

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: July 31, 2012

Re: Application No. 2011-6-PFSPV
Applicant: 343 Livingston Circle, LLC
Premises: 343 West Mt. Pleasant Avenue
Block: 400; Lots: 1, 2, 4, 14 & 15
Zone: B-1

SUMMARY OF THE CASE

1. This Application was filed by 343 Livingston Circle, LLC, (hereinafter referred to as “Applicant”), seeking Preliminary and Final Site Plan approval, with variances, from the Planning Board of the Township of Livingston, (hereinafter referred to as “Board”), to enlarge an existing commercial building on the subject premises (hereinafter referred to as “Site”), and to improve the Site. The Site was previously operated as a new and used car dealership. The enlarged building would be used for retail stores and a related office. The building would have two proposed tenants; a CVS Pharmacy and a Bottle King liquor store.

2. The Applicant was represented by Susan R. Rubright, Esq., of Brach Eichler, Roseland, New Jersey. The fees required by the Township Code have been paid, all taxes are paid to date, proper notice was given, and all statutory requirements for invoking the jurisdiction and powers of this Board have been met. Hearings with respect to the Application were heard before the Board on February 7, 2012, March 20, 2012, June 5, 2012 and June 19, 2012.

3. Appearing as witnesses on behalf of the Applicant were:
 - A: Michael T. Lanzafama, of Casey & Keller, Incorporated, admitted as an expert in engineering and planning;
 - B: Stephen W. Schwartz, of SWS Architects, admitted as an expert in architecture;
 - C: Harold A. Maltz, of Hamal Associates, Inc., admitted as an expert in traffic engineering;
 - D: Anthony Gallinari, a contractual developer for the service department of the CVS Pharmacy proposed tenant; and
 - E: Kenneth Friedman, the managing member and trustee of Applicant.

4. At the February 7, 2012 hearing, Phil Edelstein, 27 Harvest Lane, Livingston, N.J. entered an appearance and questioned a witness. He did not appear at subsequent hearings. At the March 20, 2012, hearing Bernadette M. Peslak, a resident of Wycoff, NJ, entered an appearance. Ms. Peslak explained that she is the daughter of Ed Peslak, of 374 West Northfield Road, but was appearing in her individual capacity only and not as his representative. Ms. Peslak participated in that hearing and in the June 5, 2012 hearing; but, she did not appear at the June 19th hearing.

FINDINGS OF FACT

1. The Site is a corner lot at the intersection of West Northfield Road and West Mt. Pleasant Avenue, and has partial frontage on Harvest Lane as well. The last use of the Site was as a Saturn new and used car dealership .It has been closed for several years. There is an existing building of approximately 14,330 square feet. 226 parking spaces exist on the Site. Ingress and egress is provided with a driveway off West Northfield

Road and another off West Mt. Pleasant Avenue. A third two-way driveway would be provided at Harvest Lane.

2. The proposed addition would expand the building forward toward West Mt. Pleasant Avenue, as well as to the left side and to the rear. The present front yard setback of 127.48 feet would be reduced 76.64 feet, which would still be greater than required in the zoning district. A second floor of approximately 5,175 square feet would be accessible from the rear of the building. The parking would be reconfigured and would provide a total of 128 parking spaces. That would exceed the Township Code requirement of 125 spaces. Six of the spaces would be handicap accessible. Of those, 2 would be van accessible.
3. Upon completion, the building would have net floor area of 20,857 square feet of retail space on the first floor and 5,175 square feet of office space on the second floor. The proposed retail tenancies are a CVS Pharmacy and a Bottle King liquor store. The second floor space would be located above the CVS Pharmacy but occupied by the corporate offices of Bottle King. The gross floor area of the building would be 32,182 square feet. A two-lane drive-thru facility for the proposed CVS Pharmacy would be incorporated into the southerly rear of the building.
4. The Applicant proposes to add extensive landscaping. 37 trees would be removed and 112 trees would be planted. Impervious surface would be reduced by 14,500 square feet. The existing underground detention system would adequately serve the Site. A new collection system with 15-inch pipes would be installed to feed stormwater, including roof runoff, into the underground system. An existing fence on the southerly side of the

property, adjacent to the residential properties, would be repaired and extended approximately 30 feet toward West Northfield Road. A conservation easement has been established to provide a buffer for adjacent residence zoned properties

5. The 2007 Master Plan recommended both that zoning district lines that create split-zoned lots be adjusted to eliminate split lots, and that discrete areas with significant disparities between permitted uses and actual uses, due to variances or nonconforming uses, be rezoned to bring the uses to permitted status when consistent with good planning. As a consequence, Township Ordinance No. 5-2011, of February 28, 2011, re-zoned a number of properties within the Township. By that ordinance, all of the lots that comprise the Site were zoned B-1 General Business District.
6. The architectural design of the building incorporates material similar to the existing building exterior, with tan and beige brick being added at the proposed CVS portion of the building. Wall signage for the proposed retail stores would have internally illuminated individual channel letters mounted on a metal framework. The framework of the Bottle King sign would have a depth of 9 inches and the letters would have depth of 6 inches; thereby creating a three-dimensional effect. All wall signage would be below the roofline.
7. During the course of the hearings revisions were made to the Plans to include:
 - A. Adding a meandering pedestrian pathway on the unpaved portion of Harvest Land to meet an interior sidewalk from Harvest Lane on the Site.
 - B. An additional crosswalk to the rear of the building from the area where employee parking would be provided.

- C. Landscaping to inhibit direct pedestrian access to the drive-thru area and to divert pedestrians to the new crosswalk.
 - D. Providing pedestrian access from West Northfield Road by installing a crosswalk at the West Northfield Road driveway to connect to a sidewalk that would run the entire length of, and immediately adjacent to, the westerly side of the building.
 - E. Adding a 36-inch high chain link fence on the top of the retaining wall, additional plantings for screening it, and additional plantings for screening the 6-foot high wall portion of the loading dock.
 - F. Adding a bike rack at each store.
8. Drive-thru facilities for prescription services have become customary accessory services of pharmacies. Applicant and CVS both agreed that the drive-thru facility shall not open before 8:00 A.M, would be closed while deliveries were being made to the CVS loading area adjacent to the drive-thru facility, and that while a drive-thru exists no scheduled deliveries to that area for CVS or any successor tenant would be made after 8:00 A.M. They also agreed to limit the sound level of the drive-thru intercom speakers to a maximum of 68 dBA measured at the speaker; with a maximum of 50 dBA if used after 10:00 P.M. The Applicant also proposed on-site signage to direct traffic entering from West Mt. Pleasant Avenue to the drive-thru pharmacy facility located at the rear of the building. The signs would include directional arrows.
9. The building is now 26 feet high. The proposed new height of the building is 30.6 feet; which would exceed the maximum of 28 feet permitted in the B-1 District. The proposed excess height of 2 feet, 6 inches (2.67 feet) is less than 10.0% of the permitted maximum height.

10. All three driveways would be for both ingress and egress. Right and left turns both into and out of the Site would be permitted at the West Northfield Road driveway. At the West Mt. Pleasant Avenue driveway only right turns in and right turns out would be permitted. The Harvest Lane driveway would be only for right turns in and left turns out.

11. Two monument signs are proposed: one at the driveway on West Mt. Pleasant Avenue; and the other at the corner of the intersection of West Northfield Road and West Mt. Pleasant Avenue. Vehicles using the West Mt. Pleasant Avenue driveway as an entrance will be eastbound from the Route 10 Traffic Circle, or will have turned eastward from West Northfield Road, and would face limited visibility of the driveway location. This situation is an extraordinary and exceptional circumstance uniquely affecting the Site. A monument sign would clearly identify the location of the driveway so as to promote traffic safety. There would be no detriment. The corner monument sign is proposed as an esthetic improvement and to provide name identification of the Site. A flag pole would be positioned behind it. This sign would make the location of the Site more readily apparent to motorists navigating the Route 10 Traffic Circle, with no detriment to the public or to the zone plan.

12. The Township Code § 170-92.F.(1) establishes design elements for a storefront. It requires that a minimum of 60% of the horizontal length of the main level retail façade must be transparent glass between the heights of 3 feet and 8 feet above grade. The glass portion of the Bottle King façade facing West Northfield Road within that area would measure only 10.2%. The glass portion of the CVS shop's West Mt. Pleasant Avenue

façade within that area would measure only 16.8%. The glass portion of the Bottle King facing West Mt. Pleasant Avenue would exceed the 60% requirement. That Bottle King façade primarily consists of 5 windows each having 12 glass panels that are each 4 feet by 4 feet in area.

13. “Storefront” is not defined in the Township Code. The Board takes judicial notice of the following definitions in Webster’s New World College Dictionary (2010):

1. the front of a store
2. a room on the ground floor front of a building, usually with display windows, designed for use as a retail store.

The Board also takes notice of the comment at page 167 of The Latest Book of development Definitions, by Moskowitz & Lindbloom (2004):

On improved lots the frontage is usually the side where the main building entrance is located and in the general direction in which the principal building faces.

14. The West Northfield Road façade of Bottle King has a westerly orientation. More transparent glass than proposed by Applicant on that façade could expose wines within the store to damaging levels of sunlight. By contrast, although the total glass coverage for the Bottle King northerly façade facing West Mt. Pleasant Avenue would greatly exceed the area in which glass is required by the Township Code, the same damaging exposure of wine to sunlight would not be present.

15. CVS maximizes accessibility of merchandise to its customers by placing displays on the

interior of the building walls. For that reason, Applicant proposes to limit the transparent glass in the required band of the front façade of that store to 16.8%. However, transparent glass (including that 16.8%) would be approximately 61% of the CVS front façade in a different band of a height of 7.5 feet to 12 feet. The CVS façade facing eastward would be 50.4% transparent glass in a band of that same height range; but that band would include only 2.0% of the 3 feet to 8 feet height band.

16. The Board accepts the expert opinion of Mr. Lanzafama that the intent of the façade glass ordinance provision was to try to create a pedestrian promenade setting, providing visibility of store merchandise, where people would window shop and have direct access to the building from the sidewalk.. The proposed stores are distanced from the sidewalks and isolated from other retail uses except for a donut shop, a bank and a dry cleaner on West Mt. Pleasant Avenue that are at distances to the east of the stores.
17. The proposed uses would not generate any significant increase in traffic, particularly during the morning rush hour, and would generate less traffic than other permitted uses that could be on the Site. The traffic flow as designed would provide safe operation on the Site, as well as providing safe and efficient means of ingress and egress to and from the Site. John J. Jahr, the traffic expert retained by the Board confirmed that there would be no adverse traffic impact generated by the proposed stores if there were approval of the Application.
18. The primary orientation, façade, entrances to the building, as well as all pedestrian access

to ground floor occupancies, are toward West Mt. Pleasant Avenue, and the building fronts only on that street. The building meets the design standards of Township Code § 170-73.B.(14).

19. The following variances have been requested with respect to the Application:

A. Township Code §170-90.C establishes the permitted signs in the zoning district. Monument signs are not among them. The monument sign at the West Mt. Pleasant driveway would promote traffic safety by directing motorists into the Site. This is crucial because of the grade differential and orientation of the building; particularly since the roadway is at a lower elevation than the building itself. The corner monument sign would provide an identity for the location and would be esthetically pleasing. The two proposed monument signs would provide a better plan than permitted by the Code.

B. The Applicant proposes that a wall-mounted sign for the CVS Pharmacy on the easterly side of the building be illuminated. No variance would be required if that wall faced the second street of a corner lot, but it does not. Neither would a variance be required if the sign faced a rear parking lot, but it does not. The sign would identify the store location in a timely fashion to motorists on West Mt. Pleasant Avenue traveling from the east. Illumination would improve the visibility of the sign at night. The increased traffic safety resulting from illumination of that sign would provide a better plan than permitted by the Code and would have no negative impact.

C. The Applicant requests front yard parking, which is not presently permitted in the B-1 District. Prior to enactment of Ordinance No. 43-2008, (codified as Township Code § 170-108B.(32)) the front yard parking now on the Site was permitted in the B-1

District. The West Mt. Pleasant Avenue front yard parking would be reduced from the existing 56 spaces to 47 spaces. The West Northfield Road front yard parking would be increased from 12 spaces to 13. Accordingly, there would be an overall reduction of 8 front yard parking spaces. The parking set back from West Northfield Road would be slightly increased from 3.5 feet to 3.81 feet; thus reducing the deviation from the Code requirement of 7.5 feet. Front yard parking on the Site would avoid having parking spaces closer to adjacent residential properties. Continuation of front-yard parking at the Site as proposed provides a much better plan than compliance with the recently enacted Township Code §170-108.B.(32) prohibition of front yard parking.

D. The Applicant proposes a building height of 30 feet, 8 inches (30.67 feet) where 28 feet is the maximum permitted by Township Code §170-108.C.(1). The proposed excess of 2 feet, 6 inches (2.67 feet) is less than 10.0% of the permitted maximum height. The additional building height would consist primarily of architectural enhancements that would permit articulation of the façades. It would also allow the proposed office space to be provided above store space rather than by increasing the building footprint. Because of the distance between the building and any other buildings on adjoining or nearby properties, the additional height would have little, if any, impact on those properties.

E. Township Code § 170-92.F.(1) establishes design elements for a storefront and requires that a minimum of 60% of the horizontal length of the main level retail façade must be transparent glass between the heights of 3 feet and 8 feet above grade. The Applicant has requested several variances. The proposed aggregate glass within that band for combined West Mt. Pleasant Avenue frontage of the two stores is only 46.9%; but the

glass in the façade of the Bottle King store exceeds the requirement. The CVS Pharmacy would have glass there in only 16.8% of the applicable band. The Site is in an area that will produce very few pedestrians or walk-by customers. The distance of the building from West Mt. Pleasant Avenue would minimize any visibility for product displays in windows. The CVS operation requires substantial interior display space which would be lost if the glass façade requirements were met. A variance is requested. The westerly and easterly building facades are not storefronts, and the transparent glass requirement therefore does not apply to them.

F. Township Code § 170-108.C.(6) prohibits loudspeakers and amplifiers that are so situated as to be heard outside a building in the B-1 District. Speakers at the drive-thru facility would violate that provision but are necessary for operation of the drive-thru facility. A variance is requested.

G. Township Code § 170-94 permits only entrance, exit and condition of use signs in parking areas. Applicant proposes parking area directional signs to the drive-thru facility. A variance is requested.

CONCLUSIONS OF THE BOARD

Upon the testimony and other evidence provided, the Board finds and concludes as follows:

1. The Site is in the B-1 General Business District in which the proposed retail and office uses are permitted.

2. The transparent glass requirement in Code § 170-92.F applies only to facades of storefronts and in regard to this Application applies only to the facades facing West Mt. Pleasant Avenue, and does not apply to the westerly or easterly facing facades.
3. The location and design of the building does not involve, nor is it likely to involve, unusual risk of traffic congestion, public safety or hazard; nor would the development proposal involve or be likely to involve exceptional risk of traffic congestion, public safety or hazard.
4. The wall signs, two types of monument signs, and parking area directional signs are found to be included in a comprehensive sign package; and, LED's may be used for internal illumination of the signs permitted to be illuminated.
5. Variances

A. 1. The Board finds: The location of the monument sign at the West Mt. Pleasant Avenue driveway is in response to the fact that vehicles using that driveway as an entrance will be eastbound from the Route 10 Traffic Circle, or will have turned eastward from West Northfield Road and will have limited time in which to identify the location of the driveway. This situation is an extraordinary and exceptional circumstance uniquely affecting the Site. There would be no substantial detriment to the public good or substantial impairment of the intent and purpose of the Municipal Land Use Law, the zone ordinance or plan. Monument signs are not permitted in the B-1 District. A variance permitting installation of the proposed ground-lit monument sign with an

overall height of 6 feet including the base, an over-all width of 7 feet, 3 inches and a signage area of 22 square feet, is granted pursuant to both N.J.S.A. 40:55E-70 c.(1) and c.(2).

A.2. The Board finds: The monument sign with a flag pole behind it, to be located at the intersection of West Northfield Road and West Mt. Pleasant Avenue, would be an esthetic improvement and provide the benefit of name identification of the Site. This sign also would make the location of the Site more readily apparent to motorists navigating the Route 10 Traffic Circle. These results would advance the purposes of the Municipal Land Use Law and the zoning ordinance. There would be no substantial detriment to the public good or impairment of the intent and purpose of the Municipal Land Use Law, the zone plan and ordinance. A c.(2) variance is granted for a monument sign, of the proposed design as shown on Drawing P-4, having an over-all length of 14 feet, an over-all height of 8 feet, and pin-mounted illuminated metal letters, with a flag pole behind the monument.

B. The Board finds: Illumination of the wall-mounted CVS Pharmacy sign on the easterly wall of the building facing the side parking area would make the sign visible to, and identify the store location in a timely fashion to, motorists on West Mt. Pleasant Avenue traveling westward at night. This would advance the purposes of the Municipal Land Use Law and the zoning ordinance. There would be no substantial detriment to the public good or impairment of the intent and purpose of the Municipal Land Use Law, the zone plan and ordinance. A c(2) variance from the prohibition in Township Code § 170-90.C so as to permit the sign to be illuminated is granted.

C. The Board finds: Front yard parking is an existing condition made non-conforming by an ordinance enacted in 2008. The number of front yard parking spaces would be reduced by 8 spaces, and the set-back of the parking from West Northfield Road would be slightly increased; thus reducing the non-conformity. If front yard parking is not continued, parking spaces necessarily displaced would have to be moved closer to adjacent residence zone lots. The spaces could be located there in compliance with B-1 District zoning requirements. The continuation of front yard parking as proposed presents a much better plan than compliance with the prohibition now contained in Township Code § 170-108.B.(32) and there would be no substantial detriment to the public good or substantial impairment of the intent and purpose of the Municipal Land Use Law, the zone ordinance or plan. A c.(2) variance is granted for provision of 47 parking spaces in the West Mt. Pleasant Avenue front yard with a setback of 15 feet and 13 parking spaces in the West Northfield Road front yard with a setback of 3.81 feet.

D. The Board finds: The Applicant proposes a building height of 30 feet, 8 inches (30.67 feet) where 28 feet is the maximum permitted by Township Code §170-108.C.(1). The proposed excess of 2 feet, 8 inches (2.67 feet) is less than 10 feet and less than 10.0% of the permitted maximum height. The additional building height would consist primarily of architectural enhancements that would permit articulation of the façades. It would also allow the proposed office space to be provided above store space rather than by increasing the building footprint. Because of the distance of the building from any other buildings on adjoining or nearby properties, the additional height would have little, if any, impact on those properties. The purposes of the Municipal Land Use Law and the zoning ordinance would be advanced and there would be no substantial detriment to the public good or substantial impairment of the intent and purpose of the Municipal Land

Use Law, the zone ordinance or plan. A c(2) height variance of 2 feet, 8 inches is granted.

E. Township Code § 170-92.F.(1) establishes design elements for a storefront and requires that a minimum of 60% of the horizontal length of the main level retail façade must be transparent glass between the heights of 3 feet and 8 feet above grade. The Board finds: The proposed aggregate transparent glass within that band for combined West Mt. Pleasant Avenue frontage of the two stores is only 46.9%; and the area of the CVS Pharmacy transparent glass within that band is only 16.2%. However, there is an area of that façade in a band between the heights of 7.5 feet and 12 feet above grade which has 60.1% of its horizontal length as transparent glass. The Site is in an area that will produce very few pedestrians or walk-by customers. The distance of the building from West Mt. Pleasant Avenue, and the difference in grade from the street to the building, would minimize any visibility for product displays in windows. The CVS operation requires substantial interior merchandise display space which would be lost if the glass façade requirements were met. Natural light would enter the shop from the large transparent glass band higher on the façade. Strict application of the Code requirement would result in peculiar and exceptional difficulties, but there would be no substantial detriment to the public good or impairment of the intent and purposes of the Municipal Land Use Law, the zone ordinance or plan from the grant of a deviation. A c(1) variance is granted from Township Code § 170-92.F.(1) to permit the CVS building to have only 16.1% transparent glass coverage in the applicable façade area.

F. The Board finds: Drive-thru prescription service windows are customary accessory facilities of pharmacies and, like the drive-thru facilities of banks, are a convenience for customers and provide a public good by facilitating service to people with physical handicaps. They require an intercom system for safe and efficient operation. Township Code § 170-108.C.(6) prohibits loudspeakers and amplifiers so situated as to be heard outside the building. Maintaining a limit on the decibel level of the intercom speakers as agreed to by the Applicant and CVS would prevent any detriment to the public. The purposes of the Municipal Land Use Law and the zoning ordinance would be advanced and there would be no substantial detriment to the public good or substantial impairment of the intent and purpose of the Municipal Land Use Law, the zone ordinance or plan. A c(2) variance to permit the two drive-thru lanes to be equipped with intercom speakers is granted subject to conditions that the drive-thru facility shall not operate prior to 8:00 A.M. and that the sound level of the speakers shall be limited to 68 dBA at the speaker with a limit of 50 dBA if the system is used after 10:00 P.M.

G. The Board finds: The parking area directional signs proposed to guide arriving motorists to the drive-thru facility will improve traffic flow and safety on the Site. Such signs are prohibited by Township Code § 170-94.3. The purposes of the Municipal Land Use Law and the zoning ordinance would be advanced and there would be no substantial detriment to the public good or substantial impairment of the intent and purpose of the Municipal Land Use Law, the zone ordinance or plan if the signs are permitted. A. c(2) variance from that prohibition in Township Code § 170-94.3 is granted.

Conditions

1. Prior to the issuance of any permits for demolition, site preparation or construction, the Applicant shall provide to the Board Secretary and to the Construction Official and the Township Engineer proof that an irrevocable conservation easement for the site plan buffer areas, in terms acceptable to and approved by the Township Attorney, has been filed and recorded with the Essex County Register.
2. A Tree Removal Permit and designation of the number of replacement trees shall have been received by the Applicant from the Zoning Officer prior to the issuance of any other permits.
3. A narrative recycling plan, adequately covering both proposed tenants and conforming to Township Code Chapter 232, shall have been approved by the Township Engineer prior to the issuance of a Certificate of Occupancy.
4. The Applicant shall make best efforts to have the “No Left Turn” sign facing Harvest Lane from the northerly side of West Mt. Pleasant Avenue repositioned in a location that eliminates the appearance that it applies to traffic exiting Harvest Lane.
5. The Applicant shall provide to the Township Engineer copies of any and all submissions made by the Applicant to any governmental entity in regard to the proposed Site development, and copies of all responses from such entities, promptly after submission or receipt.

6. Prior to the issuance of a Certificate of Occupancy, the Applicant shall submit to the Township Engineer a certification, by a Licensed Site Remediation Professional, that all inspections and remediation required by N.J.D.E.P. regulations and under the N.J.D.E.P. Site Remediation Program have been completed. If any other remediation is required, it shall be completed prior to the issuance of the Certificate of Occupancy.

7. If Site inspection discloses the presence of any contaminants such as, but not limited to, chlorinated solvent technochloroethene (PCE) the Applicant shall provide a N.J.D.E.P. approved and appropriate mitigation system, such as but not limited to a vapor mitigation system, prior to the issuance of any Certificate of Occupancy.

8. The Bottle King West Mt. Pleasant Avenue façade has five window areas which contain 12 panes each. No more than one sign shall be displayed in any of these five window areas. No such sign shall exceed 4-feet by 4-feet in overall dimension, or occupy space in more than one pane.

9. No speaker of the intercom system at the CVS drive-thru facility shall generate sound, measured at the speaker, greater than 68 dBA except that if utilized later than 10:00 P.M., the sound shall be reduced to no more than 50 dBA. The drive-up facility shall not be opened before 8:00 a.m. and shall be closed during any time when a delivery vehicle is at the CVS delivery area at the rear of the building.

10. CVS, or any subsequent tenant having a drive-thru facility, shall not schedule delivery at the rear loading area after 8:00 A.M. No vehicle parked in the CVS Pharmacy

loading area or at the Bottle King loading dock shall extend into a driveway or a parking area aisle.

11. No pallets, merchandise, bins or other equipment or material shall be stored outside the building.

11. All glass on the façades shall be non-reflective.

12. All of the Model Conditions of Approval attached hereto are incorporated herein except for Nos. 5 and 16.

13. The following Conditions shall be met prior to issuance of any permits or the commencement of any work: Nos. 1 and 2 above and Model Conditions of Approval 6, 8.a, 11, 14, 17 and 18.

14. The following Conditions shall be met before the issuance of any Certificate of Occupancy: Nos. 3, 4, 5, 6, and 7 above and Model Conditions of Approval Nos. 1, 3, 8.b, 12 and 19.

15. The following are Continuing Conditions: Nos. 8, 9, 10, 11 and 12 above and Model Conditions of Approval Nos. 9, and 14.d.

NOW, THEREFORE, BE IT RESOLVED, that, for the reasons set forth herein and as stated on the record by the Planning Board of the Township of Livingston, 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.


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 July 31, 2012 by the affirmative votes of Members Kalishman, Klein, Kimmel, Meade, Ratner, Rieber and Alternate No. 2 Wishnew (in place and stead of Member Dinar); they being all of the Members both present and qualified to vote.


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 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.