

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: January 3, 2012

Memorialized: January 17, 2012

Re: Application No. 2011-56-PFSPV
Applicants: Sweet Basil Café & Grill, Inc., 498 South Livingston Avenue, LLC, &
504 South Livingston Avenue, LLC
Premises: 498 & 504 South Livingston Avenue, Livingston, New Jersey
Block: 4704; Lots: 51 & 52
B- Zone

SUMMARY OF THE CASE

1. This Application was filed by Sweet Basil Café & Grill, Inc. (hereinafter “Sweet Basil”). At the time of the hearing the Application was amended orally to add as Applicants, 498 South Livingston Avenue, LLC (the owner of the premises at 498 South Livingston Avenue that is on Lot 51); and 504 South Livingston Avenue, LLC (the owner of the premises at 504 South Livingston Avenue that is on Lot 52). The business of Sweet Basil would be conducted at 498 South Livingston Avenue. The 2 added Applicants are wholly-owned by the Kutlu Living Trust. The 3 Applicants will hereinafter be collectively referred to as “Applicants”. Lots 51 and 52 are hereinafter collectively referred to as “Site”.
2. Hearings were held before this Board on December 9, 2011 and January 3, 2012 with respect to the Application.
3. Sweet Basil proposes to operate a restaurant, with a section designated as a party room, and an adjacent retail take-out shop. The building in which Sweet Basil would operate is 498 South Livingston Avenue and has several vacant stores. There would be 76 seats in the restaurant portion and 36 seats in the party room. The take-out area would measure 350 square feet of retail space.

4. The Applicant property owners propose to completely replace the façades and signage on both the building at 498 South Livingston Avenue and the building at the adjacent 504 South Livingston Avenue. The building at 504 South Livingston Avenue has a bank facing the street and a dry cleaner that faces the rear parking area.
5. The Applicants also propose to replace and enlarge a common trash area utilized by both buildings, to install a storage shed, and erect a common monument sign.
6. On-site parking would not be sufficient for the proposed operations, and the Applicants requested approval of off-site parking arrangements to meet their parking requirement.
8. The Applicants were represented by Stephen A. Geffner, Esq., at the December 9, 2011 hearing, and by Richard Tanioli, Esq. at the January 3, 2012 hearing. Proof was presented that all taxes have been paid and that proper notice has been served and published.
9. Appearing as witnesses for the Applicants were:
 - A) Neslihan S. Montag, Esq., attorney for the Kutlu Living Trust.;
 - B) Alan Platt, owner of Sweet Basil Café & Grill, Inc.;
 - C) James O'Brien, accepted as an expert in architecture; and
 - D) Michael T. Lanzafama, of Casey & Keller, P.C., accepted as an expert in planning and engineering.
9. Members of the public who appeared either to question witnesses or offer comments under oath were:
 - A) Mrs. Pat Nave, of 16 Concord Drive;
 - B) Mr. Howard Gotlieb, of 9 Concord Drive; and
 - C) Mrs. Janet Lyons, of 25 Concord Drive.
10. The present and proposed tenants in the two buildings share a common parking

area, and would require 64 parking spaces in accordance with the Township Code with the party room included. The Applicants propose to provide a total of 51 parking spaces. Three of these spaces would be handicap accessible and 1 of those will be van accessible. Each building also requires 1 loading space that is now provided and will continue to be provided. In the course of the hearing, Applicants agreed to move 2 handicap accessible spaces, now adjacent to the patio on Lot 51 and what would become the take-out for Sweet Basil, to the southerly side of Lot 51 and to make one of them the van-accessible space. The area adjacent to the patio and take-out would then be adjusted to have 3 standard parking spaces; eliminating a requested setback variance that would otherwise have been needed. The relocated handicap spaces would be for the building on Lot 51. A five-foot-wide stripped crosswalk would be provided from those spaces to a curb cut at the building. There is also an existing handicap space on Lot 52. Applicants will post a sign, acceptable to the Township Engineer, at the Lot 51 handicap spaces informing bank and drycleaner customers of that space on Lot 52. The Applicant also proposed utilizing off-site parking spaces; and represented to the Board that agreements have been reached with the owner of 508 South Livingston Avenue (Lot 53) for 12 spaces there to be used on weekends and after 6:00 P.M. on other evenings, but by Sweet Basil only, and with the West Essex Tribune for 10 spaces to be used at its property 495 South Livingston Avenue for parking by Sweet Basil employees only; and also for weekends and evenings only. The license agreement for Lot 53 has been signed, is for a 10-year term and has a clause for negotiable renewal. There is not yet a signed agreement for the second location.

11. The proposed trash enclosure on Lot 51 would be 19 feet wide by 7 feet deep, and would have a height of 6 feet and 9 inches. It would contain two 3-yard dumpsters for general waste, and separate containers for waste oil and recyclables. It would have brick-faced walls to match the new façade of the buildings, and self-closing gates with a composite color consistent with the new building façades. The trash enclosure would be setback 3 feet from the rear property line.

12. The Applicants also propose to install a storage shed on Lot 51. The shed would be 17 feet long by 8 feet wide, and would be installed parallel to the rear property line and between the trash enclosure and the side property line. During the course of the hearing, the Applicant agreed to reduce the proposed height to 8 feet and 4 inches. A door would be located in the end facing the trash enclosure. The shed would be used only for dry storage of supplies and equipment of Sweet Basil. No refrigeration or other compressors or equipment would be installed. The exterior material and colors would match the façade of the building on Lot 51. The shed would be set back 3 feet from the rear property line and 10 feet from the side property line. Township Code § 170-87.E.(2)(b) requires a rear property line setback equal to the height of the shed; a required setback of 8 feet and 4 inches that results in a variance request of 5 feet and 4 inches. The distance of the shed from the side property line, and the distance between the shed and the trash storage area, both meet the requirements of the Township Code.

13. The premises at 498 South Livingston Avenue includes a fenced patio, facing the street, that has been used by prior tenants for outdoor seating under seasonal permits. Upon review of the Plans, the Township Engineer noted that the patio and its fence intrude into adjoining property owned by the Township. This intrusion runs 4.76-feet to 5.88-feet in depth. The Applicants agreed to reduce the size of the patio and to relocate the fence so that there will be no intrusion into the adjoining Township property; and to repair the damage to the Township property. Use of the patio for outdoor seating would remain subject to obtaining seasonal permits from the Township for such use.

14. The wall signs of the present tenants, and a wall-mounted multi-tenant directory sign, are in a variety of styles and sizes and have different types of lighting. The proposed building wall signs will be of uniform size and have only opaque lettering. The proposed wall signs will be halo lit where illumination is permitted. An exception to the uniformity would be made to permit the existing sign logo of the Regal Bank. A projecting sign for the rear tenant on Lot 51 would be

removed. The number and size of the signs for the individual tenants will conform to the Township Code and no LED lighting will be used.

15. The Applicants agreed to various repairs to improve existing conditions on the Site; including replacing the broken slats of the fence at the rear of the Site, adding evergreen plantings on Lot 51 along the building façade that faces Lots 47 through 50, and resurfacing that façade. The evergreen plantings will be added only if it can be done without intrusion into the Township property or is approved by the Township.

16. The Applicants further requested a variance to permit continuation of an existing parking area in the front yard of Lot 51. Parking in the front yard is now prohibited by Township Code § 170-107.B.(7) enacted in 2008.

17. Various existing non-conforming uses will continue, as follows, on Lot 51:
 - A) Township Code § 170-73.B.(14), enacted in 2006, requires that the building have its primary orientation, facades and entrances toward the street, whereas the existing building is perpendicular to the front street and the entrances face the parking area.
 - B) A minimum side yard setback of 10 feet from a residence district is required under Township Code § 170-107.C.(3), whereas the existing building is on or close to the property line.
 - C) A minimum parking area aisle width of 24 feet is required by Township Code § 170-94.B.(10), whereas 21 feet is provided as existing.

18. As to Lot 52, the following existing non-conforming conditions will continue:
 - A) Ordinance 170-73.B.(14), enacted in 2006, requires that the building have its primary orientation, facades and entrances toward the street, whereas the existing building has 1 occupancy facing the street and the second occupancy facing the rear parking area.

19. The Applicants also requested approval for a non-conforming monument sign and

the off-site parking arrangements. On December 9, 2011 the Applicants requested that the Board bifurcate the Application to schedule a hearing on those two issues at a later date, but to approve that portion of the Application dealing with the other site improvements. The Board granted bifurcation and gave guidance to its Attorney to prepare an approving resolution for consideration on January 3, 2012. Upon subsequent review of the record by the Board Attorney, it was determined that there was insufficient evidence presented to permit the drafting of an approving resolution. On January 3, 2012, the bifurcation was reversed and the record reopened for further proofs; at which time the Applicants also proceeded with respect to the issue of the monument sign and off-street parking.

20. During the course of the hearing the Applicants agreed to certain modifications to the Plans as follows:

A: Employees of Sweet Basil will park their vehicles at the West Essex Tribune site when that parking area is available.

B: In the event that either or both of the off-site parking agreements should be terminated, if the requested variance for parking spaces while the party room is in use has been granted that variance also terminate and the operation of the party room shall terminate.

C: The façade of the building 498 South Livingston Avenue that faces Lots 47 through 50 will be scraped and refinished with a pigmented cement coating to match the color of the building's bricks.

D: The proposed monument sign was reduced in over-all size to 5 feet 8 inches high by 10 feet 4 inches wide, and would be ground-lit except for the street-facing address area which would be halo-lit. No LEDs will be used. The sign will also be moved 1 to 2 feet further to the rear of its proposed location, and will be positioned so as not to interfere with sight lines for exiting motorists. The

Applicants also reduced the number of spaces for tenant names on each face of that sign from 12 to 10. The materials and design of the monument sign will match that of the renovated buildings.

E: For the building at 498 South Livingston Avenue, the Applicant will add a rooftop exhaust system that will be screened with materials matching the exterior of the building.

F: The fence at the rear of the Site will be repaired.

G: A sign will be provided at the entrance to Sweet Basil informing customers when parking is available on Lot 53.

H. A portable sign, as approved by the Township Engineer, will be placed at the driveway from Lot 52 to Lot 53 to direct Sweet Basil customers to the parking available on Lot 53.

I: Bollards will be added at the parking spaces directly facing the patio and the Sweet Basil take-out.

J: No refrigeration equipment or other compressors or mechanical equipment will be installed in the storage shed.

K: The off-site parking arrangement on Lot 53 shall not become effective until the redesign of the parking layout and stripping on that Lot that is required by the Board's Memorializing Resolution of September 4, 2011 on the application of Elite Kids Academy, Inc., Application No. 2011-7-PFSPV, has been completed to the satisfaction of the Township Engineer.

L The party room will be used only on weekends and on evenings after 6:00 P.M.

M: The ground lighting for the monument sign will be shielded to prevent any spillover of lighting.

N: The number of wall signs for businesses on the Site will fully comply with the requirements of Township Code § 170-90.C and no LED's will be used.

O: At the handicap spaces on Lot 51, Applicants will post a sign, acceptable to the Township Engineer, informing bank and drycleaner customers of the handicap space on Lot 52.

FINDINGS OF FACT & CONCLUSIONS

1. The Board finds that the 2 buildings were in existence at the time of adoption of the provisions in Township Code § 170-73.B.(14) establishing a design standard requiring that buildings in the zoning district have their primary orientation, façade and entrance toward the street. Their design now constitute a non-conforming pre-existing condition.
2. The conversion of 1 handicap parking space to a van-accessible space reduces the available spaces on the site from 52 to 51, but improves handicap accessibility.
3. Shared parking is encouraged by the Master Plan, and provision of off-site parking is expressly permitted in the B Zone when done under agreements approved by the Board.
4. The proposed new monument sign will provide better identification of the location of tenants whose wall signs do not face the street because of the perpendicular orientation of the buildings. It would improve aesthetics by replacing a very busy large wall-mounted tenant directory sign now on the building on Lot 51. That sign is not visible to southbound motorists, and northbound motorists only get a glimpse of it. Those factors justify a c(1) variance. The presence of the monument sign would also improve

safety by improving identification of tenants by motorists seeking the Site. In addition, the presence of the monument sign would provide a better zoning alternative than permitted by the Township Code, and the grant of a variance would be a better zoning alternative advancing the purposes of the land use ordinances; justifying a c(2) variance as well.

5. Township Code § 170-94.E requires 64 parking spaces for the proposed occupancies that include a functioning party room, but only 51 would be provided on the Site. Without the party room in operation, 52 spaces are required, but still only 51 are provided. Applicants have presented satisfactory documentation that a license agreement as been entered into for 12 off-site parking spaces at 508 South Livingston Avenue on adjacent Lot 53, and have represented that an agreement in principle has been reached with the West Essex Tribune for an additional 10 spaces at 495 South Livingston Avenue. The spaces at those two locations would meet the parking need when the party room is in use. Employees of Sweet Basil would park at 495 South Livingston Avenue during the hours that those spaces are available under the license agreement. The off-site spaces at both locations would be available on week-ends and after 6:00 P.M. on week-days. The Township's Master Plan encourages shared parking arrangements, and off-site parking is permitted in the B Zone with Board approval. A conditional variance is justified under the provisions of N.J.S. 40:55D-70(c)(2).

6. The proposed enclosed trash area and storage shed are appropriate as to function, size, design and location in respect to distance from the principal buildings and nearby residences. The enlargement and enclosure of the trash area is an improvement with regard to health and safety considerations as well as aesthetics. Although both structures would be within 3 feet of a common property line with an adjacent lot to the north that is in a residence zone, there is no residence on that lot. It is a recreation area owned by the Township with a treed area adjacent to the Site. The two proposed structures would be adequately screened by the trees and the fence along the property line. The shape of the Site and the existence of the buildings on it would make denying approval to locate the trash enclosure and shed where proposed impose a hardship upon the Applicants. The grant of a c(2) variance is appropriate.

7: Grant of the several variances requested would not have any substantial detrimental impact on the public or the surrounding area, will not have any substantial detriment to the public good or substantially impair the intent and purpose of the zone plan or zoning ordinance, and would not be inconsistent with the Master Plan.

8: On the Findings of Fact stated above and the record, the Board now grants the following waivers and variances subject to the Conditions set forth hereinafter:

Waivers

The Applicant has requested and was granted waivers of preliminary site plan checklist items 15, 16, 23, 26 and 29 and final site plan checklist item 1. The requested waiver of preliminary site plan checklist item 19 was denied, and the Final Plan must show the location of the R-4 Zone structures within 100 feet. The request for a waiver of final site plan checklist item 8 was also denied, and a landscaping plan reflecting changes proposed in the course of the hearing must be provided and approved by the Township Engineer for inclusion in the Final Plan. .

Variations

- A: A variance of 1 parking space from the Township Code § 170-94.E requirement that there be 52 parking spaces for the proposed tenancies with the party room not in operation, whereas 51 are provided, is granted.

- B. A further variance of 12 spaces from the Township Code § 170-94.E requirement that there be 64 parking spaces for the tenancies with the party room in operation; provided always that while the party room is in use an aggregate of not less than 13 spaces shall be available under license agreements for off-site parking on adjacent Lot 53 and at 495 South Livingston Avenue is granted.

- C: A variance of 5 feet and 4 inches from the setback requirement of 8 feet

and 4 inches established by Township Code § 170-87.E.(2)(b), to permit the trash enclosure and the storage shed to each be 3 feet from the rear property line is granted.

D. A variance from Township Code § 170-107.B.(7) to permit the continued presence of the number of parking spaces presently in the front yard of Lot 51 is granted .

E. A variance is granted from Township Code § 170-90.C, which permits signs in the B Zone only on walls or canopy fascia, so as to permit a free-standing monument sign, in materials and finishes matching the new building façades; with a horizontal length of 10 feet and 4 inches, an overall height of 5 feet and 8 inches, including the base, and with up to 10 tenant sign placards on each signage face each with a length of 4 feet and 6 inches and a height of 5 inches. The over-all square footage of the monument shall be 58.6 square feet, including the base. The text area shall be 39 square feet. The monument shall be installed perpendicular to South Livingston Avenue, shall not obstruct the sight line for motorists exiting the Site, and shall be illuminated by ground lighting shielded to prevent spillover of light beyond the monument. The building numbers shall be on the monument end facing the street and shall be halo-lit.

F. The following existing variances shall continue:

1. The existing building on Lot 51 is on or close to the side property line, where a minimum side yard setback of 10 feet from a residence district is required under Township Code § 170-107.C.(3).

2. The parking area aisle is 21 feet wide, where a minimum parking area aisle width of 24 feet is required by Township Code § 170-94.B.(10).

3. The business wall signs on the side of the building on Lot 51 that

faces the side yard parking area are illuminated; whereas Township Code § 170-90.C permits illumination only of wall signs facing the street or a parking area in the rear of the building.

Conditions

1. The Parking License Agreements between the Applicant(s) and the owner of the property at 508 South Livingston Avenue (Lot 53) for the use of 12 parking spaces, and the Applicant(s) and the West Essex Tribune for the use of 10 parking spaces at 495 South Livingston Avenue, shall be in such terms and conditions, including signage, as shall have been approved by the Board Attorney and shall then be filed and recorded in the Office of the Essex County Register within 60 days of the date of memorialization of this decision of the Board. Sweet Basil shall submit one certified copy of each recorded License Agreement to the Board Secretary and another to the Zoning Officer. Upon expiration of a License Agreement, a copy of any extension or renewal of such shall be promptly provided to both such officials. Should any off-site parking become unavailable due to any termination of any such Agreement or due to failure to extend or renew any term of such Agreement, both the parking variance granted by this Resolution and use of the party room shall terminate immediately. Sweet Basil shall notify the Board Secretary and the Zoning Officer of such unavailability without delay.

2. The off-site parking arrangement on Lot 53 shall not be used until the redesign of the parking layout and the stripping on that Lot required by the Board's Memorializing Resolution of September 4, 2011 on the application of Elite Kids Academy, Inc., Application No. 2011-7-PFSPV, have been completed to the satisfaction of the Township Engineer.

3. The party room shall be used only on week-ends or after 6:00 P.M. on evenings, and shall not be used at any time when fewer than 13 off-site parking spaces are provided under approved license agreements filed and recorded in the Office of the Essex County Register.

4. The off-site parking at 495 South Livingston Avenue shall be used only by employees of Sweet Basil, and the off-site parking on Lot 53 shall be for Sweet Basil customers only.
5. Signs, approved by the Township Engineer shall be provided at the entrance to Sweet Basil and at the driveway from the Site to the parking area on Lot 53 to inform Sweet Basil customers of, and direct them to, the parking on Lot 53.
6. Applicants shall reduce the size of the patio and fence at the front of Lot 51 to eliminate the intrusion into Township property, and shall repair the damage to the Township property; all to the reasonable satisfaction of the Township Engineer.
7. Nothing in this Resolution is intended to, or shall be deemed to, permit the use of the patio for outdoor seating or service for the consumption of foods or beverages without obtaining a seasonal permit from the Township.
8. The façade of the building 498 South Livingston Avenue that faces Lots 47 through 50 shall be scraped and refinished with a pigmented cement coating to match the color of the building's bricks.
9. The number of wall signs for businesses on the Site shall fully comply with the requirements of Township Code § 170-90.C and no LEDs shall be used.
10. No refrigeration, compressors or other mechanical equipment shall be installed in the storage shed.
11. A screened roof top exhaust system for kitchens shall be added to the building on Lot 51.
12. At the handicap spaces on Lot 51, Applicants shall post a sign, acceptable to the Township Engineer, informing bank and drycleaner customers of the handicap space on Lot 52.

13. A five-foot wide crosswalk shall be painted from the handicap spaces on Lot 51 to a curb cut at that building.
14. The Plans and Drawings shall be revised to correctly show all of the changes agreed to in the course of the hearing.
15. Applicants shall ensure that the trash enclosure and the entire area behind the building on Lot 51 are properly maintained, repaired and kept clean.
16. The following of the Board's Model Conditions of Approval attached hereto are incorporated herein: Numbers 1, 3, 4, 6, 8 through 11, 13, 14, 18 and 19.
17. Model Conditions of Approval Numbers 6, 8 and 11 must be met before any permits are issued.
18. No Certificate of Occupancy shall be issued for the party room until the certified copies of filed and recorded parking license agreements have been submitted as required by Condition 1 above, and Conditions 2 and 5 above have been met.
19. No other Certificate of Occupancy shall be issued until Condition 14 above and Model Conditions of Approval 6, 14, 18 and 19 have been met.
20. Conditions 1, 3, 4, 7, and 10 above and Model Condition 9 are continuing conditions.

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 Preliminary and Final Site Plan approval with variances be and is hereby 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 January 3, 2012 wherein Members Anthony, Dinar, Kalishman, Klein, Kimmel, Leopold, Rieber, and Alternate No. 1 Ratner (in place and stead of Member O'Neill) voted in accordance with the action memorialized herein; they being all of the Members both present and qualified 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. January 17, 2012 memorializing the decision of the Planning Board made on January 3, 2012.



Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval (As Amended through December 20, 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 (other than alternative small energy systems and communications 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 intended blasting location (whichever is the greater distance) shall be conducted at Applicant's expense. It shall be conducted no more than 60, nor less than 30, days before blasting commences. A written report of the inspection results shall be provided to the owner of each structure inspected within 10 days after completion of the inspection.
- 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 During Demolition or Construction

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

4. Deeds & Easements

- a. All conditions of approval that are continuing conditions shall be set forth within all deeds executed with regard to the Site.
- b. 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 shall be filed for recordation after such approval. The Applicant shall submit proof of such recordation to the Board Secretary, the Township Engineer and the Construction Official prior to the issuance of any permits.

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. Such basins, together with their required landscaping and fencing, shall be completed, and shall have been inspected and approved by the Township Engineer, prior to issuance of the first Certificate of Occupancy.
- 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 and shall have received the approval of the Township Engineer prior to issuance of any construction permit. Any future revisions to the maintenance plan shall not become effective until the Township Engineer's approval shall have been obtained.
- d. Unless maintenance of the basin is assumed by the Township or a public agency as its direct responsibility, (1) the maintenance plan and any future revisions of it 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; and, (2) the Applicant shall provide a performance bond for such maintenance, including landscaping and cleanliness.

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 and Bonds

- a. The approval of this Application is subject to the posting, with terms acceptable to the Township Engineer, of any and all required performance guarantees, bonds, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the issuance of any permits for commencement of site preparation or construction.
- b. This approval is also conditioned upon the Applicant's providing, prior to issuance of the first Certificate of Occupancy, a performance guarantee acceptable to the Township Engineer 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 4.5 feet above ground level. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.
- b. Street shade trees shall be planted as required by Township Code § 170-72 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 any tree or other planting installed in accordance with the plans if subsequently removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed unless removal is approved under the Trees Ordinance or by this Board. 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 vehicles or equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, Chapter 306 of the Code of the Township of Livingston, that establishes a conflicting 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, or preparation of the Site or construction of any improvement shall be issued until proof of request for such required 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 retains jurisdiction over any and all signs until the final Certificate of Occupancy has been issued.

14. Traffic and Parking Safety and Enforcement

- a. 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.
- b. Lines of sight established for entrance and exit driveways of the Site shall be shown on the as-built site plans, and no structures, trees or plants that would interfere with such lines of sight shall be permitted at any time.
- c. All traffic and parking provisions in the approved site plans or otherwise required by the Board's resolution shall be accomplished prior to issuance of the first Certificate of Occupancy.
- d. 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.

15. Utilities for Site Plans and Major Subdivisions

Applicant shall 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 Township Code §170-73.A.(17) before issuance of any Certificate of Occupancy.

16. Wetlands

- a. Applicant shall insert on the final subdivision map and/or site plan 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 negotiated with the Township Attorney in conjunction with the Township Engineer

18. Written Response to Memoranda

Prior to issuance of any permit for site preparation, demolition or construction, the Applicant shall have provided written responses to all issues raised in all memoranda from the Township Engineer, or any consultant to the Township, that were considered by the Board in the hearings.

19. 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.