

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: June 19, 2012

Re: Application No. 2011-58-PFSP
Applicant: TMB Partners, LLC
Premises: 650 South Orange Avenue, Livingston, NJ
Block: 7001; Lot: 1.01
Zone: R-5F Residence District

SUMMARY OF THE CASE

1. This Application, as filed by TMB Partners, LLC (hereinafter “Applicant”) the owner of the premises (hereinafter “Site”), requests Preliminary and Final Site Plan approval for the development in accordance with Township Code Section 170-104.1 (hereinafter “Zone Ordinance”) of two buildings; one building (the “Market Rate Building”) containing fifty market rate condominium apartments with a swimming pool, two levels of underground parking and common areas for use solely by the residents of the market rate units, and a second building (the “Affordable Building”) containing twelve affordable housing units which will be rentals in accordance with applicable law, and will have an exterior parking lot. The Site will be heavily landscaped in accordance with a plan approved by the New Jersey Department of Environmental Protection (“NJDEP”) to protect Canoe Brook Tributary No.1 on the south side of the Site.

2. The Applicant was represented by Richard J. Hoff, Esq., of Bisgaier Hoff, LLC. All taxes have been paid, proper notice has been given, and all statutory requirements have been met.

3. Appearances were also made by Brent T. Carney, Esq., of Marazitti, Falcon & Healey, LLP, on behalf of the Township of Millburn. At the initial two hearing sessions, Robert Podvey, Esq., of Podvey Meanor, appeared for Millburn residents Dr. & Mrs. Leonard Rubin, Dr. & Mrs. Michael Steinberg, Dr. & Mrs. Eric Kanter, Dr. & Mrs. Paul Langer, Dr. & Mrs. Fred Polakoff,

and Mr. Donald Werner; all residing on Rippling Brook Drive, Millburn, NJ. That street is to the south of the Site. Mr. Podvey did not appear at the two subsequent hearings. He advised the Board's Acting Attorney that he no longer represented residents. Some of his former clients appeared and asked questions or made statements at those subsequent hearing sessions.

4. Hearings were held before the Planning Board of the Township of Livingston (hereinafter "Board"), on February 21, 2012, April 3, 2012, May 15, 2012 and May 31, 2012, with respect to the Application. At the start of the hearing the Applicant offered a Site Plan, consisting of Drawings 1 through 10 revised as of April 25, 2012. Supplements were submitted during the course of the hearings. The drawings and supplements are hereinafter referred to as the "Site Plan." Applicant also submitted architectural drawings dated January 2, 2012 consisting of 36 sheets. Supplements were submitted during the course of the hearings.

5. Appearing as witnesses for the Applicant were:

Gary Szalc, P.E. and P.P., of the firm of Casey & Keller, Millburn, NJ. Mr. Szalc prepared the Site Plan and revised Site Plan for the Site. Mr. Szalc was accepted as an expert in site engineering and planning.

Brian Conway, a landscape architect and consultant to Casey & Keller, Millburn, NJ. Mr. Conway was accepted as an expert in landscape architecture.

Bandy Jesudason, A.I.A., of the firm of JLM Design Group, Plymouth Meeting, Pa. Mr. Jesudason prepared the architectural drawings and revised architectural drawings submitted for the Site. Mr. Jesudason was accepted as an expert in architecture.

Harold Maltz, P.E., of the firm of Hamal Associates, Inc. in West Orange, NJ. Mr. Maltz was accepted as an expert in traffic engineering.

Appearing as a witness for the Township of Millburn was:

James Cosgrove, P.E., of the firm of Omni Environmental of Princeton, NJ. Mr. Cosgrove was admitted as an expert in environmental engineering with expertise in stormwater and wastewater management.

6. No deviations were requested for the Application. During the course of the hearings, several bulk variances were identified as required.

7. In addition to counsel for Millburn Township, members of the public appeared in opposition to the Application and were permitted to question witnesses and make sworn statements.

8. The approvals requested would constitute Preliminary and Final Site Plan Approval and any required bulk variances identified during the hearings.

FINDINGS OF FACT & CONCLUSIONS

1. The Site was the subject of litigation resolved through a Settlement Agreement dated August 3, 2010 among the Applicant, the Planning Board and Livingston Township (“Township”). The Settlement Agreement has been approved by the Superior Court of New Jersey and includes an obligation on the Applicant to construct on the Site twelve affordable apartment units that the Township can credit to its Affordable Housing obligations. Under the Settlement Agreement, a minimum of one of the units is required to be affordable to very low income households.

2. In accordance with the Settlement Agreement, the Township adopted Ordinance No. 37-2010 amending or creating Township Code Sections 170-85, 170-86, and 170-104.1 which rezones the Site to residence district R-5F. The within Application is in accordance with the Settlement Agreement and the Zone Ordinance.

3. The Site is on the southeastern corner of the intersection of South Orange Avenue and White Oak Ridge Road (and Hobart Gap Road on the northerly side of South Orange Avenue.) On the Site's southerly side is the border with the Township of Millburn. The southerly side of the Site is also bordered by Canoe Brook Tributary No.1, also known as "Rippling Brook".

4. The Site currently is developed on its western end with a one-story building of 12,065 square feet, a parking lot of about 55,997 square feet that extends to the bank of Canoe Brook Tributary No. 1, plus another 9,878 square feet of impervious areas. The undisturbed eastern end of the Site is in its natural state except in the middle where a former residence now demolished used to occupy part of the Site. The existing building is currently in use as a childcare facility, and previously was a restaurant and bakery.

5. The Site has a total of 186,211 square feet, or 4.275 acres, and is level at the western end where the present building and parking lot are located. The undeveloped eastern end has a slope. The site has 764 feet of frontage on South Orange Avenue and 227 feet on White Oak Ridge Road. Total impervious coverage is currently 41.9%.

6. The Applicant proposes to construct two buildings on the Site: the Market Rate Building and the Affordable Building. The larger, the Market Rate Building, is to be located at the western end near the corner. It will contain fifty (50) market rate apartments with a central core containing an entry area, card rooms, other amenities, and an outdoor swimming pool. The pool and all other common amenities would be for use of the residents of this building only and their guests. The smaller Affordable Building is about 50 feet east of the Market Rate Building facing South Orange Avenue. It will contain twelve (12) affordable housing apartment units. The Market Rate Building's apartments will be owned in the condominium format while the apartments in the Affordable Building will be rentals.

7. Due to the presence of Canoe Brook Tributary No.1, the Applicant has obtained a permit from the NJDEP to construct the proposed improvements on the Site. NJDEP required that the Applicant agree to create a conservation easement and to landscape the area between the two proposed buildings and Canoe Brook Tributary No.1 in accordance with NJDEP regulations.

The purpose of the NJDEP permit is to protect the water quality of runoff that enters the Canoe Brook Tributary No. 1 after the development of the Site in accordance with the Application. The NJDEP requires a 150-foot riparian buffer zone with some minor exceptions which the NJDEP has allowed in this case due to prior development at the Site. The Applicant granted the required NJDEP easement by Grant of Conservation Restriction/Easement dated October 3, 2011 recorded on October 18, 2011 with the Essex County Register at Book 12332, page 1640 (the "Conservation Easement").

8. The development in accordance with the Application will result in total impervious coverage of 66,644 square feet. Currently there is 77,940 square feet of impervious coverage. The percentage of impervious coverage will go from the current 41.9% down to 35.8%. The Zone Ordinance requires that the maximum impervious coverage not exceed 45%.

9. Based upon the evidence and testimony presented, the Board finds that the record shows that the two buildings meet the setback, height, impervious coverage, maximum number of stories, and maximum number of dwelling units requirements of the Zone Ordinance.

10. Based upon the evidence and testimony presented, the Board finds that the record shows that the two buildings meet the architectural requirements of the Zone Ordinance.

11. Based upon the evidence and testimony presented, the Board finds that the record shows that the size and number of parking spaces at each of the buildings meets the requirements of the Residential Site Improvement Standards as called for in the Zone Ordinance. One parking space in the Market Rate Building is undersized and is not included in the determination of the number or size of parking spaces.

12. Based upon the evidence and testimony presented, the Board finds that the record shows the ground monument signs as meeting the requirements of the Zone Ordinance.

13. Based upon the evidence and testimony presented, the Board finds that the record shows that the landscaping requirements of the Zone Ordinance have been met except with respect to matters for which variances have been requested during the hearings.

14. The Zone Ordinance Section 170-104.1(J)(4)(d) requires that the rear yards of the buildings on the Site that are adjacent to the Township of Millburn have a year-round natural solid barrier that shall include double staggered rows of evergreen trees planted eight feet apart and having a minimum initial planting height of 8 to 9 feet. The Applicant proposes that 61 evergreens be in double staggered rows, but that an additional 32 evergreen trees are to be planted in clusters. Based upon the evidence and testimony presented, the Board finds that the record shows that the testimony justifies a grant of a variance for those 32 evergreen trees from the requirement that evergreen trees be in staggered rows.

15. The Zone Ordinance Section 170-104.1(J)(4)(h) requires that no less than 75% of the plantings on the Site shall be evergreen. The proposal is for 51% of trees and 33% of other plantings to be evergreen: an overall total of 39.1%. Based upon the evidence and testimony presented, the Board finds that the record shows that the testimony justifies grant of a variance.

16. Based upon the evidence and testimony presented, the Board finds that the record shows that the walls in front of the Market Rate Building are retaining walls, not decorative landscaping walls.

17. The Zone Ordinance Section 170-87(E)(1)(e) requires that all accessory structures be in the rear yard. The Affordable Building will have a trash enclosure in the front yard adjacent to the parking lot. Due to the topography of the lot, NJDEP constraints and the riparian buffer, there is no other location for this accessory structure. Based upon the evidence and testimony presented, the Board finds that the record justifies grant of a variance.

18. The Zone Ordinance Section 170-104.1(J)(9)(b) requires that all accessory structures be setback at least 50 feet from the property lot line. Based upon the evidence and testimony

presented, the Board finds that the record shows that a 15-foot variance to permit the Affordable Building trash enclosure to be 35 feet from the property line rather than 50 feet is justified.

19. The Zone Ordinance Section 170-104.1(J)(4)(i) of the Zone Ordinance limits the height of retaining walls at the Site to 3 feet. The Applicant's proposals are:

(a) Two retaining walls at the pool in the rear of the Market Rate Building each have a height of 3 feet 10 inches; therefore, the Applicant requires a variance of 10 inches for each retaining wall.

(b) The retaining walls to each rain garden at the Market Rate Building have a height of 3 feet 10 inches; therefore, the Applicant requires a variance of 10 inches for each retaining wall at each rain garden.

(c) The retaining wall around the Affordable Building parking lot has heights varying to a maximum of 8 feet 6 inches; therefore, the Applicant requires a variance of up to 5 feet 6 inches with respect to this retaining wall adjacent to the Affordable Building parking lot.

Based upon the evidence and testimony presented, the Board finds that the record shows that the testimony justifies the grant of height variances for the above retaining walls on the Site that are in excess of three feet.

20. Based upon the evidence and testimony presented, the Board finds that the record shows that considering all the testimony provided the Board does not find the location or design of the Market Rate and Affordable Buildings to involve, or to be likely to involve, unusual risk of traffic congestion, public safety or hazard.

21. Based upon the evidence and testimony presented, the Board finds that the record shows the Market Rate and Affordable Buildings to not involve or be likely to involve exceptional risk of traffic congestion, public safety or hazard.

22. Based upon the evidence and testimony presented, the Board finds that the record shows that the stormwater management plan proposed meets the requirements of the Residential Site Improvements Standards, the Township Code provisions and the requirements of the NJDEP.

23. Based upon the evidence and testimony presented, the Board finds that the record shows that the Township of Millburn has provided wastewater sewage service to the Site under an agreement with the Township. That agreement expressly precludes service for apartment houses. The Board further finds that the Township of Millburn has not agreed to accept wastewater from the Site if developed as proposed; and that the Applicant has commenced legal proceedings seeking to compel the Township of Millburn to provide the service.

24. The Board takes judicial notice of Township Ordinance No. 12-2012 granting the request of New Jersey American Water Company, Inc. to permit extension and provision of water service and related facilities to the Site by the company.

25. Based upon the testimony presented and Township Ordinance No. 12-2012, the Board finds that Applicant will obtain freshwater service directly from New Jersey American Water Company, Inc.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Livingston, having duly considered the evidence and testimony presented, the Board concludes as follows:

1. The Board hereby approves this Application in accordance with the Site Plan and architectural drawings as amended in the course of the hearing and with the variances and conditions set forth below.
 - A. Variances. In connection with the granting of Preliminary and Final Site Plan Approval, the Board hereby grants the following bulk variances:
 - a. A variance is required from the requirement in Zone Ordinance Section 170-104.1(J)(4)(d) that all evergreen trees between the buildings and Canoe Brook Tributary No. 1 be in staggered rows. Thirty two evergreen trees shall be in clusters. A variance for the thirty two evergreen trees not in staggered rows is hereby granted.

- b. A variance is required from the requirement in Zone Ordinance Section 170-104.1(J)(4)(h) that no less than 75% of the plantings on the Site shall be evergreen. The proposal is for 51% of trees and 33% of other plantings to be evergreen: therefore, the overall evergreen plantings will total 39.1% of all plantings. A variance of 35.9% of evergreen plantings of the total plantings is granted.

- c. A variance is required from the requirement in Zone Ordinance Section 170-87(E)(1)(e) that all accessory structures be in the rear yard. A bulk variance is granted so that the trash enclosure next to the Affordable Building may be in the front yard.

- d. A variance is required from the requirement in Zone Ordinance Section 170-104.1(J)(9)(b) that all accessory structures be setback at least 50 feet from the property lot line. A 15-foot variance to permit the Affordable Building trash enclosure to be 35 feet from the property line rather than 50 feet is granted.

- e. A variance is required from the requirement in Zone Ordinance Section 170-104.1(J)(4)(i) that limits the height of retaining walls to 3 feet with respect to the following retaining walls on the Site:
 - i. Two walls at the pool in the rear of the Market Rate Building each have a height of 3 feet 10 inches. A variance of 10 inches is granted for each such retaining wall at the pool.
 - ii. The retaining walls at each rain garden at the Market Rate Building have a height of 3 feet 10 inches. A variance of 10 inches is granted for each such retaining wall at each rain garden.
 - iii. The Affordable Building parking lot retaining wall height varies to a maximum of 8 feet 6 inches. A variance of up to 5 feet 6 inches is granted with respect to such retaining wall at the Affordable Building parking lot.

- B. Conditions. The approvals are subject to the following conditions:
- a. The Market Rate Building units shall be owned in the condominium form of ownership. The Affordable Building apartment units shall be rental and the property owned in fee by the Applicant or its successor.
 - b. The Applicant, and then its successor, the condominium association for the Market Rate Building, shall own, maintain and replace, if necessary, all the rain gardens, landscaping and storm water management improvements on the Site, including in the Conservation Easement and riparian buffer area.
 - c. The Master Deed and condominium documents shall be provided to both the Board Attorney and the Township Attorney for approval before recordation so that they are consistent with this Resolution.
 - d. Direct freshwater service shall be obtained by the Applicant from the New Jersey American Water Company, Inc.
 - e. The Site shall have a single wastewater sewage service. If such service is not provided by the Township of Livingston, Applicant shall have obtained the service from the Township of Millburn. Any such service from the Township of Millburn shall be pursuant to a Sanitary Sewer Services agreement between the two townships, and any necessary actions by the Joint Meeting of Essex and Union Counties or by Essex County in regard to the Essex County wastewater management plan.
 - f. Post-construction certification that all NJDEP permit conditions have been met shall be provided by the Applicant's engineer to the Township Engineer.
 - g. All new plantings shown on the Landscaping Plan shall be maintained and replaced in perpetuity by the Applicant or by the condominium association for the Market Rate Building if such responsibility shall have been assumed by the condominium association with the approval of the Township Engineer.
 - h. The Market Rate Building pool and patio shall not be used between dusk and dawn. Therefore, lighting at the pool and patio shall be limited

to the two bollard type lighting fixtures as shown on the Site Plan.

i. In Landscape Note 6 on Drawing Number 9 of the Site Plan “will” shall be changed to “shall”.

j. Janitorial services for both buildings shall comply with N.J.A.C. § 5:10-11.1.

k. A condominium map showing locations and addresses of all apartment units in the Market Rate Building shall be submitted for Township records.

l. A phasing plan for the development, including planting of the riparian buffer, shall have been submitted to and approved by the Township Engineer before any permits are issued.

m. There shall be no gender designations for card rooms in the Market Rate Building.

n. The Market Rate Building central core amenities and pool shall not be rented to parties who are not residents of the Market Rate Building.

o. The rain gardens shall be maintained and replaced in perpetuity by the Applicant unless responsibility is assumed by the condominium association with approval by the Township Engineer.

p. The Township shall have access to the Conservation Easement area, the rain gardens and the riparian buffer to ensure that they are properly maintained and functioning properly as part of the storm water management plan for the Site. If conditions are not corrected after notice to the Applicant, or to the condominium association after responsibility has been assumed by the condominium association, the Township may elect to do the work at the expense of the Applicant or the condominium association. If any approval of NJDEP is required for the Township to have access to the Conservation Easement area, the rain gardens or riparian buffer or for any work required therein, the Applicant or the condominium association shall promptly obtain such consent of the NJDEP. If such consent is required and not promptly obtained, the Township may elect to

obtain such consent at the expense of the Applicant or the condominium association.

q. The final stormwater management plan shall have been reviewed and accepted by the Township Engineer.

r. The Applicant shall submit a revised narrative recycling plan following Township Code Chapter 232. No permits shall be issued unless that plan has been approved by both the Township Engineer and the Zoning Officer.

s. The area of the Affordable Building parking lot expanded toward the street shall be cross-hatched to indicate no parking, which plan shall be approved by the Township Engineer.

t. The Applicant shall comply with the provisions of Zone Ordinance Section 170-104.1(I) as to the issuance of a Certificate of Occupancy for the Affordable Building prior to issuance of a Certificate of Occupancy for the Market Rate Building or any units in the Market Rate Building.

u. The Applicant shall have obtained a permit for removal of trees, and the setting of the number of replacement trees required, issued by the Zoning Officer.

v. The Applicant shall make a request in writing to Essex County to prune or remove overgrowth at the headwall on White Oak Ridge Drive. A copy of such request shall be provided to the Township Engineer.

w. If stormwater flow from Affordable Building Site causes erosion, the Applicant or the condominium association shall make improvements as set forth in the Stormwater maintenance Manual, provided such improvements are approved by Township Engineer. If any proposed improvements require the approval of NJDEP, the Applicant or the condominium association shall obtain the NJDEP approval.

x. A minimum of one of the twelve units in the Affordable Building shall be affordable to very low income households.

y. The Settlement Agreement among Applicant, the Township and the Board, made as of August 3, 2010 and approved by the Superior Court of New Jersey, Law Division, Essex County after Fairness Hearing on October 19,

2010, is incorporated herein by this reference, and the Applicant shall comply with all of its obligations under said Settlement Agreement.

z. The Board shall retain jurisdiction over the Site in the event of any future planning or zoning applications.

aa. Model Conditions of Approval 1, 4, 5.c, 5.d, and 6- 9 (except for "9.a") attached hereto are hereby incorporated herein.

bb. A true and correct copy of this Resolution and of the recorded Conservation Easement shall be attached to a deed. Such deed shall be recorded on the land records of Essex County within 60 days of the date hereof, and a recorded copy shall be provided to the Planning Board Secretary and to the Board Attorney showing the recording information.

cc. A true and correct copy of this Resolution and of the recorded Conservation Easement shall be attached to a Master Deed in connection with creation of the condominium form of ownership of the Market Rate Building apartments. Such Master Deed shall be recorded on the land records of Essex County, and a recorded copy shall be provided to the Planning Board Secretary and to the Board Attorney showing the recording information prior to the issuance of any Certificate of Occupancy for any of the buildings or apartments at the Site.

dd. The following Conditions shall be met before issuance of any permits or commencement of any work: "d", "e", "i", "l", "q", and "u" above and Model Conditions of Approval Nos. 5.c, 5.d, 6, 7, 8, 11, 17 and 18.

ee. The following Conditions shall be met before the issuance of any Certificate of Occupancy: "c", "f", "k", "r", "s", "t", and "v" above and Model Conditions of Approval Nos. 12, 14 and 19.

ff. The following Conditions are Continuing Conditions: "a", "b", "g", "h", "j", "m", "n", "o", "p", "w", "x" and "z" above and Model Conditions of Approval Nos. 9, and 14b, c and d.

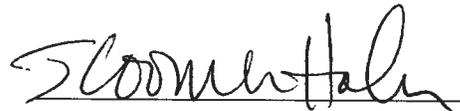
NOW, THEREFORE, BE IT RESOLVED, that, for the reasons set forth herein and on the record by the Planning Board of the Township of Livingston, Preliminary and Final

Site Plan approval and bulk variances as set forth herein be and are hereby granted and approved subject to the terms and conditions 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 June 19, 2012 by the affirmative votes of Members Anthony, Dinar, Kalishman, Kimmel, Klein, Leopold, Meade, Ratner, and Rieber; they being all of the Members both present and eligible to vote.



Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval
(As Amended through December 20, 2011)

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.

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 wash down 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.