

**RESOLUTION**

**PLANNING BOARD**

**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: September 9, 2014  
Memorialized: October 7, 2014

Re: Application No. 2014-52-PFSPV  
Applicant: St. Barnabas Medical Center  
Premises: Old Short Hills Road, Livingston, New Jersey  
Block: 7300; Lots: 5 & 6  
Zone: HH

**SUMMARY OF THE CASE**

1. The Applicant is the owner and operator of an existing hospital facility at the subject location. The property was previously zoned in the R-1 Residential District but was rezoned as the HH Hospital Healthcare District created for hospitals and healthcare facilities.
2. The Applicant is represented by Peter J. Carton, Esq. of the Gibbons firm. Proof was provided that the statutory requirements of service and publication of notice have been made. No taxes or assessments are due or in arrears for the property.
3. As shown in the Application, the Applicant proposes two separate additions to the existing hospital building; specifically a one-story addition of 1,401 square feet on the northerly side of the building for use as a CyberKnife treatment facility, and a separate one-story addition of 6,136 square feet to allow the addition of four new operating rooms and associated space.
4. Contemporaneously with the proposed additions, the Applicant will make certain improvements to the sidewalks and driveways in the area of the additions and will add

additional plantings to increase the buffer for the nearest residential property owners on the westerly side of the property.

5. The Applicant requests a parking variance of 223 parking spaces as measured under the new HH zone. That would continue an existing shortage of spaces which came into effect subsequent to the construction of the existing facility. The proposed additions would create a requirement for 5 additional spaces which the Applicant is providing to maintain the shortfall of 223 spaces under HH district standards.

6. A hearing was held before the Board on September 9, 2014. Testifying at that hearing on behalf of the Applicant were:

A: Dr. Allison Grann, Chair of the radiation oncology department of the hospital, who described the proposed CyberKnife facility.

B: John McGuire, a licensed architect admitted as an expert in architecture, specializing in healthcare facilities, who prepared the architectural plan submitted with the Application.

C: Dr. Ronald Chamberlain, the Chair of surgery and a practicing oncologist, who oversees the existing 18 operating rooms and testified as to the need for the new additional 4 state of the art operating rooms.

D: Christopher M. Cirrotti, of Dewberry Engineers, Inc., admitted as an expert in engineering, who prepared the Site Plans submitted with the Application.

E: Kelly Miller, admitted as an architect, who is the project manager for the proposed operating room additions.

F: Paul Phillips, admitted as an expert in planning.

7. The Applicant requested waivers of the requirement to submit items 23, 24, 28 and 30 of the Preliminary Site Plan checklist and Final Site Plan checklist items 7 and 9. The waivers were granted by the Board.
8. No members of the public had questions for witnesses or offered statements in opposition to or in support of the Application.

### **FINDINGS OF FACT**

1. The evidence and testimony presented by the Applicant established that the two proposed additions will advance the ability of the hospital to provide a higher quality of health care to the community. In particular, the CyberKnife facility, which involves large equipment that would not easily be retrofitted into the existing building, allows state of the art radiation treatment to cancer patients with a higher success rate in appropriate situations than other procedures. The proposed addition for this equipment would be 1,401 square feet and would be situated on the north side of the building adjacent to the oncology department. The addition would primarily be below ground, with only three feet above grade, and would not be visible from any public street. The interior space of the oncology department adjacent to the new facility would be renovated with the addition of a changing room for patients and a treatment planning room.
2. The Applicant agreed to a condition that prior to the issuance of a certificate of occupancy it would provide to the Township Engineer and Zoning Officer a certification by an independent certified health physicist that the CyberKnife facility meets all state, federal and local regulations for the operation of radiation equipment.
3. Upon the construction of the proposed CyberKnife addition the Applicant will replace the sidewalk between the building and the employee parking lot and provide new striping on the crosswalk between those two areas.

4. The CyberKnife addition will generate a requirement for 5 additional parking spaces under the requirements of the Township Code §170-118.2. Overall parking on the Site does not meet current Code requirements for the HH district. It currently provides 2,263 of the 2,486 spaces required; resulting in a deficit of 223 spaces. However, the parking count meets the prior approvals and variance granting by the Zoning Board of Adjustment. The CyberKnife facility will raise the number of required spaces as calculated under the HH zone district to 2,491. The Applicant will provide 2,268, by the addition of 5 additional parking spaces, resulting in a continued shortfall of 223 spaces for which it requests a variance.
5. The proposed addition of 6,136 square feet to contain 4 additional operating rooms would be located on the westerly side of the building. The one-story addition would have a height of 19 feet. The full height of new HVAC equipment located on the roof would be screened by an additional 9-foot metal fence. No new exterior lighting is proposed. This addition also would not be visible from any public street.
6. The proposed one-story addition of 6,136 square feet for 4 new operating rooms will supplement the 18 which the hospital currently maintains, but which have not proved adequate, or capable of being retrofitted to allow use of the most modern and up-to-date equipment. The 4 proposed operating rooms would be used for complex cardiac surgery, operation of an MRI during surgery, robotic surgery, and a multi-discipline surgical room.
7. A mechanical room at the rear of the property, adjacent to the new operating room addition, will have the access doors relocated. The existing gravel path will be paved to create a two-way driveway to allow ingress and egress to that area by service vehicles and medical staff vehicles. The driveway along the westerly side of the building will be improved with a 16-foot wide paved surface plus a sidewalk to permit better emergency vehicle access. It will be gated with a card reader for vehicle access.

8. The Applicant also proposes additional landscaping to the rear of the property where there currently exists an existing tree and understory buffer with a depth of 125 to 190 feet. This will be filled in and enhanced with additional plantings of evergreen trees and shrubs, as well as deciduous trees and shrubs, in accordance with the supplemental landscape plan prepared by Mr. Cirrotti, dated August 25, 2014 and submitted to the Board as exhibit A-7 in evidence.
9. Adjacent to the existing building and next to the building addition for the operating rooms, the Applicant would construct a concrete pad and install a temporary MRI trailer. Once the addition is completed and in use the trailer would be removed, but the pad would be retained in case of future need for a temporary MRI trailer. All other trailers presently behind the existing building would be removed.

### **CONCLUSIONS OF THE BOARD**

1. The Board concludes that the Applicant meets the requirements for Preliminary and Final Approval of a major site plan and same is hereby granted and approved, subject to the variance, terms and conditions set forth herein.
2. The Board grants a variance of 223 parking spaces from the Township Code § 170-118.2 required 2,491 spaces so as to permit the Applicant to provide 2,268. The testimony of the Applicant's engineer and planner established that there currently is no shortage of parking spaces for employees, patients and visitors, and that the existing parking which has been in place for a number of years operates with a 223 space deficit. The approval the variance will meet the standards of MLUL 40:55D-70.c(2) and that the benefits of granting the variance will outweigh any detriment and will advance the purposes of the zoning ordinance by allowing the Applicant to offer improved and better healthcare to the public, which is an inherently beneficial use. Such use promotes the

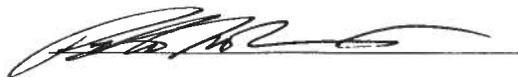
general welfare and there would be no detriment because the Applicant is increasing capacity by 5 spaces while not increasing the existing parking shortfall. Accordingly, the variance of 223 parking spaces is approved.

3. The approval of the Board is subject to the following conditions agreed to by the Applicant:

- a) Prior to issuance of a certificate of occupancy the Applicant shall provide to the Township Engineer and Zoning Officer a certification by an independent Certified Health Physicist that all federal state, and other applicable radiation regulatory standards for construction of the CyberKnife vault have been complied with.
- b) Prior to the issuance of a certificate of occupancy the Applicant shall provide to the Township Engineer and Zoning Officer a certification by an acoustic engineer that the noise generated by the HVAC equipment atop the operating room addition will meet the dBa limits at the nearest residential property line as mandated by the State of New Jersey.
- c) The Applicant shall amend its plans to provide the signage and traffic flow design as recommended by the TRAC; specifically items 2, 3 and 8 of the August 22, 2014 TRAC letter report.
- d) The Applicant shall comply with all the Board's Model Conditions of Approval attached hereto, except numbers 2, 4 and 17.

This Resolution is a memorialization of the decision of the Livingston Planning Board made on September 9, 2014, wherein Board Members Dinar, Kalishman, Leopold, Meade, and

Klein voted in accordance with the action memorialized herein to approve the Preliminary and Final Site Plan and variance; the remaining Members of the Board being absent.



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 October 6, 2014 memorializing the decision of the Planning Board made on September 9, 2014.



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 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.