9:00 a.m. or after 5:00 p.m. on Saturdays or federal holidays.

- b. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.
- c. No site preparation, demolition or construction activity (other than authorized blasting) shall produce, at the property line, (i) continuous airborne sound at a sound level in excess of 65 dBa, or which has an octave band sound pressure level in decibels which exceeds the standards provided in 32 N.J.R. 2230 et. seq., or (ii) impulsive sound in air which has a peak sound pressure level in excess of 80 decibels, or (iii) impulsive sound in air which repeats more than four times in any hour and has a peak sound pressure level in excess of 50 decibels.
- d. Relief from these noise conditions may be permitted, temporarily, by the Township Engineer upon his finding that a circumstance constituting an emergency exists and necessitates such permission.

#### **11. Other Governmental Approvals**

- a. Applicant shall comply with all applicable Federal, State and local laws and regulations and obtain any other governmental approvals required for implementation of this application as approved. If any other governmental agency or authority grants a waiver of or variance from any law, rule or regulation, or imposes any condition or requirement, which affects this approval or any of the conditions contained herein, then this Board shall have the right to review such action as it relates to this Board's approval or conditions and to modify, amend or revoke its approval and/or conditions.
- b. No Township permit for demolition of any structure, or preparation of the Site or construction of any improvement shall be issued until proof of request for such required approvals and any action thereupon, shall have been presented to the Construction Official and the Board Secretary by the Applicant.

#### **12. Paving and Sidewalks**

- a. Applicant shall install the top course of street paving:
  - (1) For residential development not later than the earlier of three (3) years after the issuance of the first Certificate of Occupancy or three (3) months after fifty percent (50%) of residential units have received Certificates of Occupancy.
  - (2) For non-residential or mixed-use development, prior to issuance of the first Certificate of Occupancy.
- b. All manholes, catch basins, and driveway curbs shall be ramped until the top course of street paving has been installed.
- c. All sidewalks shall be constructed of concrete or of non-asphalt pavers and shall be not less than four feet wide in a residence district or five feet wide in the Business

Improvement District. Existing sidewalks that do not meet prior Township Code requirements shall be replaced to the standard for the new sidewalks.

### **13. Signs**

The Board retains jurisdiction over any and all signs until the final Certificate of Occupancy has been issued.

### **14. Traffic and Parking Safety and Enforcement**

- a. At the time of applying for a building permit the Applicant shall submit proof of having filed a written request pursuant to, and in accordance with, N.J.S.A. 39:5A-1, requesting that N.J.S.A. 39:1-1 *et seq.* be made applicable to the roads, streets, driveways, parking areas, etc. within the Site. The Applicant shall provide proof of the governmental action on such request to the Construction Official prior to issuance of the final Certificate of Occupancy.
- b. Lines of sight established for entrance and exit driveways of the Site shall be shown on the as-built site plans, and no structures, trees or plants that would interfere with such lines of sight shall be permitted at any time.
- c. All traffic and parking provisions in the approved site plans or otherwise required by the Board's resolution shall be accomplished prior to issuance of the first Certificate of Occupancy.
- d. The Applicant shall comply with State law and applicable Township ordinances regarding handicapped parking and shall maintain such spaces and all the traffic and parking signage and markings on the Site in good order and repair.

### **15. Utilities for Site Plans and Major Subdivisions**

Applicant shall construct all utilities underground as required by law, and shall submit to the Engineering Department a written instrument from each serving utility evidencing full compliance with this condition and with Township Code §170-73.A.(17) before issuance of any Certificate of Occupancy.

### **16. Wetlands**

- a. Applicant shall insert on the final subdivision map and/or site plan a metes and bounds description of all wetlands, wetlands transition areas, and buffers on the Site.
- b. Where applicable, each deed for a lot, and the subdivision plat, shall contain the following language: "The lands designated herein contain wetlands and wetlands transition areas. There shall be no disturbance of any kind as to any wetlands or wetlands transition areas unless permitted by N.J.D.E.P. pursuant to law, and Best Management Practices (as defined in N.J.A.C. 7:7A-1.4 or superseding requirements) for prevention or reduction of adverse impacts upon or pollution of

wetlands, wetlands transition areas and buffers shall be followed at all times. This restrictive covenant shall run with the land and be binding upon the grantees, their heirs and successors and assigns.”

**17. Developer’s Agreement**

Prior to issuance of any permit for site preparation, or construction, the Applicant shall have entered into a Developer’s Agreement negotiated with the Township Attorney in conjunction with the Township Engineer.

**18. Written Response to Memoranda**

Prior to issuance of any permit for site preparation, demolition or construction, the Applicant shall have provided written responses to all issues raised in all memoranda from the Township Engineer, or any consultant to the Township, that were considered by the Board in the hearings.

**19. As-built Plans**

A final Certificate of Occupancy shall not be issued until the Applicant shall have submitted to the Construction Official four (4) properly signed and sealed copies each of as-built site plans, surveys and building elevations.