

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Case # 2006-101-PFSPV

Motions by: Mr. Hochberg

Second by: Mr. Silverman

WHEREAS, the applicant is the St. Mary's Armenian Church (referred to herein as the "applicant");

WHEREAS, the applicant filed an application to amend the grant of variances by Resolution dated July 24, 2007 from the conditional use standards for religious institutions, bulk variances and preliminary and final site plan approval to expand a house of worship in the R-2 and R-4 Zone;

WHEREAS, the Applicant was represented by Lawrence Cooper, Esq. of the firm of Kaye Cooper Fiore Kay & Rosenberg, LLP;

WHEREAS, the property is located on Lot 38 in Block 700 and is known as 200 West Mount Pleasant Avenue;

WHEREAS, the applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or arrearages;

WHEREAS, hearings were held on the within application before the Board on February 22, 2011, March 22, 2011 and April 26, 2011 and

WHEREAS, the Zoning Board of Adjustment of the Township of Livingston has heard evidence presented and testimony of witnesses and has considered the numerous exhibits introduced into evidence, and has heard the arguments of counsel on behalf of the applicant and an opponent and statements of those opposing the application;

NOW THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Livingston as follows:

Case Summary

1. The applicant proposes to amend its Resolution granting variances to construct a two story addition to its church building, including administrative offices, classrooms and a fellowship hall with seventy one (71) parking spaces. The applicant was approved for an addition containing 3,159 square feet and is seeking an additional 177 square feet in the revised plans (but the Fellowship Hall will be smaller than previously approved) and a parking variance

is required as the new plan contains only 71 parking spaces while a strict reading of the Ordinance would require 94 spaces.

2. The proposed use is a conditional use permitted in the R-2 and R-4 zone under the Livingston Ordinance; however, the applicant does not meet the conditions in Ordinance Section 170-88(A)(1)(b) that the improvements have at least a 100 foot setback from the street and 25 feet from the surrounding properties as required by the Ordinance. The parsonage building is set back only 43.9 feet from Mount Pleasant Avenue and a shed is set back only 15 feet from the rear line and a surrounding property. Also, the plan violates Section 170-88(A)(1)(c) as the set back for off street parking should be forty (40) feet while it is only fifteen (15) feet. The conditional use variance was granted in the 2007 Resolution despite the Church not meeting these conditions

3. Also, the 2007 Resolution granted bulk variances from Sections 170-87E(1)(e), the location of accessory buildings in a residential zone must be in the rear yard, while the parsonage is in the front yard, Section 170-94(A)(5)(d), minimum parking area distance to residential property line should be twenty five (25) feet, while the proposed is fifteen and five tenths feet (15.5) and Section 170-94(D)(4) requires an off street parking front setback of twenty feet (20') while the proposed is only fifteen (15) feet.

4. The applicant was previously granted requested preliminary and final site plan approval for the application. This application seeks to amend the previously granted site plan application.

5. The hearings opened on February 22, 2011, with the applicant calling Father Sourin, the clergyman of the Church. Father Sourin testified that the Church decided to revise the plans for two reasons. The first was that the plans were not thought to be aesthetically pleasing and the costs were in excess of budget because of the changes proposed for the current Church facility. He testified that the Church has about 300 members consisting of 75 to 80 families and does not expect that to expand after the addition. He testified that the Sanctuary and Fellowship Hall do not have concurrent use. Also the classrooms and Fellowship Hall also would not have concurrent use (although the Sanctuary and classrooms are used concurrently on Sunday mornings.) The proposed Fellowship Hall could accommodate up to 230 people and would be used by members, non-members and community organizations for events including, but not limited to, weddings, sweet sixteen parties, holiday parties and meals. The Church would

not permit an event in the Fellowship hall concurrently when services are being conducted in the Sanctuary. He testified that there are between 60 and 75 students in the Sunday School, which is the same as in 2007. The Church is generally open on Sunday from 9:30 AM to 1 PM and from 9:30 AM to 3:30 PM on weekdays. No activities are planned at the Church on Saturdays, except an occasional wedding or other event. There will no be additional students in the classes, just more adequate facilities to service the 60 to 75 students who already attend religious school at the Church. There will be no change in the hours of the Church. Currently, the maintenance person for the Church lives in the parsonage residence on the property. Events usually end between 11 PM and midnight so the facility can be cleaned for use the next day.

6. Mr. Thomas V Ashbahian, AIA, then testified for the applicant and was accepted as an expert in architectural matters. He noted that the revised addition expanded the facility in one direction, not three like the approved plans and in the new plans the Fellowship Hall would be slightly smaller than in the approved plans. Also the handicapped entrance and toilet facilities were in the new addition rather in the existing facility. The new plan added a separate entrance to the Fellowship Hall while the old plans had one entrance for the entire facility. Classrooms will be expanded from seven to ten and an assembly hall will be added for use by the Sunday School. The Fellowship Hall will have a raised stage area which will make it more suitable for certain events as it can act as a raised dais. He testified that based on his knowledge of similar churches elsewhere, the use of the facilities had adequate parking although this plan called for one less parking space, 71 rather than 72 in the approved plan. He estimated that the Fellowship Hall without a dance floor could hold 230 people seated at tables.

7. Michael Lanzafama, P.E. and P.P., the applicant's engineer and planner was called as its witness, was accepted as an expert as an engineer and planner and gave an overview of the revised plan for the proposed facility. Mr. Lanzafama testified that the site is 3.95 acres, in both the R-4 and R-2 zones and will have 71 parking spaces, less than the 94 parking spaces required by the Ordinance. He noted the setbacks of the Fellowship Hall from the approved plans to the new plans were about ten feet closer to the side and rear lines, although compliance with the Ordinance. Total building coverage was increased by 200 square feet, but within the limits provide by the Ordinance. He noted that the new plan was a benefit as total lot coverage including parking areas and driveways was reduced by about 2530 square feet. He expressed the view that since the Sanctuary and Classrooms were to be used at the same time, parking would

be calculated as both in use at the same time. However, since the testimony was that the Fellowship Hall would never be in use simultaneously with the Sanctuary, then the requirements of the Ordinance should not apply and a parking variance was more than justified. He noted due to the size of the lot, additional spaces could be created, but at an increase in lot coverage that the Church believed would not be required. The proposed seventy one spaces would be adequate for the new Fellowship Hall under the Ordinance. Mr. Lanzafama then testified about the landscaping and parking lots and the efforts to buffer the new improvements for the benefit of the neighbors to the north and east of the Church. He also testified about the new six foot high board-on board fence that will act as a buffer and the extensive additional landscaping around the parking lot and to the east and north of the property to buffer the site from surrounding residential properties. He noted one of the driveways that would remain two ways was a mere eight (8) inches short of 22 feet wide and thought a variance was appropriate. Mr. Lanzafama also testified as a professional planner that the revised plan would not have a substantial effect on the public good or impair the zoning ordinance.

8. Mr. Thomas V Ashbahian, AIA, responded to a question about the noise from the Fellowship Hall by stating the walls will be eight inches thick and windows double paned so the potential for noise should be minimal, even though the building is closer to the residences than the original plan.

9. A neighbor, Mrs. Ba of 30 Surrey Lane was concerned about light penetration. Mr. Lanzafama responded that the flood lights in the rear would be replaced with shielded lights on the poles reducing ambient light intrusion to the residential lots in the rear. Based on questions about maintenance of the landscaping from Steven Guo, a neighbor on Surrey Lane, the applicant agreed to a condition in the Resolution that the Church maintain the landscaping on site. Also the applicant agreed to have all exterior lights on timers to turn off at 11 PM when there was no event at the Fellowship Hall and midnight when there was an event.

10. The hearing continued on March 22, 2011 with Mr. Winter identifying himself as counsel for two objectors who live on Surrey Lane and who were at the last meeting. The Board agreed to delay its vote on the application as Mr. Winter had just been engaged and agreed to submit any objections in writing two weeks before the next meeting.

11. Mr. Cooper, counsel for the applicant, then advised the Board that as to outside catering events in the Fellowship Hall, the Church would limit the number of guests of non-

members to 200 so there would be no question of adequate parking for the guests and the wait staff. For Church events, the number would be 220 guests as Church members there functioned as wait staff. Further if the Church used the parking areas for events such as rides for its annual festival or other event, off site parking would be provided with shuttle transportation to avoid any parking on Hillside Avenue. Mr. Lanzafama justified the 200/220 limit by analogizing to the one space for every three seats required for restaurants in the Ordinance. Mr. Lanzafama also said that the Resolution could provide that curtains would be put on the windows of the Fellowship Hall to block light and noise from the neighbors. Placards would be placed in the Fellowship Hall indicating the limit of 200 guests for non-Church events and 220 for Church events. The Church also agreed to put the limitation of guests into the contracts for the rental of the Fellowship Hall. The Church agreed to a condition to maintain the new landscaping and replace any dying trees or shrubs. Mr. Winter had an opportunity to cross-examine Mr. Lanzafama about his parking calculations.

12. The hearing continued on April 26, 2011 with a discussion among Messrs. Winter, Mr. Cooper and the Board about Mr. Winter's assertion that using the Fellowship Hall for non-members constituted a catering facility for up to 232 guests that required a use variance. The Board acknowledged receiving the letter of Mr. Winter and the enclosed report from Ralph Cascino, a Professional Planner supporting Mr. Winter's claim. The Board also acknowledged receipt of Mr. Cooper's letter challenging Mr. Winter's claim. Mr. Cooper asserted that the use by non-members would be an accessory use just like those for members as it was customary and incident in Livingston. During the discussion, Mr. Cooper refined the use that the Church would make of the Fellowship Hall for church events, community events, religious community events, lifecycle events of members and of non-members who wish to use the Church for a dignified setting with a religious connotation to their events. Mr. Winter agreed that his assertion for the need for use variance was limited to use by non-members, not any community events, religious or secular. The Board agreed to take testimony on whether the use by non-members was customary and incident to the use of the Church and other religious institutions in Livingston, and, therefore was an accessory use or required a use variance.

13. Mr. Winter called Geroge Cascino, a professional planner. Although he admitted on cross-examination by Mr. Cooper that he had never done any report or analysis on the issue at hand prior thereto, the Board accepted Mr. Cascino as an expert in professional planning. Mr.

Cascino asserted his professional opinion that events by non-members with no direct relationship to the Church required a D Variance. In part, Mr. Cascino based his opinion on the Shim Case, which each party had cited which involved a day care center where the children did not have to be member (or their families members). Mr. Cooper challenged Mr. Cascino's opinion as one in "gross" without any basis. Counsel for the Board asked if Mr. Cascino was familiar with the functioning of churches or synagogues in Livingston and he said that he was not.

14. Mr. Cooper then called Toros Kapoian, a member of St. Mary's who has been involved in renting the current Fellowship Hall to members and non-members and community groups. He explained that the events have not been extensive due to the esthetics as the Hall has not been redecorated in many years and due to the screening by the Church for suitable events. He explained that the Church wants groups that will comport themselves appropriately, and, therefore does not permit groups larger than the capacity or where security will be an issue. Examples of non-member events recently were two Indian weddings in 2010. On cross-examination Mr. Winter asked for a definition of a lifecycle event and the applicant agreed to limit the use of the Church for non-members to lifecycle events and community events, but refused to limit the definition to a few stated events. The witness confirmed all rentals to members and non-members are by written contract and the rules, applicable to both, are provided.

15. Mr. Cooper then called Merle Kalishman, former President of Temple B'nai Abraham in Livingston who testified that her synagogue made its facilities available for lifecycle events to members and non-members and that practice has been in place for the 46 years that it has been located in Livingston.

16. Mr. Cooper then called Richard Vossler, pastor of the Grace Lutheran Church in Livingston. He testified that his Church's social hall is made available to members and non-members for lifecycle events for a fee. This has been the policy for the past 13 years while he has been the pastor of the Church. He said the fees are so the Church can continue its religious mission. The social hall seats 95 people.

17. Mr. Cooper then called Ara Araz, a member of the St. Leon Armenian Church in Fair Lawn, NJ. He has been a member for 16 years and serves on the Parish Council. The Church has a Fellowship Hall that seats 300 people and he testified that it is often used by non-members for lifecycle events including sweet 16 parties, weddings, memorial meals after

funerals, holiday parties, including by local businesses. This occurs about twice each month by non-members and twice a month for members. He explained that the income from the Hall is an important part of the Church's ability to perform its religious functions.

18. Counsel for each party was allowed to sum up for the Board on the issue of whether renting the Fellowship Hall was an accessory use or required a use variance.

Findings and Conclusions of the Board

1. The Board ruled by a vote of seven to zero that the renting of the Fellowship Hall to non-members did not require a use variance as it was customary and incident to the operations of the Church. Rather, the use was an accessory use to the Church. This was based on the testimony by the applicant's witnesses.

2. In addition to revised Preliminary and Final Site Plan Approval, the applicant requires only one change in a bulk variance which relates to parking at the facility. The Board found that since the Sanctuary and Fellowship Halls would not be used at the same time, that a parking variance allowing only 71 spaces versus the 94 required by the Ordinance was appropriate. The only other bulk variance, the width of one driveway, was resolved during the hearing by the applicant agreeing to widen the driveway to 22 feet in width.

3. As this is a revision of a revised conditional use variance case, the Board applied the ruling in Coventry Square vs. Westwood, 138 NJ 285 (1994) that the Board must find that the site proposed continues to be an appropriate site for the conditional use, notwithstanding the deviations from the one or more conditions imposed by the Ordinance. These are the same as was heard in 2007 and the conditional use variance was granted then and continued in this matter with respect to the revised site plan.

4. The Board found that additional landscaping, fencing, parking lot landscaping, draperies on the windows, new lighting with shields and removal of the flood light, all lights to be on timers, and provided buffering adequate to determine that the revised Site Plan would not be a substantial detriment to the public good.

5. The Board recognized that the applicant was an inherently beneficial use under the Sica Case, and, therefore did not have to prove the positive elements that the applicant promoted the general welfare.

6. The Board found that any negative impacts on the surrounding neighborhood were effectively dealt with by the site plan as detailed above.

7. In considering the variances and site plan application, the Board found that the surrounding properties would not be substantially adversely impacted.

8. The Board found that the application would not substantially impair the zone plan or the Master Plan of the Township.

9. On the revised conditional use variance application and preliminary and final site plan and parking bulk variance, the applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(3) for a use variance from the conditional use standards. The Board voted unanimously seven in favor and none opposed for the use and bulk variance and other relief requested including the waiver of the environmental impact statement and for preliminary and final site plan approval.

Based on the foregoing, after weighing the equities of the matter and considering the various factors referred to herein, the Board determined that the grant of the variances and site plan approval will not be a substantial detriment to the public good and there will not be an impairment of the zoning plan or municipal zoning ordinance and the granting of preliminary and final site plan approval are consistent with good planning standards.

Now, therefore, be it **RESOLVED** for the reasons set forth above and on the record of testimony, by the members of the **ZONING BOARD OF ADJUSTMENT** of the Township of Livingston, that the amended conditional use variance, bulk variance and preliminary and final site plan approval under the Board's ancillary jurisdiction under N.J.S.A. 40:55D-76b be and hereby are granted subject to the terms and conditions set forth herein and as are reasonably consistent with the plans submitted and as testified to at the hearings before the Board.

The Board imposed the following conditions on the grant of the foregoing:

1. The Church Sanctuary and the new Fellowship Hall will not be used simultaneously so that there is adequate parking at the site.

2. All exterior lights will be turned off at 11 PM unless there is an event in the Fellowship Hall in which event all exterior lights on the site will be turned off by midnight.

3. All exterior lights will be on timers.

4. The applicant will be responsible for maintaining all landscaping and replacing all trees and scrubs that may die in the future.

5. Draperies will be hung on the windows facing the north and east side of the Fellowship Hall.

6. The use of the Fellowship Hall will be limited to church events, community events, religious community events, lifecycle events of members and of non-members who wish to use the Church.

7. The Fellowship Hall will have a sign indicating the maximum capacity of the room for members and non-member events.

8. Non-members and Members will be required to sign written contracts which limit attendance to 200 people for non-members and 220 for members.

9. If on any occasion any of the 71 parking spaces are used for any purpose other than available for parking, the Church will arrange for off-site parking and have a shuttle service so attendees can park remotely and not on local street.

10. The applicant shall satisfy the requirements of the letter dated March 18, 2011 on the application from the Livingston Township Engineer.

11. The parking lot lighting poles will only be 16 feet in height and be colored black.

12. The following standard conditions will apply to this application and grant of variances: 1(a), 2, 3, 6, 8, 9, 10, 12(b), 13, 14, 16(a). The full list of standard conditions is attached hereto.

This Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on April 26, 2011 in which Board members voted to approve the application.

CHAIRMAN:



Alan Ozarow, Chairman

Dated: May 26, 2011

Prepared by: Herbert S. Ford, Esq.

ZONING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval

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 need not always apply. Other or additional conditions may be tailored for any application.

1. Architecture

- a. Rooftop ancillary structures and 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 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 blasting (whichever is the greater distance) shall be conducted at Applicant's expense.
- 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

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

- 4. Deeds & Easements.** 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 filing for recordation.

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.
- 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 in terms receiving the approval of the Township Engineer, the Board Attorney and Township Attorney. If the responsibility for maintenance is assumed by the Township, the plan shall be prepared by the Applicant and shall be subject to the approval of Township Engineer. If the responsibility for maintenance is not the direct responsibility of a public agency, the maintenance plan and any future revisions 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.

6. Final Plans

- a. The full text of all of the conditions of this approval shall be set out on the final plans which shall be submitted to the Construction Official, the Township Engineer and the Board Secretary prior to the issuance of any Township permit in respect of demolition, preparation of the Site or construction of any improvement.
- b. Such final plans shall also include all changes agreed to in the course of the hearing, and 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.

7. Flood Hazards

- a. Insert on the final 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

- a. The approval of this Application is subject to the posting of any and all required performance guarantees, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the commencement of Site preparation or construction.
- b. This approval is also conditioned upon the Applicant providing, prior to issuance of the first certificate of occupancy, a performance guarantee 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 3.5 to 4.0 inches measured at a height of 4.0 feet above the root ball. All evergreen trees planted shall have a height of 8.0 to 9.0 feet.
- b. Street shade trees shall be planted in front yards and outside the right-of-way.
- 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 a tree or other planting removed because of damage or disease.

- d. No tree existing on the Site at the time of filing of the application shall be removed except as identified for removal on an approved plan. 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 equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, § 170-53 et seq. of the Code of the Township of Livingston, that establishes a higher or more restrictive 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. No machinery or heavy equipment shall be operated on Site on Saturdays, Sundays or federal holidays.
- c. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.

- d. 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.
- e. 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 in respect of preparation of the Site or construction of any improvement shall be issued until proof of request for such approvals, and any action thereupon, shall have been presented to the Construction Official.

12. Paving and Sidewalks

- a. Applicant shall install the top course of street paving not later than the earlier of six (6) months after issuance of the last certificate of occupancy or three (3) years after the 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.

- 13. Signs.** The Board shall retain jurisdiction over any and all signs until the final certificate of occupancy has been issued.

14. Traffic and Parking Enforcement

- a. The Applicant shall comply with Township Ordinances Chapter 29, Article 26, 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.

- b. 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.

15. Utilities for Site Plans and Major Subdivisions. Applicant will construct all utilities underground as required by law, and shall submit to the Building Department a written instrument from each serving utility evidencing full compliance with this condition and with Section 16-69(a)(17) of the Land Use Ordinance before issuance of any certificate of occupancy.

16. Wetlands

- a. Applicant will insert on the final subdivision map 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 with the Township.

18. Compliance With Conditions

- a. The within Condition(s) numbered 2(b), 6, 8, 14, 16(a) and Item 10 in the Board’s resolution shall all be complied with prior to issuance of any permit for demolition, site preparation or construction.
- b. The within Condition(s) numbered 2(a), 2(c) to 2(f), 3, 9, 10 and 12(b) shall be complied with prior to issuance of any certificate of occupancy.
- c. The within Condition(s) numbered 9 (c) and 13 shall be continuing conditions as will all the Board’s conditions except item 10 which must be complied with before a Building Permit is issued.