

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: November 7, 2013

Re: Application No. 2010-45-MAJV
Applicant: Maramark Builders, LLC
Premises: 200-212 West Hobart Gap Road & 32 East Drive, Livingston, New Jersey
Block: 5100; Lots: 32, 33 and 41
Zones: R-1 & R-3

SUMMARY OF THE CASE

1. The Applicant is Maramark Builders, L.L.C., (hereinafter referred to as the “Applicant”). The Applicant is the owner of the subject property which consists of 7.025 acres (hereinafter referred to as the “Site”). It proposes to remove an existing two-story dwelling and detached garage that is located on Lot 32, and to subdivide the Site into 13 Lots, including 11 building lots. One lot would be used for a bio-retention basin, and one lot would be used for open space. One of the remaining 11 lots would be utilized for affordable housing and the remaining 10 lots would consist of single-family residences. The subdivision would require several variances as set forth hereafter. The proposed subdivision is now intended to be called “Woodland Manor”.

2. The Applicant was represented by Michael D. Sullivan, Esq., of Stickel, Koenig & Sullivan. All jurisdictional requirements have been met and all taxes due on the Site have been paid. The jurisdiction of the Planning Board of the Township of Livingston (hereinafter referred to as the “Board”) has been properly invoked.

3. Hearings were held before this Board on May 3, 2011, June 7, 2011, July 5, 2011, November 1, 2011, December 4, 2012, July 2, 2013, August 20, 2013, and September 10, 2013.
4. Testifying on behalf of the Applicant were:
 - a. Charles J. Stewart, admitted as an expert in engineering and surveying.
 - b. Adrian P. Humbert, admitted as an expert in planning.
5. A group of members of the public appeared, represented by Barry H. Evenchick, Esq., of Walder, Hayden & Brogan, P.A., as objectors. They were Dana and Michael Miller, Joan and Charles Gruber, Sue and Steven Jager, Sage and John Blinderman, Marc Hirschberg, and Beth and Bob Waldron (collectively referred to hereinafter as the "Objectors").
6. Testifying on behalf of the Objectors was Peter G. Steck, admitted as an expert in planning.
7. The Applicant had submitted an earlier and different application for subdivision which was denied by the Board by a Resolution adopted on November 1, 2005. That action was thereafter appealed by the Applicant, under Prerogative Writ, to the Superior Court of New Jersey Law Division. The Board agreed that the Applicant could return with a different application and that resulted in this matter, as well as in the withdrawal and dismissal by the Applicant of its appeal. A separate appeal was filed by objecting

neighborhood residents concerning the issuance of a wetlands permit by NJDEP. It resulted in affirmation of NJDEP's actions.

8. The original Subdivision Plat had proposed a duplex on Lot 32.01 containing two affordable housing units. The Plat presented to the Board prepared by GC Stewart Associates, Inc. dated March 2, 2011, with a final revision date of July 31, 2013, proposed 11 building lots of which of which all would contain market-rate single-family residences.

9. Other modifications to the Subdivision Plat were as follows:

A: Seven of the building lots would have front yard setbacks of 40-feet. One would have a setback of 40.04 feet and another lot would have one of 45.55 feet.

B: A sidewalk would be installed only on the easterly side of the new street, terminating between Lots 32.06 and 32.07.

C: A 48-inch high fence is proposed to surround the detention basin. Plantings would not be provided on the street side of the fence.

E: A final tree removal plan submitted showed 273 trees removed and 188 proposed plantings; which is 451 fewer Replacement Trees than required by the Trees Ordinance.

F: Lots 32.02, 32.03, 32.04, 32.05, 32.06 and 32.08 would have front-loading garages.

G: The size of the proposed lots would be as follows:

<u>Lot Number:</u>	<u>Square Footage:</u>
32.01	15,118 square feet
32.02	23,061 square feet
32.03	23,425 square feet
32.04	17,235 square feet

32.05	15,016 square feet
32.06	16,854 square feet
32.07	21,216 square feet (20,919 square feet within 150-feet of front ROW line)
32.08	17,978 square feet
32.09	15,069 square feet
32.10	15,133 square feet
32.11	16,350 square feet
32.12	35,962 square feet (23,486 square feet within 150-feet of street ROW line). This land-locked lot would be dedicated for open space and be accessible only by a 6-foot wide right-of-way between Lots 32.06 and 32.07.

All lots are conforming as to minimum lot size required under the Township Code (hereinafter referred to as the “Code”), except for proposed Lot 32 which will have the bio-detention basin, and proposed Lots 32.01 and 32.11.

10. The subdivision would include the creation of a new roadway approximately 28-feet in width and 770 feet in length, ending in a cul-de-sac. The length of the cul-de-sac roadway is within RSIS standards.

11. Proposed Lot 32 is located entirely within the R-1 Zone. Lots 32.01 and 32.11 are each split between the R-1 and R-3 Zones. All of the remaining subdivided lots would be in the R-3 Zone.

12. A number of variances were requested as set forth on Schedule A annexed hereto.

13. The Applicant also requested design waivers as follows:

A: Code §170-73.A.(8) requires all lots to have full frontage on an approved street. Lot 32.12 will have no frontage on a street and a full waiver is requested. This request is made because the lot will be dedicated for conservation and access will be had through an easement to be established on Lots 32.06 and 32.07 that are between it and the street.

B: Code §170-73.A.(8) also requires all sidelines to be substantially at right angles to street lines or radial to curved street lines. For Lots 32.05, 32.06 and 32.07 waivers from said requirement are requested for their shared sidelines. The grant of the deviation is appropriate due to the topography of the Site and is appropriate to the design and development proposed.

14. The Applicant originally proposed to meet the affordable housing requirement generated by the development by constructing a duplex residence on Lot 32.01 that would be compatible in appearance with the single-family houses. Both duplex units would be restricted to persons who meet the Affordable Housing Guidelines issued by the State of New Jersey. After consultation with the Objectors, the Applicant amended its proposal to provide for a single-family market-rate house on Lot 32.01 with the affordable housing obligation to be met off-site through a separate agreement to be reached with the Township.

15. The Board received and considered a number of reports; including the report of the Applicant's planning expert, the report of the Objector's planning expert, the reports of the

Township Engineer, report from the Board's planning consultant, Jessica L. Giorgianni, and the report of the Township's Affordable Housing consultant, Megan York.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Applicant has satisfied the statutory and code requirements for a major subdivision. The Site shall be subdivided into 13 lots to be designated as Lots 32, 32.01, 32.02, 32.03, 32.04, 32.05, 32.06, 32.07, 32.08, 32.09, 32.10, 32.11, and 32.12; each with the areas and setbacks as set forth on the record by the Applicant's witnesses, and as more particularly described on the Subdivision Plats and in paragraph 9.G above. The proposed subdivision is now intended to be called "Woodland Manor".

2. The Board hereby grants the variances set forth on Schedule A annexed hereto for the reasons set forth further herein and as set forth on the record.

3. The Board finds that the subdivision and development of the property will result in substantial improvements to stormwater management on the Site. The amount of water that will run offsite onto adjoining properties will be substantially reduced and primarily directed to collection in the proposed bio-detention basin by virtue of the drainage, underground piping and above ground swales proposed by the Applicant.

4. The Board finds that the reduced front yard setbacks will result in larger rear yards that will enhance the privacy of the adjoining property owners as well as

that of occupants of the new homes, and represent a better development scheme than would be required by ordinance. The Board finds that all the setback variances and lot size variances can be granted in that they present a better zoning scheme pursuant to the provisions of N.J.S.40:55D-70.c.(2). The variances granted will permit the creation of a harmonious development, with appropriate use of land and appropriate preservation of open space. The variances will not create any detriment to the Zone Plan or Zoning Ordinance and will be consistent with the objectives of the Master Plan.

5. The Board finds that the proposed elimination of affordable housing units, by replacing the duplex with a single-family market-rate home, does not satisfy the affordable housing obligations of the Applicant. The Applicant shall construct a duplex on Lot 32.01 consistent with the original proposal submitted before the revision Applicant agreed to with the Objectors. The sale or rental of said units shall be in accordance with the Affordable Housing standards set forth by the State of New Jersey. The Board finds that the Applicant failed to provide any credible evidence that the Site is not suitable for the originally proposed affordable housing or that there is an alternative site available and suitable. No credible evidence was presented that a duplex house could not be designed as had been proposed by the Applicant to be compatible with the single-family homes proposed on the Site, or that there would be any significant additional cost burden on the Applicant if that house had two units rather than one, or that there would be any negative impact on the Objectors or any other neighboring properties resulting from the construction of the duplex. The testimony of the Objectors'

Planner, Peter Steck, provided no evidence to support the claim that there is a planning preference for affordable housing units to be built off site of the new multi-lot development. The testimony of the Applicant's Planner, Adrian Humbert, was that the duplex would be designed to be compatible in appearance with the single-family homes in this development and that it would have no adverse impact from a sound planning standpoint.

6. Subsequent to the closing of the evidentiary record and final statements by the attorneys for the Applicant and the Objectors, the Board received a written request from the attorney for the Objectors asking that the record be reopened to allow him to question Megan York, the Township's affordable housing consultant. The Board considered said request at its open conference meeting on October 15, 2013 and unanimously decided to deny the request to reopen the record. The Board concluded, in making said decision, that its Rule of Procedure 2:16 disclosed the opportunity to call and question Ms. York during the hearing and that no good reason had been given as to why that request was not made before the record closed, nor was any proof made as to the relevancy of permitting the request. The Objectors had received a copy of both reports issued by Megan York, and their own expert referred to the York report in his testimony and his written report.

7. The Board grants the requested design waivers in regard to the frontage of Lot 32.12 and the sidelines of Lots 32.05, 32.06 and 32.07 for the reasons stated in description of the requests previously herein. Lots 32.01, 32.02, 32.03, 32.04 and 32.05 are found to have their sidelines in substantial compliance.

8. The approval herein is subject to the following Conditions:

A: A homeowner's association agreement shall be provided to the Township Attorney before issuance of the first certificate of occupancy. The homeowner's association shall be responsible for implementation of the stormwater management plan; maintenance, cleanliness and repair of Lot 32 and its bio-retention basin; all rear yard easement areas for stormwater management; maintaining Lot 32.12 and the access easement to it; and, maintenance of the swale on the westerly boundary of the Site. Upon failure of the association to perform any of its obligations under the agreement and this Resolution, the Township shall have the right to perform any necessary repairs or maintenance at the expense of the association.

B: The water main loop shall be extended along the properties that are adjacent to East Drive residences to connect to the water main on East Drive, provided that said adjacent owners give approval. The Township will assist the Applicant in attempting to obtain such approvals.

C: All stormwater drainage easements shall be a minimum of 20 feet in width.

D: Subject to the consent of the owners of Lots 33, 34, 36, 37 and 38, as necessary, the swale on the westerly side of the Site will be extended through a portion of Lot 33 to a new inlet to be installed by the Applicant to connect with the stormwater drain line on Lot 37.

E: Plantings on Lot 32 shall not be within 10 feet of the new street or West Hobart Gap Road, or within 25 feet of the intersection of those two roadways.

F: The installation of the bio-retention basin shall be supervised by a licensed geotechnical engineer to be retained by the Applicant, and said engineer shall certify

the proper construction thereof to the Township Engineer prior to the issuance of the first certificate of occupancy.

G: If the bio-retention basin site has a restrictive soil layer curtailing permeability, that layer shall be removed.

H: Tree removal by permit shall be for stages approved by the Township Engineer and Construction Official. The first stage shall be removals for the street, boundaries, swales, stormwater management and utility mains. All other removal shall be only for the construction of houses on individual lots when a construction permit has been issued for that lot. The Board retains jurisdiction over tree removal and replacement until the last certificate of occupancy is issued. A payment in lieu of \$280.00 per tree shall be paid by the Applicant for all deficiencies in planting of Replacement Trees as required under the relevant Township Ordinance. Any trees that Applicant plants on lots that abut the Site with consent of the owners of such lots shall count as Replacement Trees.

I: All sidewalks shall be concrete and 4 feet in width. Sidewalks shall be installed on the West Hobart Gap Road frontage and on the easterly side of the new street to the property line between Lots 32.07 and 32.06.

J: Parking shall be on the easterly side of the new street only and, subject to enactment of an ordinance by the Township Council, signs shall be placed on the westerly side indicating that no parking is permitted.

K: Subdivision Deeds shall have an appropriate provision regarding the obligations of the homeowner's association. The Subdivision Deeds shall include the full text of this Resolution and shall have been approved by both the Board Attorney and

Township Attorney before filing for recording. No permits shall be issued until the recording of the Subdivision Deeds.

L: The Conservation Deed and Utility Easement for Lot 32.12 shall be in such form as is acceptable to the Board Attorney, the Township Attorney and Township Council. Said approval shall be obtained and said Deed and Easement recorded before the issuance of any permits.

M: There shall be front loaded garages on Lots 32.02, 32.03, 32.04, 32.05, 32.06 and 32.08.

N: Lot utilities shall follow the edge of the driveways to the extent necessary to preserve trees and subject to the approval of the Township Engineer.

O: The Applicant shall enter into a formal agreement with the Township with respect to the duplex affordable housing units, which shall include an affirmative marketing plan for sale or rental of the units, including all COAH requirements. The affordable units shall be constructed and certificate of occupancy issued no later than completion of the fourth market-rate unit. The affordable units shall be subject to a 30 year Deed restriction in accordance with COAH and State of New Jersey regulations for affordable housing.

P. The Board retains jurisdiction over compatibility in appearance of the affordable duplex building with the rest of the development. Architectural plans establishing such compatibility shall be provided to the Board for review and approval prior to issuance of a building permit for the duplex building.

Q: The Applicant shall further amend plats and plans to restore the duplex unit to Lot 32.01 and to show all changes agreed to in the course of the hearings or made necessary by the Conditions set forth herein.

R: The Applicant shall provide a performance bond for maintenance of the bio-detention basin, including landscaping and cleanliness, maintenance of the fence, and clearance of any drainage obstruction.

S: Lot 32.12 shall be dedicated by Deed for open space use only, and shall be maintained by the homeowner's association to be formed and to consist of the residential property owners of the subdivision.

T: A maintenance plan for the bio-detention basin system meeting the requirements of the RSIS standards shall be prepared by the Applicant and submitted to the Township Engineer for approval prior to the issuance of any construction permit. Any future revisions to the maintenance plan shall not become effective until the Township Engineer has approved such changes. The maintenance plan, and any future revisions to it, shall be recorded with the Deed for that lot, and shall have received approval by the Township Attorney prior to recording.

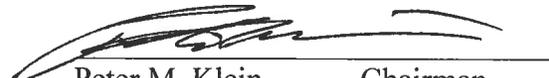
9. The failure to include any condition, reasoning, finding of fact, or other conclusion set forth on the record shall not be construed as an abandonment thereof, but said condition, reasoning, finding of fact, or other conclusion are hereby incorporated herein as if set forth more particularly.

10. The Board's Model Conditions of Approval are hereby incorporated herein as Schedule B, except for Condition Number 14 which is deemed not applicable. The tree removal staging plan required by Condition H above, Conditions K, L, R, S, T above and Model Conditions 4, 6, 8, 11, 16, 17, and 18 shall be met before issuance of any

permits other than the Tree Removal Permit.

11. Condition O above shall be met not later than completion of the fourth market-rate unit.

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 Major Subdivision approval with variances be and is hereby granted and approved, subject to the terms and conditions as set forth herein.


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 November 7, 2013 by the affirmative votes of Members Kalishman, Leopold, Meade, Ratner and Klein; they being all of the Members present and eligible to vote.


Jackie Coombs-Hollis, Secretary

SCHEDULE A
Application No. 2010-45-MAJ
Applicant: Maramark Builders, L.L.C.

VARIANCES REQUESTED

Lot 32 requires variances:

- 1) Total lot area required is 35,250 square feet pursuant to Code §170-96.C.(5) whereas 31,312.8 square feet are provided; resulting in a variance of 3,937.2 square feet.
- 2) A fence is required to have a 25-foot setback from the intersection of streets or street right-of-way lines pursuant to Township Code § 170-91.B.(1), whereas the proposed fencing on Lot 32 would be 11 feet from W. Hobart Gap Road, 10 feet from the new roadway and 15 feet from the intersection of the two right-of-way lines; resulting in variances of 14 feet and 15 feet respectively.

Lot 32.01 is split between the R-1 and R-3 Zones and the required variances are:

- 1) The Lot meets the area requirement for the R-3 Zone. A minimum lot area of 35,250 square feet is required in the R-1 Zone pursuant to Code § 170-96.C.(5), whereas 15,117.6 feet are proposed; resulting in a variance of 20,132.4 square feet.
- 2) A minimum front yard of 75 feet is required in the R-1 Zone pursuant to Code §170-96.C.(2), and in the R-3 Zone 50 feet is required by Code §170-98.C.(2), whereas 40 feet is proposed; resulting in a variance of 35 feet.
- 3) The minimum side yard for the R-3 Zone is met. A minimum side yard of 15 feet is required in the R-1 Zone pursuant to Code § 170-96.C.(3), whereas 10 feet is proposed; resulting in a variance of 5 feet.

- 4) The minimum rear yard setback for the R-3 Zone is met. A minimum rear yard setback of 75 feet is required in the R-1 Zone pursuant to Code § 170-96.C.(4), whereas 43.17 feet is proposed; resulting in a variance of 31.83 feet.

Lot 32.11 is split between the R-1 and R-3 Zones and the required variances are:

- 1) The R-3 Zone minimum lot area is met. A minimum lot area of 35,250 square feet is required in the R-1 Zone pursuant to Code §170-96.C.(5), whereas 16,349.8 feet is proposed; resulting in a variance of 18,900.2 square feet.
- 2) A minimum front yard of 75 feet is required in the R-1 Zone pursuant to Code §170-96.C.(2), and in the R-3 Zone 50 feet is required pursuant to Code § 170-98.C.(2), whereas 45.55 feet is proposed; resulting in a variance of 29.45 feet.
- 3) The minimum side yard setback for the R-3 Zone is met. A minimum side yard of 15 feet is required pursuant to Ordinance Section 170-96.C.(3), whereas 10 feet is proposed; resulting in a variance of 5 feet.
- 4) The minimum rear yard setback for the R-3 Zone is met. A minimum rear yard setback of 75 feet is required in the R-1 Zone pursuant to Code §170-96.C.(4), whereas 49.03 feet is proposed; resulting in a variance of 25.97 feet.

Lots 32.02, 32.03, 32.04, 32.08, 32.09 and 32.10 all require a 50 foot front yard setback pursuant to Code §.1.70-98C(2), whereas 40 feet is proposed; resulting in a variance for each lot of 10 feet.

Lot 32.05 requires a minimum front yard of 50 feet pursuant to Code §170-98.C.(2), whereas 40.04 feet is proposed; resulting in a variance of 9.96 feet..

SCHEDULE B

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.