

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: December 3, 2013

Memorialized: January 7, 2014

Re: Application No. 2013-48-PFSPV
Applicant: The Children's Institute
Premises: 6 Regent Street, Livingston, New Jersey
Block: 101; Lot: 1
Zone: CI

SUMMARY OF CASE

1. The Applicant is The Children's Institute (hereinafter referred to as the "Applicant") which currently operates a private school for autistic children at the subject location. The portion of the building facing the main parking area and Microlab Road is used for a high school facility for autistic children through age 21. The Applicant also operates a separate unit known as The Center for Independence that provides educational services for autistic adults over age 21 and has an entrance and separate parking area facing Regent Street.

2. The Applicant proposes to make certain improvements and modifications to the property, including the following:
 - A: Construction of a greenhouse to be used for science projects and other activities.
 - B: An outdoor sports and play area to include a tennis court and basketball court.
 - C: A canopy to be installed over the primary entrance to the high school.

D: Refurbishment, and modification of the text, of the existing monument sign on Regent Street that identifies both the school and the adult facility.

E: Two additional freestanding signs that will provide directional information for motorists entering the property and maneuvering thereon.

F: A new freestanding building identification sign for the high school.

G: A 45-foot flagpole would be constructed with an approximately 52-foot setback from Regent Street. The flagpole would be used only for displaying an 8-foot by 12-foot American Flag and would not be used for any commercial or other displays.

3. Testifying on behalf of the Applicant were:

A. Bruce Ettinger, the superintendent of the high school and chief executive officer of The Children's Institute.

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

4. The Applicant was represented by Dean Donatelli, Esq., of Inglesino, Pearlman, Wyciskala & Taylor, LLC, of Parsippany, New Jersey. Proof was provided that all jurisdictional requirements have been met, including payment of taxes and service and publication of notice of hearing.

5. No members of the public appeared either in support of or in opposition to the Application.

6. The Applicant requested Preliminary and Final Site Plan approval of the Site Plans submitted and prepared by Casey & Keller under date of October 9, 2013 with a final revision date of November 11, 2013. The Applicant also requested approval of a sign package prepared by Signal Sign Company, under date of July 26, 2013 with a final revision date of November 11, 2013.
7. No changes are proposed to the existing parking provided on the property.
8. Impervious surface would increase to 43.8% of lot coverage; which remains substantially below the 75% permitted in the CI Zone.
9. The Applicant would remove 5 trees for construction of the sports court. The Applicant acknowledged that it is required to, and will, apply for a Tree Removal Permit from the Township as a condition to be met before any other permits are issued for the Site.
10. The sports court would have artificial lighting which the Applicant agreed would be turned off no later than 9:00 p.m.
11. The Applicant would require the following variances:
 - A. The site is permitted a maximum of 1 freestanding sign, pursuant to Township Code Section 170-90.L.(3), whereas 4 signs are proposed, requiring a variance to allow the 3 additional signs.

B. The minimum setback required for a sign in the front yard under the provisions of Section 170-90.L.(3)(b) is 25 feet 1 inch. A setback of 5 feet is proposed for the sign designated on the sign package as sign D (the sign at the Microlab Road driveway), resulting in a request for a setback variance of 20 feet 1 inch.

12. The Applicant agreed to relocate the sign designated on the sign package as sign C so that it will comply with the required setback of 25 feet 1 inch.

FINDINGS OF FACT AND CONCLUSIONS OF THE BOARD

1. The Board finds that the Applicant has satisfied the criteria for Preliminary and Final Site Plan approval and hereby grants same, subject to the conditions and variances set forth hereinafter.
2. The Board approves the variances requested by the Applicant as follows:
 - A. The application to install 3 additional freestanding signs (designated as signs B, C and D on the submitted sign package) is approved and a variance is granted from the provisions of Township Code Section 170-90.L.(3) permitting the 3 non-conforming freestanding signs in addition to the existing monument sign designated as sign A on the said sign package. The Board finds that these signs are primarily for purposes of providing building identification or directional information for vehicular traffic that will result in a substantial increase in traffic safety. A majority of the students are transported to the center by school buses

and private vans for which drivers are in frequent turnover. They require proper direction so that the high school students are delivered to the proper location and the adult students are delivered to their proper entry to the building. This is important because of legal requirements that there be no intermingling of the high school students with the adults. The shape of the property is unusual in that it has three frontages on streets, which could cause confusion to approaching motorists as to where proper entry should be. Accordingly, the Board finds that the Applicant has satisfied the statutory criteria of N.J.S 40:55D-70.c(1) and c(2). The Board further finds that the grant of the variance will not have a detrimental impact on the Zone Plan or Zoning Ordinance, will have no negative impact on the public, and that the benefits will outweigh any detriment.

3. The Board approves a variance to allow sign D to be setback 5 feet from the property line and approves a variance of 20 feet 1 inch from the requirements of Township Ordinance Section 170-90.L.(3)(b). The Board finds that this sign will also promote traffic safety and will provide proper information to motorists as to where the high school students should be delivered. Without such signage, and due to the various points of entry on a property with an unusual situation of fronting public streets on three sides, there could be confusion resulting in the transporting of students to the wrong location in the building. Accordingly, the Board finds that the grant of the variance will not have any detrimental impact on the Zone Plan or the Zoning Code, there will be no negative impact to the public, and the benefits to be obtained from the grant of the variance would outweigh any

detriment and present a better zoning plan than provided by the ordinance, satisfying the criteria of N.J.S. 40:55D-70.c(2).

4. During the course of the hearing the Applicant agreed to certain conditions and modifications to the Plans as follows:

A. The fencing around the sports court will be increased to 12 feet in height.

B. The setback of sign C will be increased to be at least 25 feet 1 inch from the property line.

C. The flag to be displayed on the flagpole will not exceed a size of 8 feet by 12 feet and will be limited to the American Flag, and the flagpole will not be used for any commercial flags or other displays.

D. The lighting on the sports court will be turned off no later than 9:00 pm.

E. Annuals and perennial plantings will be placed at each of the freestanding signs.

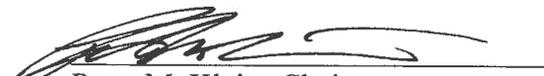
F. The height of the berm of the stormwater management system will be increased to provide a freeboard greater than 4 inches but not more than 12 inches.

5. The existing monument sign (designated as sign A) is a pre-existing non-conforming sign in that its setback is 25 feet whereas 25 feet 1 inch is required. Said non-conforming sign shall continue and remain at the location with the content changed as proposed in the sign package.

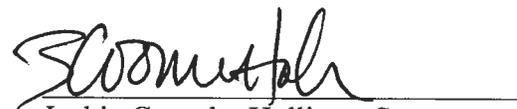
6. The approval herein is subject to the following additional conditions:

- A. Applicant shall obtain a Tree Removal Permit from the Township.
- B. The Board's Model Conditions of Approval Nos. 6, 8, 9, 18 and 19 attached hereto are incorporated herein.
- C. Condition A and Model Conditions of Approval 6 and 18 shall be complied with before any other permits are issued

This Resolution is a memorialization of the decision of the Livingston Planning Board made on December 3, 2013 wherein Board Members Klein, Ratner, Santola, Dinar, Meade, Kalishman, Leopold, Anthony and Alternate No. 1 Alvarez (for absent Member Kimmel) voted in accordance with the terms and conditions set forth herein, the remaining Members having been absent from the hearing or not being eligible to vote.


Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on January 7, 2014 memorializing the decision of the Planning Board made on December 3, 2013.


Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval
(As Amended through February 12, 2013)

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.

- c. Such final plans shall comply with the Uniform Construction Code and the Barrier Free Subcode as then in force in the State of New Jersey. If, during performance of work pursuant to the Board's resolution and permits that have been issued, field conditions indicate need for change(s), such need shall be called to the attention of both the Construction Official and the Township Engineer for approval of any such change before it is implemented. If any such change is significant, permission to amend the Site Plan may have to be sought from the Planning Board. Until all requirements under approved plans and the Uniform Construction Code, including accessibility requirements, have been completed or bonded, any certificates of occupancy issued shall be temporary certificates only.

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.