

Exhibit A-4

township of wayne

Planning Department
475 Valley Road
Wayne, New Jersey 07470
www.WayneTownship.com
Phone: 973-694-1800, x3282
Fax: 973-872-0586

Planning Department Review Memo

To: Stephen P. Sinisi, Esq.
Two Sears Drive, 2nd Floor
Paramus, NJ 07652

From: Christopher J. Kok
Township Planner

Date: March 6, 2020

Subject: Planning Board Case PB-037-18
220 Berdan Avenue, Block 3200 Lot 16
220 Berdan LLC (The Learning Experience)
Amendment to Resolution Required

The purpose of this memo is to provide the applicant, 220 Berdan LLC represented by Stephen Sinisi Esq., with guidance as to the conformance status of Application PB-037-18 in view of post approval, pre-compliance change in circumstances.

The Board's approval of 220 Berdan LLC's application was memorialized by Resolution PB-2019-009, dated March 11, 2019. Several post approval conditions were incorporated into the approving resolution. In order to obtain a building permit, the applicant is required to comply with various conditions as set forth in the Resolution. Included in those conditions were several items relating to the Township's Engineering Division report of February 6, 2019, which report included Attachment "C", as referenced in the Resolution's condition #5. The Resolution recites that at hearing, the Applicant had agreed to comply with all conditions and requirements contained in Attachment C.

Within Attachment C, item 1.e specified:

"Applicant is proposing to fully develop the site and proposes to continue to discharge runoff to the northeast corner of the property where a portion of the site (54%) currently drains overland into a concrete headwall that is located off-site. It is important to note the headwall, pipe, and basin referred to by the applicant in the drainage report are located within Block 3200 – Lot 17 which is a lot owned by the Township of Wayne where a portion of the parking lot and the detention basin for the Wayne Hills H.S. (WHHS) are located. The BOE [Wayne Board of Education] should comment on their desire to continue to accept runoff from the adjacent site under developed conditions. In addition, the Engineering Division recommends a drainage easement be granted to block 3200-Lot 16 so they can undertake any future repairs to this pipe and headwall. The Township nor the BOE shall be responsible to undertake repairs to this pipe and headwall when under post-development conditions 83% of the adjacent lot will discharge into the headwall. The headwall and pipe in question were constructed by the BOE as part of the construction of the tennis courts and parking lot expansion."

Thus, the Board's approval recognized that the applicant's project contemplated that it would utilize some of the storm water infrastructure located in Lot 17, that as a condition of approval, the applicant would be required to obtain agreement with the controller of Lot 17's storm water management infrastructure and was premised upon the Board of Education being the party having control over and responsibility for the storm water infrastructure of Lot 17.

Subsequent to the Board's approval of March 11, 2019, the Applicant sought to come to an agreement with the Board of Education regarding the maintenance of the storm water infrastructure, more specifically, the drainage pipe located on Lot 17. During that process, but before any agreement was reached as between the applicant and the Board of Education, the Township assumed control over and responsibility for the storm water infrastructure of Lot 17. As a result, the premise underlying the above condition is no longer applicable, and instead, the applicant became required to reach agreement with the Township of Wayne rather than with the Board of Education.

To that end, the applicant has reached agreement with Township and has entered into a Developer's Agreement, dated February 26, 2020 which addresses all matters that the Township deemed necessary and appropriate for and which grants the applicant the usage of the Lot 17 storm water infrastructure, as contemplated by the Board's Resolution of March 11, 2019. As part of the Developer's Agreement, the applicant has agreed to pay for the costs of maintenance of the pipe in perpetuity through the posting of a \$20,000 escrow, which will be required to be replenished any time the escrow is less than \$5,000.

While this matter was pending, the Township agreed to issue and did issue a building permit allowing installation of footings and foundation (only), which would be at the applicant's sole risk.

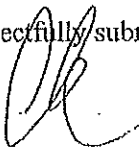
The Developer's Agreement meets the spirit and purpose of item 1.e in Attachment C of the Engineering Department's report, however, because of the change in control over Lot 17's stormwater infrastructure, it does not meet the actual language of this item and the Engineering Division has advised that it cannot 'sign-off' (approve) issuance of a building permit unless the Resolution condition is modified.

Accordingly, the applicant shall submit an application to the Planning Board requesting to modify the condition of approval to reflect the change in circumstances.

The Planning Department is satisfied that no modifications of the previously submitted site plans will be needed for this application. Be advised that a copy of this letter may be attached to the application in order to expedite matters.

Upon submission of its application, a date for the hearing will be provided to the Applicant so that the Applicant may bring this item before the Board for its review and approval/denial.

Respectfully submitted,



Christopher J. Kok, P.P., A.I.C.P.
Township Planner