

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: September 20, 2011
Memorialized: October 18, 2011

Re: Application No. 2011-1-PFSPV
Applicant: Dieci Uomo, LLC
Premises: 48 West Northfield Road
Block: 4701; Lot: 57
Zone: B

SUMMARY OF THE CASE

1. The Applicant is Dieci Uomo, LLC, wholly-owned by Paul Gaglioti, and is a proposed occupant at the subject premises (hereinafter "Site") on which is currently located a vacant building most recently used as a beauty salon. The Applicant proposes to operate a men's hair salon with related spa services.
2. An existing side yard setback violation will be continued without change.
3. Stephen A. Geffner, Esq., of Schenck Price Smith & King, LLP, appeared on behalf of the Applicant.
4. Jo Ann Schnitzer, of 40 West Northfield Avenue, an objector, appeared through her attorney Jarrid Kantor, Esq.

5. Hearings on this Application were held before the Board on June 21, 2011, July 19, 2011, and September 20, 2011.

6. The identity of the Applicant as an LLC was established in an oral amendment of the Application. The proper spelling of the owner's last name was established when he was sworn as a witness.

7. Testifying on behalf of the Applicant were:

A. Paul Anthony Gaglioti, the owner of the Applicant.

B. Michael Lanzafama, of Casey & Keller Associates, admitted as an expert in engineering and planning.

C. Justin Mihalik, admitted as an expert in architecture.

8. The Applicant proposes to upgrade and improve the existing structure. The façade would be upgraded with a new finish and additional windows, the entrance at the front of the building would be eliminated and an entrance on the side of the building facing the existing parking lot would be the main entrance. A deck at the second floor would be constructed for use by customers and would be surrounded by a parapet wall measuring 9'10" in height so that there would be no visibility of the deck activities from the street level.

9. In addition to continuation of existing variances, additional variances are required for this Application as follows:

A: Transparent glass for 33% of the façade is proposed, whereas 60% is required pursuant to Township Code §170-92.F.(1)(c); resulting in a variance request for the deficiency.

B: The Site requires 49 parking spaces for the proposed use pursuant to Township Code §170-94.E.(1), and 27 are proposed; resulting in a variance requirement of 22 parking spaces.

C: Awnings are proposed over a potential sign band, thereby requiring a variance from the prohibition in Township Code §17-92.F.(2)(b).

10. Mr. Gaglioti currently operates a similar business in Livingston primarily for women, and utilizes valet parking there. The Applicant proposes to also utilize valet parking at the new site so that vehicles can be stacked, thus increasing the number of cars that can be parked on site. Valet parking would operate on Thursdays, Fridays, and Saturdays; which are the busiest days of operation. Off-site parking for 5 vehicles would be provided on all business days.

11. The Applicant business would provide services for men, including hair cutting, hair coloring, manicure, pedicure, and waxing services; as well as massage. A former salon operated on the Site had an internal layout similar to that proposed by the Applicant, and had a total of 20 salon work stations. The Applicant would have 14 stations. There would be not less than 14 to 15 employees in the building. Customers would be seen only by appointment, and no walk-in trade would be sought. The second floor of the operation would contain a locker room, showers, 3 massage rooms, and the outside walled-in patio that would be used primarily by massage customers who are waiting for treatment or relaxing after massage.

12. The building changes would include adding a small new rear addition of approximately 57 square feet that would contain toilet and shower facilities, and construction of the roof patio deck and space for mechanical equipment at the front of the second story of the building. The overall height of the building would be reduced from 31.5 feet to 28 feet; which complies with the Township Code. A stucco façade finish would be utilized with a base area consisting of a heavier stucco that resembles the look of stone. Decorative features to create the appearance of windows would also be added. Awnings would provide shade over windows. The existing building has 15% of its façade as transparent glass. That would be increased to 33%. The existing basement, which was previously used for office and storage spaces, would be continued but with a small employee lounge added. The main entrance would be on the easterly side of the building, facing the parking area. Two other entrances would be provided but would not be utilized by customers. The Applicant is also adding two handicapped toilets, one of which would be accessible by wheelchair. An existing enclosed rear porch is one-story and would have a second story added within the footprint of the existing porch. A total of 57 square feet would be added to the structure by this addition. That is the area that would be utilized for lockers and showers. Awnings and other decorative features would enhance the look of the building. Flat solar panels would be installed on the roof over the second floor and would be hidden from view by the parapet wall around the second-floor patio. The solar panels would provide supplemental electrical service or would heat water.

13 A refuse area in the southwest corner of the parking area would be screened. The parking would be increased by 2 spaces, from the current parking on-site, to a total of 27 spaces. Two spaces would be designated for handicapped parking, since there are periods of time when

customers would self-park. In addition to the valet parking that would allow stacking, the Applicant has the agreement of a nearby property owner, at 514 South Livingston Avenue, to provide 5 off-site parking spaces. There is an existing side yard setback violation of 9.6 feet that would be continued without change.

14. The Applicant stipulated that the roof patio would not be used for gatherings or parties, but only for clients receiving massage treatment, and that no music would be played there.

15. The Applicant would remove several existing trees and would be required to provide 7 replacement trees. The Applicant would plant 6 replacement trees on-site, and would make a contribution to the Open Space Trust Fund in the agreed amount of \$250.00 in lieu of the 7th required tree.

16. The Applicant also agreed that the written agreement for off-site parking must be reviewed and approved by the Board Attorney before signing and then be recorded.

17. The Objector Jo Ann Schnitzer did not personally appear or offer testimony or evidence, but was represented by attorney Jarrid H. Kantor, Esq. during the entire hearing.

FINDINGS OF FACT

The Board finds that:

1. The parking deficiency for the proposed use would be reduced by the provision of two additional spaces on-site in addition to the 25 presently provided, plus adding 5 spaces off-

site as permitted by Township Code § 170-94.A(2); but, that a deficiency of 22 parking spaces from the required 49 spaces would remain.

2. The provision of valet parking during peak hours on Thursdays, Fridays and Saturdays with stacking of valet-parked cars on-site would significantly ameliorate that deficiency by increasing the total number of cars that can be parked to 43 when the off-site spaces are included. This amelioration of the deficiency justifies the grant of a 22-space variance, as conditioned in this Resolution, from the required 49 spaces

3. The present transparent glass on the ground floor is 15% of the facades and would be increased to 33%. Although still less than the 60% required by Code, it would add to the significant improvements in the appearance of the building being proposed by the Applicant without any detriment. A variance is justified.

4. The three awnings proposed to be located on the second floor façade, above what could be a first floor sign band, are prohibited by the Township Code at that location but would be an architectural enhancement to the appearance of the building while not having any negative effect so long as no signs are added. A conditional variance from the prohibition is justified.

5. The height of the building would be reduced from a non-conforming 31.5 feet to a conforming 28 feet. That change constitutes a benefit to the public.

6. The Board finds that the variances requested can be granted under the c.(2) provisions of N.J.S.A.40:55D-70 for the reasons stated in the preceding findings, and that there will be no detriment to the zone plan or zoning ordinance and no substantial detriment to the public good.

7. The building has a door facing the street that would be eliminated. In the previous occupancy that door was not the principal entrance. Applicant would continue the primary orientation of both the building and the main entrance toward the parking lot. The main entrance would, however, be accessible from the street. The orientation of the building and location of the main entrance constitute deviations from design standards in the Code. The existing conditions would make literal enforcement of the design requirements for the primary orientation of the building, the façade and entrance an undue hardship by depriving the Applicant of the reasonable use of its land and the preservation and enjoyment of substantial property rights. Grant of a deviation from those three requirements would create no detriment to public health, safety or welfare and would not present any injury to property in the area.

8. The Applicant has agreed to plant 6 replacement trees on-site and to make a contribution of \$250.00 to the Open Space Trust Fund in lieu of a seventh tree.

CONCLUSIONS

The Board hereby approves the Application for Preliminary and Final Site Plan approval with the variances, deviations and conditions set forth below.

A. Variances and Deviations

- (1). The Board grants a variance of 22 parking spaces from the 49-space requirement of Township Code §170-94.E.(1); but conditioned on execution, recording and continuing effectiveness of an agreement for 5 off-site parking spaces.
- (2). The Board grants a variance to permit only 33% of the aggregate horizontal length of the first floor facades facing the street and on the primary side of the building when 60% is required by Township Code §170-92.F.(1)(c).
- (3). The Board grants a variance from Township Code §170-92.F.(2)(b) so as to permit 3 awnings to be mounted above the potential wall sign band on the façade facing the parking lot. This variance is conditioned upon no signage being added on that façade on or above the potential sign band without permission of the Planning Board.
- (4). The Board grants a variance from the 10-foot side yard setback requirement in Township Code §170-107.C(3) so as to permit continuance of the existing 0.4-foot side yard setback from the common zone line with the adjacent R-4 residence district.
- (5). The Board grants a deviation from the design standard in Township Code

§170-73.B.(14) so that the building shall have, as demonstrated on the site plans prepared by Casey & Keller and dated May 3, 2011 with a final revision date of June 8, 2011, its primary orientation, façade and entrance toward the parking area rather than toward the street right-of-way.

2. The Applicant shall contribute the agreed sum of \$250.00 to the Open Space Trust Fund in lieu of planting a 7th replacement tree on the Site.

3. The Parking Agreement between the Applicant and the owner of the property at 514 South Livingston Avenue for the use of 5 parking spaces every day shall be in such terms and conditions, including signage, as shall have been approved by the Board Attorney before signing and shall be filed and recorded within 60 days of the date of memorialization of this decision of the Board. The Applicant shall submit one certified copy of the recorded Agreement to the Board Secretary and another to the Zoning Officer. Upon expiration of any extension or renewal of such Agreement copies of any further extension or renewal shall be promptly provided to both such officials. Should the off-site parking become unavailable due to early termination of such Agreement or due to failure to extend or renew any term of the Agreement, the parking variance granted by this Resolution shall terminate immediately. The Applicant shall notify the Board Secretary and the Zoning Officer of such unavailability without delay.

4. The Applicant shall comply with all requirements of the Township Engineer's review memorandum dated May 12, 2011 as revised June 22, 2011.

5. The roof patio deck shall not be used for parties or gatherings; but only by clients prior to or after receiving a massage. No music shall be played on that patio.

6. The following of the Board's Model Conditions of Approval attached hereto are incorporated herein: Numbers 1, 3, 4, 6, 8 through 14 and 18.

7. **Conditions Precedent.**

A. The filing and recording of the Agreement for shared parking after it has been approved by the Board Attorney, and the submitting of one copy of the recorded Agreement to the Board Secretary and another to the Zoning Officer are conditions precedent to the parking variance becoming effective.

B. Conditions precedent to granting of any permits are Condition 4 above and Model Conditions 6, 8 and 11.

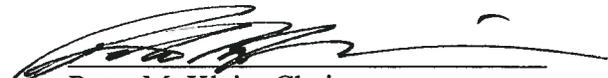
C. Conditions precedent to issuance of any certificate of occupancy are Model Conditions 4, 12.b & c, 14.b and 18.

8. **Continuing Conditions.** Condition 5 above and Model Conditions 9 and 14.a.

NOW THEREFORE, for the reasons set forth herein and as stated on the record by Members of the Planning Board of the Township of Livingston, it is resolved that the

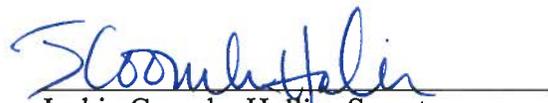
Application for Preliminary and Final Site Plan approval, with variances and design waivers as set forth herein, be and are hereby granted and approved subject to the terms and conditions of this Resolution.

This Resolution is a memorialization of the decision of the Livingston Planning Board made on September 20, 2011 wherein Members Dinar, Kalishman, Kimmel, Klein, Leopold, Rieber, Venza, Alternate No. 1 Ratner (in place and stead of Member Meade) and Alternate No. 2 Anthony (in place and stead of Member O'Neill) voted in accordance with the action memorialized herein; they being all of the Members then both present and eligible to vote.



Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on October 18, 2011 memorializing the decision of the Planning Board made on September 20, 2011.



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, surveys and building elevations prior to signing.