

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

Application #: 2016-19-V
Decided: November 29, 2016
Memorialized: December 13, 2016

SUMMARY OF THE APPLICATION

The subject property is commonly known as 25 East Northfield Road, and is taxed as Block 2700, Lot 50. The property is in the B Central Business District Zone which is designed for, and limited to, business uses such as retail sales and services, business and professional offices and similar uses. Residential use is not a permitted use in this zone.

The building located on the Property contains a restaurant. The upper level of the building formerly contained an apartment that was a pre-existing nonconforming use. The apartment was converted by a tenant to a kitchen preparation area which is a permitted use in the zone. The Applicant proposes to convert the upper level kitchen preparation area to a two-bedroom apartment. A use variance is required to permit residential use. In addition, a bulk variance for parking is required (24 spaces required, and 19 spaces proposed).

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 hearing on November 29, 2016, the following findings of fact and conclusions are made:

1. The Applicant is: Red Barn Associates, LLC
2. The Applicant was represented by Nicole Magdziak, Esq, from the law firm, Day Pitney LLC.
3. The Applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears.
4. The Applicant proposes to convert the upper level of a building containing a restaurant to a two-bedroom residential apartment.
5. Violations of the following Livingston Zoning Ordinances were noted:
 - (a) Section 170-107 – B Central Business District - Proposed residential use of property zoned for business uses.
 - (b) Section 170-94 - Off-Street Parking and Loading Provisions - 24 parking spaces required; 19 spaces proposed.
 - (c) Section 170-107C (4) - Rear Yard Setback - 25 feet required; 2.85 feet proposed.
6. The following persons were sworn and testified at the hearing on behalf of the Applicant:
 - (a) Phillip Talkow, an owner of Red Barn Associates LLC, the Applicant;
 - (b) Franz Laki, the Applicant's engineer; and
 - (c) Michael Tobia, admitted as an expert in Planning.

7. No members of the public appeared either in support of or opposition to the Application.
8. The Applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(c) (1) for the relief sought by demonstrating that the Property is particularly suited for the proposed use. The Livingston Master Plan states that the mixed use of residential units above retail and service businesses is desirable for the purpose of adding residential vitality to central business districts. The Board found that the proposed use is consistent with the Township's Master Plan and that the purposes of the Municipal Land Use Law will be advanced by the project (N.J.S.A. 40-55D-2 (e) and (g)).

CONCLUSIONS OF THE BOARD

The Board found that by granting the variances there will be no substantial 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 the following variances from the Ordinance:

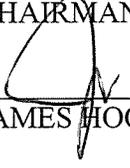
- (a) A Use Variance is granted to allow residential use of property zoned for business uses (Section 170-107 – B (Central Business District).
- (b) A variance is granted for Off-Street Parking and Loading to allow 19 parking spaces where 24 parking spaces are required.
- (c) A Rear Yard Setback of 22.15 feet is granted.
- (d) The Board's Model Conditions of Approval annexed hereto are incorporated herein.

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.

Copies of the Applicant's survey showing the proposed improvements and architectural plans are attached hereto as an exhibit to indicate the final version thereof.

This Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on November 29, 2016 in which Board voted seven in favor and none opposed to permit the application.

CHAIRMAN:



JAMES HOCHBERG

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Livingston on November 29, 2016 by the affirmative votes of Mr. Vieira, Mr. Gillman, Ms. Hwang, Mr. Resnick, Ms. Tabak Fass, Mr. Nardone and Mr. Hochberg; they being all of the Members present and eligible to vote.

PLANNING ADMINISTRATOR:



JACKIE COOMBS-HOLLIS

Prepared by: Alan Ozarow, Esq.

ZONING BOARD OF ADJUSTMENTS – TOWNSHIP OF LIVINGSTON

Model Conditions of Approval (Adopted August 14, 2008)

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. Storm water 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 washdown 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. Condition(s) numbered _____ shall all be complied with prior to issuance of any permit for demolition, site preparation or construction.
- b. Condition(s) numbered _____ shall be complied with prior to issuance of any certificate of occupancy.
- c. Condition(s) numbered _____ shall be continuing conditions.