

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: November 7, 2013

Re: Application No. 2013-21-PFSPV
Applicant: 75-89 E. Northfield Road, LLC
Premises: 75-89 East Northfield Road, Livingston, New Jersey
Block: 2700; Lots 42.01 and 42.03
Zone: B-1

SUMMARY OF THE CASE

1. The Applicant is 75-89 E. Northfield Road, LLC (hereinafter "Applicant"). The Applicant proposes to convert and expand an existing office building to be leased to Summit Medical Group to provide medical offices, medical specialty diagnostic and treatment facilities, physical therapy and urgent care to its patients. The proposal originally included a point-of-care pharmacy. It was dropped in the course of the hearings. The building would be expanded by the addition of a second floor onto the existing one-story building using almost all of the existing building footprint. The resulting building would total 52,036 square feet and will include doctor offices, diagnostic and treatment facilities and an urgent care center.

2. The Applicant was represented by Stephen A. Geffner, Esq., of Schenck Price Smith & King, LLP. He confirmed that all jurisdictional requirements have been met and that all taxes on the premises have been paid.

3. Hearings were held before the Planning Board (hereinafter "Board") on July 16, 2013, August 29, 2013 and October 1, 2013.
4. Testifying on behalf of the Applicant were:
 - A: Olympia Lang, Chief of Strategy and Business Development for Summit Medical Group.
 - B: Michael T. Lanzafama, of Casey & Keller, admitted as an expert in planning, engineering and surveying, who supervised the preparation of the Site Plans and survey of the subject premises dated 04-22-2013 with final revision date of 8-23-2013).
 - C: Brian S. Conway, admitted as an expert in landscape architecture.
 - D: Harold K. Maltz, of Hamel Associates, admitted as an expert in traffic design and engineering.
 - E: Justin Mihalik, admitted as an expert in architecture, who supervised the preparation of architectural plans and building elevations dated 05/16/12 with final revision dated 06/06/13.
5. Jason R. Rittie, Esq., of Einhorn, Harris, Ascher, Barbarito & Frost appeared on behalf of Carolyn Simons, the owner of adjacent Lot 43, 69 East Northfield Road.
6. No members of the public appeared to testify either in support of or in opposition to the Application. A number of members of the public did appear to ask questions of witnesses. They were: David Xiao, Feng "Frank" Hong, Jun Meng, Min-Wei "Mike" Yu, Syed Hasan, Rubina Hasan, Sampath Jain, and Lei Rong, Some of them

eventually reached an accommodation agreement with the Applicant as to certain aspects of the Site Plan.

7. The Board received the advice and recommendations of the Township Engineer, Planning Consultant, and Traffic Consultant.
8. The subject property (hereinafter "Site"), is approximately 4.43 acres, and contains an existing vacant one-story office building of 32,040 square feet fronting on East Northfield Road. The Site is irregular in shape and the rear yard borders on a brook. The Applicant proposes to reduce the footprint of the first story of the building, and to add a second story within that reduced footprint. Each floor would measure 26,018 square feet, for a total of 52,036 square feet. The parking area would be expanded, repaved, and re-striped to provide a total of 322 parking spaces. In order to prevent blocking of access to the trash pick-up area, 2 spaces would have restricted use during days when trash pick-up is scheduled. 32 of the parking spaces will be designated for handicap use only. Township Code Section 170-94.E.(1) requires a total of 425 parking spaces for the uses proposed. A variance of 103 spaces is requested.
9. The reconfigured building would have a pedestrian entrance facing East Northfield Road, but the primary entrance would be at the rear of the building facing the parking area. A third entrance would be on the easterly side of the building and would face a smaller parking area adjacent to the two-way driveway. On the westerly side of the building there would be a doorway to permit pick-up of patients requiring departure

by ambulance. Building signage is proposed for the front, rear and easterly facades of the building, but specific details were not provided.

10. The interior would be configured to provide offices for approximately 30 physicians, plus spaces for the various services to be provided. An urgent care center on the first floor would be primarily for patients of Summit Medical Group, but walk-in patients would be accommodated. The intent is not to operate an emergency room facility, but to treat patients requiring immediate care but not having a condition so severe as warranting a visit to an emergency room.

11. The building would be open 7 days a week. The hours of operation would be from 7:00 a.m. to 10:00 p.m. on week days and 7:00 a.m. to 5:00 p.m. on weekends. Weekday peak business hours would generally be from 9:00 a.m. to 11:00 a.m. and 2:00 p.m. to 4:00 p.m. Fewer physicians have office hours on Saturdays. On Sundays, only the urgent care center would normally be open. Based on similar facilities operated by Summit Medical Group, it was estimated that the maximum number of patients visiting the building in a day would be 750.

12. Existing primary vehicular site ingress and egress is a two-way driveway which connects to Schindler Way to the east of the Site. This driveway would be eliminated. Vehicular ingress and egress would occur from a widened driveway on East Northfield Road. A one-way driveway, for exiting ambulances and delivery vehicles only, would be on the westerly side of the building.

13. The area of present small Lot 43.03 will have a 6-foot tall board-on-board fence along the adjacent rear yards of Lots 4.02 and 42.04; 4-foot tall board-on-board fence along the side yards of those lots; and a 50 percent open fence complying with the Fence Ordinance in the Schindler Way front yard.

14. Mr. Maltz, the Applicant's Traffic Engineer, and Mr. Jahr, the Board's Traffic Consultant, agreed that the parking spaces proposed by Applicant would be adequate under the Institute of Traffic Engineers ("ITE") 4th edition parking generation study. Both recommended that the parking space variance requested be granted. Mr. Jahr expressed concern that actual conditions during future operation of the building might show that more parking would be needed. It was his view that such need might then be met by stacked parking under a valet service. Both experts agreed that entry and exit at East Northfield Road would be safe and adequate for all vehicle movements.

15. Mr. Lanzafama, Applicant's Planner and Engineer, testified as to the basis for granting the following bulk variances requested:

A. A variance of 2.5 feet from the maximum height of 28 feet established by Code § 170-108.C.(1) to permit a building height of 30.5 feet.

B. A variance of 103 parking spaces to permit 322 where 425 spaces are required by Code §170-94.E.(1).

- C. A variance of 2 feet to permit the parking spaces to have a length of 18 feet where the Code § 170-3 requirement is 20 feet.
- D. Continuation of the existing 0.14-foot variance from the 15-foot front yard setback requirement of Code § 170-108.C.2(a).
- E. Continuation of the 1.79-foot variance from the 10-foot side yard setback adjacent to a residence district required by Code §170-108.C.3.

He also testified as to granting a requested waiver of the Code §170-73.B.(14) requirement that the building have its primary orientation, façade and pedestrian entrance toward the street right-of-way. A variance from the requirement that there be a vehicle loading area was withdrawn, and such an area was added to the Site Plan.

16. During the course of the hearings, the Applicant consulted with several members of the public who reside on Schindler Way and agreed to a number of provisions that the Applicant would propose be covered by conditions of any approving resolution. Those provisions as reported to the Board were:

A: The Applicant will provide a minimum of two weeks', and not more than 4 weeks', notice to residents when existing fences adjacent to their residences on Schindler Way are to be removed and replacement fences installed.

B: All living trees and plantings on the Site will be preserved wherever possible.

C: An abandoned utility pole at the rear of the Yu property at 1 Schindler Way will be removed.

D: Plantings, including trees, which had been installed by the Yu's at the area of the existing access via Lot 42.03, will be preserved or moved and replanted on the Yu property at 1 Schindler Way. Any sprinkler heads which had been installed by the Yu's at the same location will also be moved or replaced onto the Yu property.

E: The Applicant will add additional plantings of 7' to 8' Norway Spruces in the former driveway access area in a staggered manner. Fencing will be installed as proposed on the original Plan dated April 22, 2013.

F: The Applicant will erect a sign indicating "No Loitering No Smoking" and will also include language that the green area in the former access area is only for the use of Summit Medical Group employees and patients.

G: Exterior lighting will have a maximum of 25% of the lights on sensors, and all other lighting will be on a timer and re-set seasonally to turn off no later than 30 minutes after closing.

H: Any plantings provided by the Applicant on the adjoining properties will be at the expense of the Applicant but future maintenance will be the sole responsibility of those property owners.

17. In response to issues raised by the Board the Applicant also agreed to certain matters to be covered by conditions of approval:

A: Trash pick up will be no earlier than 7:00 a.m. on weekdays.

B: The Schindler Way driveway will not be used for access or exit during demolition or construction.

C: The Applicant to cooperate with the Township and County to preserve and replant any trees in the East Northfield Road center island affected by the changes resulting from the installation of a left turn lane for eastbound traffic.

D: A tree removal permit shall be obtained prior to the issuance of any other permits.

E: The tenant's contract with any private ambulance service shall require that there be no engine idling while waiting or stopped at the Site.

F: Signage shall indicate "head-in parking only" in the spaces facing the adjacent residential lots.

G: All signs on the building to comply with the Township Code and the Board retains jurisdiction over all building signage.

H: Signage shall be posted indicating restrictive parking for the two spaces on the westerly side in the area of the trash dumpster.

I: The Applicant will make good faith efforts to explore shared parking arrangements with the office complex to the west.

J: 18 months after issuance of a Certificate of Occupancy Applicant's tenant shall have a parking conditions study conducted by an engineer, and a traffic conditions review conducted by a traffic engineer. The results of the reviews to be promptly

reported to the Township Engineer. The Applicant's tenant to provide valet parking if the parking conditions review is found by the Township Engineer to require such service. The Board to retain jurisdiction in the event of any dispute as to the recommendations of the Township Engineer as to parking or traffic conditions.

FINDINGS OF FACT & CONCLUSIONS

After full consideration of the testimony and evidence presented, the Board concludes as follows:

1. The Applicant has satisfied the statutory and Code requirements for Preliminary and Final Site Plan approval. The Board hereby grants approval of the Plans submitted by the Applicant bearing the date of 04-22-2103 with final revision date of 8-07-2013, and subject to the conditions set forth herein which must be included on the Final Site Plans to be submitted to the Township.
2. The Board hereby grants the following variances requested by the Applicant:
 - A. A variance of 2.5 feet from the maximum height of 28 feet established by Code § 170-108.C.(1) to permit a building height of 30.5 feet.
 - B. A variance of 103 parking spaces to permit 322 (32 of which shall be handicap spaces) where 425 spaces required by Code §170-94.E.(1).

C. A variance of 2 feet to permit the parking spaces to have a length of 18 feet where the Code § 170-3 requirement is 20 feet.

3. The above variances are all granted pursuant to the provisions of N.J.S.A.40:55-70.c.(2) in that they provide a better zoning alternative than the zoning ordinance requirements and the benefits of the variances would greatly outweigh any detriment. As testified to by the Applicant's planner, Michael Lanzafama, the height variance will allow the addition of architectural features that will provide an esthetic benefit. The length of the parking stalls will work well without any detriment and will allow additional parking spaces to be provided for the benefit of the patients and employees. The total parking spaces provided meet the requirements of the ITE, and the Board's traffic consultant, John Jahr, agreed that the proposed parking would be adequate, and that the Applicant could utilize valet parking in the future if parking capacity proved troublesome. The Applicant agreed to a parking review and a traffic study within 18 months after issuance of that Certificate of Occupancy, and that it would implement valet parking if necessary. Accordingly, the Board finds that the variances requested should be granted. The Board finds that there would be no detriment to the public good, that the purposes of the Land Use Code and the Master Plan would be satisfied, and that there would be no detriment to the Zone Plan or Zoning Ordinance, and that the benefits resulting from the approval will greatly outweigh any detriment.

4. The Board continues variances for the following existing conditions set forth on the Site Plan:

A. Continuation of the existing 0.14-foot variance from the 15-foot front yard setback requirement of Code § 170-108.C.2(a).

B. Continuation of the 1.79-foot variance from the 10-foot side yard setback adjacent to a residence district required by Code §170-108.C.3.

5. The Board finds that the building and its façade have, and will continue to have, orientation toward the street and that the building's ground floor occupancies will have pedestrian access from the street; all as required by the Township Code. However, the primary building entrance for patients and employees arriving by vehicle will be at the rear of the building, and the primary entrance for patients parking in handicap spaces will be on the easterly side of the building. The Board grants a design waiver from the requirements of Code § 170-73.B.(14) requiring that the building's primary entrance orientation be toward and accessible from the street right-of-way.

6. The Applicant has agreed to, at its expense, plant evergreen trees on adjacent residential properties under agreements to be reached with the owners of those properties as to location; with the owners to bear costs of maintenance. The Board finds planting of such trees to be enhanced buffering of the parking

area and recommends to the Zoning Officer, who is the Administrator under the Trees Ordinance, that such trees be considered Replacement Trees under that ordinance.

7. The Site currently consists of Lots 42.01 and 42.03 in Tax Block 2700, and they will be merged by deed into a single one.
8. This approval is subject to the following conditions agreed to by the Applicant:
 - A. Trash pickup shall be no earlier than 7:00 a.m. The Board retains jurisdiction as to the actual time period during which pickups will be permitted.
 - B. Schindler Way access shall not be used for entry or exit during demolition or construction.
 - C. The Applicant shall cooperate with the Township and County to preserve and replant, or replace, any trees in the East Northfield Road center island affected by the changes resulting from the installation of the left turn lane for eastbound traffic.
 - D. Applicant shall make every reasonable effort to preserve trees that are on the Site.
 - E. The Applicant shall plant trees at its expense in the rear yards of Lot 42.02 and Lots 42.04 through 42.08 under such agreements as

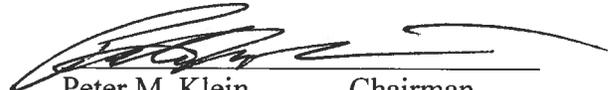
Applicant may reach as to the location of such trees with the respective lot owners who will be responsible for maintenance.

- F. Any trees, plantings and sprinkler heads that have been installed on Lot 42.03 by the owners of Lot 42.02 shall be relocated to Lot 42.02 at Applicant's expense.
- G. The Applicant shall add additional plantings of 7' to 8' Norway Spruces in the former driveway access area in a staggered manner. Fencing will be installed as proposed on the original Plan dated April 22, 2013.
- H. The Applicant shall provide a minimum of two weeks', and not more than 4 weeks', notice to residents when existing fences adjacent to their residences on Schindler Way are to be removed and replacement fences installed.
- I. A tree removal permit shall be obtained prior to the issuance of any other permits.
- J. An abandoned utility pole at the rear of the Yu property at 1 Schindler Way shall be removed.
- K. The space between Lots 42.02 and 42.04 shall be posted as limited to use by personnel and patients of the tenant, with smoking and loitering prohibited,
- L. Signage shall be posted restricting parking in the two spaces closest to the refuse enclosure.

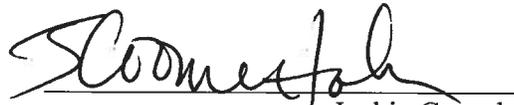
- M. Signage shall require head-in parking in the spaces closest to the residential lots on Schindler Way.
- N. All signs on the building shall comply with the Township Code and the Board retains jurisdiction over all building signage.
- O. The Applicant shall make good faith efforts to explore shared parking arrangements with the office complex to the west on Lot 44.
- P. The tenant's contract with any private ambulance service shall require that there be no engine idling while waiting or stopped at the Site.
- Q. No later than 18 months after issuance of a Certificate of Occupancy, Applicant shall have a traffic conditions review conducted by a traffic engineer and the parking conditions reviewed by an Engineer . The results shall be promptly reported to the Township Engineer. The Applicant shall provide valet parking if the parking conditions review is found by the Township Engineer to require such service. The Board retains jurisdiction in the event of any dispute as to recommendations of the Township Engineer.
- R. Exterior lighting shall have a maximum of 25% of the lights on motion sensors after closing, and all other lighting shall be on timers re-set seasonally to turn off no later than 30 minutes after closing.

9. The Board's Model Conditions of Approval attached hereto are, except as modified therein, incorporated herein. Condition I above and Model Conditions 8, 11, 17 and 18 shall be met before any other permits are issued.

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 variances as set forth herein be and is hereby granted and approved, subject to the terms and conditions as set forth herein.


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 November 7, 2013 wherein Members Kalishman, Kimmel, Leopold, Meade, Ratner and Klein voted; they being all of the Members present and eligible to vote.


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.