

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: July 7, 2015
Memorialized: August 11, 2015

Re: Application No. 2009-49-PFSPV (Amendment)
Applicant: Newark Academy
Premises: 91 South Orange Avenue, Livingston, NJ
Block: 6001; Lot: 135
R-L Zone

STATEMENT OF THE CASE

1. The Applicant requests amendments to previous approvals of the Board adopted in this matter on January 5, 2010, January 4, 2011, and November 29, 2011.
2. The Applicant operates a private school facility and seeks to make additions and modifications to the existing middle school and high school building. These proposals includes modifications and changes from the Plans previously approved by the Board for this project.
3. A hearing on this Application was heard by the Board on July 7, 2015.
4. The Applicant was represented by Stephen A. Geffner, Esq., of Schenck Price Smith & King, LLC, and has provided confirmation that statutory requirements of notice and publication have been complied with, and there are no taxes due or delinquent respecting the subject property.
5. Testifying on behalf of the Applicant were:

- A: Donald M. Austin, the Head of the school.
 - B: Michael Lanzafama, of Casey & Keller, P.E., admitted as an expert in planning and engineering.
 - C: Walter Kneis, admitted as an expert in architecture.
 - D: Karl A. Pehnke, admitted as an expert in traffic engineering.
6. The Board granted a request by the Applicant for a waiver of an environmental impact statement.
 - 7.
 8. No members of the public has questions for witnesses or appeared either in support of or in opposition to the Application.

FINDINGS OF FACT

1. The Board has previously granted approval to the Applicant for construction of additions to the school building and improvements to the grounds and signage on the property. The Applicant now seeks certain changes and modifications to meet needs and demands which have become apparent as earlier stages of the improvements progressed. The previously approved Plans included the addition of a performing arts center which the Applicant no longer intends to construct and instead will expand and renovate its existing auditorium facility.
2. The proposed newly designed facility will provide 14 middle school classrooms, and a total of 59 in the entire academy. The middle school classrooms will be larger in size and will provide a better learning environment. The proposed addition would increase the footprint by 12,415 square feet. The Board, by previous Resolution, had approved an addition of 11,204 square feet. The new design includes a parapet, but the addition will still be lower in total elevation than the existing primary building. The Applicant also requests new signage at the front entrance which would have improved visibility for motorists on South Orange Avenue.

3. The Plans as submitted would require the following variances:

A: Township Code 170-115.C.(1) provides for a maximum building height of 35 feet; 38 feet 5.9 inches proposed. A variance of 3 feet 5.9 inches is requested.

B: Township Code 170-90.H.(1) limits the Applicant to one free standing sign; 2 are proposed. A variance for one additional sign is requested.

C: Township Code 170-90.H.(1) limits the distance from the street -of way to a minimum of 75 feet; 40.72 feet is proposed. A variance of 34.28 feet is requested.

D: Township Code 170-90.H.1) limits the distance from a street right of way to a minimum of 75 feet; 36.92 feet is proposed for one sign and 40.72 feet for the other. Variances of 38.08 feet and 34.28 are requested.

E: Township Code Section 170-94 requires a total of 431 parking spaces, whereas 335 are being provided. Applicant requests a variance of 96 parking spaces.

F The Applicant also requested continuance of a number of existing non-conforming conditions which were included in the previously Applications and are:

(1) Township Code Section 170-87.E.(2)(e) requires a minimum of a 200 foot front yard setback for an accessory building. 64 feet is existing and proposed to continue, a variance of 136 feet front yard setback is requested to be continued.

(2) Township Code Section 170-87.E.(2)(d) requires a minimum side yard setback of 75 feet for an accessory building. 65 feet is existing and

proposed to be continued, a variance of 10 feet side yard setback is requested to be continued.

(3) Township Code Section 170-115.C.(5)(a)[1] requires a minimum distance of 150 feet from the parking area to South Orange Avenue. 52 feet is existing and proposed to be continued, a variance of 98 feet is requested to be continued.

4. The Applicant presented testimony from its traffic expert and planner that the parking obligation is skewed high because of the size of the proposed remodeled auditorium/performing arts facility. Parking needs for this facility are rarely, if ever, utilized during school hours and are normally for evening and weekend events when the parking needs for school operations are not utilized. The Board had previously approved a variance for 71 parking spaces and there have been no issues or problems with parking shortages since that approval, so that the increase to a 96 space variance will not have a detrimental effect on the Applicants ability to meet its parking requirement. The school operates as a self-contained campus and there is little, if any, spillover onto public roadways.

5. The Applicant's experts testified and presented adequate proofs that the requested bulk variances for the building setback and height can be granted because of the self-contained nature of the campus on which the Applicant operates the school, and there will be little visibility from any public streets or adjoining properties due to the size of the property and the location thereon of the existing and proposed buildings and improvements. The variances can be granted pursuant to N.J.S.40:55D-70c.(2) because the benefits outweigh any detriment, the Zone Plan and Zoning Ordinance will not be impaired, there will be no detriment to the public good, and that the improvements will serve to enhance the existing school facility and further enhance its educational functions.

6. The sign variances are necessary to provide enhanced visibility of the school entrances for motorists, and will enhance safety by allowing motorists to make safer identification of the Site. Accordingly, the Applicant has satisfied the requirements of N.J.S.40:55D-70.c(2) because the additional and larger signs will provide a better zoning alternative by allowing more visible identification of the entrances thereby enhancing traffic safety for motorists who are not familiar with the exact location of the property. There will be no detriment to the public good and the intent and purpose of the Zone Plan and Zoning Ordinance will not be impaired and the benefits of the grant of the variances will outweigh any detriment.

CONCLUSIONS OF THE BOARD

1. The Board finds that the Applicant has satisfied the statutory and Township Code requirements for approval of the Site Plan and same is hereby granted subject to the variances and conditions set forth herein.

2. The Board hereby grants and approves the following variances:

A: A variance from Code Section 170--115.C.(1) of 3 feet 5.9 inches to allow a total building height, including parapet, of 38 feet 5.9 inches (35 feet permitted, 38 feet 5.9 inches approved).

B: A variance from the provisions of Township Code Section 170-90.H.(1) to allow one additional free standing sign, for a total of 2 free standing signs (1 sign permitted, 2 signs approved).

C: A variance from Township Code Section 170-90.H.(1) for a freestanding front sign setback variance of 34.28 feet from a right-of-way line (75 feet required, 40.72 feet approved) (Easterly side of driveway from South Orange Avenue).

D: A variance from Township Code 170-90.H.(1) for a freestanding front sign street setback of 38.08 feet from a roadway (75 feet required, 36.92 feet approved) (Westerly side of driveway from South Orange Avenue).

E: A variance from Township Code Section 170-94 of 96 parking spaces (431 required, 335 approved).

3. The Board also continues the pre-existing non-conforming conditions which were approved as variances by prior Resolutions of the Board and are:

4.

A: Township Code Section 170-87.E.(2)(e) requires a minimum of a 200 foot front yard setback for an accessory building. 64 feet is existing and the variance of 136 feet front yard setback is continued.

B: Township Code Section 170-87.E.(2)(d) requires a minimum side yard setback of 75 feet for an accessory building. 65 feet is existing and the variance of 10 feet side yard setback is continued.


C: Township Code Section 170-115.C.(5)(a)[1] requires a minimum distance of 150 feet from the parking area to South Orange Avenue. 52 feet is existing and the variance of 98 feet is continued.

5. This approval is subject to the Applicant obtaining approval from the Township Engineer that all water and sewer improvements are in compliance with the Township Code and State requirements. The Applicant will also submit to the Township Engineer any necessary information and confirm that all new lighting complies with regulations as to foot-candle illumination.

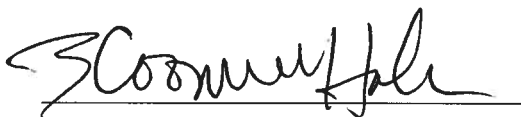
6. This approval is subject to the Board's Model Conditions of Approval attached hereto and incorporated herein.

7. Except as expressly amended by or inconsistent with this Resolution, all provisions contained in the Resolutions of January 5, 2010, January 4, 2011 and November 29, 2011 on Application No. 2009-49-PFSPV remain in full force and effect.

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, by this resolution the Board does hereby memorialize its approval of the Application with variances as set forth subject to the terms and conditions set forth herein by the decision rendered on July 7, 2015 by the affirmative votes of Members Anthony, Kalishman, Meade, Ratner, Santola, Alternate No. 1 Alvarez (in place and stead of Member Leopold), Alternate No, 2 Wishnew (in place and stead of member Dinar) and Member Klein; they being all of the members present.


Peter M. Klein, Chairperson

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of Livingston on August 11, 2015 memorializing the decision of the Planning Board made on July 7, 2015.


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.