

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

Decided: April 2, 2013

Re: Application No. 2012-23-PFSPV  
Applicant: Squiretown Properties, LLC  
Premises: Eisenhower Parkway/Old Road  
Block: 5900; Lots: 35, 36, 37, 42 & 44.01  
Zone: R-5I

**SUMMARY OF THE CASE**

1. The Applicant is Squiretown Properties, L.L.C. (hereinafter “Applicant”). The Applicant proposes to construct a residential complex with 220 units in 5 separate buildings, a clubhouse with pool and other amenities, play areas, a maintenance building, landscaped areas, gate-house and appropriate site improvements. The proposed complex would be known as “Parkview Heights”.
  
2. The Applicant comes before the Planning Board of the Township of Livingston (hereinafter “Board”) pursuant to a judgment and final order entered in the Superior Court of New Jersey in the matter entitled: “Squiretown Properties, LLC vs. Township of Livingston, et al.”, under Docket Number ESX-L-9785-07. This litigation was consolidated with the matter entitled “Joseph Kushner Hebrew Academy, Inc. and TMB Partners, LLC, vs. Township of Livingston, et al.”, under Docket Number ESX-L-9126-07. Said final order provides, in part, that 20% of the residential units built on the Site shall be housing units affordable to low and moderate income households in accordance with the provisions and

regulations issued by the Council on Affordable Housing of the State of New Jersey (hereinafter "COAH Regulations"). The Site has been, pursuant to said order but under protest, rezoned as the R-5I Residence District. The final order and judgment was entered on June 21, 2011. The Township of Livingston and this Board filed a Notice of Appeal on August 3, 2011 that specifically appealed the award of a builder's remedy to the Applicant that resulted in the adoption, under protest, of the ordinance that created the R-5I Residence District. That appeal is pending in the Appellate provision under Docket No. A-5797-10T7.

3. The Applicant was represented by Stephen A. Geffner, Esq., of the firm Schenck Price, and the Board confirmed that all jurisdictional requirements have been met and that all taxes on the Site have been paid.
  
4. Testifying on behalf of the Applicant were the following persons:
  - A. John Cicchino, managing member of the Applicant
  - B. Michael Lanzafama, of the firm Casey & Keller, admitted as an expert in planning, engineering, and surveying
  - C. David J. Minno, of Minno & Wasko, admitted as an expert in architecture
  - D. Brian S. Conway, of the firm of Casey & Keller, admitted as an expert in landscape architecture
  - E. Harold K. Maltz, of Hamel & Associates, admitted as an expert in traffic engineering
  - F. Samuel Gershwin, a management consultant retained by the Applicant.

Various members of the public questioned witnesses.

5. Testifying in opposition to the Application were the following members of the public:

- A. Betsy Beck, 21 Old Road, Livingston
- B. Charles Beck, 21 Old Road, Livingston
- C. Lisa Diorio, an employee of Horizon School, Livingston
- D. Richard Larson, 20 Baker Road
- E. Judy Kulik, 25 Walnut Street
- F. Vincent Kulik, 25 Walnut Street
- G. Steven Fleischer, 27 Country Club Road
- H. Scott Napolitano, 33 Old Road
- I. Christine Young, 15 Old Road
- J. Frederick Friedman, Sr., 1304 Pointe Gate Drive.

6. The Site consists of approximately 20.96 acres and is undeveloped vacant land. The Applicant agreed to merge and consolidate the five separate lots into one lot. The majority of the Site consists of woodlands. A stream runs through the easterly segment of the Site. A large wetlands area would be left in its natural state, except for a driveway crossing it to and from Eisenhower Parkway. Approximately 11 acres of the Site would be developed. Five residential buildings would be constructed with a total of 220 residential units that the Applicant currently plans as rentals. Two of the proposed buildings (Buildings designated as B and C on the Site Plan) would each have four residential stories over one parking garage level. The other three buildings would each have three residential

stories over one parking garage level. There would be additional parking that would be surface parking. A two-story clubhouse with amenities including a pool; a sports court; a children's play area; and a maintenance building would be included in the development. An internal street, to be called Briggs Circle, would form a loop through the developed part of the Site. A driveway to and from Eisenhower Parkway would connect with that loop road. A gate-house would be located on the driveway just before the intersection with the loop road. A total of 453 parking spaces would be provided. That exceeds the State's Residential Site Improvement Standards (RSIS) requirement of 428 spaces. Of the provided spaces, 12 would be handicap accessible. Only 9 are required.

7. The driveway to and from Eisenhower Parkway would have an 18-foot wide inbound lane, an 18-foot wide outbound lane, and a raised median. During the course of the hearing, the Applicant indicated that it had reached an agreement with Essex County that the proposed intersection with Eisenhower Parkway would be designed with actuated traffic signals to control both inbound and outbound left and right turns. Applicant would pay for installation, operation and maintenance of the traffic signal system. Both the Applicant's traffic expert and the Board's traffic expert supported the design and effectiveness of the proposed intersection and traffic signals.
8. The Applicant originally proposed a secondary driveway to and from Old Road. During the course of the hearing, in response to concerns raised by the Board and

by Old Road residents, the Applicant agreed to withdraw the request for that driveway. Instead, it would provide an emergency access grass paver driveway that would be blocked by a locked chain or similar obstruction.

9. Pursuant to COAH Regulations and the Court Order, 44 of the 220 residential units would be designated as affordable to low and moderate income households. Affordable units would be integrated into each the five residential buildings.

10. The project would be constructed in three phases. Phase 1 would consist of the construction of Building A, the clubhouse, the access road, the gate-house and related site work. Phase 2 would involve construction of Buildings B and C and related site work. Phase 3 would include the construction of Buildings E and F, the maintenance building and related site work. A more specific phasing plan would be submitted to the Township Engineer for approval. In the course of the hearing Applicant explained that the Buildings identified as "A" through "E" on the Site Plan and in testimony would be designated as "1" through "5" respectively when built. Those designations are used hereinafter in this resolution.

11. The westerly side of the Site adjoins a right-of-way held by Jersey Central Power & Light Company (hereinafter "JCP&L"). Pursuant to Board of Public Utilities (hereinafter "BPU") rules, JCP&L places certain constraints on landscaping and structures in the right-of-way. No vegetation with a height greater than 36 inches is permitted in the ROW. This necessitated a change in the types of screening

plantings proposed for there by the Applicant. In response to concerns expressed by members of the public, the Applicant agreed to install a six-foot high solid wood fence along the parking area that is within the ROW. During the course of the proceedings the Applicant obtained written approval from JCP&L for a wood fence not exceeding 6 feet in height to be installed on the Site property line within the ROW. Plantings not exceeding 36 inches in height would be planted on the Site side of the fence. Lamp posts that would have been placed at the boundary line or within the ROW for lighting of surface parking areas are not permitted by JCP&L. Accordingly, the Applicant proposes to provide light fixtures on 24-foot tall posts in front of the westerly facades of Buildings 1, 2 and 3 to provide the necessary illumination. A variance is requested.

12. Two detention basins would be located at the most advantageous points of the Site, taking into account the natural flow of water. The Applicant would install an aesthetic water feature in the southern basin. It would provide aeration of a permanent pool of water. The basin would purify stormwater before it leaves the Site. A second detention basin on the northern portion of the Site would be a dry basin to receive, filter and percolate run-off from the northern area of the Site. Existing water runoff from the Site onto Eisenhower Parkway would be significantly reduced as a result of these systems. The southern detention basin would have terraced retaining walls. Although none of those walls would exceed the permitted height of 8 feet, there would be an aggregate height of approximately 21 feet there; exceeding the Township Code § 170-91.B.(16) aggregate height limit of 10 feet. Other terraced retaining walls would have an

aggregate height of 12 feet and a horizontal separation between those walls of 6 feet. Code § 170-91.B.(16) requires a separation of not less than 8 feet. Variances as to height and separation are requested. Protective fencing, 48 inches high and with four-inch spacing between slats, would be provided for both basins.

13. Fences are proposed to be provided along the common boundary lines with the adjoining residences on Old Road. They would be 6-foot high stockade board-on-board fences to provide privacy for those homes. They would be within the Old Road front yard of the Site. Such fences are prohibited in front yards. Variances are requested. Decorative metal fences with a height of 48 inches and with brick piers would be provided along the driveway to and from Eisenhower Parkway.

14. The Site's frontages on Old Road and Eisenhower Parkway would have five-foot wide concrete sidewalks. Such a sidewalk would also be provided for Lot 35.01.

15. The architectural design of the Site would present a uniform appearance for all buildings. All residential buildings would have underground parking, elevator service, and basement storage for use by tenants. The first floor of each building would contain a courtyard-facing lobby. Market rate and affordable rate units would be intermingled on every floor. A trash room would be maintained on the garage level of each building. Recycling barrels would be installed on each floor, and a garbage chute to a space in the garage provided for other trash. The residential buildings would have lofts in their top floor units. The Applicant agreed to a condition that the deed and the leases would prohibit use of the lofts

for sleeping accommodations. All units are designed to be handicapped adaptable. The buildings would be fully equipped with fire sprinkler systems. All of the buildings would be in conformance with the height restrictions of the R-5I Zone; with the tallest building being Building 3 at 64 feet. Each residential unit would have air conditioning for the entire unit, provided by a through-the-wall installation, its own hot water heater and its own laundry facilities.

16. Street and parking lighting has been designed using LED fixtures with a steeper spillage cutoff than traditional lights, and would operate at greater energy efficiency. All street and parking area lights are proposed to be on 18-foot poles, except for the western side of the property where they would be mounted at 24-foot height on poles near the western facades of buildings 1, 2 and 3 with shielding to prevent light spillage toward those buildings and beyond the fencing along the JCP&L easement. The wall-mounted lights require a variance. Courtyard lighting would be limited to the pathways and sidewalks, and would be on poles not exceeding 12 feet in height; as would be lighting on the pedestrian walkway to Old Road. Outside shields on all pole-mounted lights would cut off distribution to adjacent areas.

17. The Applicant proposes to remove 1,305 trees. Under the Township Tree Ordinance, Code Chapter 306, it would be required to plant 1,846 replacement trees. The Plans provide for the planting of 599 new trees on the Site. Under the terms of the Court Order governing this Application, the Applicant is not required to comply with the Township Tree Ordinance requirement to pay for replacement

trees that cannot reasonably be provided on the Site. However, a Tree Removal Permit under that ordinance is required.

18. The Applicant requested the following variances:

A. Post-mounted non-illuminated signs identifying buildings and units are proposed to be installed in front of the residential buildings. Code §170-104.4.F.(13)(c) requires that such signs be wall-mounted.

B. The Applicant proposes to place LED light fixtures at a height of 24 feet on poles near the westerly façades of Buildings 1, 2 and 3 to provide illumination of the parking areas affected by the JCP&L ROW restrictions. Code § 170-94.A.(6) limits parking area lights to a height of 18 feet. A height variance of 6 feet is requested.

C. The aggregate terraced retaining wall heights of approximately 21 feet at the southern detention basin, and of 12 feet elsewhere, exceed the 120 inches aggregate height limit in Code §170-91.B.(16); resulting in variance requests of 11 feet and of 2 feet. The separation proposed between the retaining walls with an aggregate height of 12 feet, is 6 feet. Code §170-91.B.(16) requires a separation of not less than 8 feet; resulting in a variance request of 2 feet.

D. The plantings in front of the 6-foot fence along the westerly boundary line would be limited to a height of 36 inches due to the JCP&L easement

requirements and BPU regulations. A variance of 36 inches from the 72-inch height applicable under Code §170-104.4.G.(2)(b) is requested.

- E. A portion of the Site that has frontage on Old Road constitutes a front yard. Code §170-91.B.(2)(b) prohibits front yard fences taller than 48 inches and less than 50% open. That front yard abuts the entire depth of adjacent Lots 35.01 and 38; each of which contains a private residence. To protect the privacy of the occupants of those residences, the Applicant proposes to construct 6-foot high board-on-board fencing. One such fence would extend from the Old Road sidewalk along the entire westerly property line of Lot 38 and to a screening fence at the surface parking adjacent to Building 4. A similar fence would be provided at all common boundary lines shared by the Site and Lot 35.01. Front yard fence variances are requested.
  
- F. There are no Code provisions for an identification sign on the clubhouse. The Applicant requests a variance to allow a wall sign on the clubhouse building that would identify it as both the clubhouse and the management office.

19. The Applicant agreed to the following conditions:

- A. Use of any lofts as sleeping accommodations shall be prohibited. This provision shall be included in the recorded Deed, in all Lease Agreements, and shall apply as well if the premises are converted to condominium ownership

- B. A final recycling plan shall be submitted to the Township Engineer for approval.
- C. During Site preparation and construction, all vehicles and equipment shall enter and exit only at Eisenhower Parkway and shall not transit Burgundy Drive or Country Club Road. Signs announcing such restrictions shall be posted by the Applicant at the intersection of Eisenhower Parkway and Burgundy Drive and at the intersection of Walnut Street and Country Club Road.
- D. There shall be a grass paver driveway from Old Road that shall be an emergency entry or exit only and shall have controlled access by way of a chain or similar obstruction.
- E. The Township Engineer shall have final review of the design and application for the Eisenhower Parkway intersection and traffic signals before submission by the Applicant to Essex County for approval.
- F. No permits shall be issued until Essex County has given formal approval of the design of the Eisenhower intersection and proposed traffic signals installation. No certificate of occupancy shall be issued until such traffic signals are in operation.
- G. No permits shall be issued until a detailed phasing plan has been approved by the Township Engineer.
- H. The five individual lots of the Site shall be merged into one lot with primary frontage of Eisenhower Parkway, and a Deed creating said lot shall be filed and recorded prior to the issuance of any permits. Said Deed shall have attached a copy of the Board's Resolution, a copy of the final stormwater

management plan as approved by the Township Engineer, and a copy of the perpetual conservation easement agreement required by Condition I.

- I. All undeveloped and unimproved portions of the Site shall be subject to a perpetual conservation easement, which shall have been approved by the Township Attorney and signed prior to the issuance of any certificate of occupancy. Said easement shall provide the Township with a right of entry and remediation at the Applicant's expense, subject to prior notification of the deficiency and the right to cure by the Applicant.
- J. A licensed land surveyor engaged by the Applicant shall have staked out the wetlands transition buffer lines prior to the issuance of any permits.
- K. After construction, the Applicant shall provide, to the Township Engineer, certification by an engineer engaged by the Applicant, that all stormwater management design and other NJDEP requirements have been met.
- L. The pool and outdoor recreation facilities, including decks and patios, shall not be used between sunset and dawn; and use of the clubhouse and recreational facilities shall not be rented to non-residents of the development..
- M. All street and parking area lighting fixtures, other those than on the entrance driveway, shall have house shields.
- N. 44 of the residential units shall be affordable to low and moderate income Households as required by Code § 170-104.4.C, and administration and operation of the development shall be in compliance with the Uniform Housing Affordability Controls.
- O. If there is any amendment to existing law that shall permit preference for

rentals of Affordable Housing Units to be given to veterans, Applicant shall provide such preference.

- P. Applicant shall install a five-foot wide concrete sidewalk on Eisenhower Parkway for the entire length of the Site's frontage.
- Q. All on-site sidewalks shall have a width of not less than 4-feet.
- R. A crosswalk shall be provided from the sidewalk of the entry driveway to the Clubhouse.
- S. A sidewalk shall be provided from the entry driveway to Building 4.
- T. A directional sign for building 3 shall be installed on Briggs Circle in the vicinity of Building 4 and the Maintenance Building.
- U. The conditions of the Schneider Memo of December 17, 2012 shall be met.
- V. The Applicant shall comply with all of the outstanding requirements of the memos and reports issued by the Township Engineer and Planning Consultant.
- W. All plantings shall be deer resistant, and any that are not shall be replaced by the next planting season.
- X. The Applicant shall comply with all requirements of the Fire Chief's Memorandum dated May 8, 2012.
- Y. The Applicant shall install a 6-foot high solid wood fence along the length of the surface parking area on the western boundary line subject to Jersey Central Power & Light requirements.
- Z. The Applicant shall provide an aggregate total of 10 additional trees, meeting the size requirement for replacement trees under the Trees Ordinance, that the Applicant shall plant in the rear yards of Lots 35.01 and 38 provided that

the owners of those Lots approve. The Applicant shall not have an obligation to maintain such trees.

- AA. The children's playground equipment and design shall meet applicable state and federal standards.
  
- BB. Bicycle racks shall be installed in front of the clubhouse and at the sports Court, but shall not be used for overnight storage. The Applicant shall also provide bicycle storage areas in the garage of each building.
  
- CC. Applicant shall bear the costs of design and construction of the intersection with Eisenhower Parkway, and the traffic control signalization, and shall bear the future costs of operating and maintaining the signalization.
  
- DD. The Applicant shall apply for, and have received from the Zoning Officer, a Tree Removal Permit authorizing removal of all trees proposed to be removed under the Plans submitted to the Planning Board; and shall submit a copy of the permit received to the Board's Secretary. The Applicant is exempt from the requirement that a payment in lieu be made in respect of replacement trees that cannot reasonably be planted on the Site.
  
- EE. One year after issuance of the final certificate of occupancy for the final residential building, the Applicant shall retain a traffic expert to study the flows on Burgundy Drive, Burgundy Court and Country Club Road of vehicles entering or exiting the Site. Said expert shall make a report, to both the Applicant and the Township Engineer, identifying the flows found and providing recommendations to remediate problems resulting from such

traffic. Any corrective actions approved by the Township shall be accomplished at the Applicant's expense.

- FF. The Applicant shall grant to the Township a perpetual easement of access to the entire site for purposes of inspection, installation, maintenance, repair, replacement of municipal water mains and sewerage mains in accordance with the RSIS.

### **CONCLUSIONS & FINDINGS OF FACT**

Upon the testimony and other evidence provided, the Board finds and concludes as follows:

1. The Site is in the R-5I Residence District established by ordinance enacted, under protest, pursuant to court order.
2. All signs for which variances are not provided are permitted under the zone ordinance. No variance is required to include a logo on the directional sign designated as Sign #2 on Site Plan Drawing No. 3.
3. The Board hereby approves the Application for Preliminary and Final Site Plan approval with variances, and subject to conditions, as set forth below.
4. The Board grants the following variances for the reasons stated:
  - A. Code §.170-104.F(13)(c) provides that all signs identifying building units must be wall-mounted. The Board approves the variance request for the

installation of post-mounted non-illuminated signs in front of the residential buildings. The Board finds that the variance should be granted pursuant to the provisions of NJS 40:55D-70.c.(2) in that the proposed signs would provide more ready identification of the buildings by motorists and promote traffic safety and that the benefits would substantially out-weigh any detriment.

B. Code §170-94.A.(6) requires all parking areas to be lighted to ensure safe movement of persons and vehicles, and limits the height of parking area light poles to the lesser of 18 feet or one-half the height of the building. Installation of light poles in the JCP&L right-of-way way is prohibited. A variance is granted to allow the Applicant to mount the proposed lights on poles near the westerly facades of Buildings 1, 2 and 3 at 24-foot heights with shields to prevent spillage of light onto those buildings and beyond the solid wood fence in the JCP&L ROW. The Board finds that the variance is justified under the provisions of NJS 40:55D-70.c.(2) in that it shall provide adequate lighting and promote safety on the Site and that there shall be sufficient shields on the light fixtures to prevent objectionable spillage. The benefits from a grant of the variance substantially out-weigh any detriment.

C. The aggregate terraced retaining wall heights of approximately 21 feet at the southern detention basin, and of 12 feet elsewhere, each exceed the 120 inches aggregate height limit in Code §170-91.B.(16); resulting in variance requests of 11 feet and of 2 feet. The separation proposed between the retaining walls with an aggregate height of 12 feet, is 6 feet. Code §170-91.B.(16) requires a

separation of not less than 8 feet; resulting in a variance request of 2 feet. The Board finds that said height variances can be granted pursuant to NJS 40:55D-70.c.(2) in that the design of the walls is necessary to provide a proper, adequate and safe structure that will also provide a softer aesthetic view; and that the horizontal separation is necessary because of constrained space for the installation. The benefits of the grant of the variances substantially out-weigh any potential detriment.

D. The plantings in front of the 6-foot fence required along the westerly boundary line would be limited to a height of 36 inches due to the JCP&L ROW easement and BPU regulations. Under Code §170-104.4.G.(2)(b) Site perimeter landscaping is to be consistent with an exhibit introduced in court. That exhibit called for those plantings to be at least 72 inches in height. The variance request of 36 inches is necessitated by the JCP&L restrictions. The wood fence will provide better screening than would 72-foot plantings, and the appearance of the fence will be softened by 36-inch plantings. The benefits from a grant of the variance substantially out-weigh any detriment, and the variance is granted pursuant to NJS 40:55D-70.c.(2) .

E. A portion of the Site that has frontage on Old Road constitutes a front yard. Code §170-91.B.(2)(b) prohibits front yard fences taller than 48 inches and less than 50% open. That front yard abuts the entire depth of adjacent Lots 35.01 and 38; each of which contains a private residence. The proposed 6-foot high board-on-board fences would protect the privacy of the occupants of those

residences. One such fence would extend from the Old Road sidewalk along the entire westerly property line of Lot 38 and to a screening fence at the surface parking area adjacent to Building 4. A similar fence would be provided at all common boundary lines shared by the Site and Lot 35.01. The benefits from a grant of a 24 inch variance from the height limit and from the 50% open requirement substantially out-weigh any detriment, and the variance is granted pursuant to NJS 40:55D-70.c.(2).

F. Code § 170-104.4.F.(13)(c) specifies the identification signs permitted on buildings. There is no sign authorization for the Clubhouse/Management Office. The Board grants the request for a variance to allow a sign on that building identifying it as the Clubhouse and Management Office. The Board finds that said signage is necessary for identification of the building and its purposes to visitors. Under the provisions of NJS40:55D-70.c.(2) the Board finds that the benefits of said variance substantially out-weigh any detriment.

5. As to each of the foregoing variances, the Board finds that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
6. Approval is subject to the following conditions:
  - A. Use of any lofts as sleeping accommodations shall be prohibited. This provision shall be included in the recorded Deed, in all Lease Agreements,

and shall apply as well if the premises are converted to condominium ownership

- B. A final recycling plan shall be submitted to the Township Engineer for approval.
- C. During Site preparation and construction, all vehicles and equipment shall enter and exit only at Eisenhower Parkway and shall not transit Burgundy Drive or Country Club Road. Signs announcing such restrictions shall be posted by the Applicant at the intersection of Eisenhower Parkway and Burgundy Drive and at the intersection of Walnut Street and Country Club Road.
- D. There shall be a grass paver driveway from Old Road that shall be an emergency entry or exit only and shall have controlled access by way of a chain or similar obstruction.
- E. The Township Engineer shall have final review of the design and application for the Eisenhower Parkway intersection and traffic signals before submission by the Applicant to Essex County for approval.
- F. No permits shall be issued until Essex County has given formal approval of the design of the Eisenhower intersection and proposed traffic signals installation. No certificate of occupancy shall be issued until such traffic signals are in operation.
- G. No permits shall be issued until a detailed phasing plan has been approved by the Township Engineer.
- I. Lots 35, 36, 37, 42 and 44.01 shall be merged into one lot with primary frontage of Eisenhower Parkway, and a Deed creating said lot shall be filed

and recorded prior to the issuance of any permits. Said Deed shall have attached to it a copy of the Board's Resolution, a copy of the final stormwater management plan as approved by the Township Engineer, and a copy of the perpetual conservation easement agreement required by Condition I.

- I. All undeveloped and unimproved portions of the Site shall be subject to a perpetual conservation easement, which shall have been approved by the Township Attorney and signed prior to the issuance of any certificate of occupancy. Said easement shall provide the Township with a right of entry and remediation at the Applicant's expense, subject to prior notice of the deficiencies and the right to cure by the Applicant..
- J. A licensed land surveyor engaged by the Applicant shall have staked out the wetlands transition buffer lines prior to the issuance of any permits.
- K. After construction, the Applicant shall provide, to the Township Engineer, certification by an engineer engaged by the Applicant, that all stormwater management design and other NJDEP requirements have been met.
- L. The pool and outdoor recreation facilities, including decks and patios, shall not be used between sunset and dawn; and use of the clubhouse and recreational facilities shall not be rented to non-residents of the development..
- M. All street and parking area lighting fixtures, other those than on the entrance driveway, shall have house shields.
- N. 44 of the residential units shall be affordable to low and moderate income Households as required by Code §170-104.4.C, and administration and

operation of the development shall be in compliance with the Uniform Housing Affordability Controls.

- O. If there is any amendment to existing law that shall permit preference for rentals of Affordable Housing Units to be given to veteran, Applicant shall provide such preference.
- P. Applicant shall install a five-foot wide concrete sidewalk on Eisenhower Parkway for the entire length of the Site's frontage.
- Q. All on-site sidewalks shall have a width of not less than 4-feet.
- R. A crosswalk shall be provided from the sidewalk of the entry driveway to the Clubhouse.
- S. A sidewalk shall be provided from the entry driveway to Building 4.
- T. A directional sign for building 3 shall be installed on Briggs Circle in the vicinity of Building 4 and the Maintenance Building.
- U. The conditions of the Schneider Memo of December 17, 2012 shall be met.
- V. The Applicant shall comply with all of the outstanding requirements of the memos and reports issued by the Township Engineer and Planning Consultant.
- W. All plantings shall be deer resistant, and any that are not shall be replaced by the next planting season.
- X. The Applicant shall comply with all requirements of the Fire Chief's Memorandum dated May 8, 2012.
- Y. The Applicant shall install a 6-foot high solid wood fence along the length of the surface parking area on the western boundary line subject to Jersey Central Power & Light requirements.

- Z. The Applicant shall provide an aggregate total of 10 additional trees, Meeting the size requirement for replacement trees under the Trees Ordinance, that the Applicant shall plant in the rear yards of Lots 35.01 and 38 provided that the owners of those Lots approve. The Applicant shall not have an obligation to maintain such trees.
- AA. The children's playground equipment and design shall meet applicable state and federal standards.
- BB. Bicycle racks shall be installed in front of the clubhouse and at the sports Court, but shall not be used for overnight storage. The Applicant shall also provide bicycle storage areas in the garage of each building.
- CC. Applicant shall bear the costs of design, and construction of the intersection with Eisenhower Parkway and the traffic control signalization, and shall bear the future costs of operating and maintaining the signalization.
- DD. The Applicant shall apply for, and have received from the Zoning Officer, a Tree removal Permit authorizing removal of all trees proposed to be removed under the Plans submitted to the Planning Board; and shall have submitted a copy of the permit received to the Board's Secretary. The Applicant is exempt from the requirement that a payment in lieu be made in respect of replacement trees that cannot reasonably be planted on the Site.
- EE. One year after issuance of the final certificate of occupancy for the final residential building, the Applicant shall retain a traffic expert to study the flows on Burgundy Drive, Burgundy Court and Country Club Road of

vehicles entering or exiting the Site. Said expert shall make a report, to both the Applicant and the Township Engineer, identifying the flows found and providing recommendations to remediate problems resulting from such traffic. Any corrective actions approved by the Township shall be accomplished at the Applicant's expense.

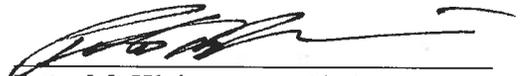
FF. The Applicant shall grant to the Township a perpetual easement for access to the site for inspection, installation, maintenance, repair, replacement of municipal water mains and sewerage mains in accordance with the RSIS.

GG. The Applicant shall submit a copy of the Tree Removal Permit received from the Zoning Officer to the Board's Secretary prior to the issuance of any other permits by the Township.

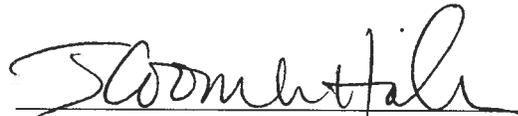
7. All of the Model Conditions of Approval attached hereto are incorporated herein; except that: Number 5 is amended by deleting the first sentence of paragraph "a"; and, Number 12 is revised by deleting the provisions under "a" and substituting therefor "a. Applicant shall install the top course of street paving as provided in the Phasing Plan approved by the Township Engineer."

8. **Conditions that must have been met prior to issuance of any permits other than the Tree Removal Permit are A, C, E, F, G, I, J, and Model Conditions of Approval 4, 6, 7, 8a, 11, 16, 17 and 18**

NOW THEREFORE, BE IT RESOLVED, that for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that Preliminary and Final Site Plan approval with bulk variances as set forth herein be and are 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 April 2, 2013 by the affirmative votes of Board Members Kimmel, Klein, Leopold, Meade, Ratner, and Alternate No. 2 Wishnew (in place and stead of Member Anthony). Members Dinar and Kalishman voted in the negative.

  
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 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.