

**RESOLUTION**

**PLANNING BOARD**

**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: October 3, 2017  
Memorialized: November 9, 2017

Re: Application No. 2017-45-PFSPV  
Applicant: Spectrum 360  
Premises: 6 Regent Street, Livingston, NJ  
Block: 101; Lot: 1  
Zone: C-I

**SUMMARY OF THE CASE**

1. The Applicant, formerly known as The Children's Institute, currently operates a private school for individuals on the autistic spectrum with disabilities at the subject location. The operation has offered educational services for a variety of ages from grade level through high school and beyond. Applicant now proposes to provide additional educational, pre-vocational and vocational services for students from the ages of 18 to 21 who are not ready for graduation.
2. The Application proposes to add additional space to accommodate the adult students, plus space for occupational and physical therapy, a film academy, a large gymnasium, and 8 more classrooms.
3. The Board previously adopted a Resolution with variances for this location, under Applicant's prior name of The Children's Institute, which was memorialized on January 7, 2014.

4. The Applicant was represented by Dean J. Donatelli, Esq., of the firm Inglesino, Webster, Wyciskala & Taylor, LLC, of Parsippany, New Jersey.
  
5. The Applicant presented proof that all statutory requirements have been met, including payment of taxes, service and publication of notice as required.
  
6. Testifying on behalf of the Applicant were:
  - A: Dr. Bruce Ettinger, Executive Director & Superintendent of Spectrum 360;
  - B: Erin Vasold, admitted as an expert in architecture;
  - C: Michael Lanzafama, P.E. & P.P., admitted as an expert in engineering and planning.
  
7. Three additional variances were requested, as follows:
  - A: Code Section 170-118.C.(2).(a)[2] requires a 10-foot setback from the building for any parking spaces, whereas a 4.4-foot setback is proposed; resulting in a request for a 5.6-foot variance.
  - B: Code Section 170-94.F.(1) prohibits a loading area in the front yard; for which Applicant requests a variance; and
  - C: Code Section 170-118.C.(2).(a)[3] prohibits parking within 50 feet of a front yard boundary, whereas the Applicant proposes a 25.25-foot setback; resulting in a request for a variance of 24.75 feet.

8. The Applicant also requests approval under the provisions of Code Section 170-3 which sets a minimum length of a parking stall to be 20 feet. 18 feet is proposed and can be permitted by the Board since a 2-foot overhang is provided.
9. No Members of the public appeared to testify either in support of or in opposition to the Application.

### **FINDINGS OF FACT**

1. The Applicant currently operates a private school facility on the subject premises and seeks to construct a single-story addition of approximately 20,188 square feet to the easterly side of the existing building. That extension would house a gymnasium and 8 more classrooms; which together with the proposed reconfiguration of the interior of the existing building will bring the total number of classrooms to 11. An existing fence and bollards near the tennis court will be removed. Existing lights for the tennis court will be relocated to the southerly façade of the new extension. A fire hydrant within the parking lot will be relocated. Parking spaces will be reduced from 192 to 158 spaces, which is still compliant with the Township requirement of 105 spaces. The parking will include 7 handicap parking spaces; which exceeds the requirement of 6 such spaces. Also included in the 158 spaces are 4 reserved for the vans for student transportation. The Applicant will remove any outdoor storage pods currently present. A “temporary” greenhouse structure is also being proposed. 46 trees would be removed and 53 new trees planted; in excess of 43 required by the

Township's Trees Ordinance. The Applicant agreed to utilize deer resistant arborvitae and similar trees where possible.

2. During the course of the Lanzafama testimony, it became apparent to the Board that the proposed relocation of the refuse area would place it 33.39 feet from the front yard setback boundary. 50 feet is required by Code 170-118.C.(2)(a). Thus a fourth variance; one for 16.61 feet, was required for the relocation of the refuse area within the already approved off-street parking area.
3. The premises are within the Business Improvement District in which Township Code §170-92.F.(7) requires that refuse area dumpsters be in the rear yard; resulting in a request for relief from that standard as well.
4. The Board further determined that the Applicant was intending to park 4 buses on the premises, which is not permitted in the C-I Zone. The Applicant established that such buses are passenger vans that are necessary for transportation of students and will serve the overall educational purposes of the Applicant's operation and that a variance for such parking was necessary. The Applicant further indicated that all vans are the size that will fit in a conventional 20-foot parking space and will fit into an 18-foot space with a 2-foot overhang as can be permitted by the Board.

5. Included in the parking count are 3 spaces to be added at the northeast corner of the property within the required front yard setback from Microlab Road; necessitating a front yard setback variance of 24.75 feet from the required 50 feet.
6. The proposed “temporary” greenhouse would be in addition to an existing greenhouse and would be used to hydroponically grow vegetables, fruit, flowers and the like and be maintained by the students. It is constructed of tent-like materials, but would be placed on a concrete slab. The Board determined it did constitute an accessory structure but had sufficient setback from the building and property lines so that no variances were required.
7. A Knox Box, and an emergency fire lane with grass pavers, and a gate or posts and chain as required by the Fire Department, would be provided.
8. The existing storage pods currently maintained on the property will be removed and not used any further.

#### **CONCLUSIONS OF THE BOARD**

1. The Board finds that the Applicant has met the statutory and ordinance requirements for Preliminary and Final Site Plan approval.
2. Approval is granted with the following variances:
  - A. A variance is granted from Township Code Section 170-92.F.(7) to permit

the refuse and trash area to be in a front yard.

B: A front yard variance of 16.61 feet is granted from the provisions of Township Code Section 170-118.C.(2)(a)[1], for the refuse and trash area structure where 50 feet from the Microlab Road right-of-way line is required.

C: A variance is granted from the provisions of Township Code Section 170-118.C.(2)(a)[2] for a variance of 5.6 feet from the required 10-foot setback from the building for any parking spaces.

D: A variance is granted from the provisions of Township Code Section 170-94.F.(1) to permit the loading area to be in the front yard.

E: The Board grants a variance from the provisions of Township Code Section 170-118.C.(2)(a)[3] for a variance of 24.75 feet for front yard parking less than 50 feet from the Microlab Road right-of-way line.

The Board finds that the evidence and testimony of the Applicant established that the variances can be granted pursuant to the provisions of N.J.S.40:55D-70.c.(1) in that the subject premises has an existing building which leaves no room for a rear yard addition, and also that it is corner lot with fronts on 3 streets, and that the proposed use of the premises serves a public good and provides needed educational facilities

that will serve the community, and that there will be no detriment to the Zone Plan, Zoning Ordinance or to the public good.

3. The Board concludes that the 4 vans are solely for transportation of the students, are of the type and size permissible for off-street parking on the premises under provisions of Township Code Section 170-94.A(3), and that parking of those vans in reserved spots is permitted under those circumstances.

4. The Board grants a waiver from the provisions of Township Code Section 170-3 with respect to the requirement of a 20-foot parking stall; finding that the proposed stalls of 18 feet will also have a 2-foot overhang and so can hereby be approved by the Board.

5. This approval is subject to the following Conditions:

A: The Applicant will supply a written reply to the Planning and Engineering Department memorandum of September 28, 2017.

B: The Applicant shall obtain a Tree Removal Permit.

C: The Applicant shall provide a Knox Box and shall equip the emergency fire lane with a gate or posts and chain to the satisfaction of the Township Fire Chief.

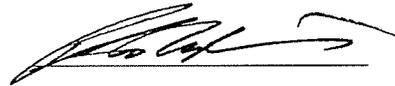
D: All Conditions of prior approvals shall continue in force unless inconsistent with these Conditions.

E: The parking spaces for the 4 vans shall have signage identifying them as reserved for that purpose.

F: The Board's Model Conditions of Approval attached hereto are incorporated herein.

G: Conditions A, B and Model Conditions of Approval 6, 8, 11,17 and 18 shall be met before any permit other than a Tree Removal Permit shall be issued.

**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 Application for Site Plan approval with variances, as set forth herein, subject to the terms and conditions of this Resolution.



Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on November 9, 2017 memorializing the decision of the Board made on October 3, 2017 wherein Board Members Anthony, Dinar, Kalishman, Santola, Alternate No. 1 Rieber (in place and stead of Member Ratner), Alternate No. 2 Wishnew (in place and stead of Member Silverman), and Klein

voted to approve the Application in accordance with the action memorialized herein; they being all of the Members present.

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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.