

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: May 3, 2011

Re: Application No. 2010-25-PFSPV
Applicant: G&S Livingston Realty, Inc.
Premises: 530 West Mt. Pleasant Avenue
Block: 100; Lots: 17 & 18
CI Zone

WHEREAS, an Application has been by G&S Livingston Realty, Inc., (hereinafter referred to as the "Applicant"), the corporate owner of the subject premises (hereinafter referred to as the "Site"), commonly known as 530 West Mt. Pleasant Avenue, (also as N.J. State Route 10 and hereinafter referred to as "Route 10"), made to the Planning Board of the Township of Livingston (hereinafter referred to as the "Board") for Preliminary and Final Site Plan Approval, with variances, to permit construction of two additions, totaling 24,400 square feet, to existing retail buildings on the Site; and

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

WHEREAS, a public hearing was heard before this Board on July 6, 2010, August 17, 2010, November 30, 2010, January 4, 2011, March 1, 2011, and April 5, 2011 with regard to this Application; and

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

WHEREAS, the Board has heard and considered the testimony of the Applicant and its expert witnesses, of objectors and their expert witnesses, and of members of the public;

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

1. The Applicant presented the testimony of Mr. Larry Traub, a principal of the Applicant corporation. He testified that the Site contains two retail buildings that are currently vacant. Interested potential tenants have indicated that the buildings, as presently configured, are not of sufficient size and design to meet the requirements of any anchor tenants that would be necessary for successful operation of the property. The Site currently consists of two separate lots the utilization of which was combined for the previously approved uses and would remain for the proposed uses. The Applicant agreed that in lieu of merging the lots it would consent to Deed restrictions that neither lot could be sold independently of the other.
2. Mr. Michael Lanzafama, admitted as an expert in engineering and planning, of the firm of Casey & Keller, Inc., testified for the Applicant. Lanzafama was responsible for preparation of the Site Plan and for revisions agreed to in the course of the hearing. He testified that approximately 30 to 40 percent of the Site is wetlands and flood plain that cannot be utilized, and that the Site has an unusual lot configuration. The two existing buildings on the Site are vacant and are: a 79,138 square-foot multi-tenant building that backs onto West Mt. Pleasant Avenue, which is also Route 10; and a 42,500 square-foot single-tenant retail building on the rear of the Site. The building at the front of the Site is referred to as Building C in Applicant's planning, and the Building at the rear as Building A. There is existing parking for 584 vehicles. The Applicant proposes a 7,150 square foot addition to Building C; bringing its total size to 86,288 square feet. The loading bays and docks would be brought into alignment with an additional loading dock that would be provided for that building. A third building, referred

to as Building B, would provide an additional 17,500 square feet of space. It would be to the east of, and would abut, Building A. However, for an appropriate tenant, Buildings A & B could be combined into a single building of 59,750 square feet. The construction of Building B would result in the loss of approximately 50 parking spaces.

3. 21 new parking spaces would be provided at Building C setback only 5.03 feet from Daven Avenue; where a 50.0 foot parking setback is required. Another 22 spaces would be added to the existing large parking field to the east of Daven Avenue. Some of these also would set back less than 50.0 feet from Daven Avenue. A parking setback variance would be required. The total proposed parking (including an area for 15 spaces banked for future use) would be 590 spaces. The Township Code requires 5 parking spaces for 1,000 square feet of net floor area; which results in a need of 657 parking spaces and a variance request of 67 parking spaces. The Applicant believes that the proposed parking will be adequate based on the review by its traffic expert and its experience in operating similar centers.
4. The Applicant would enhance landscaping in the Site's front yard on Route 10, and would provide new pedestrian access from Route 10 by constructing a sidewalk along Route 10 and on Daven Avenue. An existing sidewalk through the parking lot will continue to provide a pedestrian link between the front and rear buildings. The Applicant would provide 8 handicap parking spaces for the front building and 6 handicap spaces for the rear buildings. These spaces would be located as close to the entrances as necessary and in compliance with ADA regulations, once actual tenants have been identified.
5. Lanzafama also testified that Applicant agreed to certain changes based on the report of the Township Engineer dated July 13, 2010. Sidewalk access to the Site would include a new staircase where the grade changes as the access leaves Daven Avenue. All roofs would have interior roof drains that would connect

directly to the stormwater collection system. Inlet filters would be inserted to catch debris as recommended. A recycling plan would be submitted and incorporated into tenant leases. The proposed Building B was moved 10 feet so as not to impact the existing retaining wall at the rear of the Site. Additional signage will be added to direct traffic from Industrial Parkway to Route 10, and improved signage will be added for traffic from Route 10 to Industrial Parkway. All of the proposed improvements would result in approximately 5,000 square feet of additional impervious area. The majority of the added space would be over existing pavement and there will be no increase in stormwater runoff of any significance. Other locations for the improvements are not available due to the shape of the lots. The Applicant agreed that the additional parking area to be constructed between Daven Avenue and Building C would be designated as employee parking with appropriate signage. Both existing buildings are not in conformance with the current Township requirements as to façade glass, and Building B also would not be. Building C faces the interior of the Site. The rear of that building faces Route 10. Building A is also not in compliance with the façade glass requirements. Since this is an existing condition as to both buildings, the Applicant requested a design waiver or variance.

In the event that the space reserved for 15 future parking spaces is used for that purpose, the Township Tree Ordinance will be complied with. The Applicant also agreed to a condition that space not be leased to restaurants of any type, spas, health clubs or any type of gym; all of which have higher parking requirements.

6. Lance Blake, admitted as an expert in architecture, testified and described the architectural plans that he had prepared. The additions will utilize identical materials as the existing structures. Building B would have a central focal point entrance. Parapets and detail would increase architectural appeal. Buildings A and B may be rented by two different single tenants, with each having a single entrance. These particular types of retail buildings generally have mostly interior merchandise displays. Building A was built with minimal façade glass, and

Building B should be visually and proportionally compatible. Although Building B's façade would exceed 100 feet in length, it would not be appropriate to break the facade into smaller elements because B is being added to Building A that does not have those elements. Building A has 10.1% of its façade as glass. Building B's would be 13.4%. The average for the two buildings would be 10.23%. He also testified that large glass facades are appropriate for main street downtown stores, but not for a shopping center where retailers use probably 90% of interior wall space for merchandizing. To break up the appearance of the two rear buildings, they would use façade protrusions and different height levels to create an appealing architectural appearance. HVAC equipment will be located on the roof towards the center of each building and will not be visible from ground level.

7. Mr. Harold K. Maltz, admitted as an expert in traffic engineering, testified as to his studies of the subject property and his report dated July 30, 2010 and revised August 9, 2010. Maltz testified that the current Township ordinance, which requires 1 parking space per 200 square feet is not in conformance with the recommendations of the Urban Land Institute (ULI) and the Institute of Traffic Engineers (ITE), both of which recommend a lesser parking requirement. One of the primary differences is that Livingston bases its parking requirements on net square footage, whereas both the ULI and ITE recommend using gross leasable area. The ULI recommends an 85th percentile peak 4.0 spaces for 1,000 square feet of gross leasable. Maltz testified that the Livingston Code would require 657 parking spaces; whereas 590 are provided (of which 15 are banked). He said that 590 spaces would be 4.49 spaces per 1,000 gross leasable square feet and would meet the ULI standard. Maltz further testified that there would be sufficient parking for the Site even if a supermarket (which would generate more significant traffic than general retail) were to be included. Maltz testified that the ITE recommendations for parking for the expanded Site would require 513 spaces for all general retail use, 605 spaces with a supermarket occupying the entire smaller building, or 646 spaces if a supermarket occupied the entire larger building. Even at the highest proposed requirement, he believed a parking variance would not

impact seriously on traffic operations on Site and would present no greater traffic risk.

Maltz also testified that there would not be any measurable impact on traffic on Route 10, even at peak times of traffic volumes. However, the Walnut Street intersection at Route 10 is already at Level of Service F for traffic exiting the Site and the slight additional traffic which would result from the additions to the existing buildings would not have any measurable effect on traffic flow. While there might be some residual backup for vehicles attempting to leave the Site at peak hours, it would not involve more than one traffic light cycle. The total difference between the existing and proposed structures would be approximately 2 trips per cycle for weekdays and 2.5 for Saturday peak. An increase in the green traffic light cycle for the Walnut Street intersection with Route 10 would reduce the waiting time, but such changes are solely within the jurisdiction of the New Jersey Department of Transportation. Based on the testimony of Maltz, the Applicant agreed to a condition of approval that it would bear the cost of painting crosswalks at the Route 10/Daven Avenue/Walnut Street intersections. All turns at Walnut Street by westbound Route 10 traffic are now prohibited. Applicant agreed to support a sign permitting right turns there by such traffic. Maltz further indicated that health clubs and restaurants are significant traffic generators, even higher than supermarkets, and noted that the Applicant had agreed to prohibit any restaurants, health clubs and gyms. In summary, the Applicant requests a 67 parking space variance. The Applicant also agreed to a condition that it would fund the cost of certain improvements approved by the Department of Transportation at the Walnut Street/Route 10 intersection, including design and construction cost, if the Township would make the actual application for DOT approval. The cost of these improvements would be included in a Developer's Agreement to be entered into between the Township and the Applicant, which agreement would include any other provisions deemed necessary by the Township Attorney

8. Mr. John J. Jahr, retained by the Board as a traffic expert, commented on the testimony and reports of Mr. Maltz. He stated that the ULI and ITE are constantly updating their data, which municipalities are not able to do, and it is relevant to consider the recommendations of those institutes. He believed that the Township Code parking requirement is slightly overly conservative and that the 575 parking spaces would be adequate even with a supermarket occupying the entire larger building. He was also of opinion that traffic increases from the proposed expansion would be minimal.

9. Objector Regent Park Associates, represented by Carleton R. Kempf, Esq., called Mr. John Palus, admitted as an expert in engineering and planning. Palus testified that he believed that the proposed changes would involve disturbance of steep slopes. However, the Township Engineer, Richard Calbi, Jr., advised that there was no such problem. Palus expressed the view that the proposed Site did not provide adequate signage or lighting, that a sanitary sewer line would be under a building, that rear yard setbacks are not indicated, and that contours were not shown within 100 feet of a tributary or brook. However, all of the issues raised by Mr. Palus were noted by the Township Engineer to have been existing conditions the subject of waivers granted by the Board when the existing buildings were approved, are not being affected by the proposed addition, and have been reviewed by the Township Engineer. Palus also questioned whether cart corrals that would be added for a supermarket could be provided without loss of parking spaces. Mr. Palus further indicated that he did not believe the truck turning lanes for access to the docking bays of the larger building were adequate for the size of trucks frequently used by supermarkets, and that the trucks would create traffic congestion and delays for customer vehicles. He also was of opinion that a minimum of 3 to 4 loading bays should be required for Building C. Palus also questioned the absence of a stormwater management design meeting the requirements of the Township Code and the failure the Board to require an environmental impact study.

10. Objector Regent Park Associates also called Mr. Charles Olivo, of Stonefield Engineering & Design, admitted as an expert in traffic engineering. Olivo testified that the Maltz work product was reviewed by him and supplemented by his own research and analysis. He testified that the distance between the rear and front buildings on the Site limited interaction of customers at either. As to the ITE and ULI parking recommendations, he believed they were not a replacement for existing zoning laws and that a parking shortage could cause spillover of traffic off the Site, constrict circulation on the Site, and result in vehicles being parked in prohibited areas. He also believed that the ITE and ULI recommendations utilized by the Applicant were for an integrated building and not where there are two separate buildings. He calculated the ITE requirement as 4.9 cars per 1,000 which he said is virtually similar to the Livingston ordinance, and that the proposed parking would be inadequate if there was a supermarket.

With regard to level of traffic, Olivo testified that the Walnut Street and Daven Avenue approaches would be at level of service F and that not a lot can be done to improve that. Olivo believed that the space expansion on the Site would add 2 to 3 vehicles per traffic cycle. This would cause some vehicles to wait for more than 1 green cycle to exit the Site. He believed this would cause extensive queuing of exiting vehicles both at the Walnut Street and Daven Avenue jug handles and that vehicles might have to wait 2 to 3 green cycles at peak hours to exit the Site. Mr. Olivo prepared and presented a computerized traffic flow simulation utilizing the Synchro Simulation Model and Trafficware software program that he represented as visually simulating projected traffic flows on Route 10, the jug handles and Walnut Street and Daven Avenue during a period of one hour. He has presented similar simulation before three or four boards and in a deposition, but was not aware if it was every accepted by a court.

Olivo then indicated that there could be some improvements for exiting the Site at the Walnut Street/ Route 10 intersection , including widening the southbound exit to provide for a double left turn lane and potentially a through lane, and

improvement for entry there by allowing a right turn from Route 10. He also testified that eastbound traffic on Route 10 faces significant back up at the Walnut Street jug handle and that the additional square footage on the Site would exacerbate an existing failed situation. He also questioned whether the loading dock area for the front building would be adequate and whether the approach to the docking bays was workable. To improve safety on Site he would recommend more crosswalks between the two buildings, and additional signs directing traffic to yield to pedestrians.

On cross-examination, Mr. Olivo testified that the existence of exit lanes on Daven Avenue wider than 12 feet could mean that wait time and backup for exiting traffic could be less than he had testified to. He also said that an 8,000 square foot restaurant could generate a need for 96-120 spaces. He subsequently testified that pedestrians pushing shopping carts in parking aisles create safety concerns in his mind, but that the absence of pedestrian paths does not make parking fields inherently dangerous.

11. The Applicant recalled Michael Lanzafama who testified that a new stormwater management report was not required because the proposed Site work would actually reduce runoff. He also testified that he had confirmed with NJDEP that because no work is being done in areas regulated by them, no DEP approval is required. As to the existence of a sewer line under the building, he testified that this is necessary and common to capture toilet discharge from the buildings. He also testified that 6 to 8 parking corrals about 36 inches wide and 10 to 15 feet in length could be incorporated on the Site without reducing parking, but would require reduction in the size of the islands. He said there would be separate refuse areas and compactors located for each of the buildings. He further testified that the Site is not included as having steep slopes under the Township Code. He testified that there is a walkway between the front and rear buildings that provides a nice synergy between the buildings and is an appropriate design for this type of center. He was of opinion that the parking field presented no safety concerns, and

that the 4.04 spaces per thousand square feet of gross leasable floor area that would be provided is appropriate. He found that if the Urban Land Institute 10% adjustment to get to gross leasable area is applied, 4.49 spaces per 1,000 are provided. Lanzafama further testified that a parking variance was justified under the c.(1) requirements because of the unusual configuration of the property, the reduction of impervious surface, the location of the existing buildings on the Site and the fact that a significant portion of the property is not usable because of wetlands designation. All of this resulted in a hardship which justified the grant of a total parking space variance and also for the front yard setback variance request. It was his opinion, based upon the testimony of Mr. Maltz and Applicant's agreement that there would not be any restaurants and any type of gym facility, that the parking variance could be granted without substantial detriment to the public good or to the intent and purpose of the zone plan, that there is not a traffic safety hazard to pedestrians, and that the c.(2) criteria also are met.

12. Objectors Amy Pulio, Bruce Nagel and Laurie Kaufman were represented by John Inglesino, Esq. and John P. Wyciskala, Esq., of Inglesino, Pearlman, Wyciscala & Taylor, LLC, but did not call any witnesses.

14. Members of the public testified as to the Application. Mr. Richard Larsen testified that, as a resident in the neighborhood for over 20 years, he was concerned over the appearance and safety of the intersection at Route 10 and that no efforts were made to clean up trash at the intersection or on the properties. He also requested crosswalks on Route 10, regular maintenance of the intersection including both cleanliness and the condition of the Route 10 center barrier, and preserving opportunity for widening the right-of-way in future redesign. Ms. Judy Kulik, expressed the same concerns as Mr. Larsen and said that safety of the intersection was her primary concern.

NOW THEREFORE, BE IT RESOLVED by the Board, having duly considered the evidence presented by the Applicant, and having heard the testimony of the witnesses presented by the Applicant and Regent Park Associates, and the public, and the views of its own engineer and the traffic expert hired to advise the Board; the Board concludes as follows:

- A. The Application for Preliminary and Final Site Plan approval be and is hereby approved to allow additions to the two existing structures on the property: an addition of 17,250 square feet at the rear building, and an addition of 7,150 square feet to the front building; resulting in a total addition of 24,400 square feet. The Board finds that the Application complies with the requirements of the CI – Commercial Industrial District Zone, that the Plans as modified in the course of the hearing provide adequate buffers and parking, and that the terms and conditions agreed to by the Applicant and set forth herein are part of this approval.

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

- C. The variances approved are as follows:
 - 1: Township Code § 170-118.C.(3) requires a parking setback of 50 feet from the Daven Avenue right-of-way line. Applicant proposes a setback of 5.03 feet; resulting in a grant of the variance request of 45.97 feet.

 - 2: Township Code § 170-94.E.(1) requires 657 parking spaces. The Applicant requests approval of a total of 590 parking spaces; including 15 spaces to be banked for future use at locations shown on the Site Plan Code § 170; resulting in a variance of 67 spaces. The Board finds the testimony of Mr. Maltz and the advice of Mr. Jahr to be more persuasive than the testimony of Mr. Olivo and grants the variance of 67 parking spaces.

3: Township Code §170-92.B.(1)c in effect when the Application was filed and Code § 170-92.F.(1)(c) now in effect require that 60% of Building B's façade be clear glass. The Applicant proposes a glass area of 13.4%; resulting in grant of the variance request of 46.6%.

4: A variance is requested to allow continuation of the existing condition wherein Building A is located on both Lots 17 & 18. The Board grants a variance from the requirement that the lot lines be consolidated since the Applicant has agreed to provide deed restrictions and cross easements that would prevent the independent sale of either lot and would ensure continuation of shared parking on the two lots.

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

1: The Applicant shall prepare, execute and record amendments to the deeds for Lots 17 and 18, in form and terms acceptable to the Board Attorney that shall prohibit the sale of either lot separately and independently of the other.

2: The Applicant shall prepare, execute and record perpetual deeds of easement for shared parking and access and egress for the two adjoining lots in form and terms acceptable to the Board Attorney.

3: The new parking added on the Daven Avenue side of Building C shall be restricted to employees only and appropriate signage provided.

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

5: The Applicant shall install a sidewalk along Route 10 and from Route 10 to the parking area as provided on the Site Plan.

- 6: The Applicant shall create a painted crosswalk between Building B and the parking area and shall install pedestrian crossing signs at all crosswalks on the Site.
- 7: Signs shall be installed on the Site directing traffic to the Industrial Parkway connection, and from Industrial Parkway to Route 10, in such form as shall be approved by the Township Engineer. Said signs shall indicate that such access driveway provides for two-way traffic.
- 8: The areas reserved for future parking spaces and the potential locations of shopping cart corrals on the Site, should there be a tenant requiring such facilities, shall be shown on the Final Site Plan.
- 9: The Applicant shall install flowerbeds in the Route 10 front yard and understory plantings along Daven Avenue.
- 10: A trash and recycling area for Building B shall match the finish of the building.
- 11: The Applicant shall enter into a Developer's Agreement in such form and on such terms as approved by the Township Attorney. Such agreement shall contain provisions that the Township Engineer deems necessary and shall include the Applicant's obligation to cooperate with the Township in application by the Township for NJDOT approval of the following:
 - A Installation of a pedestrian crosswalk with painted striping across Route 10 leading to the sidewalk that the Applicant shall install on the Site, and for approval of a countdown signal for the pedestrian traffic controls at said intersection.
 - B. Change the signal timing for traffic at the Walnut Street/Route 10 intersection and any necessary physical changes required to accomplish same.
 - C. Removal of the prohibition of westbound Route 10 vehicles making right turns at the Walnut Street traffic signal.

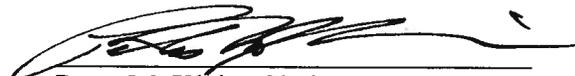
- D. Installation of a “Do Not Block Intersection” sign where the ramp from eastbound Route 10 intersects with Walnut Street.
- E: Dedication of the right-hand northbound lane on Walnut Street south of Route 10 to permit a right turn onto Route 10 eastbound.
- F: Dedication of a sufficient portion of Lot 18 to permit possible future widening of westbound Route 10 by one lane.

Any such improvements, if approved, shall be implemented at the sole expense of the Applicant.

- 12: All machinery on the rooftops shall be screened so as not to be visible from any location on the property.
- 13: The Final Site Plan shall include all notes requested by the Township Engineer’s letter of October 15, 2010.
- 14: Restaurants of any type, health clubs, spas, gymnasiums, or similar uses are prohibited in any building on the Site and Applicant’s leases to tenants shall so provide.
- 15: The location of handicap parking spaces shall be subject to approval by the Construction Official when initial tenants are determined, and shall comply with all ADA requirements.
- 16: The Applicant shall make payment of any necessary affordable housing non-residential development fee.
- 17. All deliveries by tractor-trailer to tenants shall be made only between 9:00 P.M. and 6:00 A.M. and Applicant’s leases to tenants shall so provide.
- 18: The Applicant shall provide “As Built” Site Plan, survey and architectural plans to the Township Engineer and Construction Official before any certificate of occupancy is issued.

19. Numbers 1, 3, 4, and 6-18, of the Board's Model Conditions of Approval attached hereto are hereby incorporated herein.
20. Conditions 1, 2 and 11 above, and Model Conditions of Approval Nos. 6, 11 and 17 are conditions precedent to issuance of any permits by the Township.

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



Peter M. Klein, Chairperson

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 May 3, 2011 wherein Board Members Kalishman, Kimmel, Klein, Leopold, Meade, Venza, Alternate No. 1 Ratner (in place and stead of absent Member O'Neill) and Alternate No. 2 Anthony (in place and stead of Member Rieber not qualified to vote) voted in favor of the Resolution; they being all of the Members both present and qualified to vote. Member Dinar was absent.



Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval
(As Amended through March 15, 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 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 blasting (whichever is the greater distance) shall be conducted at Applicant’s expense.
- 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

- 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 which 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, and within 500 feet of the Site, shall be manually or mechanically broom swept to remove dirt, mud or debris originating from the Site.
- c. Dust suppression methods acceptable to the Construction Official and the Township Engineer shall be utilized on the Site.

4. Deeds & Easements

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 filing for recordation.

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.
- 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 (as well as any future revisions) 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 in terms receiving the approval of the Township Engineer. Unless maintenance is assumed by the Township or a public agency as its direct responsibility, the maintenance

plan and any future revisions 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.

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

- a. The approval of this Application is subject to the posting of any and all required performance guarantees, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the commencement of site preparation or construction.
- b. This approval is also conditioned upon the Applicant providing, prior to issuance of the first certificate of occupancy, a performance guarantee 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 4.0 feet above the root ball. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.
- b. Street shade trees shall be planted in front yards and outside the right-of-way 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 a tree or other planting removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed except as identified for removal on an approved plan. 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 equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, § 170-53 et seq. of the Code of the Township of Livingston, that establishes a higher or more restrictive 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, preparation of the Site or construction of any improvement shall be issued until proof of request for such 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 shall retain jurisdiction over any and all signs until the final certificate of occupancy has been issued.

14. Traffic and Parking Enforcement

- a. 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.
- b. 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.

15. Utilities for Site Plans and Major Subdivisions

Applicant will 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 Code Section 170-73.A.(17) of the Land Use Ordinance before issuance of any certificate of occupancy.

16. Wetlands

- a. Applicant will insert on the final subdivision map 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 with the Township when informed by the Township Engineer that such an agreement is required. The terms of such an agreement shall be subject to review and approval by the Township Attorney prior to signing.

18. 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,