

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: July 31, 2012

Memorialized: August 21, 2012

Re: Application No. 2008-56-PFSP Amendment
Applicant: Livingston Circle Associates, LP
Premises: 290 West Mount Pleasant Avenue
Block: 600; Lot: 9
Zone: P-B2

STATEMENT OF THE CASE

1. The Applicant is the owner of the subject premises, commonly known as 290 West Mount Pleasant Avenue, Livingston, New Jersey (hereinafter referred to as the "Site"), and has filed an Application to the Planning Board of the Township of Livingston (hereinafter referred to as the "Board"), for Preliminary and Final Site Plan approval to add a fifth level to a previously approved, but not yet built, four-level parking structure to be built on the Site.
2. The Board adopted a Memorializing Resolution on October 7, 2008 permitting the Applicant to construct a four-level parking structure on the Site, together with other relief and subject to certain conditions set forth in said Resolution.
3. A public hearing was heard before the Board on July 31, 2012 with respect to this Application. The Applicant was represented by its attorney, Stephen A. Geffner, Esq., of Schenk Price Smith & King, L.L.P., and demonstrated that the

Application was in compliance with all statutory requirements and that there were no taxes due or delinquent with respect to the Site.

4. At the outset of the hearing, the Applicant moved to amend its Application to also request approval for the installation of up to six additional emergency generators as shown on the Site Plan amended through July 16, 2012. Applicant provided proof that notice of this hearing and availability of the plans for public inspection 10 days prior to the hearing was published in the West Essex Tribune on July 12, 2012. The Board determined by a vote of 7 to 1 (only Member Kalishman voting in the negative) that said amendment would not constitute a substantially different request and no additional notice or publication was required since one approved 1,500 kW emergency generator is already on the Site, the proposed additions are shown on the Site Plan, and no variances were required with respect to said amendment to the Application.

5. A separate Application that had been made by the Applicant for Minor Subdivision approval of the proposed additional generators had been scheduled for hearing before the Minor Subdivision Committee. It was withdrawn in view of the amendment made by the Applicant to include said request for approval in this Major Site Plan Application.

FINDINGS OF FACT

1. The Applicant presented the testimony of the following witnesses on its behalf:

- A: Peter Schofel, a principal of the Applicant partnership;
- B: Michael Lanzafama, a principal in the firm of Casey & Keller, admitted as an expert in engineering;
- C: Matthew T. Murello, of the firm Lewis S. Goodfriend & Associates, admitted as an expert in acoustic engineering;
- D: Lance Blake, of the firm Rotwein and Blake, a licensed architect admitted as an expert;
- E: Karl Pehnke, of the firm Langan Engineering and Environmental Services, admitted as an expert in traffic engineering.

2. The Applicant is the owner of the Site, which consists of approximately 33.765 acres on which is located an existing three-story office building that has a current occupancy rate of approximately 46%. The primary current tenant is Verizon, which maintains a high density employee population that generates greater parking need than does usual office use. Verizon has expressed interest in leasing more space, but would require more parking than is currently allocated to it. To accommodate that need, and still meet the requirements of other tenants, the Applicant now requests approval for adding a fifth level to the not yet built parking structure so as to provide an additional 127 parking spaces.
3. The Applicant also requests permission to install up to six additional emergency generators supplementing an already permitted and installed 1,500 kW generator. The generators would be utilized only during power outages and would provide service to

tenants during such periods. The six additional generators, which would be of varying sizes and capacities, would provide a maximum aggregate of 2,600 additional kilowatt output. The sizes of the additional units would be based on the needs of present and future tenants. The units would be installed only as tenant needs are determined. The proposed generators would be installed on their own separate concrete pads in an area to the east of the parking fields, with all of the installations enclosed by a chain link fence that would have gates at both ends. An approximately 4-foot high planter would be installed between the parking area and the area of the emergency generators. Twenty-two arborvitae, 8 to 10 feet in height, would be in the planters.

4. Each generator would have its own manufacturer-provided acoustically rated enclosure. Sound levels generated by the units would range from 56 to 58 dB(A) at the closest residential property line. NJDEP sets a sound level limit at that line of 65 dB(A). NJDEP regulations exempt emergency generators from the sound limits when operating during emergency situations. The topography of the Site provides additional sound buffering because of the sloping upward grade to the nearest residences. On the easterly side, and at both ends, of the generator area the Applicant will construct a retaining wall with varying heights to a maximum of 9 feet as it follows the contour of the Site. A 6-foot high chain link fence with green slats will be installed at the top of the retaining wall. Evergreen trees and additional plantings will screen that wall and the fence. The additional generators would be installed on an as needed basis. The entire pad area, its enclosure and landscaping would be constructed when the first new generator and its pad are installed. The Applicant agreed to provide actual sound test

results for each additional unit, promptly after is installed, to the Township Engineer to confirm that levels testified to at the hearing are not exceeded. All testing will be limited to daylight hours and to one generator at a time. Testing is anticipated to be done at least once per month or as otherwise recommended by the manufacturer. Manufacturer's specifications, recommended testing schedule, and Applicant's intended testing schedule for a generator will be provided to the Township Engineer, for approval before the generator is installed.

5. The proposed fifth level of the parking structure would increase the overall height by 10-feet 8-inches. The structure would still be within Township Code height limits. The fifth level would accommodate 127 additional parking spaces; bringing the total on-site parking to 1,899 spaces. Twelve handicap spaces would be in the parking structure and 20 in the surface parking areas.

6. There is no proposed change to the footprint or location of the parking structure as previously approved by the Board. Substantial existing and proposed new tree plantings would provide a buffer to restrict visibility of the parking structure from the nearest residential properties on Beaufort Avenue; although there would be more visibility during winter periods when deciduous trees have lost their foliage. To minimize that circumstance, the Applicant agreed to plant additional evergreen trees. The highest point of the proposed five-level structure would have an elevation of 248.25 feet above sea level; which is less than the 251.74 feet highest elevation of the existing office building. Lighting would be the same type as previously proposed and

approved, and would cause no spillover from the top level because of the parapet wall that surrounds the open parking area on this top level, the low positioning of the lights, and their orientation and shielding. The exterior of the parking structure would remain the same as previously presented to the Board.

7. The additional parking spaces provided on the fifth level would result in approximately 50 more traffic trip generations to and from Beaufort Avenue and Eisenhower Highway during peak hours. This would be easily accommodated by those roadways and would not have any detrimental affect on traffic in the area. On-site circulation will operate safely and efficiently, and would not be appreciably different than with the previously approved four-level structure. Pedestrian crossings will be marked for pedestrian safety as previously provided for in the prior approval by the Board.

8. Upon completion of the improvements proposed by this Application there would be a net additional 580 square feet of impervious surface; an insignificant increase in respect of what is permitted.

8. No members of the public appeared either in support of or opposition to the Application.

CONCLUSIONS

The Board, having duly considered the testimony and other evidence presented, concludes that the Application for amended Preliminary and Final Site Plan approval, as was

amended in the course of the hearing, is hereby approved subject to the following conditions:

1. The Board finds that the Application complies with the requirements of the Township Code and New Jersey Municipal Land Use Law. The Applicant has met its burden of proof with respect to the Application.
2. The request by the Applicant for waivers of the Site Plan checklists requirements is granted.
3. The approval is subject to the following conditions agreed to by the Applicant on the record:

A. All conditions of approval contained in the Board's Resolution memorialized on October 7, 2008 remain in full force and effect unless expressly superseded by this Resolution.

B: Prior to the issuance of any construction permit in respect of any additional emergency generator, the Applicant shall submit to the Township Engineer: the manufacturer's specifications for the generator and its enclosure; projected sound levels at the property line of the nearest residence in the easterly and northerly directions; the Applicant's testing schedule for such generator; and the certification of an acoustical expert acceptable to the Township Engineer that such sound level will not exceed

58 dB(A) at the Site's boundary with the nearest residence property. The testing schedule shall be subject to approval by the Township Engineer.

C: Promptly upon installation any new generator, the Applicant shall provide to the Township Engineer the certification, by an acoustical expert acceptable to the Township Engineer, of the actual sound level of the generator at the pad and at the property line of the nearest residence in an easterly or northerly direction. If that testing, or any subsequent testing, of an emergency generator shows that the sound level limits established by this Resolution are exceeded, the Applicant shall immediately notify the Township Engineer and there shall be no further operation of the generator (other than as permitted under the N.J.A.C. in an emergency) until all deficiencies have been remedied.

D. All testing of generators, including the testing of the previously approved 1,500 kW generator, shall be performed during daylight hours with no more than one generator tested at any time.

E: The aggregate total kilowatt output of the up to six additional generators shall not exceed 2,600 kilowatts.

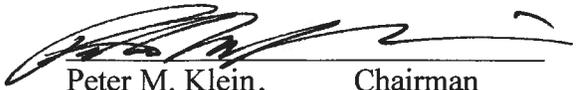
F: The Applicant shall comply with the requirements of the Township Engineer's reports of June 12, 2012 (excluding items 5 & 6) and July 23, 2012, and shall reply in writing to the latter report.

G. The Board's Model Conditions of Approval, as amended through November 13, 2007 and incorporated in the Memorializing Resolution of October 7, 2008 are hereby superseded by the Model Conditions of Approval as amended through December 20, 2011 attached hereto and hereby incorporated herein with the exception of Model Conditions numbered 1, 4, 5, 7, and 16.

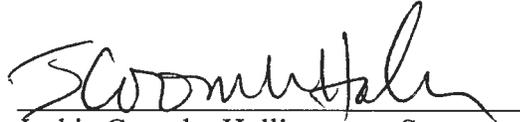
H. In addition to continuing conditions established in the Board's previous Memorializing Resolution, Conditions B, C, D and E above are continuing conditions.

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 be and hereby are granted subject to the terms and Conditions set forth herein.

This Resolution is a memorialization of the decision of the Livingston Planning Board made on July 31, 2012, wherein Board Members Anthony, Kalishman, Kimmel, Klein, Meade, Ratner, Rieber, and Alternate No. 2 Wishnew (in place and stead of Member Dinar) voted in accordance with the action memorialized herein; they being all of the Members then present and qualified to vote.


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 August 21, 2012 memorializing the decision of the Planning Board made on July 31, 2012.


Jackie Coombs-Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval
(As Amended through December 20, 2011)

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.

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 wash down 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 dB(A), 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.