

**West Windsor Township Zoning Board of Adjustment**

**Minutes – Regular Meeting**

**July 25, 2019**

The regular meeting of the Zoning Board of Adjustment was called to order at 7:05 p.m. on Thursday, July 25, 2019 by Chair Abbey in Meeting Room A of the Municipal Building.

**STATEMENT OF ADEQUATE NOTICE**

Pursuant to the Sunshine Law, a notice of this meeting's date, time, location and agenda was mailed to the news media, posted on the Township bulletin board and filed with the Municipal Clerk as required by law.

**ROLL CALL AND DECLARATION OF QUORUM**

Present: Susan Abbey  
John Church  
Michael Garzio  
Curtis Hoberman  
Henry Jacobsohn  
Aleta Ricciardi  
John Roeder  
Carl Van Dyke

**CHAIR'S COMMENTS & CORRESPONDENCE**

No comments were provided.

**PUBLIC COMMENT**

No comments were provided.

**RESOLUTIONS:**

- a) **ZB19-08 Penn's Neck Substation Expansion**  
d-3; d-6, Conditional Use & Preliminary Final Major Site Plan  
Block 3, Lots 3 & 14.02

Motion was made by J. Roeder to approve the resolution for ZB19-08, seconded by H. Jacobsohn. The vote was 5-0 in favor. Motion carried.

FOR: Church, Garzio, Hoberman, Roeder, Abbey  
AGAINST: None  
ABSTAIN: None

**APPLICATION**

**ZB 18-07 CELEBRATIONS @ WEST WINDSOR**  
**D-1 Use Variance and Concept Plan**  
**Block 21.27, Lot 1**  
**Northwest Corner of McGetrick Lane & Southfield Road**

**Property Zoned: P-1 District  
MLUL: 7/26/19**

Edwin Schmierer, Esq., legal counsel for the Board, stated that proof of notice is in order and the Board has jurisdiction.

Chair Abbey stated that this is a bifurcated application, use variance approval is needed in addition to other variances associated with the site and if the use is approved then the applicant returns will a fully engineered site plan for review.

She noted that a letter had been received by Mr. Schmierer from the applicant's attorney regarding an article in a local paper dated June 14, 2019 concerning this proposal and the comment in the article, which is attributed to a "source", notes that the application is dead on arrival. Mr. Wolfson questioned if this comment had been attributable to a member of the Board. Mr. Schmierer wants to make the record clear and asked if any Board member or Board professional is the source to advise and step down. There was no response from any one in attendance. Mr. Schmierer stated that all members and professionals in attendance are eligible to participate.

Douglas Wolfson, Esq., legal counsel for the applicant advised that the director of planning and development for the properties was in an accident and will be arriving late, the application cannot proceed without him. He asked for the next available meeting date for a continuation. Mr. Surtees stated that the next two meeting is August 1<sup>st</sup> and August 22<sup>nd</sup>, Mr. Wolfson confirmed he will be out of the country for the August 1<sup>st</sup> meeting but is available on August 22<sup>nd</sup>.

Mr. Wolfson stated the property is zoned P-1 and this zone does not permit housing, the project being proposed is 100% residential. A concept plan of the development has been submitted, which is required, and the project is an inherently beneficial use.

Bradford Aller, Engineer for the applicant, presented an aerial of the site (Exhibit A-1) and presented the concept plan (Exhibit A-2) and stated that conceptually 420 units are being considered in 13 buildings including a clubhouse and other amenities. Five egress/ingress points will be provided. The landscape plan for the west side of the property (Exhibit A-3) and east side (Exhibit A-4) were presented. Mr. Wolfson stated that the landscaping is consistent with township requirements and the applicant will work with the landscape architect. The parking will exceed what is required and trash compactors will be provided for the residents. C. Van Dyke stated that sufficient land is needed for landscaping. Mr. Wolfson stated that the development will provide enough room for adequate landscaping. Mr. Aller responded that each building will have a buffer and plantings.

Mr. Aller referenced item 1.01 in the report from Van Cleef Engineering dated 5/15/19 and stated that there are small pockets of wetlands on the property, and they intend to fill those. An individual general permit from the NJDEP allows fills up to one acre in size. In addition, any environmental concerns that arise will be addressed. Soil logs will be provided and a new survey will be provided with the formal site plan submission.

Item 1.06, the title is to be reviewed for accuracy. Mr. Wolfson asked if the Board attorney could review the title for accuracy. Item 2.02 pertains to the right-of-way dedication and a 25 foot right-of-way will be granted. The applicant is open to a relocation of one of the access drives from Route 571 so as not to conflict with the drive from the adjacent development. The applicant is also open to suggestions for the driveway treatment of the Boulevard and they are considering a landscaped island.

He stated that based upon the number of bedrooms being considered, the number of parking spaces required would be 848 and 858 spaces would be provided. Mr. Wolfson stated that the parking could be increased to 872 parking spaces.

Ian Hill, engineering consultant for the Board, presented the report from Van Cleef Engineering dated May 15, 2019 and stated that the parking requirement is one guest space per unit. Mr. Wolfson stated that they feel the RSIS standards supersede the Township standards. Mr. Hill stated that a design waiver from the ordinance requirement would be needed.

H. Jacobsohn stated that Route 571 is a 55 mph road and recommended Southfield for accessing the property. Mr. Wolfson stated that Southfield is a local Road but this could be considered.

Mr. Hill noted that parallel parking spaces are proposed and this is to be addressed by the Fire Marshall. C. Van Dyke stated the applicant has maxed out the lot with this development and questioned if the number of parking spaces can be provided without parallel parking spaces. Mr. Wolfson stated that other things could be considered including underground parking or if the number of units are reduced. Mr. Wolfson stated that the applicant will make every attempt to provide what is required or request a waiver.

Mr. Aller stated that a buffer around the basin will be provided although that detail is not shown on the concept plan. C. Van Dyke stated that basins are typically large but they are not shown on the plan. Mr. Wolfson stated that a majority of the basins are underground. Mr. Aller stated that item 3.03 of the Van Cleef report recommends the utilization of permeable materials and they will look into this but this is not the preferred approach when considering maintenance.

Mr. Hill stated that approximately 104,000 gallons of water per day is needed for the proposed development. If the use was office/retail then 11,285 gallons per day is anticipated and he referred to the report from the landscape architect dated 5/15/19 stating that waivers may be required regarding separation/buffering between units; perimeter landscape buffering; stormwater management; as well as open space and recreation. The plans do not demonstrate that the impacts of this high density development can be mitigated by landscape area or design.

Karl Pehnke, traffic engineer for the applicant, was sworn in and referenced Exhibit A-1. He stated that the property is located on the south side of Route 571 and the zone allows for commercial use, personal service and limited retail. The property has several access opportunities to surrounding roadways and development of this property would offer access opportunities from these roadways. He stated that he has performed traffic studies in this area for other developments, for this project it would be a straight comparison with retail; office and service use. For those uses, peak hour traffic in the morning is 258 trips per hour and during the pm peak hour 373 trips are anticipated. He stated that the proposed use of residential is less intensive, the total amount of traffic anticipated for this use is substantially less when compared to office space, service and retail use. Residential numbers are 186 trips in the am peak hour and 112 trips in the pm peak hour. He stated that the plan has been reviewed and they can comply with the layout requirements in the RSIS and all parking spaces needed for this proposal could be achieved on site. The roadways can also accommodate the increase in traffic. He referenced the traffic report from Arora and Associates and stated that the parking analysis will be provided in addition to an exhibit, the wrong information was provided in the report from the Board's traffic consultant.

James Kochenour, traffic engineer for the Board, was sworn in and reviewed his report dated July 18,

2019. Mr. Kochenour asked the traffic consultant to elaborate the traffic generation numbers because sometimes people have difficulty understanding 420 units not resulting in a larger volume of traffic and a great amount of data is available to validate this. For trip generation, whatever the number of houses built most of those homes will have two vehicles resulting in 840 cars. Mr. Pehnke stated that residential traffic has varying arrival and departure times and after school activities. Townhouse developments typically result in less traffic than single family homes.

Marta Lefsky, planning consultant for the applicant, was sworn in and stated that when a use variance is being presented testimony from a Planner would reference case law and this proposal is considered an inherently beneficial use. There are particular uses which are recognized as being beneficial to the general welfare of the public regardless of the zoning. The proposal is for a development of 100% affordable housing units, 420 units are being considered along with parking and amenities. Affordable housing has been deemed by the courts as being inherently beneficial. She identified the special reasons to grant the variances as being an important contribution to the general welfare and that fair share obligations are in place and must be met. Shelter and housing is a human and constitutional right; affordable housing has the right to locate on any suitable site because it serves the public good. Ms. Lefsky stated that all other associated variances are assumed with a use variance, the density of the zone will not be applied but the applicant is asked to demonstrate that the site can accommodate the use and all problems associated with that use. Ms. Lefsky read the first three parts of the Sica decision concerning the court's four suggestions on how board should proceed on applications involving inherently beneficial uses. J. Church asked that she also read the fourth suggestion about weighing the positive and negative aspects of the proposed variance, which she then did read.

The negative criteria were identified to determine if there would be any detriment to the public good or a substantial impairment to the zone plan or ordinance. Ms. Lefsky noted that in the master plan this tract of land was designated as P1 but the zoning ordinance and the Master Plan are not consistent so there will be little impact or impairment of the intent of the zone plan. She stated that the Master Plan notes this parcel is suited for commercial and should be rezoned. She stated that the Master Plan amended in 2019 recommends that this parcel was one of the parcels considered for inclusionary housing sites to address the third round affordable housing obligation.

David Novak, planning consultant for the Board was sworn in stated that the 2002 Master Plan speaks about the intent of the P-1 zone as being existing professional medical locations and professional office uses on lots larger than 5000 sf, it is geared towards office/professional/medical. This zone is also part of the 1990 Master Plan. Because direct access is proposed off McGetrick, year round screening is recommended. A low profile is envisioned in the area, consisting of retail and office uses. He stated that the P district is professional/medical and P1 is geared towards office and professional as per the 2002 Master Plan. The P1 district was in place before the new recommendation for this zone in the 2018 reexamination report. Mr. Novak stated that although the Master Plan recommends a zone change, the current zoning ordinance is still valid.

Ms. Lefsky stated that the surrounding uses are single family homes and determining if there will be any impact on the surrounding properties, she stated that when single family homes are developed, a maximum height of 2.5 stories (35 feet) is permitted, the proposal is for a height of 45 feet. The development will be 150 feet away from the closest building and 310 feet away from the edge of the closest single family residence. There are also less traffic impacts during peak hour traffic. She stated that the use variance meets the positive criteria and also provides little negative impact to the zone plan and its surrounding areas and any impact can be eliminated with reasonable conditions imposed.

Chair Abbey stated the intention of the P1 zone is to serve the needs of the surrounding neighborhood, she questioned how high density affordable housing serves the needs of the surrounding neighborhoods?

Mr. Wolfson stated that it does not serve the needs which is why a use variance is required.

Chair Abbey asked if there are any other properties that are appropriate for this use. Mr. Wolfson stated that this land has been vacant for a long time and no other lands were considered. C. Van Dyke stated that this portion of town is not densely populated, there are single family homes on 1 acre lots surrounding this parcel. J. Roeder referenced the memorandum from Ed Schmierer, Esq., dated 5/15/19 noting the Board can consider whether the use variance represents a zoning change which is under jurisdiction of Council.

C. Hoberman read an excerpt from Section 5.2 pertaining to affordable housing noting that the Town should continue to examine the proprietary obligation while maintaining the character to the greatest extent possible. He stated that in West Windsor we do an inclusionary approach where we weave into other forms of housing and not isolate affordable housing. Mr. Novak stated that both inclusionary and 100% affordable housing were approved by ordinance in 2019. Ms. Lefsky referenced page 12 of the planner's report and stated that the applicant has the right to locate on any site and because there is a lack of area when considering all the other properties zoned as P-1. It is the size, location and nature of the property that would dictate the success of this use and the size of this parcel is not the problem, it is the fact that the other parcels in the zone are so small and development on those parcels would require many variances and waivers.

C. Van Dyke stated that a buffer of 45 feet vs. 35 feet separating the uses is not an issue for him but the FAR and MIC percentages were not discussed. There is a 52% FAR and 66.4% MIC. Mr. Wolfson stated that the FAR and MIC of the P-1 zone does not apply for this development. Mr. Novak asked Mr. Wolfson to provide the case law that he referenced pertaining to the zone standards. Chair Abbey stated that a majority of the land surrounding this parcel are single family homes on one acre parcels.

C. Van Dyke asked if the affordable housing will have a 20-year limit and Mr. Wolfson stated that it will be perpetual, there will be no limit.

The meeting was opened to the public.

Joseph Salerno, 20 Priory Road, stated that the applicant testified that they will not pursue anything more than 420 units, he asked what the least number of units are being considered.

Mui Ling, 33 Jennifer, asked about the cost of the children in this type of development attending the schools. Mr. Schmierer stated that the Board cannot take into consideration, it is illegal to discuss whether children would be on site.

Sreekanth Kumar, 4 Diamond Court, stated that a dentist in this location would be more beneficial and he has concerns about the traffic exiting onto Route 571.

Carol Hertz, 16 Westbrooke Boulevard, asked why the residents would want something that doesn't fit in our town and no open space is being provided for the residents on that parcel. Mr. Wolfson stated that open space will be provided.

Daniel Xcito, 16 Haverford Road, stated that all four roads surrounding this property access Southfield and he asked if another roadway for the main entry drive was considered. Mr. Wolfson responded that another road was not considered but only right turns out of the site will be permitted.

Motion was made and seconded to extend the time of discussion, all voted in favor.

Mark Frankel, 2 Flock Court, asked if the traffic study took into respect the fact that most traffic is residential and the direction of traffic is typically towards the commercial uses. Mr. Pehnke stated that it did.

Mary Licviner, 4 Tennis Court, asked about the landscape buffer and how large the street trees may be and that homes face on to Westbrook so there is no room for a buffer. She also expressed concern about left turning movements onto Southfield during peak hour traffic times. She also asked if the traffic study considered the school bus traffic.

Adi Duajamuji, 12 Bright Court, asked specifically what the applicant is requesting. Mr. Wolfson responded that they are asking for use variance approval for 100% affordable housing on this site.

Robert Gerbic, 10 Penns Court asked if the applicant has taken into account the number of accidents in this portion of Route 571. Mr. Pehnke stated that the road is designed according to standards.

Salvatore Sabatino, 36 Haverford Road, asked when the traffic counts were taken. Mr. Aller stated that the counts were taken on Wednesday May 29th and prior traffic studies were referenced.

Girish Sharma, 5 Woodland Road, asked what efforts were made to develop this land since it was zoned P-1.

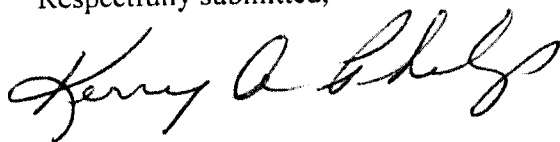
Ronald Aulenbach, applicant/owner, was sworn in and stated that they have presented plans for development of this site several times.

Jeff Weizman, 27 Priory Road, asked about affordable housing being considered beneficial when the project does not apply to the zoning standards.

The meeting remains open to the public. Motion was made by J. Roeder and A. Ricciardi seconded the motion to continue review of the use variance proposal to August 22, 2019. The vote was 7-0 in favor. Motion carried.

Being that there was no other business before the Board, the meeting was adjourned at 11:00 p.m.

Respectfully submitted,



Kerry A. Philip  
Recording Secretary