

**RESOLUTION**

**PLANNING BOARD**

**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: April 1, 2014  
Memorialized: May 6, 2014

Re: Application No. 2013-22-PFSPV  
Applicant: Om Divya Realty, LLC  
Premises: 222 North Livingston Avenue  
Block: 1706; Lots: 1, 2 & 55  
Zone: B-1

**SUMMARY OF THE CASE**

1. The Applicant is the owner of Lot 1 on which is located an abandoned gasoline and automotive repair station. It proposes to construct a full service restaurant with an outdoor patio for seasonal seating. The property would share parking on Lot 2 with adjoining Lot 55 on which are located a dry cleaner and convenience store.
2. Hearings were heard before the Planning Board of the Township of Livingston ("Board") on November 7, 2013, March 4, 2014 and April 1, 2014.
3. The Applicant was represented by Jay Pasternack, Esq. who provided documentation that all jurisdictional requirements have been met, including service and publication of notice and payment of all taxes due and owing.
4. Testifying on behalf of the Applicant were:
  - A: Shailesh Patel, the principal owner of the Applicant entity.
  - B: James B. Mastronardy, admitted as an expert in engineering and planning.

C: Jose Carballo, of Jose Carballo Architectural Group, P.C., admitted as an expert in architecture.

D: Michael T. Lanzafama, of Casey & Keller, admitted as an expert in engineering and planning.

E: Brian Conway, of Casey & Keller, admitted as an expert in landscape architecture.

5. Members of the public with questions for witnesses were Ronnie Bonder, Peter Zulkofske, Lillian Salvemini, Scott Kushel, Marilyn Olin, and Mercedes Hernaiz.
6. Ronnie Bonder also testified in opposition to the Application, expressing concerns as to overflow parking on public streets.

### **FINDINGS OF FACT**

1. The Applicant proposes to convert a closed and abandoned Exxon gasoline station into a full service restaurant that would include waitress service and an outdoor patio for seasonal seating. The Applicant indicated that the restaurant would operate 7 days a week from approximately 11:00 a.m. to 10:00 p.m. with possible earlier closing on weekday nights. The gas station has been abandoned since at least 2008, and the structure is in need of renovation or repair or replacement. The principal in the Applicant entity is also the principal owner of a convenience store on adjacent Lot 55. Lot 55 utilizes parking on Lot 2 that is to the rear of both Lots 1 and 55. A shared parking arrangement on Lot 2 for Lots 1 and 55 is proposed.

2. The Applicant proposes to renovate the existing one-story building on Lot 1 to accommodate the restaurant. The entire façade of that building and of the building on Lot 55 would be redone, and significant landscaping would be added together with repaving and re-striping of the Lot 2 parking area. The outdoor dining patio would accommodate 60 seats, be located at both the front and East McClellan Avenue side of the building, and be screened by planters and shrubbery. No outdoor

music would be played or performed. Parking would be located on Lot 2 to the rear of the building with vehicular entry and exit at East McClellan Avenue, and via a driveway off North Livingston Avenue. That driveway is on an existing 20 feet wide easement granted by the owner of Lot 54 for the benefit of Lots 1, 2 and 55. A new stockade fence would be erected along adjacent Lot 53 to provide screening of the parking area and privacy for that residential property.

3. The gas station operation included front yard parking that would be eliminated. The minimal existing landscaping on Lot 1 would be substantially improved. Construction as originally proposed would be in two phases with the first involving the reconstruction of the restaurant building and the second stage involving the repaving and exterior work on Lots 2 and 55. LED lighting would be installed in the rear of the site.

4. During the course of the hearing, Applicant's expert Mastronardy was replaced by experts Lanzafama and Conway. The Applicant made several design changes as shown in the Plans prepared by Casey & Keller dated March 14, 2014. These eliminated some requested variances and also addressed comments and questions raised by the Board. The Applicant also made corrections to the drainage plan, in accordance with the suggestions in the Township Engineer's memo dated November 22, 2013, which would correct a draining issue affecting the adjoining property owners. The two parking spaces proposed on the East McClellan Avenue side were replaced with landscaping, and a proposed loading area there. McClellan Avenue was moved to the rear of the site. A request for a free-standing monument sign was withdrawn. The driveway from North Livingston Avenue to Lot 2 would be one-way for entry only and appropriate signage would be installed.

5. To address further concerns of the neighbors, the landscaping and lighting were revised by the Applicant's landscape architect, Brian Conway, who reduced the height of the light poles on Lot 2 to 15 feet; thereby reducing the foot candle measurements at the property line. Shields on the lights were included to remove any spillover, and the proposed 6-foot solid wood fence would also buffer

those properties. An existing fence along the property line would be repaired or replaced if necessary. The landscaping of the outdoor seating area was redesigned to provide plantings and boulders for better separation from the sidewalk and vehicular traffic.

6. The final proposal provides for 48 parking spaces as required by Township Code Section 170-94 for the present uses on Lot 55 plus the interior seating of the proposed restaurant. Three of those spaces would handicap van accessible. However, although the parking would be adequate for up to 20 exterior seats under an annual seasonal outdoor seating permit, a parking variance is required for the planned 60 outdoor seats.

7. Certain variances were requested by the Applicant as follows:

A: A rear yard setback variance for Lot 1 from the provisions of Township Code Section 170-108.C.(4) which requires a 25-foot setback. The projection of the roof of the restaurant building will be only 16.1 feet from the rear property line; resulting in a variance request of 8.9 feet. Mr. Lanzafama testified that the variance is justified under the provisions of N.J.S. 40:55D-70.c.(1) because of the shallow depth of the lot, the design which will provide adequate light, air and space, and because there would be no substantial detriment to the public good, and that the proposed renovation of the building will provide an esthetic improvement and appearance and there will be no detriment to the Zone Plan or Zoning Ordinance.

B: The Applicant requests approval for 60 outdoor seats, whereas Township Code Section 170-92.1 provides for a maximum of only 20 outdoor seats without need for added parking; resulting in a parking variance request. Mr. Lanzafama testified that the Applicant will be providing sufficient parking to accommodate the additional 40 outdoor seats, and that the extensive landscaping will mitigate any impact of the seating that will be in the front yard facing a heavily traveled street. By providing for beautification of the property for outdoor seating with adequate parking, the purposes of zoning and the Township's goals of creating inviting streetscapes and interactions between community members are advanced in the opinion of Mr.

Lanzafama and a variance for a total of 60 seasonal outdoor seats without any increase in parking is justified under N.J.S. 40:55D-70.c.(2).

C: Township Code Section 170-108.C.(2)(a) requires a 12.5 foot front yard setback for parking, whereas the proposed parking on Lot 2 will be 11 feet from East McClellan Avenue; thus requiring a 1.5 foot variance. Mr. Lanzafama testified that this too would be justified under the c.(2) statutory provisions and that the landscaping mitigates the effect of the minor violation and allows sufficient and adequate parking with sufficient room to maneuver and therefore promotes safety.

D. The Applicant also requested a variance from the provisions of Township Code Section 170-90.N.(1)(i) to permit utilization of LED technology for illumination of reverse channel lettering on 3 wall signs. The Applicant presented testimony that this type of LED lighting has become the industry standard and that it would have no greater impact or visibility than other approved forms of diffused or indirect lighting. There would be no detriment to the Zone Plan or Zoning Ordinance by a grant of this variance and there would be no detriment to the public good. The planning expert, Lanzafama, testified that the variance was justified therefore under the provisions of N.J.S. 40:55D-70.c.(2).

E. The Applicant proposes a partial parking setback on Lot 2, from the adjacent residential property, of 9.68 feet, whereas 10 feet are required by Township Ordinance Code 170-108.C.(3); so that a variance of 0.32 feet is requested. This is necessary to provide a small bump-out for efficient vehicle maneuvers in and out of a parking space that would not be as safe without the variance. Accordingly, it would provide a safer maneuver and Mr. Lanzafama testified that grant of the variance would be in accordance with the provisions N.J.S. 40:55D-70.c.(2).

8. Lot 55 contains 6 existing non-conforming conditions that will continue unchanged.

## CONCLUSIONS OF THE BOARD

1. The Board finds that the Applicant has satisfied the statutory criteria for preliminary and final approval of the Site Plan which is hereby granted, including the variances requested as more specifically set forth herein and as justified by the testimony of expert Lanzafama.
2. The Board hereby grants and approves the following variances as requested by the Applicant:
  - A: A rear yard setback variance on Lot 1, from the provisions of Township Code Section 170-108.C.(4), of 8.9 feet for the rear yard roof projection.
  - B: A variance from the provisions of Township Code Section 170-108.C.(2) of 1.5 feet on Lot 2 for the parking setback from East McClellan Avenue.
  - C: A variance of .32 feet on Lot 2 from the provisions of Township Code Section 170-108.C.(3) for a setback of 9.68 feet, where 10 feet are required.
  - D: A variance from the provisions of Township Code Section 170-92.1 to permit a total of 60 seasonal outdoor seats on Lot 1 without additional parking.
  - E: A variance from the provisions of Township Code Section 170-90.N.(1)(i) to permit utilization of diffused LED lighting for the illumination of the three wall signs with reversed channel lettering that will be erected on the building on Lot 1.
3. This approval is subject to the following conditions as agreed to on the record by the Applicant:
  - A. The site shall be developed in three phases as follows:
    - Phase 1 shall include the Lot 2 parking area except for the staging area for Lot 1 construction.
    - Phase 2 shall be for the Lot 1 construction, with equipment entry, exit and staging only on Lot 2 from East McClellan Avenue.
    - Phase 3 shall be for Lot 55 improvements and completion of all other work.

B: There shall be no left turns by vehicles exiting the site onto Livingston Avenue, and appropriate signage shall be installed to control said traffic.

C: All documents relating to the easement for the driveway from South Livingston Avenue to Lot 2 shall be subject to review by the Board Attorney for consistency with the site plan approvals granted herein. If any further agreements in respect of such easement are needed for effectuation of the Board's approval of the Application they shall be recorded with the County before any permits are issued.

D: The Applicant shall provide a recycling plan fully compliant with Township Code Section 232.4 requirements prior to issuance of a Certificate of Occupancy.

E: Prior to the issuance of any permits the Applicant shall provide a certification to the satisfaction of the Township Engineer and the Township Construction Official as to appropriate safety control precautions that shall be taken during subsoil excavations, in order to (1) eliminate the potential for any explosive hazards reaching or exceeding the established Lower Explosive Limits, and, (2) to minimize vapor intrusions to adjacent properties.

F: Before issuance of a Certificate of Occupancy, the Township Engineer shall be provided with satisfactory documentation that a licensed site remediation professional has certified that all applicable State standards have been met.

G: The Applicant shall obtain a Tree Removal Permit before any other permits are issued.

H: No live, recorded, transmitted or otherwise audible music shall be played or performed outdoors. There shall be no serving in the outdoor seating area after sunset.

I: The Applicant shall satisfy the requirements of the Township Engineer's March 28, 2014 memo, specifically those on pages 3 through 6.

J. All Plans shall be conformed to the provisions of this Resolution and to the testimony and conditions set forth on the record prior to the issuance of any permit other than a Tree Removal Permit.

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

L. Conditions C, E, G, and J above, and Model Conditions of Approval 6, 8.a, 11.b, 14, 17 and 18 shall be complied with before any permits other than a Tree Removal Permit shall be issued.

NOW THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that Preliminary and Final Site Plan approval for the Amended Application, with variances, be and is hereby granted and approved, subject to the terms and conditions as set forth herein. This resolution is a memorialization of the decision of the Planning Board of the Township of Livingston made on April 1, 2014 wherein Members Dinar, Leopold, Anthony, Kalishman, Kimmel, Meade, Santola, Alternate No. 2 Wishnew (in place and stead of Member Ratner), and Chairman Klein voted in accordance with the terms and conditions set forth herein, the remaining Members being absent.



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 May 6, 2014 memorializing the decision of the Planning Board made on April 1, 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 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.