

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: February 12, 2013
Memorialized: March 5, 2013

Re: Application No. 2012-39-MSUB
Applicant: Anthony Yu and Lisa Yu
Premises: 60 Chestnut Street, Livingston, New Jersey
Block: 6900; Lot: 42
R-1 Zone

SUMMARY OF THE CASE

1. This Application was made by Anthony Yu and Lisa Yu, owners of the subject premises. The Applicant requests a Minor Subdivision, with variances, to permit the existing lot to be divided into two lots; each of which would be undersized and irregular in shape.
2. The Application was amended during the course of the proceedings to change the dimensions of the proposed subdivided lots. Proposed Lot 42.01 would measure 26,016 square feet. Proposed Lot 42.02 would measure 26,085 square feet. The minimum lot size in the R-1 Zone is 35,250 square feet within 235 feet of the front street right-of-way line; resulting in the requested variances of 9,234 square feet for proposed Lot 42.01, and 9,165 square feet for proposed Lot 42.02.
3. The Applicants were represented by Stephen A. Geffner, Esq., of the firm Schenck Price Smith & King, and presented evidence that all statutory requirements have been met and there are no taxes due or delinquent with respect to the subject property.

4. Hearings were heard before this Board on December 4, 2012 and February 11, 2013.
5. Testifying on behalf of the Applicants was Paul W. Anderson, admitted as an expert in civil engineering and planning.
6. Members of the public who appeared and questioned the witness were Roger Hendershot, Evelyn Misiewicz, Mike Pacholec and Dan Weidner. None of said persons presented any testimony or evidence.
7. The Applicants presented revised Plans during the course of the proceedings which resulted in a more equal division of the lots than originally proposed, as set forth in the Plans submitted by Anderson Consulting Services, LLC, with final revision date of January 26, 2013. The subject property is irregular in shape with a dividing lot line from the adjoining Lot 43 that is not substantially at a right angle from the front street right-of-way line as required by Township Code § 170-73.A(8). The Applicants request a variance from Code § 170-96.C.(5), as to both proposed lots, from the requirements of the R-1 Zone which mandate a 35,250 minimum square foot lot measured within the 235 feet of the front street right-of-way line. The existing home has a front yard setback of 51.6 feet, which does not comply with the R-1 Zone requirement of a 75-foot setback. The new homes to be constructed on both subdivided lots will comply with setback requirements and both proposed lots would have the required minimum front yard size.

8. The testimony presented by the Applicants demonstrated that there are numerous homes in the immediate vicinity that are similar in size and lot dimensions to what the Applicants propose. The Applicants demonstrated that the variances could be granted under the M.L.U.L. c(2) provisions in that the purposes of the law and the Township Code would be advanced by the variances and that the benefits would substantially outweigh and detriments. Applicants showed that it would promote a desirable visual environment, encourage the efficient use of land, meet the objective of the Master Plan to provide appropriate residences, improve the neighborhood by providing two compatible new homes, and would be comparable to the density established in the neighborhood.

9. As to the waiver, the Applicants provided testimony that having a dividing line between the new lots that has approximately the same angle as the side line with Lot 43 would allow for a larger lot size for the proposed lots, and would cause no injury or harm to any of the adjoining properties.

10. The Applicants propose to continue to live in the present residence while a new residence is built on proposed Lot 42.02. They would then move into the new residence and demolish the existing house. The common side lot line of proposed lots 42.01 and 42.02 would pass through the existing residence. The Applicants requested a conditional variance to allow the Applicants to construct the new dwelling before demolition of the existing home. That would result in two buildings on a single lot or the existing residence being on two lots if subdivision were to occur before the second residence were built. Once the new residence is

constructed the Applicants would demolish the existing home and then file their subdivision Deed.

FINDINGS OF FACT & CONCLUSIONS

Upon the testimony and other evidence provided, the Board finds and concludes as follows:

1. The Board finds that the Applicants are the owners of the subject premises and that all statutory requirements have been met.
2. The Application for the proposed subdivision as amended and set forth in the Site Plans dated September 12, 2012, with last revision date of January 26, 2013, is hereby granted.
3. The Board approves the variance request to allow subdivision into two undersized lots. The requirements of the R-1 Zone set forth in Code § 170-96.C.(5) are for a minimum of 35,250 square feet within 235 feet of the front street right-of-way line. The Board grants a variance of 9,234 square feet as to new Lot 42.01, to allow a total minimum lot area of 26,016 square feet. The Board grants a variance of 9,165 square feet as to new Lot 42.02, to allow a total minimum lot area of 26,085 square feet.
4. The Board finds that the grant of those variances would advance the purposes of the zoning ordinance and will not be a detriment to the public good, will be compatible with the existing neighborhood, will remove an existing non-

conforming front yard setback, and will not be a detriment to the Zone Plan or Zoning Ordinance.

5. The Board finds that the proposed common side line of Lots 42.01 and 42.02 would not be substantially at a right angle to the front street right-of-way line as required by Code § 170-73.A.(8). The existing line between present Lot 42 and Lot 43 also fails to meet that design standard. By allowing a waiver, the size of the subdivided lots can be more evenly divided and two conforming residences can be constructed. The Board finds that application of the design standard would deprive the Applicants of the reasonable use of their land, that grant of the deviation would preserve a substantial property right of the Applicants and permit them to enjoy that right, and that there would be no detriment to public health, safety or welfare or injury to other property in the area. The requested design waiver is therefore granted.

6. Township Code 170-87.D prohibits more than one principal building on a lot. The Board grants a conditional variance to permit construction of the new residence in the area that will be designated as new Lot 42.01, provided that no permanent certificate of occupancy shall be issued for said new residence until the existing home on Lot 42 has been demolished. At no time shall both the existing home and the new residence be occupied. The existing home shall be demolished within 60 days after the date of issuance of a temporary certificate of occupancy for the new residence. Upon completion the demolition and issuance of a permanent certificate of occupancy for the new residence, the subdivision deed shall be filed by the Applicants.

7. This approval is subject to the following conditions agreed to by the Applicants:

- A The Applicants shall comply with the Tree Ordinance Township Code Chapter 306.
- B. The attached Model Conditions of Approval numbered 3, 4, 6, 8, 9, 10, 11, 16 and 19 are incorporated herein

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 Preliminary and Final Site Plan approval with waiver and variances as set forth herein be and are hereby granted and approved, subject to the terms and conditions as set forth herein.

This Resolution is a memorialization of the decision of the Planning Board of the Township of Livingston made on February 12, 2013 wherein Board Members Anthony, Dinar, Kalishman, Kimmel, Klein, Leopold, Meade and Ratner voted in accordance with the action memorialized herein; they being all of the Members present and eligible to vote.


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 on March 5, 2013 memorializing the decision of the Planning Board made on February 12, 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, 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 demolition, 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.