

**RESOLUTION**

**PLANNING BOARD**

**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: February 10, 2011  
Memorialized: March 1, 2011

Re: Application No. 2011-3-PFSP  
Applicant: Circle 10 Restaurant, LLC d/b/a Margaritas  
Premises: 372 West Mount Pleasant Avenue  
Block: 600; Lot: 1  
Zone: B-1

**WHEREAS**, an Application has been made by Circle 10 Restaurant, LLC d/b/a Margaritas, (hereinafter referred to as the “Applicant”), the lessee of the subject premises commonly known as 372 West Mount Pleasant Avenue, Livingston, New Jersey, (hereinafter referred to as the “Site”) to the Planning Board of the Township of Livingston (hereinafter referred to as the “Board”) for Preliminary and Final Site Plan approval, to permit changes to the exterior façade and limited structural changes to an existing building; 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 properly been invoked and exercised; and

**WHEREAS**, the Applicant, represented by its attorney, Stephen A. Geffner, Esq., of the firm Schenck, Price, Smith & King, LLP, has demonstrated that the Application is in conformance with all statutory requirements and has submitted proof that there are no taxes due or delinquent with respect to the Site; and

**WHEREAS**, a public hearing was held before this Board on February 10, 2011; and

**WHEREAS**, the Board having heard and considered the testimony of the Applicant and its expert witnesses and having considered the evidence submitted, and there being no objectors appearing;

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

1. The Applicant is the lessee of the Site of approximately 2.2 acres on which there is building that has an extensive past history of use as a restaurant, most recently as a Houlihans franchise. There will be no increase in the square footage of the building. There are 161 paved existing parking spaces. The proposed new restaurant operation would be named "Margaritas". There would be renovations to the interior of the building that will result in a total capacity of 268 seats. The Applicant further proposes exterior changes that include changes to the façade and the redesign of the main entrance covering. Parking will be re-stripped and handicap parking will be increased to a total of 6 spaces, including 1 van accessible space, to comply with current ADA requirements; resulting in a total of 157 parking spaces; exceeding the number required by Code.

2. Testifying on behalf of the Applicant were:

A: John Buchholz, admitted as an expert in architecture, who prepared the Architectural Plans and Elevations, all under last revision date of January 28, 2011;

B: Michael Lanzafama, of Casey & Keller, admitted as an expert in engineering and planning, who prepared the Site Plans under last revision date of January 31, 2011.

3. The Applicant proposes to replace the existing front black canopy with a newly designed canopy to consist of a seam metal roof and a clay tile roofline. The entire exterior of the building will be renovated. The front of the building and the westerly side

will be re-finished with a stucco finish. The remaining two sides of the building will be painted. The color on all four sides will be consistent and the proposed colors have been approved by the Livingston Business Improvement District (hereinafter" B.I.D."). A stone facing across the front of the building and along the westerly side has also been reviewed and approved by the B.I.D. The Applicant will also add a trellis to the easterly side of the building as requested by the B.I.D. Samples of the proposed colors and stone were presented to the Board and received in evidence.

4. The height of the building will be 27 feet 9 inches at the high point of the curved arch to be constructed over the front entrance. The height complies with the Code. Pergolas along the westerly side have been added as architectural elements and will be constructed to match the front entrance. These are solely decorative accent features and will not be enclosed.

5. The proposed signs will have a maximum lettering height of 3 feet which is within the Code allowance of 5 feet. The Applicant introduced renderings of the proposed signs demonstrating the proposed colors. The Applicant also agreed to install ice cleats or a similar safety feature on the roof to guard against pedestrian or vehicles traversing the side of the building being injured by falling ice.

6. The Applicant will provide a total of 157 parking spaces, including 6 handicap spaces, one of which will be van accessible. By Code, a restaurant providing 252 seats is required to provide 87 parking spaces. The Applicant agreed that the parking spaces will include hairpin striping. The Applicant further agreed to replace the existing tow-away signs with new ones conforming to State standards as to size and content.

7. Existing lighting will be improved by adding fixtures along the sides of the building as indicated on the Plans. The Applicant will also add new plantings around the perimeter of the building. The existing rear landscaping area will remain in its present condition. The existing enclosed refuse storage area will be refinished and painted in a color to match the building.

8. The Applicant agreed to comply with the requirements of the review letter from the Township Engineer revised as of February 9, 2011.

9. The Applicant requested continuance of an existing non-conforming parking lane aisle with a width of 20.35 feet, which is less than the 22 feet minimum required by Code. This involves only a small area adjacent to only 2 parking stalls. The Applicant indicated that to widen the aisle would require the narrowing of a sidewalk that abuts the building; which would create a more dangerous condition than the existing aisle width. The Applicant did agree to restrict the 2 parking spaces which abut the narrow point of the aisle to use by compact cars only; with appropriate signs indicating same.

10. The request from the Applicant for a waiver of the requirement to provide an Environmental Impact Statement was granted since the property is already developed and there are no substantial changes requested with respect to the surface of the Site and the existing impervious coverage will be continued as it currently exists.

11. Applicant's request for waivers from providing Preliminary Site Plan Checklist

Items 15, 16, 18, 19, 20, 28 and 29 and Final Site Plan Checklist Item number 1 were granted. Further Site Plan Checklist waiver requests were denied, but the matters were addressed during the course of the hearing.

**NOW THEREFORE**, be it resolved by the Board, having duly considered the evidence presented and the testimony of the witnesses presented by the Applicant, the Board concludes as follows:

1. The Application for Preliminary and Final Site Plan is hereby approved as stated on the record and as set forth herein.
2. The Board grants waivers of the filing of an Environmental Impact Statement, and of the filing of responses to Items 15, 16, 18, 19, 20, 28 and 29 of the Preliminary Site Plan Checklist and Item 1 of the Final Site Plan Checklist.
3. Continuation of the existing nonconforming deficiency of 1.65 feet for a small area of the parking area aisle is approved.
4. The approvals and grants herein are subject to the following conditions agreed to on the record:
  - A. The Applicant shall add a trellis to the easterly facade of the building as requested by the B.I.D.
  - B. The Applicant shall install ice cleats, or a similar method of preventing ice from falling from the roof, as shall have been approved by the Township Engineer.

- C. The existing refuse enclosure shall be painted a color to match the building.
- D. The 2 parking stalls that abut the narrow non-conforming portion of the parking lot aisle shall be restricted to use by compact cars only and posted with signs indicating that restriction.
- E. The Applicant shall have the existing sanitary sewer system of the building confirmed to be in proper condition to the satisfaction of the Township Public Works Department and the Township Engineer. If deficient it will be corrected and repaired as necessary.
- F. The parking spaces shall be repainted with hairpin striping.
- G. The existing “tow away” signs will be replaced with signs that conform to State requirements.
- H. If the Township Engineer determines that a developer’s agreement is required, Applicant shall enter into such an agreement in such form as approved by the Township Attorney.
- I. The parking lot lighting shall be subject to approval by the Township Engineer.
- J. Exterior electrical boxes shall be screened in a manner permitted by Code.
- K. “As built” site plan and elevations shall be provided to the Construction Official prior to issuance of the final certificate of occupancy.
- L. The Applicant shall submit a recycling plan for approval by the Township Construction Official.
- M. Conditions numbers 1, 3, 4, 6, 8, 10, 11, and 14 of the Model Conditions of Approval attached hereto are hereby incorporated herein.

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

This Resolution is a memorialization of the decision of the Livingston Planning Board made on February 10, 2011, wherein Board Members Dinar, Kalishman, Kimmel, Klein, Leopold, Ratner, Rieber, Alternate No. 1 Ratner (in place and stead of Member O'Neill) and Alternate No. 2 Anthony (in place and stead of Member Venza) voted in accordance with the action memorialized herein to approve the Preliminary and Final Site Plan ; they being all of the Members present.

  
Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on March 1, 2011 memorializing the decision of the Planning Board made on February 10, 2011.

  
Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval  
(As Amended through November 13, 2007)

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 need 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 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 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, the Board Attorney and Township Attorney. If the responsibility for maintenance is assumed by the Township, the plan shall be prepared by the Applicant and shall be subject to the approval of Township Engineer. If the responsibility for maintenance is not the direct responsibility of a public agency, 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**

- a. The full text of all of the conditions of this approval shall be set out on the final plans which shall be submitted to the Construction Official, the Township Engineer and the Board Secretary prior to the issuance of any Township permit in respect of demolition, preparation of the Site or construction of any improvement.

- b. Such final plans shall also include all changes agreed to in the course of the hearing, and 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.

## **7. Flood Hazards**

- a. Insert on the final 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 3.5 to 4.0 inches measured at a height of 4.0 feet above the root ball. All evergreen trees planted shall have a height of 8.0 to 9.0 feet.
- b. Street shade trees shall be planted in front yards and outside the right-of-way.
- 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. No machinery or heavy equipment shall be operated on Site on Saturdays, Sundays or federal holidays.
- c. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.
- d. 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.

- e. 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 in respect of 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.

#### **12. Paving and Sidewalks**

- a. Applicant shall install the top course of street paving not later than the earlier of six (6) months after issuance of the last certificate of occupancy or three (3) years after the 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.

#### **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 Township Ordinances Chapter 29, Article 26, 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 Building Department a written instrument from each serving utility evidencing full compliance with this condition and with Section 16-69(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.