

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

Case # 2012-30-PFSPV

Motion by: Mr. Ozarow

Second by: Mr. Shah

FINDINGS AND CONCLUSIONS

The Zoning Board of Adjustment of the Township of Livingston, having considered the Application and plans filed in this matter, and the testimony and evidence presented at the hearings on July 24, 2012, the following findings of fact and conclusions are made:

1. The applicant is St. Barnabas Medical Center.
2. The property is located on Old Short Hills Road is taxed as Block 7300 Lot 5 & 6. The property is in the R-1 Zone.
3. The applicant is represented by Peter Carton, Esq. of the firm of Gibbons PC.
4. The applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrearages.
5. As shown in the application, the applicant intends to expand the Emergency Room Entrance at the Medical Center to add a 650 square feet addition containing a lobby waiting area and new entrance façade, signs and to re-stripe the parking areas to create three (3) additional parking spaces. The applicant seeks approval of its amended site plan.
6. This application requires variances as follows:
 - a. The application requires a conditional use variance under N.J.S.A. 40:55D-70(d)(3) as it fails to meet Section 170-88(A)(4)(d) of the Township of Livingston Land Use Ordinance that requires the application comply with Section 170-88A(Off Street Parking and Loading Provisions) as follows:
 - i) Section 170-94B which requires all parking areas and driveways shall be fully curbed to direct surface water; and
 - ii) Section 170-94B(11) which requires driveway widths to be at least 22 feet wide but as there is no curbing to delineate the width.
 - b. In addition, the applicant requires the following bulk variances for the proposed addition:
 - i) Section 170-91B(2)(b) which requires a front yard fence height not to exceed four feet, while 10 feet is proposed, a six foot variance is requested;

- ii) Section 170-91B(2)(b) which requires an openness of 50% in a front yard fence while the wall is 0% open, requiring a 50% variance
- iii) Section 170-91B(6)(a) which requires evergreen plantings to screen a front yard fence, while no plantings are proposed;
- iv) Section 170-3 requires all parking spaces to be 9' X 20' while the proposed spaces are 9' X 18";
- v) Section 170-90A(1) which requires only one sign in the residential zone while three new signs are proposed;
- vi) Section 170-90N(1) which prohibits roof signs and this includes a roof sign;
- vii) Section 170-94B(11) which requires 22 foot wide driveway for two way traffic while the driveways are not curbed so the width cannot be delineated; and
- viii) Section 170-94E requires 3,340 parking spaces while only 2263 are proposed (variance previously granted for only 2260 spaces prior to this addition).

7. The Applicant presented the following witnesses:

(a) Mr. William Cuthill, Vice President of Facilities Management at the Hospital for 19 years, testified as to the proposed expansion of the emergency room exit to be dedicated to the former CEO, make the entrance more visible to prospective patients, and create a canopy to protect patients from the elements. He noted that valet parking would be available during normal day time working hours to help arriving guests and patients ferry their cars to a nearby parking area. Exhibit A-1, an aerial photo of the Hospital was used to explain the location of the new emergency room entrance and other parking adjustment elsewhere on site. He also stated that the adjacent loading dock would no longer be used to avoid conflict with arriving cars to the emergency room entrance.

(b) Mr. Christopher Cirrotti, PE of the firm of Dewberry Associates, was accepted as an expert in civil engineering and testified as the site engineer. He described the site plan for the new lobby and canopy and noted there would be no additional impervious coverage. He stated that noted the new parking space were remote from the Emergency Room and testified that these spaces were for hospital employees and not guests, but should be counted in the total count for the Hospital's site plan.

(c) Kelly Miller, AIA, of Cauffman Associates, went through the architectural renderings of the new entrance during daytime and nighttime and described the materials.

(d) Paul Phillips, P.P. was accepted as an expert in planning and testified persuasively about the basis and reasoning for the conditional use and bulk variances required.

Conclusions of the Board

The Board concluded that the Applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(3) for the relief sought, demonstrating that the benefits of the proposed

expansion to the Hospital far outweigh any detriments which might be caused by the granting of the variances.

A. The Board concluded that the application violated the Municipal standards for conditional use in the R-1 Zone and the applicant requires variances.

B. Since the Hospital is a pre-existing conditional use, the Board concluded that this case must be analyzed under both the Coventry Square conditional use analysis and the Sica vs. Board of Adjustment analysis. Under Coventry Square, conditional uses which do not meet all of the conditions of the ordinance must meet a lesser burden when seeking variances. In addition, under Sica vs. Board of Adjustment, inherently beneficial uses, such as a hospital at issue herein, also must be scrutinized under a lesser standard than typical Medici commercial variances.

C. The Board found that in addition to the hospital being an inherently beneficial use, the proposed new entrance to the emergency room with greater visibility and a lobby waiting area will benefit both the community and the surrounding towns.

D. The Board accepted the testimony of the Applicant's employee witness and experts and concluded that the Hospital needed the new enhanced entrance to the emergency room and new lobby. The Board was in favor of the design which would fit architecturally with the existing structure. For the most part, the site plan of the Hospital was not changing at all and no impervious surface was being created so that no environmental or storm water impact study should be required.

E. The Board found very few detriments to the application.

F. When compared to the overwhelming benefits that the Hospital provides to the surrounding area and the additional benefits which will be provided due to the proposed new entrance and lobby against the few detriments caused by the proposed application, the Board concludes that under both Sica and Coventry Square, that the Application should be granted with all conditional use and bulk variances requested.

Based upon the above findings, there will be no detriment resulting to the public good, nor will there be an impairment of the zoning plan or municipal zoning ordinance.

Now, therefore, be it **RESOLVED** by the **ZONING BOARD OF ADJUSTMENT** of the Township of Livingston that the application herein submitted is granted to allow the following variances:

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 variances 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.

a. The application is granted a conditional use variance under NJSA 40:55D-70(d)(3) as it fails to meet Section 170-88(A)(4)(d) of the Township of Livingston Land Use Ordinance for failure to meet the bulk requirements of the Ordinance for parking.

b. Variance from Section 170-88(a)(4)(d) and 170-94 of the Township of Livingston Land Use Ordinance –Minimum number of parking spaces. The ordinance requires 1 space per 250 square feet while the applicant proposed 3 spaces be added leaving the total for the Hospital below the required number of spaces required under the Ordinance. In addition the Hospital is granted bulk variance as follows:

i) Section 170-91B(2)(b) which requires a front yard fence height not to exceed four feet, while 10 feet is proposed, a six foot variance is granted;

ii) Section 170-91B(2)(b) which requires an openness of 50% in a front yard fence while the wall is 0% open, a 50% variance is granted;

iii) Section 170-91B(6)(a) which requires evergreen plantings to screen a front yard fence, while no plantings are proposed and a variance is granted;

iv) Section 170-3 requires all parking spaces to be 9' X 20' while the proposed spaces are 9' X 18" and a variance is granted for the size of the new spaces;

v) Section 170-90A(1) which requires only one sign in the residential zone while three signs are proposed and a variance is granted from the sign Ordinance provisions;

vi) Section 170-90N(1) which prohibits roof signs and this includes a roof sign for which a variance is granted;

vii) Section 170-94B(11) which requires 22 foot wide driveway for two way traffic while the driveways are not curbed so the width cannot be delineated so a variance is granted from the requirement to delineate the driveway widths.

The applicant's requests for a waiver of an environmental impact and storm water management statement are also granted. This approval is subject to all other requirements of the Township ordinances, building code, and the right of appeal by any interested party. Also, as required by Livingston Ordinance 170-27(A), construction must be commenced within one year of the date hereof or the variance shall expire.

The Board imposed a condition that the loading dock next to the emergency room entrance be closed and no longer used. Prior to a Certificate of Occupancy is issued, the loading dock shall be closed and no longer used.

This approval relates solely to the emergency room entrance and related parking area and does not involve any other site improvements at the site that may have been made without approval of the Board previously and the applicant is reminded that all site improvements must be approved in an amended site plan by the Board.

The following standard conditions will apply to this application and grant of variances: 1(a), 2, 3, 6, 8, 9, 10, 11, 12(b), 13, 14, and 17. The full list of standard conditions is attached hereto.

The Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on July 24, 2012, in which Board unanimously voted to approve the application in accordance with and subject to the conditions and terms set forth herein on the record.

CHAIRMAN:



ALAN OZAROW

Dated: August 14, 2012

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, 11, 14, and 17, to the extent determined applicable by the Township Engineer, 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) to the extent determined applicable by the Township Engineer 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.
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