

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: February 18, 2014
Memorialized: March 18, 2014

Re: Application No. 2014-5-MSV
Applicant: 39 Brookside, LLC
Premises: 39 Brookside Avenue, Livingston, New Jersey
Block: 3202; Lot: 37
Zone: R-4

SUMMARY OF CASE

1. The Applicant is the owner of the subject premises on which is currently located a single-family residence.
2. The subject premises measures 100 feet in width by 200 feet in depth. The minimum lot size required in the R-4 Zone is 9,375 square feet within 125 feet of the front street right-of-way line. To achieve that a lot must have a width of 75 feet.
3. The Applicant proposes to subdivide the existing lot in to two separate lots, each to measure 50 feet in width by 200 feet in depth. This would create two undersized lots for which it seeks a variance.
4. The Applicant submitted Plans prepared by Michael T. Lanzafama, P.E. and P.P., of Casey & Keller, Inc., and dated December 13, 2013. The Plans included the proposed subdivision as well as a neighborhood area map showing the prevalence of other undersized lots on Brookside Avenue.

5. The Applicant was represented by Stephen A. Geffner, Esq., of Schenck, Price, Smith & King, LLP. All taxes have been paid and the Applicant has provided proof of notice by publication and by service of all property owners within 200 feet of the premises. A hearing was heard before the Board on February 18, 2014.
6. The Applicant presented as its only witness Gary Szelc, of Casey & Keller, admitted as an expert in Planning and Engineering.
7. Members of the public appearing in opposition to the Application and testifying were Steven Weber of 21 Brookside Avenue and James Cowan of 3 Glannon Road.

FINDINGS OF FACT

1. The subject premises is currently used for a one-family residence. The existing home is proposed to be demolished upon the grant of the subdivision and 2 separate one-family homes are planned to be built on the subdivided lots. The Applicant presented testimony that within 400 feet to the east on either side of the street, and to the west to the intersection of Brookside Avenue and Glannon Road, at least 52% of all homes are on lots that have frontage of 50 feet or less. The Applicant presented historical data that shows that the neighborhood was originally subdivided in 1925 into 50 by 200 foot lots, and that the subject property was still maintained as 2 separate lots as recently as 1968, with a house straddling the common lot line. At some point thereafter, upon the Township re-designation of lots, the property was merged into a single lot. The merger appears

to have been appropriate for this property although not initiated by any current or former owner.

2. The Applicant presented testimony that the Applicant requires two variances for the subdivision, which are:

A: Township Code Section 170-99.C.(5) requires that lot size be a minimum of 9,375 square feet within 125 feet from the front street right-of-way line. With a 50-foot width, each lot would only measure 6,250 square feet within that depth; resulting in a variance requirement of 3,125 square feet for each lot.

B: In order to meet the minimum area requirement, a lot would need a minimum lot frontage of 75 feet in the R-4 Zone; whereas 50 feet is proposed; resulting in a request for a 25-foot frontage variance for each proposed lot.

3. Gary Szelc, the expert engineering and planning witness for the Applicant, testified that the variances requested should be granted under the provisions of N.J.S. 40:55D-70.c.(2) because it meets the intent and purpose of the Municipal Land Use law by providing an appropriate use for the development of land and the establishment of appropriate population densities, and will contribute to the wellbeing of the neighborhood and community. It provides sufficient space in appropriate locations for appropriate residential use and will be in harmony with the existing neighborhood character. Of the properties on both sides of the street within 400 feet to the east and to the intersection with Glannon Road to the west, 62 percent have area that is the same or less than proposed and 52 percent have frontage of 50 feet or less. Mr. Szelc further indicated that the purposes of the Municipal Land Use law would be advanced by a deviation from the existing

Zoning Ordinance and the benefits would substantially outweigh any detriment. There would be no substantial detriment to the public good and no substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance. Mr. Szalc noted that the lot as it is currently configured could have constructed on it a much larger home than those proposed, and that such a house would not be in character with the rest of the neighborhood, in that the size and dimensions of such a larger permitted house would far exceed the other residential structures on the street.

4. The Applicant agreed that the existing Ordinance for the R-4 Zone would limit the size of a house to a maximum of approximately 3,000 square feet and indicated it would agree to a condition that the footprint of any future home would not exceed 1,600 square feet, and that it would not request any bulk variances for any such development. The Applicant also agreed that the existing structure would be demolished before the recording of the subdivision Deed.

CONCLUSIONS OF THE BOARD

1. The Board concludes that the Application for a minor subdivision of the existing Site be and is hereby granted with the variances and conditions as set forth hereinafter.
2. The Applicant's expert testimony was that only 52% of the lots within 400 feet had frontage of 50 feet or less, so that the 60% threshold in Code Section 170.87.G was not met for establishing consistency with neighborhood character.

The Board finds that the Code provision is expressly stated to be “guidance”, and that the Applicant’s Exhibit A-1 demonstrates that of the four lots to the East on the same side of the street but beyond 400 feet, three have frontage width of 50 feet. The Board finds that the Applicant’s proposed frontages are consistent with the neighborhood character.

The Board grants the variances requested by the Applicant as follows:

A: A variance of 3,125 square feet for the area of each lot is hereby granted from the provisions of Township Code Section 170-99.C.(5) which requires that lot size be a minimum of 9,375 square feet within 125 feet of the front street right-of-way line.

B: A 25-foot street frontage width variance for each new lot is hereby granted from the provisions of Township Code Section 170-99.C.(5) that result in a required minimum lot frontage of 75 feet in the R-4 Zone; whereas 50 feet for each lot is proposed.

The Board finds that the variances will allow the property to be developed in a manner more consistent with the neighborhood and the intent and purpose of the Zoning Ordinance, in that a home constructed on the current oversized lot could be far larger than either of the two proposed and out of character with the neighborhood. Accordingly, the variances will allow a better zoning alternative than provided by the Ordinance. The variances will not impair the intent and purpose of the Zone Plan and Zoning Ordinance, will not have any substantial detriment to the public good, and the benefits of the approval will substantially outweigh any detriment.

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

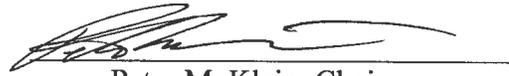
A: The existing building on the Site shall be demolished before recording of the subdivision Deed. Accordingly, Lot 37 Block 3202 shall be subdivided into 2 lots of equal size, each measuring 50 feet in width by 200 feet in depth and shall be assigned such lot numbers as determined by the Township Tax Assessor.

B: Any structure built on a new lot shall comply with the bulk requirements for the R-4 Zone, including the limitations on habitable floor area and habitable floor area ratio, and the Applicant shall not seek any variances from such requirements in the construction of said structure. This condition shall be included in each of the recorded deeds for the new lots.

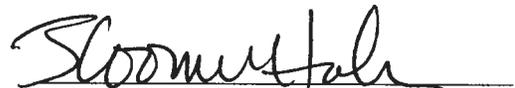
C: The Applicant shall comply with numbers 2, 3, 4, 6, 8, 10, 11, 18 and 19 of the attached Model Conditions of Approval hereby incorporated herein.

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 and consistent with the proofs and testimony presented at the hearing it resolved that the Board does hereby approve and grant the application for subdivision into two lots with the variances set forth herein and subject to the terms and conditions set forth herein.

This is a memorialization of the decision of the Planning Board of the Township of Livingston made in a meeting on February 18, 2014 wherein Board Members Kimmel, Santola, Dinar, Klein, Alternate No. 1 Alvarez (in place and stead of Member Leopold) and Alternate No. 2 Wishnew (in place and stead of Member Meade) voted in favor of the Application, and Board Member Anthony voted not to approve.


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 in Open Conference Meeting on March 18, 2014 memorializing the decision of the Planning Board made on February 18, 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.