

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: October 18, 2011
Memorialized: November 29, 2011

Re: Application No. 2011-33-PFSPV
Applicant: West Mt. Pleasant Associates
Premises 651 West Mt. Pleasant Avenue
Block: 6001; Lot: 2
Zone: B-1

SUMMARY OF THE CASE

1. The Applicant is 651 West Mt. Pleasant Associates, a partnership (hereinafter “Applicant”). The premises (hereinafter “Site”) consists of 3.69 acres in the B-1 General Business District and includes a two-story general office building with a gross floor area of 51,968 feet and a calculated net floor area of 46,771 square feet. The address of the building is 651 West Mt. Pleasant Avenue; although the street is also commonly known as Old Mt. Pleasant Avenue. Lot No. 1, immediately adjacent to the Site, is owned by the Township of Livingston which has granted a license to the Applicant for use of a portion of that Lot as additional parking space. The Applicant’s present available parking space on the Site exceeds the requirements of the Township’s Code. The Applicant proposes to increase the number of parking spaces on the Site and to install a monument sign.
2. Stephen A. Geffner, Esq., of Schenck Price Smith & King, LLP, appeared on behalf of the Applicant.
3. A hearing on the Application was held before the Planning Board (hereinafter “Board”) on October 18, 2011.
4. Testifying on behalf of the Applicant were:
 - A. Peter E. Schofel, and officer of Applicant.

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

C. Bruce Fish, owner of Signal Sign Company.

5. There are presently 215 parking spaces on the Site. The licensed portion of Lot 1 contains an additional 26 spaces currently available. Township Code § 170-94.E requires only 187 spaces. The Applicant proposes to reconfigure the parking area on the Site to increase the number of parking spaces to 253. A loading zone that meets the Code requirement would remain. There are presently 4 handicap parking spaces on the Site. The reconfiguration would bring that number to 7, of which one will be van-accessible. The aggregate number of spaces on the two lots would be 279. All existing parking spaces have a width of 8.5 feet. An existing variance permits a length of 18 feet rather than the 20 feet called for by the Township Code. The adjacent residential properties to the rear of the Site are screened by trees, landscaping and fencing.

6. Ten of the new spaces would be only 16 feet deep, with two additional feet of overhang space provided. They would be at the immediate rear of the building, but set back the distance required by the Code. Each would be for compact vehicles only. Two electric docking ports would service up to four vehicles in those parking spaces.

7. Twelve trees would be removed. Only five of those trees would require replacement under Township Code § 170-56.C. All five replacement trees will be planted on the Site.

8. A monument sign is proposed to contain the building number and identification of principal tenants. It would be installed at a right angle to the street, set back approximately 8 feet from the face of the curb and within the right-of-way of the street. The street is an Essex County road. The height, including the base, would be five feet, and the width would be 8 feet. It would have an over-all area of 40 feet, of which 30 square feet would be the signage space. It would be illuminated by ground fixtures. Monument signs are not permitted in the B-1 General Business District. The location of the Site close to where the roadway crosses the Passaic River, the presence of trees and shrubs between the river and the Site, and the setback of the building on the Site, all combine to limit visibility of the building to drivers coming from the river crossing.

The proposed sign and its location would enable drivers to identify the location more readily and enter more safely.

9. The Applicant has agreed to install a sidewalk, consistent with the recommendations in the Township's Master Plan, along West Mt. Pleasant Avenue right-of-way upon receiving approval from Essex County.

10. The Applicant acknowledged that the surfacing of the licensed parking area on Lot 1 may not be consistent with the requirements of the license. Applicant agreed to resolve that question with the Township.

FINDINGS OF FACT

The Board finds that:

1. The provision of 10 parking spaces for compact cars and providing electric docking ports to serve vehicles at up to 4 of those spaces would encourage the use of such vehicles; such vehicles can be accommodated in parking spaces with a length that is 16 feet plus a 2-foot overhang; and the proposals present a better zoning alternative.

2. The installation of a monument sign and of a sidewalk along West Mt. Pleasant Avenue would improve safety, but would each require the approval of Essex County. The safety considerations justify the grant of a variance to permit the monument sign when none is permitted in the zoning district.

3. The deviations described in (1) and (2) above would advance the purposes of the Township's Land Use Ordinance. There would be no substantial detriments to the public good and no substantial impairment of the intent and purposes of the zone plan and zoning ordinance.

4. The landscaping and screening of parking areas on the Site from adjoining residence districts satisfy the requirements of Township Code § 170-94.

5. There is a question as to whether the surfacing on Lot 1 meets the requirements of the license, and that question must be resolved with the Township of Livingston.

CONCLUSIONS

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

A. Variances

- (1) The Board grants a variance 2 feet to permit 10 parking spaces at the rear of the building to have a length of 16 feet plus a 2-foot overhang, where 20 feet or 18 feet plus a 2-foot overhang is required by Township Code § 170-3.
- (2) The Board grants a variance to permit installation of a ground-lit monument sign at the location depicted on Site Plan Drawing No. 3 dated 06-15-2011 as revised through 10-05-11 and with a width of 8 feet and an over-all height, including the base, of 5 feet.

B. Conditions

- (1) The Applicant shall obtain the approval of the Essex County Planning Board for installation of the monument sign and sidewalk.
- (2) The Applicant and the Township of Livingston shall have fully resolved the issue as to the surfacing of the licensed portion of Lot 1.
- (3) The following of the Board's Model Conditions of Approval attached hereto are incorporated herein: Numbers 3, 8 through 11, 12.c, 14, 17 and 18.

4. **Conditions Precedent.**

Conditions (1) and (2) in "A" above are conditions precedent to this Resolution and the approvals contained herein becoming effective.

Model Conditions of Approval numbered 8, 11 and 17 shall be met before any permits are issued.

Model Conditions of Approval Numbered 12.c, 9, 10 and 18 shall be met before any certificate of occupancy is issued.

5. **Continuing Condition.** Model Condition of Approval No. 8 is a continuing condition.

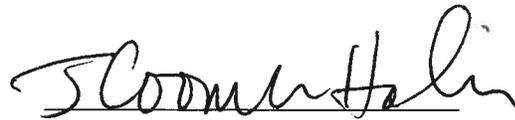
NOW, THEREFORE, for the reasons set forth herein it is hereby resolved by the Planning Board of the Township of Livingston that the Application for Preliminary and Final Site Plan approval, with variances as set forth herein, be and are hereby granted and approved subject to the terms and conditions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

This Resolution is a memorialization of the decision of the Livingston Planning Board made on October 18, 2011 wherein Members Kalishman, Kimmel, Klein, Leopold, Rieber, Alternate No. 1 Ratner and Alternate No. 2 Anthony voted 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 actual copy of the Resolution adopted by the Planning Board of the Township of Livingston on November 29, 2011 memorializing the decision of the Planning Board made on October 18, 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.