

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: November 3, 2015

Re: Application No. 2015-18-MSV
Applicant: Saber Livingston, LLC
Premises: 276-290 Eisenhower Parkway
Block: 600; Lots: 2 thru 8
Zone B-1

Re: Application No. 2015-19-PFSPV
Saber Livingston, LLC
Premises: Block: 600; Lots: 1 thru 8
372 W. Mt. Pleasant Avenue & 276-290 Eisenhower Parkway
Zone B-1

SUMMARY OF THE CASE

1. Saber Livingston, LLC (“Applicant”) has submitted two interrelated applications. Application No. 2015-81-MSV seeks to create two lots from Lots 2, 3, 4, 5, 6, 7, and 8 in Tax Block 600. Application No. 2015-19-PFSPV seeks site plan approval for development of stores and restaurants, with associated parking, on the two new lots and Lot 1 in Tax Block 600. The application hearings were consolidated and the properties are collectively referred to herein as the “Site”.
2. Completed applications have been filed, all fees required by the Township Code have been paid, all taxes are paid to date and all notice and publication requirements have been met. A public hearing on both applications was held before the Planning Board (“Board”) on September 24, 2015.
3. Applicant was represented by its attorney Stephen A. Geffner, Esq., of Schenck, Price, Smith & King LLP.
4. Lot 1 presently contains a vacant building that had been a restaurant and that Applicant proposes to demolish for construction of a building for retailer The Container Store. The lot is 96,663 square feet in area. No changes in the size of this lot are proposed.

5. Lots 2 thru 8 each contain a non-conforming single-family residence that is proposed to be demolished. The areas of those lots are:

Lot 2	24,281 square feet
Lot 3	23,006 square feet
Lot 4	19,002 square feet
Lot 5	10,024 square feet
Lot 6	10,006 square feet
Lot 7	9,988 square feet
Lot 8	9,969 square feet.

There are no required minimum lot sizes in the B-1 Business District.

6. The proposed subdivision would combine 3,298 square feet of Lot 5 with the areas of Lots 2, 3 and 4 to create a new lot of 69,587 square feet shown on the Subdivision Plat and the Site Plan as Lot 2, but hereinafter designated "Lot 2.01". The remaining 6,726 square feet of Lot 5 would be combined with the areas of Lots 6, 7 and 8 to create a lot of 36,689 square feet shown on the Plat and Plan as Lot 3, but hereinafter designated "Lot 3.01".
7. Lot 1 presently fronts on both W. Mt. Pleasant Avenue and Eisenhower Parkway at the Livingston Traffic Circle and would continue unchanged. Lots 2.01 and 3.01 would front only on Eisenhower Parkway.
8. Lot 2.01 would contain a building of approximately 13,000 gross square feet with retail and restaurant uses. Aggregate restaurant seating capacity in the building is projected as not exceeding 160 persons.
9. Lot 3.01 would contain a building of approximately 3,500 gross square feet with two tenancies: a restaurant having a maximum seating capacity of 40 persons with a drive-up take-out facility and a single additional retail use.
10. The three lots would be operated as a common shopping location with common means of ingress and egress for shared parking.
11. Variances and design waivers described below were requested.
12. Testifying on behalf of the Applicant:

Michael Klinger, Managing Member of Saber Livingston, LLC
Michael Lanzafama, PP, PE & Land Surveyor
Peter Fitzgibbon, The Container Store Sr. Director of Real Estate Development
Scott Kanaga, Architect
Matthew Jarmel, Architect
Harold K. Maltz, Traffic Engineer

13. No members of the public appeared in support of or in opposition to the applications.

FINDINGS OF FACT

1. The Applicant requests subdivisions that would involve the merger of the current Lots 2 through 8 into two lots in order to facilitate the development of the Site on which, together with the existing Lot 1, there will be three individual and separate retail buildings constructed on three lots. The three lots would all be compliant, as to size and frontage, with Township Code regulations for the B-1 Business District. The three lots would share common means of vehicle and pedestrian ingress and egress, and the entire Site would be operated as an integrated single development with shared parking and shared access and egress.

2. The Applicant will remove and demolish an existing closed and unused restaurant facility on Lot 1 that has visibility from both West Mt. Pleasant Avenue and Eisenhower Parkway. It would be replaced by a new retail structure designed specifically for the use of the proposed tenant, The Container Store. Of the 24,581 gross square feet of the building, portions will be used for offices and storage and other non-customer functions. To facilitate customer movement between the store and their parked vehicles, the primary orientation, façade and entrance of the building will be toward the parking lot, rather than toward West Mt. Pleasant Avenue or Eisenhower Parkway. The restrooms, offices, breakrooms, mechanical rooms, storage areas and other non-retail areas will be toward those streets. Deliveries would be solely between 5:00 A.M. and 7:00 A.M. Applicant requests a waiver from the Township Code Section 170-73.B.(14) design standard that the building shall have its primary orientation, facade and entrance toward and accessible

from the street right-of-way; and that all ground floor occupancies have their primary pedestrian access from the public street. Due to the grading of the property, and that there will be no customer entrance facing West Mt. Pleasant Avenue, a sidewalk to the building from the street is not feasible or necessary. A sidewalk will be provided by the Applicant on West Mt. Pleasant Avenue to connect to a sidewalk to be provided by it on Eisenhower Parkway, where the primary pedestrian access to all three lots will be located. Unless objected to by Essex County, Applicant will extend the new Eisenhower Parkway sidewalk beyond the Site to the Beaufort Avenue intersection. All interior pedestrian walkways will be striped. Witness Lanzafama testified that the intent and purpose of the design standards are satisfied by the benefits to customer convenience and safety of the proposals and justified grant of the waiver.

3. The Applicant proposes to provide a total of 193 parking spaces:

A: 97 on Lot 1

B: 73 on Lot 2.01

C: 23 on Lot 3.01.

The projected uses, including up to an aggregate of 200 restaurant seats, plus up to 30 outdoor seasonal seats, require 213 spaces under the Township Code Section 170-94.E.(1). A variance of 20 spaces was requested. Witness Lanzafama testified that there were two justifications for the variance. The first was that more recent studies by the Urban Land Institute with regard to large shopping centers is that parking requirements would be as low as 4 spaces per 1,000 gross square feet, whereas the Livingston Code requires 5 spaces per 1,000 square feet; and that under the more liberal standard only 185 spaces would be required. Additionally, 10 of the required parking spaces are generated

by proposed aggregate outdoor seating that would be seasonal. The 20 spaces would not be required during the majority of the year. There would be 10 such seats in front of the Starbucks on Lot 3.01, and not more than 20 such seats on Lot 2.01 on a sidewalk not less than 12 feet wide, and protected by bollards, on the right side of the building. He pointed out that if Lots 2.01 and 3.01 fronted on West Mt. Pleasant Avenue rather than Eisenhower Parkway, the seasonal outdoor seating would be exempted from any parking requirement by Township Code Section 179-92.1.C.(5). He was of opinion that pedestrian access from both the street and the adjacent office building would provide some reduction in the number of customers using vehicles to access te Site. He was also of opinion that the more recent and generally accepted parking requirements proposed by the Urban Land Institute indicate that the 20 space parking variance could be granted without substantial detriment to the public good and would not violate the purpose and intent of the Zone Plan and Zoning Ordinance, and would provide adequate parking for the patrons of the proposed Site. Parking on the three lots will be shared under a shared parking agreement. For all of these reasons Lanzafama was of opinion that the proposed parking be adequate for the development.

4. Township Code Section 170-94.F.(1) requires a loading area to be provided either to the side or rear of the building being served. Because the location of a drive-thru facility in the building on Lot 3.01 will prevent loading from either the sides or the back of the structure, the loading space is proposed to be placed in the northwesterly corner of the front yard. It would not be adjacent to or visible from any residences, would have

evergreen screening, and would be not less than 50 feet from the Eisenhower Parkway right-of-way line. Deliveries would only be in non-peak business hours.

5. Township Code Section 170-108.B.(23) prohibits off-street parking in the B-1 District to be in the front yard. Such parking is proposed in the Eisenhower Parkway front yards of all three lots. In each case the parking would be not less than 50 feet from the right-of-way line and screened by evergreen plantings.

6. Applicant proposes three monument-type ground signs that are not permitted in the B-1 District and for which variances are requested. One would be in the West Mt. Pleasant Avenue front yard of Lot 1, the other two would be on Eisenhower Parkway in Essex County's very wide right-of-way. They would be of the same design and dimensions as shown on the "Typical Monument Sign Elevation" attached to Jarmel Kizel Drawing SK-1 revises 8/21/15 entered into evidence as Exhibit A-10. They would have a stone veneer matching the veneer on the proposed buildings, would be two-faced, with 9 tenant panels on each face. Each monument would have an over-all height of 7 feet and length of 12 feet 2 inches. The signage area would be 4 feet 11.5 inches high and 9 feet 2 inches wide, and would have shielded ground lighting. Because Lot 1 is burdened by an easement that includes possible future vehicular access and egress for the office building in the adjacent PB-2 District, Applicant requested that the variance include permission to add to the sign at the Lot 1 driveway the name of the then primary office building tenant when the access/egress is implemented. Witness Lanzafama testified that because of the proximity of the Site to the complex traffic circle at which West Mt. Pleasant Avenue, Eisenhower Parkway and West Northfield Road meet, and the significant setback of the buildings on proposed Lots 2.01 and 3.01, the signs are needed to provide adequate information to motorists for traffic safety and adequate location identification both of the Site and the entry points. The variance would also be justified because the speed of the traffic on Eisenhower Parkway makes clear and adequate signage necessary to avoid unsafe maneuvers by drivers looking for the Site. The variance could be granted without

substantial detriment to the Zone Plan or Zoning Ordinance, would not have a negative impact on the public good, and the benefits to be gained from the grant of the variance would outweigh any detriment.

7. Witness Maltz testified that he was of opinion that an adjustment of two seconds in the traffic signal timing at the intersection of Eisenhower Parkway with Beaufort Avenue and Executive Way would facilitate return of vehicles from the Site to West Mt. Pleasant Avenue by reducing the delay of the Beaufort Avenue approach at the signal from Level E to Level D. The Board's traffic consultant John Jahr shared that opinion. The two second timing adjustment is already accommodated in the existing signal timing at this intersection so that no signal timing revision request to the County is required.
8. Township Code Section 170-92.F.(1)(a) requires storefront windows to provide interior visibility and/or merchandise display. The evidence of witness Kanaga as to the amounts of clear glass to be provided in the length of each of the four exterior walls of The Container Store within a band 3 to 8 feet above grade was that for the northerly elevation, the main entrance, 79.4%; for the westerly elevation toward Eisenhower Parkway, 71.5%; and for the southerly and easterly elevations no clear vision glass is provided or appropriate for reasons explained by him and witness Lanzafama. Kanaga also explained that the "spandrel glass" shown on the elevations is not highly reflective, but is the same vision glass used on the true windows with an opaque ceramic frit on the interior surface. Any necessary variances due to those reasons were requested. He also testified that the southerly façade would be improved by addition of architectural features such as bands of stone and the addition of some tall landscaping, and that the southeasterly corner and easterly façade would be improved by addition of stone wainscoting.
9. Witness Jarmel testified that the buildings on Lots 2.01 and 3.01 would be compliant with the Township Code bulk, signage and design requirements, that the requests in the Fire Chiefs memorandum will be met, and that all rooftop equipment will be screened by the building parapets.

CONCLUSIONS OF THE BOARD

1. Application No. 2015-18-MSV for subdivision of Lots 2 through 8 in Tax Block 600 to create two lots is hereby approved without any variances being required and subject to terms and conditions contained in this Resolution as follows
 - A. 3,298 square feet of Lot 5 combined with the areas of Lots 2, 3 and 4 to create a new lot shown on the Subdivision Plat and the Site Plan as Lot 2, but to be permanently identified as "Lot 2.01", of 69,587 square feet.
 - B. The remaining 6,726 square feet of Lot 5 combined with the areas of Lots 6, 7 and 8 to create a lot shown on the Plat and Plan as Lot 3, but to be permanently identified as "Lot 3.01", of 36,689 square feet.

2. The Board grants the following variances in respect of Application No.2015-19-PFSPV:
 - A. A variance of 20 parking spaces from the 213 space requirement under Township Code Section 170-94.E.(1). 10 spaces of the requested variance would bring the provided parking into consistency with the current recommendations of the Urban Land Institute without any significant detriment. The remaining 10 space requirement is generated by seasonal outdoor seating by the restaurants. In 2005 the Board proposed and the Township Council enacted Code Section 170-92.1 to encourage pedestrian friendly outdoor seasonal seating at restaurants on named streets in the B-1 District by allowing approved seating of that type not to generate parking requirements. The properties now approved as Lots 2.01 and 3.01 were not in the B-1 District at the time of enactment of those provisions and are not on a named street. The Board finds the testimony as to use of the seasonal outdoor seating to be consistent with the rationale behind the parking exemption under Township Code Section 170-92.1 and to be persuasive support for granting the further 10 parking spaces variance.

 - B. A variance from Township Code Section 170-108.B.(23) is granted in order to

permit off-street parking in the Eisenhower Parkway front yards of Lots 1, 2.01 and 3.01 not less than 50 feet from the right-of-way line and with evergreen screening.

C. A variance from Township Code Section 170-94.F.1 to permit the loading area on Lot 3.01 to be in the northwesterly corner of the front yard is granted.

D. A variance to permit each of the three monument-style ground signs is granted for the safety reasons presented on the record. The sign at the Eisenhower Parkway may include the name of the then primary tenant in the adjacent office building in the PB-2 District when the vehicular access/egress easement is activated.

E. In respect of the westerly and southerly facades of The Container Store building the Applicant has requested a variance from the requirement of Township Code Section 170-92 that at the storefront a minimum of 60% of the horizontal length of the main level retail façade must be transparent glass between the heights of three feet and eight feet above grade. The variance is granted for the reasons set forth on the record.

3. The Board finds that the aforesaid variances can be granted pursuant to N.J.S. 40:55D-70(c)(2) because the benefits gained, including improved aesthetics and utilization of the Site and traffic safety enhancement, will outweigh any detriment and that relief can be granted without substantial detriment to the public good or substantial impairment to the zoning plan or ordinance.

4. In respect of Application No. 2015-19-PFSPV, for the reasons stated on the record, the Board grants the following requested waiver of the Township Code Section 170-73.B.(14) design requirement that The Container Store building have its primary orientation, façade and entrance toward and accessible from the street right-of-way and that all ground floor occupancies have their primary pedestrian access from the public street is granted. The Board finds that the building's primary orientation, façade and

entrance accessibility and the proposed pedestrian accessibility will not present any harm to public health, safety or welfare, that the design proposals are consistent with the physical character of the Site, that failure to grant a deviation from the design standard would deprive the Applicant of reasonable use of its land and is necessary for preservation and enjoyment of substantial rights of the Applicant. The Board further finds that grant of the deviation will not be detrimental to the public health, safety and welfare or injurious to property in the area where the Site is located.

5. Application No.2015-19-PFSPV for Preliminary and Final Site Plan approval with the variances and deviation granted herein is hereby approved subject to the terms and conditions contained in this Resolution.
6. Conditions agreed to by the Applicant:
 - a. Bollards shall be installed at all handicap parking spaces facing buildings.
 - b. One or two bicycle racks shall be installed at appropriate locations on the Site.
 - c. The sound system for the drive-thru facility on Lot 3.01 shall not produce sound at Site boundaries that exceeds 65 dB(A) during the period from 7:00 A.M. to 9:00 P.M. or 55dB(A) at all other times; or any more restrictive limits set by law or regulation.
 - d. The outdoor seasonal seating area on Lot 2.01 shall be protected by planters of sufficient design to offer protection from vehicles.
 - e. In the driveways and parking areas striped pedestrian crossings, crossing warning signs, stop bars and stop signs shall be added. Exit driveways to Eisenhower Parkway shall have prominent “No left turn” signs and one-way signs pointing north.
 - f. Seasonal outdoor seating shall be provided only at the locations shown on the approved Site Plan.
 - g. An agreement for shared vehicular access/egress and parking for all three lots shall be submitted to the Board Attorney for approval, and shall thereafter be recorded in the Essex County Register office.

- h. Deliveries to the building on Lot 1 shall be made or accepted at only from 5:00 A.M. to 7:00 A.M., and at buildings on Lots 2.01 and 3.01 only during non-peak business hours of the occupants.
- i. Applicant shall submit to the Township Engineer an NJDEP LOI and approval of the wetlands transition averaging.
- j. Applicant shall submit to the Township Engineer and the Township Planner written responses of Applicant's experts to issues raised in reports or memoranda of those officials and the Board's consultants.
- k. Applicant shall, unless prohibited by Essex County, extend the sidewalk to be installed along the Eisenhower Parkway right-of-way all the way to the Beaufort Avenue intersection.
- l. The recycling Plan shall be revised to change the words "will" and "can" to "shall" in each instance.
- m. All underground fuel storage tanks shall be removed, soil remediation required by NJDEP regulations shall be accomplished, and such accomplishment shall be certified to the Township Engineer by Applicant's engineer.
- n. A Health and Safety Plan, including truck and construction equipment routing to and from the Site during demolition and construction, shall be submitted to, and have received the approval of, the Township Engineer.
- o. The southerly façade of The Container Store's building shall be improved by adding architectural features such as bands of stone and tall screening landscaping, and the southeasterly corner and easterly façade shall be improved by adding stone wainscoting.
- p. A Tree Removal Permit shall be obtained prior to issuance of any other permits.
- q. The full text of this Resolution shall be filed and recorded with the deeds for the Lots.
- r. All of the Board's Model Conditions of Approval attached hereto, other than Numbers 5.a and 5.b, are incorporated herein.
- s. (1) Conditions i, j, m, n, p and q shall be met before issuance of any permits other than for environmental remediation.
(2) Conditions g, k and l shall be met before issuance of the first CO.

- (3) Condition d shall be met before issuance of the CO for the building on Lot 2.01.
- (4) Conditions a and b shall met before issuance of the last CO for a building.
- (5) Conditions c, e, f, h and Model Conditions Numbers 5.c, 5.d and 11 are continuing conditions..

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, it is resolved that the Board does hereby approve and grant the Application for Minor Subdivision and the Application for Preliminary and Final Site Plan approval with variances and deviation waiver as set forth herein, subject to the terms and conditions set forth herein.

 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 3, 2015 by the affirmative votes of Members Anthony, Dinar, Kalishman, Kimmel, Meade, Ratner, Santola, and Alternate No. 2 Wishnew (in place and stead of Member Klein); they being all of the Members present and qualified 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 certifiacat

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