

# **TOWNSHIP OF NORTH BRUNSWICK PLANNING BOARD**

## **RESOLUTION**

**DM Investment of North Brunswick, LLC  
North Brunswick Market Place  
Georges Road (Rt. 130) and Davidson's Mill Road  
Block 224, Lots 2, 5, 6, 8, and 87  
Conditional Use Approval &  
Preliminary Site Plan Approval**

**WHEREAS**, pursuant to the applicable provisions of the North Brunswick Zoning Ordinance (herein defined as the Ordinance), an application has been submitted to the North Brunswick Township Planning Board (the Board) by DM Investments of North Brunswick, LLC. (the Applicant) seeking Conditional Use Approval and Preliminary Site Plan Approval to remove all remaining structures from the site and construct a retail center including a 1,728 square foot "fast food" facility, a 3,715 square foot bank, a 15,750 square foot retail building, and two large retail establishments consisting of 79,551 square feet and 64,906 square feet respectively. The site is located in the C-4 Non-Restricted Commercial District.

**WHEREAS**, CME Associates, the Board's Consulting Engineer, reviewed all documents submitted by the Applicant including those concerning the engineering related requirements of Ordinance Section 205-68 for the C-4 Non-Restricted Commercial District; and

**WHEREAS**, a report was issued by CME Associates, the Board's Consulting Engineer, dated June 15, 2010, a copy of which is incorporated herein and made a part hereof (the "Engineering Memorandum"); and

**WHEREAS**, a public hearing was held on this matter on June 15, 2010, and upon proper public and personal notice pursuant to N.J.S.A. 40:55D-12 and the relevant portion of the Ordinance; and

**WHEREAS**, during the course of the hearing, the Board reviewed and considered the written comments of various Township officials and professionals including the Engineering Memorandum; and

**WHEREAS**, during the course of the hearing on this application, the following reports and/or documents were considered by the Board:

<u>Description of Report/Document</u>	<u>Date of Report/Document</u>
Plans entitled "Preliminary Site Plan Application – North Brunswick Market Place, Block 224, Lots 2, 5, 6, 8 and 87, Township of North Brunswick, Middlesex County New Jersey" prepared by Steven R. Cattani, PE, unrevised consisting of twenty (20) sheets	Dated May 18, 2010 Signed June 10, 2010
Plan entitled "Wetlands Delineation Plan – Block 224 Lots 2, 5, 6, 8, and 87, Township of North Brunswick, Block 27 – Lots 4 and 6 Township of South Brunswick, Middlesex County, New Jersey," prepared by Philip A. McEntee, Jr., L.S., unrevised consisting of one (1) sheet	Dated May 19, 2009
Plan entitled "Plan of Survey – JSM at 2470 Route 130, LLC – Block 224, Lot 8 – Township of North Brunswick, Middlesex County, New Jersey," prepared by William J. Buttler, L.S. license number 19451 of Control Layouts, Inc., unrevised consisting of one (1) sheet	Dated September 13, 2002
Plans entitled "Residential Option No. 1 and Residential Option No. 2 – Block 224, Lots 2, 5, 6, 8, and 87, for North Brunswick Market Place, Township of North Brunswick," prepared by Steven R. Cattani, P.E., consisting of two (2) sheets, each 1 of 1, each drawing #101	Dated May 27, 2010 Last revised June 11, 2010
Tax Map sheet	Dated June 1988

Easement, covenants, deed restrictions and Board decisions entitled "Right of Way Agreement recorded in Deed Book 1143, Page 348"

Recorded December 14, 1938

Easement, covenants, deed restrictions and Board decisions entitled "Drainage Rights recorded in Deed Book 1435, Page 426"

Recorded March 26, 1949

Report entitled "Traffic Evaluation – proposed North Brunswick Market Place – Route 130 and Davidson's Mill Road – North Brunswick Township, Middlesex County, New Jersey," prepared by Langan Engineering and Environmental Services

Dated June 1, 2010

Report entitled "Storm Water Management Report for North Brunswick Market Place – Block 224 – Lots 2, 5, 6, 8 and 87 for North Brunswick Township, Middlesex County, New Jersey," prepared by Steven R. Cattani, P.E.

Dated May 28, 2010

Photos entitled "North Brunswick Market Place Site Photos" – Block 224, Lots 2, 5, 6, 8 and 87 – Township of North Brunswick," consisting of eighty (80), 3" x 4", color photos

Dated May 20, 2010

Correspondence from the NJDEP entitled "Letter of Interpretation- Line verification File No: 1200-09-00002.1."

Dated October 27, 2009

Chronological status report entitled: "Truemann Milestones and Status"

Correspondence from the NJDEP regarding the Work Plan for Treumann Storage Facility entitled "PA/SI Work Plan Approval NJDEP Case # 07-10-30-0801-57"

Dated April 22, 2010

Ordinances supplementing Chapter 205, "Land Use", adding a new Article Section XIVA to create a new Commercial District known as "C-4 Non-Restricted Commercial District"

North Brunswick Fire Marshal's Review Memorandum

Dated June 9, 2010



American Water Review  
Memoranda

Dated June 10, 2010 and  
June 14, 2010

Department of Public Works Review  
Memoranda

Dated June 14, 2010

**WHEREAS**, during the course of the hearing on this application, the following reports and/or documents were entered into the record:

<u>Description of Report/Document</u>	<u>Date of Report/Document</u>
A-1, PowerPoint Presentation entitled "North Brunswick Market Place"	June 15, 2010

**WHEREAS**, the Board, after carefully considering the evidence presented by and on behalf of the Applicant, and upon the advice and recommendations of the advisory municipal personnel, agencies and consultants, including, without limitations, those set forth in the Engineering Memorandum, make the following findings of fact:

**FINDINGS OF FACT**

1. Except as otherwise modified herein, any factual information as set forth in the reports and/or memoranda detailed above is incorporated herein by reference. Except as otherwise set forth herein, the proposed Preliminary Site Plan Approval conforms to the bulk requirements of the zoning district in which the Property is located and applicable design standards as set forth in the Ordinance. Except as otherwise set forth herein, all of the recitals set forth above are incorporated herein as findings of fact.
2. The Property is situated in the C-4 Non-Restricted Commercial District.
3. The Applicant was represented by Robert G. Smith, Esq., Bob Smith & Associates, 216B-1 Stelton Road, Piscataway, New Jersey, 08854.

4. Mr. Smith began by describing the application for conditional use approval and preliminary site plan approval for the “fast food” facility, bank, retail building and two large retail establishments. Mr. Smith stated that he would call Ronald C. Aulenbach, Director of Engineering and Planning with DM Investments of North Brunswick, LLC, and Karl Pehnke, transportation and traffic engineer with Langan Engineering & Environmental Services, as witnesses. Also available to testify, if needed, were Brad Aller, civil engineer, and Victor Furmanec, planner.

5. Mr. Smith then began by presenting the testimony of Mr. Aulenbach, who was duly sworn. Mr. Aulenbach then described the existing site, vehicle access to and from both Rte. 130 and Davidson’s Mill Road, and the “fast food” facility, bank, retail building and two large retail establishments. Mr. Aulenbach indicated that the Applicant may come back to the Board for amended approval after the Applicant reaches agreement with future tenants.

6. Mr. Aulenbach also stated that the project is subject to DEP wetlands approval. Concerning the remediation of the site, Mr. Aulenbach indicated that the Applicant and the DEP have entered into an Administrative Consent Order, which requires the Applicant to perform site remediation within specific time periods. Mr. Aulenbach also provided some information concerning the DEP’s LSRP guidelines/program.

7. Mr. Aulenbach then gave testimony concerning the possible affordable housing obligation and the Applicant’s plan to meet that obligation, as one of the conditional use requirements applicable to large retail establishments is that the Applicant is required to meet any affordable housing obligation that is incurred by the Township as a result of development of a large retail establishment. Two options were proposed, the first occupying the site of the proposed 15,750 square foot retail building, and the second fronting Rte. 130 between Block 224, Lots 7 & 9. Mr. Aulenbach also stated that there would be no affordable housing obligation



if the Applicant received preliminary site plan approval by June 30, 2010, and pulled its building permits by January 1, 2013.

8. Mr. Aulenbach last testified as to the ingress/egress to the site. He stated that there would be two “right-ins/right-outs” located on Rte. 130, and one full movement, ingress/egress located on Davidson’s Mill Road. Tractor-trailors would be restricted from exiting out onto Davidson’s Mill Road. Mr. Aulenbach also provided testimony concerning the interior traffic circulation.

9. Mr. Smith then introduced Mr. Karl Pehnke, who was duly sworn and his credentials as a transportation and traffic engineer were accepted by the Board. Mr. Pehnke discussed his traffic analysis/study of the proposed site. He stated that the driveways will operate within State standards, the intersection of Davidson’s Mill Road and Rte. 130 will need lane reconfiguration, and that the majority of traffic will be on Rte. 130, falling under DOT regulation. Additionally, the driveways will be designed within State design criteria, and the Applicant will meet DOT level of service standards. Additionally, Mr. Pehnke testified that the application meets the requirements of the C-4 zone, and provided a description of the proposed connections for pedestrians and bicycles. Mr. Pehnke stated that the application meets and exceeds the number of parking spaces required.

10. The Engineering Memorandum was then reviewed. Mr. Aulenbach agreed that the Applicant would conform to all aspects of the Engineering Memorandum with two exceptions. Specifically, comments Nos. 3(a) and (b) on Page 5 of 11 should be amended. No. 3(a) shall state “it appears that the improvements would need to be implemented prior to the issuance of a certificate of occupancy,” in lieu of “it appears that the improvements would need to be implemented prior to the construction of the development.” No. 3(b) shall state “the Applicant should be responsible for the implementation of the recommended improvements and

all associated improvement costs prior to the issuance of a certificate of occupancy,” in lieu of “the Applicant should be responsible for the implementation of the recommended improvements and all associated improvement costs prior to construction of the proposed development.”

11. The North Brunswick Fire Marshal’s Review Memorandum was then reviewed. Mr. Aulenbach agreed that the Applicant would conform to all aspects of the Fire Marshal’s Review Memoranda.

12. The American Water Review Memorandum was then reviewed. Mr. Aulenbach agreed that the Applicant would conform to all aspects of the American Water Review Memoranda.

13. The Department of Public Works Review Memoranda was then reviewed. Mr. Aulenbach agreed that the Applicant would conform to all aspects of the Public Works Review Memoranda, with the following modifications:

(a) The Applicant agreed to provide all DEP paperwork concerning the final site clean-up to the Department of Public Works for their review;

(b) The Applicant will be re-routing and replacing the sanitary sewer interceptor line, and will provide a new easement along the new route;

(c) The Applicant agreed to do a total remediation of the 25 foot easement area with clean fill material; and

(d) The Applicant agreed to enter into a developers’ agreement concerning future application(s) for the construction of a road through wetlands areas for access to the interceptor relocation. The Applicant agreed to incur all costs associated with any applications submitted for this purpose.

14. The Board then heard from a member of the public, who inquired as to the traffic along Davidson's Mill Road. In response to the public's questions, Mr. Pehnke testified that 10% of the proposed site's traffic would come from Davidson's Mill Road east.

15. Members of the Board then reminded Mr. Aulenbach that one of the conditional use standards for a large retail establishment is that the large retail establishment be designed to achieve LEED certification. The Applicant acknowledged that the failure to design said large retail establishments to meet LEED standards would result in the Planning Board losing jurisdiction and the application being referred to the Board of Adjustment for a D variance. The Applicant also acknowledged the performance standard that requires large retail establishments to supply a minimum of 10% of its energy needs from renewable sources. The Applicant stated that it was not feasible to address these issues at the time of Preliminary Site Plan Approval because there are no known tenants at this time, but the Applicant agreed to address these issues at the time of its application for Final Site Plan Approval.

16. Members of the Board also asked Mr. Aulenbach questions concerning the location of the large retail establishments. Mr. Aulenbach confirmed that the proposed large retail establishment would be more than 250 feet from any existing residential uses, and more than 150 feet from proposed residential uses.

17. Mr. Aulenbach last testified that he did not know at this time how many tenants would utilize the proposed 15,750 square foot retail building.

**NOW, THEREFORE, BE IT RESOLVED**, that the North Brunswick Township Planning Board hereby grants Conditional Use Approval and Preliminary Site Plan Approval with regard to the property known as Block 224, Lots 2, 5, 6, 8 and 87, subject to the following conditions.



1. The Applicant shall comply with the Engineering Memorandum prepared by CME Associates and the recommendations therein dated June 15, 2010, except as to the two amendments discussed in Findings of Fact No. 10 above, inserting "prior to the issuance of a certificate of occupancy," in lieu of "prior to the construction of the development."

2. The Applicant shall provide information at the time of Final Site Plan Approval to prove to the Planning Board that the large retail establishment is designed to achieve LEED Certification and that the large retail establishment shall generate a minimum of 10% of its energy from renewable resources. Failure to document that the large retail establishment can achieve LEED Certification shall result in the application being referred to the Board of Adjustment for a D variance. Failure to generate 10% of its energy demand from renewable resources would require the granting of a variance from the Planning Board.

3. The Applicant shall comply with the North Brunswick Fire Marshal's Review Memorandum dated June 9, 2010.

4. The Applicant shall comply with the American Water Review Memoranda dated June 10 and June 14, 2010.

5. The Applicant shall comply with the Department of Public Works Review Memoranda dated June 14, 2010, including the modifications discussed in Findings of Fact No. 13 (a) through (d) above.

6. No Construction or construction-related site disturbance may commence without Final Site Plan Approval.

7. The Applicant shall bring all escrow accounts within the Township current.

8. Except as specifically varied or waived herein, this approval does not in any way relieve the Applicant from constructing all improvements as herein approved in accordance with

good and acceptable engineering and construction standards and all construction engineering requirements of the Township.

9. The Applicant shall obtain such other governmental or quasi-governmental approvals as may be legally required in order for the Applicant to develop the Property in the manner herein approved, including but not limited to approvals from the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, The Freehold Soil Conservation District, the Middlesex County Planning Board, American Water Services, the Department of Public Works, North Brunswick Police Traffic Safety, and North Brunswick Fire.

10. Prior to the issuance of any building permit, the Applicant shall pay any taxes and assessments then due on the Property which is the subject of this application.

11. The Applicant shall comply with any representations made at the public hearing of this application.

**THIS IS TO CERTIFY** that the foregoing is a true copy of the Resolution adopted by the Planning Board of the Township of North Brunswick at its public meeting held on July 13, 2010.

  
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Janice A. Larkin  
Planning Board Secretary