

**RESOLUTION**  
**PLANNING BOARD**  
**TOWNSHIP OF LIVINGSTON, NEW JERSEY**

Decided: April 1, 2014  
Memorialized: May 20, 2014

Re: Application No. 2013-62-PFSPV  
Applicant: St. Barnabas Realty Development Corporation  
Premises: 200 South Orange Avenue  
Block: 6101; Lots: 48 & 49  
Zone: R-L

**SUMMARY OF THE CASE**

1. The Applicant is the owner of the subject property ("Site") on which is currently operated an ambulatory care center providing outpatient medical services that include, but are not limited to, radiology, same-day surgery, clinical practices, physical therapy, and related medical services. The Applicant proposes an addition of 42,844 square feet to an existing building. The proposal would require variances as set forth further herein.
2. This Application was heard before the Livingston Planning Board ("Board") on April 1, 2014.
3. The facility was the subject of an October 17, 1996 Resolution by which the Livingston Zoning Board of Adjustment granted a use variance to permit construction of the ambulatory care center and parking structure presently on the Site. Since that time the permitted uses in the R-L Research Laboratory District have been amended to include ambulatory care facilities.

4. The Applicant was represented by Peter J. Carton, Esq., of Gibbons Law Firm, who presented proof that all jurisdictional requirements including service and publication of notice have been met, and that all taxes owed on the Site have been paid.
  
5. Testifying on behalf of the Applicant were:
  - A. William Cuthill, Senior Vice President Facilities Management and Construction for St. Barnabas Medical Center and Barnabas Health.
  - B. Christopher M. Cirrotti, admitted as an expert in engineering.
  - C. Willie O. Stokes, admitted as an expert in architecture.
  - D. Matthew T. Witkowski, admitted as an expert in traffic engineering.
  - E. Tsvia Adar, admired as an expert in planning.
  
6. No members of the public appeared in support of or in opposition to the Application or questioned witnesses.

## **FINDINGS OF FACT**

1. The Site is currently used for the operation of an ambulatory care center that provides a variety of outpatient medical services that include, but are not limited to, radiology, same-day surgery, clinical practices, physical therapy, and related medical services, in a building of 230,872 square feet. The Applicant proposes to construct a two-story annex measuring 42,844 square feet that would provide similar outpatient services.
  
2. The facility currently is in operation on Monday through Saturday from 6:30 A.M.; with closing not later than 9:00 P.M. Closing is by 6:00 P.M. on Fridays and around 2:00 P.M. on Saturdays. No changes in those hours are anticipated. The Site currently has 1,034 surface and parking structure spaces. A recorded perpetual easement provides an additional 133 parking spaces on an adjoining commercial property. Those additional spaces were included in the Zoning Board of Adjustment's 1996 approval.

3. Construction of the proposed annex, together with changes in surface parking and stripping of spaces in the parking structure, would reduce the number of on-site spaces to 994. Of those, 99 will be handicap accessible and an additional 16 van accessible. The 133 off-site spaces by perpetual easement will remain available. The combination of on-site and adjacent off-site spaces would total 1,127; exceeding the 1,095 required by Township Code Section 170-94. Applicant provided testimony that some 350 spaces are now vacant during peak hours every day.
4. The proposed annex would need for the following variances:
  - A. A front yard setback from South Orange Avenue of 84.71 feet is proposed. Township Code Section 170-115.C.(2) requires 200 feet; thus a variance of 115.29 feet is requested.
  - B. Three wall signs and two canopy signs are proposed. One of the wall signs would be the building address number. The other four would be illuminated. Township Code Section 170-90.H.(4) makes signs in the R-L District subject to the requirements of Section 170-90.C. Only three signs attached to the building are permitted, and only two of them may be illuminated; thus a variance for two additional signs and illumination of four rather than two signs is requested.
  - C. Back-lighting diffused illumination of four signs attached to the building is proposed with use of LED technology. Township Code Section 170-90.N.(1)(i) prohibits such utilization of LED technology; thus a variance to permit LED technology is requested.
5. The Applicant proposes to continue the existing traffic pattern for access to the building via a two-way driveway that becomes one-way inbound as it passes the building entrances and until exiting vehicles leave via the two-way portion. The portion in front of the building entrances would have three one-way lanes: the closest to the building would be for emergency vehicles, ambulances and official patient transport vehicles; the middle lane would be for valet service and for ambulatory patient drop-off and pick-up by private vehicles; the lane farthest from the building would be a through lane. The lane closest to the building would have surface demarcation, be separated from the others by movable soft bollards, and be monitored by attendants.
6. All of the spaces in the parking structure will be restriped. 90 spaces will be handicap spaces, and 14 more will be van accessible. These are all included in the 115 accessible spaces on the site.
7. The natural grading of the site will result in the ground level of the annex being 7 to 15 feet below the elevation of South Orange Avenue, mitigating the visual effect of the front yard

reduction. A berm and new plantings will further reduce that impact. The annex will be directly across the street from a parking field of the Livingston Mall and will not be near any residences.

8. With respect to the requested signs on the building, the Applicant demonstrated that this is a large property with multiple entry and exit points for vehicles, as well as a number of different building entry points. The Applicant proposes 5 signs, 4 of which would be illuminated, on the building. The size and scale of the signs are small, particularly compared to signage and lighting at the Livingston Mall direct across the street. Because the facility will be open after dark, particularly during winter, illumination of the four signs is necessary and will facilitate and promote traffic safety without any detriment to the public interest.
  
9. Applicant's planner Adar testified that the facility is an inherently beneficial use advancing public health and welfare; that the annex would only be 184 feet wide on its face toward Orange Avenue and constitutes only 8.3 percent of the site's frontage on that avenue, so that the setback deviation is minor as compared to that frontage; that the provision of the berm and landscaping in conjunction with the natural grade will mitigate the effect of the deviation; that signs that clearly identify the nature of the facility are an important safety consideration; that the shape of the building requires signs facing more than one direction; that illumination of four of the signs will be necessary for patients arriving in the dark; and, that the internal nature of the LEDs will not be so bright as to have any negative impact. She was of opinion that the annex scale and design, the existing and proposed landscaping, and the modest size of the proposed signs would all create a pleasing appearance, and the project would advance public health, safety and the general welfare. She was of opinion that the variances were a better zoning alternative than provided by the Code, that there was no impairment of the Zone Plan or Zoning Ordinance, and that the variances requested are justified under the provisions of N.J.S. 40:55D-70.c.(2).

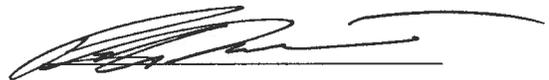
### **CONCLUSIONS OF THE BOARD**

1. The Board concludes that the Application meets the requirements for Preliminary and Final Site Plan approval, and approval is granted with the conditions and variances set forth herein. The Board finds that the proposed use of the addition to provide more outpatient medical services, including but not limited to, radiology, same-day surgery, clinical practices, physical therapy, and related medical services, is inherently beneficial.
  
2. The Board grants a two sign variance to permit the proposed total of 5 signs on the expanded building while only 3 are permitted by Township Code Section 170-90.C.

3. The Board grants a further variance to permit the 4 signs other than the address sign to be illuminated while only 2 may be illuminated pursuant to Township Code Section 170-90.C.
4. The Board grants a variance, from the Township Code Section 170-90.N.(1)(i) prohibition of the use of LED technology, so as to allow installation of concealed LEDs to provide backlighting of the approved illuminated signs on the building.
5. The Board grants a front yard setback variance of 115.29 feet to permit a setback of 84.71 feet from South Orange Avenue where 200 feet are required by Township Code Section 170-115.C.(2).
6. The Board finds, on the testimony offered by the Applicant, that the foregoing variances meet the requirements of N.J.S. 40:55D-70.c.(2) in that they provide a better zoning alternative than required by the Township Code provisions, will not impair the intent and purposes of the Zone Plan or Zoning Ordinance, and the benefits far outweigh any detriment.
7. The Board finds that a variance for parking is not required because the Applicant continues to have available the spaces provided by perpetual easement as approved by the Zoning Board of Adjustment in 1996; and, thus will be providing more spaces than required by the Township Code.
8. This approval is subject to the following conditions agreed to by the Applicant on the record:
  - A. The sidewalk between the parking structure and the new annex shall be not less than 6 feet wide.
  - B. A striped and signed crosswalk shall be added from the sidewalk in the center island through the three vehicle lanes to the sidewalk in front of the building. Another walk shall be added to facilitate pedestrian traffic to and from South Orange Avenue.
  - C. Written responses to the final memoranda of the Township Engineer and Planner shall be provided.
  - D. The Site Plans shall be revised to: (1) show all changes agreed to on the hearing record; (2) to identify in generalized terms how work will be phased so as to preserve safety and functionality of the Site during construction; and (3) to make minor adjustments in parking in response to points raised by the Township Engineer, provided that the total number of parking spaces on and off site continues to be in excess of the requirements of the Township Code.

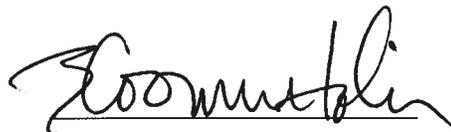
- E. Signage, surface markings and soft bollards along the driveway shall identify and delineate the three separate lanes.
- F. The loading/unloading area at the rear of the existing building shall be maintained and serve the annex as well.
- G. The Board's Model Conditions of Approval annexed hereto are incorporated herein.
- H. Conditions C and D above and Model Conditions Nos. 6, 8, 11, 14, 17, and 18 shall be complied with prior to the issuance of any permits.

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, with variances, be and is hereby granted and approved, subject to the terms and conditions 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 herein, the remaining Members being absent.



Peter M. Klein, Chairman

I certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on May 20, 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.