

**RESOLUTION**

**PLANNING BOARD**

**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: January 22, 2013

Memorialized: February 12, 2013

Re: Application No. 2012-51-PFSPV  
Applicant: IMMC-348, LLC,  
Premises: 348 East Northfield Road, Livingston, New Jersey  
Block: 7600; Lot: 2  
P-B3 Zone

**SUMMARY OF THE CASE**

1. The Applicant is the contract purchaser of the subject premises, commonly known as 348 East Northfield Road, Livingston, New Jersey (“the Site”), on which is located an existing building, most recently used as a pharmacy and which is currently vacant. The Applicant proposes to convert the building to a dialysis center for treatment of outpatients by proposed tenant Fresenius Medical Care (“Fresenius”). The Applicant does not propose any increase in the size of the building, but would install an emergency generator, has redesigned the parking and landscaping, and requests certain variances as set forth herein.
2. A public hearing was held before the Planning Board of the Township of Livingston (“the Board”) on January 8 and January 22, 2013 for Preliminary and Final Site Plan approval. The Applicant was represented by Susan R. Rubright, Esq., of the firm Brach Eichler, and presented documentation that the Applicant has met all necessary notice requirements and that the property taxes are paid to date.

3. Testifying on behalf of the Applicant were:

A: Joseph Mele, of the firm Jarmel Kizel Architect and Engineers, Inc., who was admitted as an expert in the fields of engineering and planning.

B: Margaret Milfort, regional Director of Operations for Fresenius Medical Care.

C: Harold Maltz, of the firm Hamal Associates, Inc., admitted as an expert in traffic engineering.

D: Matthew T. Murello, of Lewis S. Goodfriend & Associates, admitted as an expert in acoustical engineering.

4. Robert Silverman and Jeff Finkelstein, with offices in the medical building at 22 Old Short Hills Road, were members of the public with questions for witnesses.

5. The Applicant proposes to convert the existing vacant building into a dialysis center that will provide 19 dialysis stations. One of the stations will be an isolation room intended only for part-time use. The prospective tenant expects to normally have 9 staff members on the Site. They would be 3 registered nurses, 1 clinical manager registered nurse, 4 state certified patient care technicians, and 1 secretary. Additional part-time staff would be present on an irregular basis; as they cover multiple facilities operated by Fresenius. Patients generally are treated in 4-hour shifts with staggered starting times between 6:00 a.m. and 6:30 a.m., and again between 11:00 a.m. and 11:30 a.m. In addition to the dialysis stations, various supporting rooms would be created; including a training room, a conference room, a staff lunchroom and storage areas and a room for medical waste storage.

6. The Applicant proposes to re-stripe, re-grade, and re-landscape the exterior. 27 parking spaces are proposed, including 5 ADA handicap spaces. The Zoning Officer has recommended that 32 parking spaces are required. The Applicant requests a 5 space parking variance.
  
7. The Applicant originally requested sign variances that included a freestanding monument sign. The monument sign request was withdrawn during the course of the hearing. The building currently has the street address number affixed to the front wall. That constitutes a sign under Township Code §170-94.O.(1) for the P-B3 zone; where only one wall sign is permitted and such sign may not be illuminated. The Applicant requests a variance to permit installation of a second wall-mounted sign to identify the occupant and operation. The Applicant also requests a variance to allow a portion of that sign to be internally illuminated; specifically a single line of the lettering identifying Fresenius plus its logo.
  
8. A back-up generator, which is required by the State for a facility such as proposed, would be located to the rear of the Site and would be enclosed with a 11-foot 6-inch high retaining wall for noise suppression purposes. Improved lighting in the rear parking area would be installed, and the existing trash enclosure would be renovated and expanded to include both trash and recyclables. That structure will have stucco walls that will match the color of the building. Medical waste will be stored in a room of the building and will be picked up by a special service.

## FINDINGS OF FACT

1. The Applicant established a factual basis for the approval of the Application as amended and the grant of the variances requested.
  
2. A dialysis center is not a use specifically permitted in the P-B3 District. Code §170-112.1.A.(1)(a) permits certain named uses and “such other professional uses as determined by the Planning Board to be of a similar character to the uses provided herein”. There is no definition of “similar character” in the Code. Mr. Maltz referred the Board to The Latest Illustrated Book of Development Definitions by Professional Planners Harvey S. Moskowitz and Carl G. Lindbloom (Rutgers Center for Urban Policy Research, 2004) and to their definition of “similar use” at page 367: “A use that has the same characteristics as the specifically cited use in terms of trip generation and type of traffic, parking and circulation; utility demands, environmental impacts; physical space needs; and market area. The Board finds that the facility proposed will be staffed by health care professionals and that, based upon the testimony presented, it has characteristics similar to specifically permitted professional uses and is a permitted other professional use.
  
3. The Site consists of approximately  $\frac{3}{4}$  of an acre on which there is a vacant building previously used as a pharmacy. The Applicant proposes to renovate the interior of the building for the operation of a dialysis center providing only dialysis treatment and related services. The Applicant will improve the exterior of the Site, including re-grading of the property to allow more efficient handicapped access, redesigning and re-striping

the parking area, upgrading the sidewalks, adding one more ADA compliant parking space than required, replacing the existing deteriorating trash enclosure and expanding it to include recycling storage capacity, adding an emergency generator with a barrier wall on three 3 sides of it for noise suppression so that off-site sound levels will not exceed 65 dB(A), and improving the landscaping on the property.

4. During the course of the hearing the Applicant agreed to add bollards in the parking area to protect the open side of the generator and at the rear of the building to protect the rear entrance from vehicles exiting the parking space closest to the emergency generator. Applicant also agreed to additional traffic control signage, to extend the length of all parking spaces at the rear of the building to 20 feet, and to install a fence along the rear property line where it abuts the property at 22 Old Short Hills Road. Applicant further agreed to extend that fencing along the adjoining diner's property side line to such distance from East Northfield Road as shall be approved by the Township Engineer.
  
5. The Board is satisfied, from the testimony and exhibits presented by the Applicant, that the parking will be sufficient for the proposed use. Fresenius operates numerous similar facilities, and provided sufficient proof that a significant number of patients (more than 50%) do not require parking spaces since they arrive either by van or other medical transport, or are dropped off by relatives or other drivers who do not stay with them during their treatment. Accordingly, the Board finds that the requested variance of 5 parking spaces can be granted without detriment to the public good or to the Zone Plan or Zoning Ordinance, and that there will be adequate parking for this particular operation.

The facility will provide needed medical treatment for dialysis patients, and this benefit outweighs any potential detriment that the parking variance might create. The Board also finds that the parking needs for other permitted professional uses in the P-B3 Zone would be greater, that this use would generate substantially less traffic than those permitted uses, and that the peak hours for the proposed facility do not coincide with traffic peak hours, further reducing any possible negative traffic impact.

6. The Board finds that the variance request for the second wall sign and for it to be partially illuminated should be granted. The existing mere listing of the address number is counted as a sign under the definitions for the P-B3 Zone, but would not sufficiently identify the Site as providing the dialysis services. The proposed second sign would face East Northfield Road. It would measure 17 feet long by 30 inches high, which would be conforming size. The partial internal illumination is necessary for identification of the Site since many patients will be arriving, particularly during winter months, when it is dark out. The signage will promote traffic safety and the benefits therefrom far outweigh any detriment. The variance can be granted without any negative impact to the public or to the Zone Plan and Zoning Ordinance.
  
7. The Applicant satisfied the Board that the proposed operation would not generate any water or sewer usage in excess of 6,840 gallons per day; which meets Code requirements. There will be no increase in water runoff and no impact to the Storm Water Management System.

8. The Applicant agreed to conditions as set forth in the Board's Conclusions.
  
9. No members of the public appeared either in support of or opposition to the application.

### CONCLUSIONS

The Board, having duly considered the evidence and testimony presented, and the Application as amended in the course of the hearings, concludes as follows:

A: The Applicant is granted a variance of 5 parking spaces from the 32 required, and shall provide 27 parking spaces which include 5 ADA handicap spaces, one of which shall be van accessible.

B: The Applicant is granted a variance from Township Code § 170-9-.O.(1) to permit a second wall sign to be installed on the front façade of the building; which sign shall measure no more than 17 feet in length by 30 inches in height, and shall have internal illumination of only the logo and a single line of the text that reads "Fresenius Medical Care".

C. Approval is subject to the following conditions agreed to by the Applicant during the course of the hearing:

- 1: The bollard light fixture adjacent to the van accessible handicap space near the main entrance shall be removed.

2: A vinyl board-on-board fence of earth tone in color and measuring 4-feet in height shall be installed along the rear property line of the Site abutting the property at 22 Old Short Hills Road.. The fence shall also extend along the side property line shared with the adjacent diner such distance toward East Northfield Road as shall be approved by the Township Engineer.

3: The Applicant shall obtain a tree removal permit for any tree removal.

4: The sound attenuation method used to reduce sound level of the emergency generator to 65 dB(A) shall have the prior approval of the Township Engineer. Testing of the generator shall be only on weekdays, not more often than weekly, during the mid-day period, and for no longer than 30 minutes.

5. Upon installation of the emergency generator, the Applicant shall provide to the Township Engineer certification, by an acoustical expert acceptable to the Township Engineer, of the actual sound level of the generator at the pad and at the property line of the nearest office building in an easterly or southerly direction. If that testing, or any subsequent testing, of an emergency generator shows that the sound level limits established by this Resolution are exceeded, the Applicant shall immediately notify the Township Engineer and there shall be no further operation of the generator (other than as permitted under the N.J.A.C. in an emergency) until all deficiencies have been remedied.

6. Prior to issuance of any certificate of occupancy, the Applicant shall (1) make façade improvements at the locations of any prior signage on the building so that facades have uniform appearance, and (2) inspect and clean out the existing underground stormwater detention system. The Applicant's Engineer shall certify accomplishment of such clean-out to the Township Engineer.
7. All parking spaces in the parking area at the rear of the building shall be 20 feet in length.
8. All scheduled deliveries to the facility shall be between 7:00 and 7:30 A.M.
9. The attached Model Conditions of Approval numbers 1, 2, 6, 8 though 15, 18 and 19 are incorporated herein.

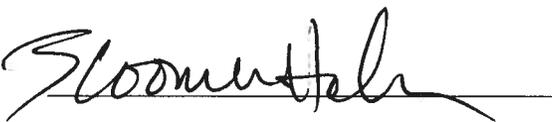
NOW THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that Preliminary and Final Site Plan approval with variances as set forth herein be and are hereby granted and approved, subject to the terms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

This Resolution is a memorialization of the decision of the Planning Board of the Township of Livingston made on January 22, 2013 wherein Board Members Kalishman, Anthony, Kimmel, Leopold, Meade, Ratner, Dinar and Klein voted in accordance with the action

memorialized herein; they being all of the Members. Alternate No. 1 Alvarez and Alternate No. 2 Wishnew did not participate in the 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 February 12, 2013 memorializing the decision of the Planning Board made on January 22, 2013.

  
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 wash down 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 dB(A), 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.