

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: December 2, 2014
Memorialized: January 6, 2015

Re: Application No. 2014-74-PFSPV
Applicant: Dorsa Avenue Associates, LLC
Premises: 87 Dorsa Avenue, Livingston, New Jersey
Block: 103; Lot: 6
I Zone

SUMMARY OF THE CASE

1. The Applicant is the owner of the subject premises, which measures approximately one acre on which is located an existing one-story building measuring approximately 10,900 square feet. The building is currently divided into four separate units. The Applicant proposes to construct an addition measuring 31 feet by 45 feet that would be attached to the rear of the existing building but would not be internally connected. The proposed use of the addition would be to store equipment, material and vehicles used by the Applicant in its landscaping business.
2. A completed Application has been filed, all fees required by the Township Code have been paid and all taxes are paid to date. All notice and publication requirements have been satisfied.
3. The Applicant was represented by its attorney, Barry Evenchick, Esq. of Walden Hayden P.A.
4. The Applicant called as witnesses:
 - A: George C. Reinhardt, Jr., the principal owner of the Applicant.
 - B: Michael Lanzafama, of Casey & Keller, Inc., who was admitted as an expert in planning and civil engineering.

5. A public hearing was heard before the Board on December 2, 2014 with regard to the Application.
6. The Applicant requested and was granted waivers of the Preliminary Checklist items 26, 28, and 29. Request for waivers for Preliminary Checklist items 9 and Final Checklist item 30 were denied and Applicant was directed that if the Application is approved a complete recycling plan acceptable to the Township Engineer must be submitted to that official.
7. The Applicant presented a Site Plan package, prepared by Casey & Keller, Inc., dated March 18, 2014 with a final revision date of September 9, 2014.
8. No members of the public appeared to testify either for or against the Application or to question either of the witnesses presented by the Applicant.

FINDINGS OF FACT

1. The Applicant requests approval to construct a one-story addition at the rear of the existing building. The addition would measure 31 feet by 45 feet and would abut the existing building, but the structures would not be internally connected. The wall of the existing building is fire rated. The addition would be used solely for storage of vehicles, materials and equipment used by the Applicant in a landscaping business. No employees would be located at the site on behalf of said business. There would be no retail sales conducted by the occupants of the site.
2. The building is currently occupied by four tenants: a limousine dispatch center, a warehouse of camp materials, a martial arts school, and a pool service company. There are currently a total of 34 parking spaces, including one ADA space, on site. After the addition and other site improvements are completed parking will be reduced to 33 spaces; which is compliant with the Township Code requirement. However, a second ADA compliant parking space would be included. It would be van accessible, and the existing handicap space would be widened and made van accessible.

3. In addition to the proposed addition and change in parking, the Applicant would make other site improvements that would include removal of an existing storage shed located 7.4 feet from the rear property line and removal of one storage bin. The Applicant would also remove a fence gate on the southwesterly side, but leave intact a gate on the northeasterly side of the property. A driveway completely around the building as enlarged would enable small trucks to navigate across the rear of the property. Access for emergency vehicles would be available from the driveways and parking areas on the sides of the building. The addition would have setback of 12.6 feet from the rear property line. The setback is presently 43.04 feet under an existing variance. Township Code Section 170-117.C.(4) requires a 60-foot minimum rear yard setback, so that a variance of 47.4 feet is requested. A nonconforming front yard setback would continue.
4. There is no loading area, an existing nonconformity, and the building and tenants are currently serviced by small van deliveries that are able to utilize the existing parking area.
5. The testimony of Michael Lanzafama, the planning expert for the Applicant, was that the rear yard setback variance should be granted under the provisions of N.J.S. 40:55D-70.c.(1)(a) because the exceptional narrowness and depth of the lot and the location of the present building on the property create peculiar and exceptional practical difficulties in placing the addition. Mr. Lanzafama also testified that the variance would result in the positive benefits of removal of the shed that is close to the property line, removal of a storage bin, and moving of equipment that is currently stored outdoors to indoor storage, thus meeting the requirements of N.J.S. 40:55D-70.c(2); and that the relief requested can be granted without substantial detriment to the public good and without substantial impairment to the zone plan or zoning ordinance. The addition and site enhancements would be an aesthetic improvement. There is no negative impact on any neighboring property. In conclusion, Mr.

Lanzafama opined there would be no substantial negative impact on the zone plan or zoning ordinance and no detriment to the public good.

CONCLUSIONS OF THE BOARD

1. The Board grants the Application for Preliminary and Final Site Plan approval subject to the conditions set forth herein, and finds that the Applicant has satisfied the statutory and Township Code criteria for such approval.
2. The Board grants the request for a 47.4-foot rear yard setback variance from the 60-foot setback required by Township Code Section 170-117.C.(4) This is a case where due to the location of the existing structure on a property that is narrow and deep there is no other practical area to put the addition.
3. The Board finds that the Application will improve the aesthetic appearance of the property and will remove an existing shed that is located substantially closer to the property line than the proposed addition would be. Approval will not result in interference with use or enjoyment of any adjoining properties. The Board accepts the testimony and opinion of the Applicant's planner that the variance as to rear yard setback is justified pursuant to both N.J.S. 40:55D-70(1)(a) and 40:55D-70(2).
4. The benefits of the addition and other site improvements proposed will outweigh any detriments. There will be no detrimental impact on the Zone Plan or Zoning Ordinance. The benefits of the approval will outweigh any detriment to the public good and will advance the purposes of the master plan to promote appropriate use of properties in appropriate locations.

5. This approval is subject to the following conditions agreed to by the Applicant:

A: A complete recycling plan acceptable to the Township Engineer as meeting Township Code requirements shall be provided to that official prior to the issuance of any permits.

B: The gate on the southwesterly side of the property shall be removed.

C: Prior to the issuance of any permits, the Plans shall be revised to show the addition of the new handicap space and enlargement of the other, as well as all other changes agreed to on the record.

D: Prior to the issuance of any permits the Applicant shall reply in writing to all outstanding items in the Township Engineer's report dated October 31, 2014.

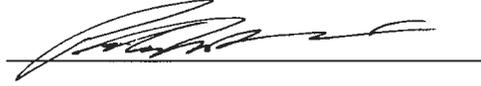
E: The Applicant shall obtain, and deliver to the Board Secretary and the Township Engineer, a written report from the Fire Department advising whether or not it approves of emergency access.

F. Numbers 3, 6, 8, 10, 11, 18 and 19 of the Board's Model Conditions of Approval attached hereto are hereby incorporated herein.

NOW, THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that Preliminary and Final Site Plan approval and the variance set forth herein be and are hereby granted and approved.

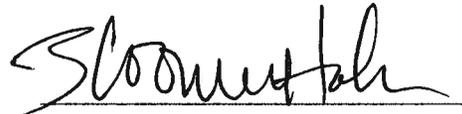
This Resolution is a memorialization of the decision of the Livingston Planning Board made on December 2, 2014, wherein Board Members Anthony, Kalishman, Leopold, Meade, Klein, Santola, Alternate No. 1 Alvarez (in place and stead of Member Kimmel) and Alternate No. 2 Wishnew (in place and stead of Member Ratner) voted in

accordance with the action memorialized herein to approve the Preliminary and Final Site Plan and variance; while Member Dinar voted in the negative.



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 January 6, 2015 memorializing the decision of the Planning Board made on December 2, 2014.



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 demolition, 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.