

RESOLUTION
PLANNING BOARD
TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: October 6, 2015

Re: Application No. 2015-15-PFSPV
Applicant: MARSAG, LP
Premises: The Village at Livingston Circle
277 Eisenhower Parkway, Livingston, NJ
Block: 100; Lot: 43
Zone: D-S2

SUMMARY OF CASE

1. The Applicant, MARSAG, LP (hereinafter "Applicant"), is the owner and operator of a designed shopping center located on the subject premises (hereinafter "Site") that was originally approved by this Board, under Application Number 1991-3-PFSPV, by Resolution dated May 6, 1991 and amended on July 20, 1993. A Resolution adopted August 7, 2007, under Application Number 2007-45-PFSPV, approved changes to the signage on the Site. On October 15, 2013, the Subdivision/Site Plan Committee of the Board, under Application No. 2013-41-MS, granted approval of outdoor seating and the redesign and enlargement of a freestanding monument sign.

2. The current Application requests approval to construct a new, entry only, driveway to run from Eisenhower Parkway across an existing grass median on Site to connect with the existing parking lot. A hearing on the Application was had before the Board on June 16, 2015.

3. The Applicant was represented by Sean Monaghan, Esq., of Schenck Price Smith & King, LLP. All jurisdictional requirements of service of notice, publication, and payment of taxes have been satisfied.

4. Testifying on behalf of the Applicant were:
 - A: Peter Schofel, a principal of MARSAG, LP.

 - B: Michael T. Lanzafama, of Casey & Keller. Inc., admitted as an expert engineering.

 - C: Karl Pehnke, admitted as an expert in traffic engineering.

 - D: Michael Tobia, admitted as an expert in planning.

5. No members of the public had questions for witnesses or appeared either in support of or opposition to the Application.

FINDINGS OF FACT

1. The Site consists of approximately 16.05 acres on which is situated a designed shopping center with 473 parking spaces. Although the shopping center sits at the intersection of State Highway Route 10 and Essex County's Eisenhower Parkway, there is no direct access from either of those roads. Access is only from Executive Parkway, a local street that intersects with Eisenhower Parkway. Motorists proceeding south on Eisenhower Parkway will frequently pass

Executive Parkway without realizing that this provides the only access to the Site. The Applicant proposes to construct a new driveway which would run from Eisenhower Parkway across an existing on-site grass median and connect with the parking lot on the Site. The driveway would be constructed and signed to allow ingress only, and all vehicles exiting the Site would do so through the existing Executive Parkway driveways. The Applicant also proposes to reserve an area for future expansion of parking, if needed, to allow an additional 45 parking spaces.

2. There are currently several vacant stores on the Site. The Applicant has encountered problems in obtaining tenants because of the difficult access to the Site. However, the Applicant anticipates new tenancies such as a restaurant and a fitness center if the new driveway is approved.
3. The addition of the new driveway would increase impervious coverage by 1,133 square feet, which would have no substantial impact on existing stormwater management systems.
4. The July 20, 1993 Board resolution allowed adding one more building to the designed shopping center and granted a variance to permit a total of 484 parking spaces. The Site now has 473 parking spaces Applicant's witnesses were unable to offer proof of authorization for the shortfall in parking spaces, but presented logical theories such as the need to provide handicap parking. The Applicant proposes to continue at 473 parking spaces, and to reserve space for 45

banked parking spaces. Based upon the current and anticipated tenants, a total of 656 parking spaces are required by Township Code Section 170-94.E; resulting in a variance request of 138 spaces. The 45 banked parking spaces are included in the calculation of the variance request.

5. The Applicant presented testimony that the existing parking has been more than adequate even during times when the shopping center was fully leased. The Applicant's traffic expert submitted data from the ITE and ULI studies that propose parking requirements less than the Township Code would require. His testimony was that these studies are more recent and provide a more accurate measurement of parking needs. The variance requested by the Applicant was that the Board relieve the Site of the use-specific requirements of the Township Code's parking provisions and apply the ITE standard for shopping centers with the mix of uses contemplated. That would be 5.0 parking spaces per 1,000 square feet of gross floor area without regard to whether the use is a retail shop, health and fitness center, hair salon or restaurant. Both the traffic expert and the planning expert testified that the required parking under that standard would equal the 473 spaces now provided.

6. The traffic expert also testified that the proposed new driveway can be accommodated at Eisenhower Parkway; which has sufficient width for three south-bound lanes, including a right turn lane for the new driveway. The driveway would consist of one lane only and no exit traffic would be permitted.

By providing an easier and more clearly defined means of entry onto the Site, traffic safety would be improved and there would be no negative impact on existing traffic flow. However, the driveway and right turn lane would be subject to approval by the Essex County DOT and the Essex County Planning Board.

7. The Applicant would require the removal of 1 tree to construct the driveway, and of an additional 8 trees in order to activate the banked parking spaces. The Applicant would request a Tree Removal Permit and provide replacement as required by Code when the new driveway is constructed. The other trees would be removed and replaced as required by the Code at the time of activation of banked spaces. On two north/south existing parking area aisles that would be crossed by vehicles entering from Eisenhower Parkway, signs will be installed so that vehicles in those aisles will have to stop for the entering traffic.

8. The Applicant requested that the Board provide a parking variance for a variety of uses that might involve greater parking requirements under the Township Code than the existing and most recent uses. Contemplated prospective tenants include a 200-seat restaurant, a health and fitness center of 16,000 to 18,000 sq. ft., and a hair salon. The testimony presented was that these particular uses would be complementary to most of the existing uses on the Site so that there would not be peak demands at the same times. All three uses are permitted in the zone. The requested parking variance has factored in parking needs of prospective health and fitness center, restaurant and hair salon tenants. .

9. The Applicant proposed that any variance include approved parking at 5 spaces per 1,000 sq. ft. gfa for the prospective health and fitness center, restaurant and hair salon tenancies in addition to any retail present tenancies. The Applicant conceded that a variance based on applying the Township Code standards for the present uses and those projected could yield the same result as a variance applying the ITE standards and would be acceptable to the Applicant.

CONCLUSIONS OF THE BOARD

1. Based upon the testimony and evidence presented by the Applicant, the Board finds that the Applicant has satisfied the statutory requirements for Site Plan approval, which is hereby granted, subject to the conditions and variance established herein.

2. The Board approves a variance from the provisions of Township Code Section 170-94.E which requires 656 parking spaces (473 spaces are provided plus 45 spaces banked) for a variance of 138 spaces. The Board finds that the parking as proposed and approved herein is adequate for the current uses and for currently vacant space to be occupied by health and fitness center use not exceeding 18,000 sq. ft, up to 200 additional seats of restaurant use, a hair salon, or other permitted retail uses so long as the aggregate spaces required under the Township Code does not exceed 656. The variance is appropriate and is consistent with the

provisions of NJS 40:55D-70.c.(2) because the proofs established that current parking has proven adequate, and established industry studies validate the present number of spaces. There will be no substantial detriment to the public good. There would be no impairment of the intent and purpose of the Zone Plan and Zoning Ordinance, and the benefits of this approval will outweigh any detriment. This variance does apply a standard of 5 spaces per 1,000 sq. ft. gfa or substitute that standard for the requirements of the Township Code.

3. The Board makes no findings as to the adequacy of parking in the event of a future change in use or uses that would result in a total parking requirement in excess of 656 spaces under the Township Code's parking provisions.
4. The prior Resolutions of the Board involving the Site are continued in full force and effect, except as modified herein.
5. This approval is subject to:
 - a. Approval by the Essex County DOT and the Essex County Planning Board, and any other governmental agency having jurisdiction.
 - b. Installation of stop signs and stop bars for traffic in the two parking area north-south aisles.
 - c. Obtaining of the necessary Tree Removal Permits.

- d. Written reply to the June 8, 2015 memo of the Township Engineer and Township Planner.
- e. Numbers 3, 6, 8 through 13, 18 and 29 of the Board's Model Conditions of Approval attached hereto and 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, it is resolved that the Board does hereby approve and grant the Application for Preliminary and Final Site Plan approval with variance as set forth herein, subject to the terms and conditions set forth herein.


Peter M. Klein, Chairperson

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 October 6, 2015 by the affirmative votes of Members Anthony, Kalishman, Kimmel, Klein, Ratner and Alternate No. 2 Wishnew (in place and stead of Member Dinar: they being all of the Members qualified to vote.



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.