

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: March 1, 2011
Memorialized: March 15, 2011

Re: Application No. 2011-4-PFSPV
Applicant: Posa, L.L.C.
Premises: 250, 256 & 260 South Livingston Avenue, Livingston, New Jersey
Block: 4302; Lots: 11 & 12 and Block: 4303; Lot: 20
Zone: B-1

WHEREAS, an Application has been made by Posa, L.L.C., owner of the subject premises, (hereinafter referred to as "Applicant") to the Planning Board of the Township of Livingston (hereinafter referred to as "Board") for Preliminary and Final Site Plan approval to permit façade changes to an existing structure located at 256 South Livingston Avenue, and to change the use at the existing building at 256 South Livingston Avenue from an office to retail stores; and to create a one-way exit driveway at the rear of Lot 12 to provide egress from Lot 11, and for a shared parking agreement among all the properties included in this Application; and

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

WHEREAS, public hearings were held before this Board on January 18, 2011 and March 1, 2011 with regard to this Application; and

WHEREAS, Applicant, represented by its attorney, Jack Serpico, Esquire, has demonstrated that it 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 subject premises; and

WHEREAS, the Board has heard and considered the testimony of Applicant and its expert witnesses, and there being no testimony in opposition to the Application;

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

1. Applicant is the owner of the following subject premises:

A: 250 South Livingston Avenue (Block: 4302; Lot:11), hereinafter referred to as “250”, which contains an existing two-story building of approximately 8,836 square feet consisting of retail stores and offices.

B: 256 South Livingston Avenue (Block: 4302; Lot:12), hereinafter referred to as “256”, contiguous to 250 South Livingston Avenue, with an existing one-story building of approximately 4,400 square feet formerly used as a real estate office and currently vacant.

C: 260 South Livingston Avenue (Block: 4302; Lot: 20), hereinafter referred to as “260”, located across Irving Avenue from 256. There is a frame house containing a retail use on said lot.

All of these premises are located in the B-1 Business District, which permits both retail and office uses.

2. Access to the parking area of 260 is via a driveway from Irving Avenue located on adjacent Lot 19 that is not owned by Applicant but is used under an easement agreement from the owner.

3. Witnesses appearing for Applicant were:

A. Christine Miseo, admitted as an expert in architecture, who prepared the architectural plans and elevations, all under last revision date of 02-24-11.

B. Nicholas W. Agnoli, admitted as an expert professional engineer, who prepared the revised site plans signed on 2-18-11.

4. The 256 building was previously utilized as a real estate office and is currently vacant. There is no available space on that lot to provide parking. This is an existing condition. The Applicant proposes to make renovations and improvements to the façade of the building, and to lease a portion to a dry cleaning establishment. The remaining portion of the building would be utilized for other retail use or uses.

5. The Board heard the testimony of Christine Miseo. She described the exterior of the existing building at 256 as being in disrepair and that façade improvements will be consistent with the exterior of the building on the adjoining property at 250. The signage style and gooseneck lighting on the front of 256 will be of the styles that are on 250. There will be gooseneck lighting over the doors at the rear of the building. For signage on the southerly façade facing Irving Avenue, Applicant may utilize the existing backlit sign box. The front façade would have new retail display windows. The rear façade would have two doors, one of which would replace an existing window. Brick will be repointed or replaced as necessary. After repair, the existing brick on the rear façade and on the

façade facing 250 will be repainted in a color to match the remainder of the building. Alternatively, the Applicant would install a stucco finish to look like brick that would also match the color of the remainder of the building. The interior of the building will be changed to allow two, or potentially three, retail uses. A proposed tenant for 1,700 square feet of the 4,400 square-foot building would be a dry cleaning establishment.

6. The façade glass areas facing streets will not comply with the Code requirement that glass equal not less than 60% of the façade. A variance was requested to allow glass façade coverage of 9% on the Irving Avenue façade of 256, and to allow a 27% glass façade coverage on the front facade facing Livingston Avenue. As to the Irving Avenue side, the 9% proposed is an existing condition. On the Livingston Avenue façade of the building the percentage of glass will be improved from 20 to 27%. Miseo explained that no additional increase in glass façade is possible because of the existing construction of the building, and that the increase in glass in the front façade would be an improvement. Variances for both façades are necessary.

7. The ventilation for the building will be through the roof. Applicant will remove existing awnings and will not install any awnings on the exterior of the building. No cleaning chemicals other than those in sealed dry cleaning machinery would be on the premises.

8. Witness Agnoli testified that to the rear of the building at 256 is an area that will be utilized as an exit driveway from 250 to Irving Avenue. In accordance with the plans submitted, the driveway will be signed for exit only and will have a complying width of not less than 12 feet. A 6-foot high fence will be placed at the boundary line between Lot 12 and the residential property immediately contiguous at Lot 13. An arborvitae buffer

will also be planted along that fence. These plantings will be a minimum of 7 to 8 feet in height when planted. At maturity, their height would extend to 14 feet; which is higher than the driveway light pole to be installed. That light will be directed toward the building and will be designed so that there is no light spill more than 1 foot onto the contiguous residential property. The Applicant also agreed to put an automatic shutoff on that light and the wall exterior lighting at the rear of 256. The lights will be turned off no later than one hour after closing of the businesses in that building. The Applicant will also post signs prohibiting stopping or standing in the new driveway, and will include a provision in the leases for tenants of 256 enforcing same and designating where delivery vehicles may park. Appropriate signs will be maintained on the properties in accordance with the site plan submitted; except that, as requested by the Board, left turn prohibition signage at the driveway from at 260 onto South Livingston Avenue will not be included. The Applicant agreed to provide cross-easements for the exit driveway and for shared parking for all three lots. The easement will be drawn in such form as satisfactory to the Board Attorney, and, if required, a shared parking agreement will also be prepared.

9. During the course of the hearing Applicant agreed that the parking lot at 260 will be re-paved, an ADA compliant parking space will be provided, and striping for 9 parking spaces as depicted on the plans presented will be painted. Applicant also agreed to provide an ADA compliant walkway from the parking area to the Irving Avenue sidewalk. Applicant further agreed to add NJDOT-compliant high-density rubberized wheel stops for the parking stalls facing Irving Avenue. Applicant will continue to provide a one-way entrance driveway from Irving Avenue to the parking area and a one-way exit onto South Livingston Avenue. The exit would continue to permit both left and right turns.

10. The parking at 250 will provide 33 spaces. There will be 9 spaces at 260. 256 has none. For all three lots a total of 62 parking spaces is required by Code: 33 for 250; 22 for 256 and 7 for 260. Only 42 will be provided; resulting in a request for a parking variance of 20 spaces. Applicant also agreed to provide signage and appropriate traffic markings to prevent left turns out of the driveway to South Livingston Avenue from 250.

11. Applicant further agreed to reserve 3 parking spaces, with appropriate signage, at 260 specifically for employees from 256. Applicant further agreed the variance, if granted, would apply only so long the tenancies in the three buildings do not require more than an aggregate of 62 spaces; and, that any parking variance granted would be limited in that if any future change of business requires more aggregate parking space, a new variance approval from the Board would be required. Applicant also agreed to comply with the requirements of the Township Engineer's review letters dated December 1, 2010 revised through February 22, 2011.

12. Applicant further agreed to additional improvements at 256; including replacing the concrete driveway apron on Irving Avenue, replacing the adjacent sidewalk, increasing the grade of the driveway to a minimum of 2%, and adding a trench drain the entire width of the driveway to tie into an existing 8-inch pipe leading to the roadway. At such time as Irving Avenue is repaved, that pipe will be tied directly into to the Township sewer system by Applicant. The refuse area on 250 will also service the property at 256, a sign will be placed at the refuse area indicating such use, and tenants' leases for 256 will require use of that area and compliance with the Township's recycling ordinance .

13. Applicant agreed that the signage on 256 facing the South Livingston Avenue will be of the same type as at 250. The BID has not approved any signage proposed by

Applicant. It was agreed by Applicant that the Board would retain jurisdiction over signs on the building.

14. Applicant also agreed to extend the fence behind 256 for an additional 5-10 feet toward Livingston Avenue and to add additional arborvitae screening along the increased fence line.

15. Applicant's professional engineer, Nicholas W. Agnoli, testified that the variances in regard to parking are necessary because of an undue hardship created by the existing building at 256 having no room for parking due to the present lot coverage by the building. The lot is narrow and there are no available adjoining vacant sites. The shared parking arrangement will alleviate the parking shortage for the existing and proposed uses. Dry cleaning establishments traditionally have limited duration of parking by customers, rarely exceeding more than a few minutes; thus needing less parking than other permitted tenancies. The parking flow will be substantially improved by creation of the exit driveway and will be a benefit for public safety. Additionally, draining, lighting, landscaping and façade improvements will provide a more desirable visual environment. There would be no detriment to the public good or to the zone plan or zoning ordinance.

14. No members of the public appeared to testify either for or against the Application.

NOW THEREFORE, BE IT RESOLVED by the Board, having duly considered the evidence presented and having heard the testimony of witnesses presented by Applicant, the Board concludes that the Application for Preliminary and Final Site Plan Approval with changes agreed to by Applicant in the course of the hearing is approved with variances as detailed below and subject to conditions agreed to by Applicant in the course of the hearing as detailed below:

1. The Board finds that the following variances requested by Applicant can be granted without substantial detriment to the public good or substantial impairment of the intent or purpose of the zone plan and ordinance and are required by peculiar practical difficulties presented by the size and shape of the lot, and the size and design the existing building at, 256 South Livingston Avenue, and that the benefits from the grant of such variances would outweigh any minimal detriment. Specifically, the Board grants the following variances:

A. Township Code § 170-92.B.(1)(c) requires that a minimum of 60% of the main level retail facade be transparent glass. A variance from the requirement is granted to permit only 27% of the 256 South Livingston Avenue main level retail facade to be transparent glass and to permit the transparent glass on the Irving Avenue facade of the building to remain at 9%.

B. Township Code § 170-94.E requires an aggregate of 62 parking spaces. A variance of 20 parking spaces to permit an aggregate of 42 spaces for the three premises is granted subject to the following conditions agreed to on the record: (1) the cross-easement agreements, and any separate joint parking arrangement that may be required, shall have been entered into and recorded as required by this Resolution; and, (2) there being no future change in occupancy of any of the three premises that would have the effect of increasing the aggregate number of parking spaces required by Township Code beyond 62. In the event of such an effect, a new variance must be sought from the Board.

2. This approval is subject to the following additional conditions agreed to by Applicant on the record.

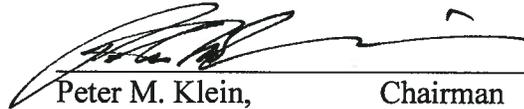
- A. The Board retains jurisdiction over signage on the building at 256 South Livingston Avenue.
- B. The lights on the rear of the building at 256 South Livingston Avenue and for the driveway behind the building shall be on timers and shall turn off no later than one hour after the close of business operations in the building.
- C. Signage and signage lighting on the South Livingston Avenue façade of the building at 256 South Livingston Avenue shall be of the type previously approved by the Board for the building at 250 South Livingston Avenue; *ie*: gooseneck lights over signs that are only painted, stained and/or carved wood; painted metal; brushed finished aluminum, stainless steel, brass or bronze. Signage and lighting on the Irving Avenue façade shall require Board approval.
- D. Leases of tenants of the building at 256 South Livingston Avenue shall require compliance with: light timers, prohibition of standing or stopping in the exit driveway and requirements concerning refuse and recyclables disposal, and shall contain specification by Applicant of where delivery vehicles may stop or stand.
- E. Existing awnings shall be removed from that building at 256 South Livingston Avenue and none shall be installed.
- F. All of the changes called for in the Township Engineer's letter of December 1, 2010 revised through February 22, 2011 shall be reflected in final plans.

- G. Deeds of Easement, with metes and bounds, covering shared parking rights for the three premises, use of the exit driveway to Irving Avenue, and sharing of refuse and recycling facilities by occupants of the buildings at 250 and 256 South Livingston Avenue, all in terms acceptable to the Board Attorney, shall be executed and filed. If those deeds are deemed by the Board Attorney to lack sufficient detail to serve as the joint parking program subject to Board approval, then a separate agreement establishing such program and acceptable to the Board Attorney shall be executed by Applicant and filed and recorded with the deeds.
- H. Prior to issuance of any permits, Applicant shall have entered into a Developer's Agreement with the Township is deemed necessary by the Township Engineer. The terms of such an agreement shall be subject to review and approval by the Township Attorney.
- I. Signs prohibiting left turns shall be posted and maintained facing exiting traffic from Lot 11 to South Livingston Avenue, but shall not be posted at the driveway from Lot 20.
- J. As-built site plans and surveys for all three premises shall be submitted by Applicant to the Township Engineer.
- K. Numbers 1,3,4,6, 8 though 11, 13 and 14 of the Board's Model Conditions of Approval attached hereto are hereby incorporated herein.
- L. **Conditions precedent to issuance of any permits:** "F", "H", and Model Conditions 6, 8, 11 and 14.

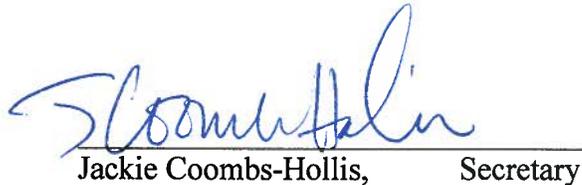
M. **Conditions precedent to issuance of any certificate of occupancy:** “B”, “G”, “H”, “I”, “J” and Model Conditions 1, 4, and 14.

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

This Resolution is a memorialization of the decision of the Livingston Planning Board made on March 1, 2011 wherein Board Members Dinar, Kalishman, Kimmel, Klein, Leopold, Venza, and Alternate No. 2 Anthony (in place and stead of Member O’Neill) voted in favor in accordance with the action memorialized herein; 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 Livingston on March 15, 2011 memorializing the decision of the Planning Board made on March 1, 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.