

**RESOLUTION**  
**PLANNING BOARD**  
**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: January 10, 2017  
Memorialized: February 7, 2017

Re: Application No. 2016-49-MSV  
Applicant: Michael Smith and Michelle Smith  
Premises: 35 Brookside Avenue, Livingston, NJ  
Block: 3202; Lot: 38  
Zone: R-4

**SUMMARY OF CASE**

1. The Applicants are the owners of the subject premises that consists of a single residential lot on which is located an existing single-family home and detached garage.
2. The Applicants propose to subdivide the lot to create two separate residential lots, both of which would be undersized under the Township Code. The Applicant requests subdivision approval with variances for lot size and side yard setback, as set forth further herein.
3. A public hearing on this matter was heard by the Board on January 10, 2017.
4. The Applicants were represented by Stephen A. Geffner, Esq.
5. Proof was presented that all statutory requirements of notice and publication and payment of taxes have been complied with.
6. The Applicants presented the testimony of Michael Lanzafama, of the firm Casey & Keller, of Milburn, New Jersey, who was admitted as an expert in land surveying, engineering and planning. The Applicants requested approval of the

Minor Subdivision Plat submitted with the Application and prepared by Mr. Lanzafama of Casey & Keller, under date of 07-29-2016.

7. Present at the hearing was Ms. Sue Salzman, a resident at 29 Brookside Drive, who raised concerns with respect to water runoff and storm water management.

### **FINDINGS OF FACT**

1. The subject property is in the R-4 zone and is irregular in shape, with measurements of 100 feet by 200 feet with an irregular jog at the front of the property that does not increase the overall width.
2. The property, as originally created, was two separate lots as part of the original subdivision of the neighborhood. Over the years, through common ownership these two lots were merged into a single lot designated as Lot 38 in Block 3202.
3. The property is proposed to be divided into two separate lots. Lot 38.01 would be 50 feet by 200 feet. Proposed Lot 38.02 would have an irregular jog at the front of the property in which a triangular portion extends the front yard to create a slightly irregular lot that would measure 50' x 212.57' on the left side as viewed from the street and 200 feet on the right. The proposed subdivided lots would be configured as follows:

A: Lot 38.01 would measure 10,000 square feet with 6,250 square feet within the first 125 feet from the front street right-of-way line. Township Code Section 170-99.C.(5) requires a minimum of 9,375 square feet within the first 125 feet, resulting in a request for a variance of 3,125 square feet.

B: Lot 38.02 would measure 10, 157 square feet, with 6,470 square feet within the first 125 feet from the front street right-of-way line. Township Code Section 170-99.C.(5) requires a minimum of 9,375 square feet within the first 125 feet, resulting in a request for a variance of 2,905 square feet.

4. Mr. Lanzafama expressed his understanding that in order to have 9,375 square feet within 125 of the front street right-of-way line a lot would have to have a 75-foot width, necessitating a variance of 25 feet.
5. As part of the application, an existing garage attached to the single-family home would be demolished, as would a free-standing garage presently on that portion of the property that would become Lot 38.02. The proposed free-standing two-car garage for Lot 38.01 would have conforming 6.0-foot side yard and rear yard setbacks.
6. The existing single-family home would remain located entirely within proposed Lot 38.01. It is in violation of the 10-foot side yard setback requirement for the zone because 5.95 feet from the adjoining property line. The proposed rear extension of that home would maintain that same building line while extending it farther to the rear. This would necessitate a side yard setback variance of 4.05 feet for the extension.
7. New Lot 38.02 would be irregular in shape because of a bend in the road at the front of the property. The front property line would run 29.94 feet plus 28.039 feet where it turns. The lot depth would be 50' x 212.57' on the left side as viewed from the street and 200 feet on the right. A new single-family home would be constructed on that lot at some future time.

8. The testimony of Mr. Lanzafama demonstrated by statistical data that 65.2% of all of the properties within 400 feet of the subject Site were of equal or lesser size, and that 69.6% were of equal or less width than the proposed new lots. It was his opinion that because the subdivided lots would be comparable in size to the majority of the lots in the neighborhood there would be no negative impact on the Zone Plan or Zoning Ordinance and, because of the consistency with the character of the neighborhood no detrimental impact to the public good .
9. The application requires variances from the provisions of Township Code Section 170-99.C.(5) that requires a minimum of 9,375 sq. ft. within the first 125 feet from the front street right-of-way line. Lot 38.01 will have 6,250 square feet there; necessitating a variance request of 3,125 square feet. Proposed Lot 38.02 will have 6,470 square feet within 125 feet of the front street right-of-way line; necessitating a variance of 2,905 square feet. The Applicant further requires a variance as to the width of the property. Township Code Section 170-99.C.(3) requires a 75-foot width. 50 feet is proposed; resulting in a request for a 25-foot lot width variance for each proposed lot.
10. Lanzafama also testified that the bulk variances requested could be granted under the provisions of N.J.S.40:55D-70(c)1 because of the irregular shape of the property. He further testified that the approval would be consistent with the Master Plan and with the provisions of a, e and g of N.J.S. 40:55D-2. The proposed side yard setback variances will not increase existing conditions and will not create a further encroachment. The widths of the proposed lots are consistent with others in the immediate vicinity. The Applicant could remove the

existing home and construct a larger home utilizing the existing lot. The size of such a house would be out of character with the neighborhood, so that the requested relief actually provides a better zoning alternative consistent with N.J.S.40:55D-70(c)2.

### **CONCLUSIONS OF THE BOARD**

1. The Board approves and grants the subdivision request made by the Applicant, together with the variances set forth herein.
2. The Board approves the subdivision to create two new lots as shown and described on the Minor Subdivision Plat prepared by Michael Lanzafama of Casey & Keller, under date of 07-29-2016.
3. The Board approves and grants the following variances with respect to the Application:
  - A: With respect to the proposed rear extension to the existing residence on proposed Lot 38.01, a side yard setback variance of 4.05 feet from the provisions of Township Code Section 170-99.C.(3). Said approval is consistent with the provisions of N.J.S. 40:55D-70(c)1, as testified to by Mr. Lanzafama.
  - B: For proposed Lot 38.01, a variance of 3,125 square feet from the Township Code Section 170-99.C.(5) requirement for lot size within the first 125 feet from the front street right-of-way line. As testified to by Mr. Lanzafama, the variance meets the requirements of N.J.S. 40:55D-70(c)2 in providing a better zoning alternative to the Township Code by permitting development that will preserve

the nature of the neighborhood. The benefits of the approvals outweigh any detriment.

C. For proposed Lot 38.02 a variance of 2,905 square feet from the Township Code Section 170-99.C.(5) requirement for lot size within the first 125 feet from the front street right-of-way line. As testified to by Mr. Lanzafama, the variance meets the requirements of N.J.S. 40:55D-70(c)2 in providing a better zoning alternative to the Township Code by permitting development that will preserve the nature of the neighborhood. The benefits of the approvals outweigh any detriment.

D. Variances of 25 feet from the width of 75 feet required both for Lot 38.01 and Lot 38.02 to allow overall lot widths of 50 feet. These variances will meet the requirements of N.J.S. 40:55D-70(c)2 in providing a better zoning alternative to the Township Code by permitting development that will preserve the nature of the neighborhood. The benefits of the approvals outweigh any detriment.

3. The approvals herein are subject to the following Conditions agreed to:
  - A. The Applicants submitting a plan for their stormwater management system acceptable to the Township Engineer.
  - B. The Applicants obtaining lot grading and surface drainage permits from the Township Engineer.
  - C. The removal of the existing free-standing garage upon perfection of the approved subdivision.
  - D. The Applicants shall obtain a Road Opening Permit for any work, including curb modifications and utility connections, within the front street right-of-way.

E. Conditions A, B, and D above must be met before the Township issues any permits other than a permit necessary for accomplishment of Condition C.

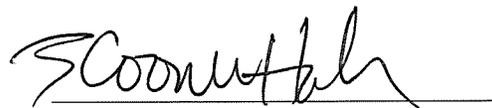
F. The appended Model Conditions of Approval Numbers 3, 4, 6, 8, 10, 11 and 12 are hereby incorporated herein.

NOW THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, and consistent with the proofs and testimony presented at the hearing, it is resolved that the Board does hereby approve the Minor Subdivision with variances, as set forth herein, subject to the terms and conditions set forth herein.



Peter M. Klein, Chairman

This Resolution is a memorialization of the decision of the Livingston Planning Board of the Township of Livingston made on January 10, 2017 wherein Board Members Leopold, Anthony, Santola, Silverman, Kalishman, Klein, Alternate No. 1 Rieber (in place and stead of Member Ratner), and Alternate No. 2 Wishnew (in place and stead of Member Dinar) voted to approve the Application in accordance with the action memorialized herein, they being all of the Members present and eligible to vote.



Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF  
LIVINGSTON

Model Conditions of  
Approval  
(As Amended through  
February 12, 2013)

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.
- c. Such final plans shall comply with the Uniform Construction Code and the Barrier Free Subcode as then in force in the State of New Jersey. If, during performance of work pursuant to the Board's resolution and permits that have been issued, field conditions indicate need for change(s), such need shall be called to the attention of both the Construction Official and the Township Engineer for approval of any such change before it is implemented. If any such change is significant, permission to amend the Site Plan may have to be sought from the Planning Board. Until all requirements under approved plans and the Uniform Construction Code, including accessibility requirements, have been completed or bonded, any certificates of occupancy issued shall be temporary certificates only.

## **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 washdown 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 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.