

Mr. Russel Huntington, (Attorney for the Applicant) opens this evening stating they propose to reopen the Public hearing to introduce some testimony to clarify the visual impact there may be with the proposed building on the Paramus side of the River....

Calls 1st witness, Mr. Robert Milanese (Applicant & Owner of Barrister Development, LLC) who has been previously sworn.

Mr. Rosenberg (Board Attorney) before beginning clarifies with Ms. Peck, all Board Members seated this evening are qualified to vote on this application.

Mr. Newman swears in: Robert Milanese
650 Pottersville Road
Bedminster, N.J.

Mr. Huntington begins his direct cross.
Refers to Exhibit A-25-Photo Board asking Mr. Milanese to indicate what this represents.

Mr. Milanese testifies the Exhibit shows where the simulation photos were taken from. He took these photos personally along the dirt trail along the River...He took the pictures, marked the locations and their Engineer went out and took elevations from these spots. They chose three (3) pictures overall to show the Board what the building would look like from the Paramus side of the river...pictures taken in late February so there is no leaves on the trees.

Clarification regarding marking of Exhibit.
Exhibit A-26- Board Exhibit
Exhibit A-25-Series of 3 Photos taken by Mr. Milanese.

Testimony continues on these Exhibits...detailing each location of the photos.

Mr. Rosenberg (Board Attorney) would like to distinguish each photograph for the record.
1st Photo-A25- A.
2nd Photo-A25-B.
3rd Photo-A25-C.

Mr. Milanese walks the members through each picture describing the locations.

Mr. Huntington calls his 2nd witness...

Mr. Newman swears in: Martin Kimmel (Architect)
151 East 10th Ave
Conshohocken, PA

Mr. Newman notes Mr. Kimmel has been accepted as an Expert Witness previously for this application.

Mr. Kimmel describes the process utilized to create the depictions in the Exhibit...a three (3) dimensional model of the building...explains the procedure testifying it is an extremely accurate depiction of what the reality would be.

Mr. Kimmel states in his opinion, they will virtually not see the building at all when foliage is in play or if anything, see sporadic dots in between the trees...

Mr. Huntington has no further questions of his witness.

Mr. Huntington would like Mr. Milanese to review the proposed conditions we would want the Board to be aware of as it evaluates their application on a decisional basis.

Mr. Newman puts this request on hold to swear in the Board's Professionals.

Mr. Newman swears in: Paul Azzolina, (Board Engineer)
Frank Miskovich, (Board Traffic Engineer)
Jennifer Beahm, (Board Planner)

Mr. Newman asks if they have any comments with regards to the newly presented testimony. Seeing none,

Mr. Newman opens to Residents living within 200ft. with questions only regarding the new testimony. Seeing none,

Mr. Newman closes this portion and opens to the General Public for questions only regarding the new testimony.

Mr. Newman swears in: Walter Weglein
18 Ramsey Terrace
Fair Lawn, N.J.

Mr. Weglein does not understand the motivation of these photos. Six (6) months of the year everything would be covered, but the other six months won't...what is the purpose?

Mr. Newman states he asked for the pictures at the last hearing.

Mr. Newman swears in: Pamela Coles
13-34 George Street
Fair Lawn, N.J.

Ms. Coles asks how many trees are slated to be removed on the southbound side of the River.

Mr. Kimmel (Architect) clarifies the location and testifies he does not know.

Discussion...

Mr. Kimmel references Photo/A-25, and notes the trees immediately on the other side of the River are definitely within the buffer, the Wetlands which they cannot touch, but he would say the simulation is pretty accurate as to the way it will be.

After further questioning regarding landscaping, trees, etc. Ms. Coles notes this is really not a true visual of what the final project would be less all the trees and the foliage...

Discussion continues on the amount of trees to be taken down...

Mr. Kimmel explains almost 100% of the area between the building and the stream is in the riparian buffer which means they will not be removing these trees...the second question as to the accurate depiction, this is inaccurate in that it does not show the buffering landscape they will be adding.

Questions & clarification regarding the amount of trees removed and the visual impact.
No further questions.

Mr. Newman swears in: Regina Klaatsch
42-04 Fox Court
Fair Lawn, N.J.

Ms. Klaatsch notes the building has been moved further away from the homes on Landzettel Way, but has it been moved further away from the two homes on Fox Court which are just as close?

Mr. Milanese testifies a while ago when the setbacks were adjusted, it was moved a little bit further away...he believes 5-7ft. but since then no changes have been made.

Ms. Klaatsch refers to a memo.

Mr. Newman questions the memo that Ms. Klaatsch refers to...

Discussion.

Ms. Klaatsch still feels the building is much too close to her home.
No further questions.

Mr. Newman swears in: Simon Fridman
15-08 Landzettel Way
Fair Lawn, N.J.

Mr. Fridman asks how come these pictures were taken in portrait mode rather than landscape mode.

Discussion...

Mr. Fridman has an issue with this because when pictures are presented in portrait mode, it does not present accuracy...

Mr. Newman will not allow Mr. Fridman to testify a non-expert opinion on whether or not this should have been taken the other way...

Discussion continues....

Mr. Newman in his opinion thinks this picture shows exactly what he requested, showing the entire facility from the sky to the ground where a Landscape picture may not give a full canopy of the trees. He is quite satisfied with the photos.

No further questions.

Mr. Newman swears in: Peggy Norris
1 15th Avenue
Elmwood Park, N.J.

Ms. Norris asks a question regarding a view from Landzettel Way. Will they show it?

Mr. Milanese (Developer) testifies it was presented in prior hearings but if she would like to see it, he will put it up.

Also, Ms. Norris would like to know if they did the same thing from the Naugle House.

Mr. Milanese testifies when he did these last photos, he went over by the Naugle house & the Vanderbeck house but couldn't see anything, so he did not take any pictures.

No further questions.

Mr. Newman refers back to the pictures she requested which were put up for her to see but states to the General Public he will not allow new testimony regarding these pictures, this is just in response to her question only.

Mr. Newman asks they be taken down after review by Ms. Norris.

Mr. Newman swears in: Eric Bal (Attorney)
1433 46th Street
North Bergen, N.J.

Mr. Bal represents N.J. S.A.R. The 1st Mountain Chapter of the Sons of the American Revolution & area resident, Ann Goldberg.

Mr. Bal begins his questioning. Asks Mr. Milanese how many pictures were originally taken. Etc....

Mr. Milanese states he took 10-12 and gave five (5) of the pictures which showed the most accuracy & depiction of what he was trying to show to Mr. Kimmel's office.

Discussion....

Mr. Bal moves to question Mr. Bal on the production of these simulations or images. Questions the procedure of this.

Mr. Kimmel answers the question in detail each procedure done in order to create the simulation.

Discussion....

Mr. Newman (Chairman) asks Mr. Bal to get to the point of questioning.

Mr. Bal objects to having to shorten his questioning of this procedure.

Mr. Kimmel continues with his testimony of the detailed procedure done and how the scale of the simulation was done. He will testify as an Expert this is exactly to scale and precisely accurate.

Objection from Mr. Newman stating the questions Mr. Bal is asking has already been testified to and asks Mr. Bal to please sit down.

Mr. Bal objects to his questioning being cut off.

Discussion....

Mr. Newman swears in: Marc Colyer
39-08 Van Duran Ave;
Fair Lawn, N.J.

Mr. Colyer references the retaining wall. He cannot see them from where he is sitting in the Exhibits.

Mr. Colyer is given the opportunity to review the pictures close up...questions one of the pictures which should have included the Naugle house. Asks if the house was photo chopped out?

Discussion....

Mr. Milanese testifies there were no alterations of the original photographs. None whatsoever. He took the pictures on his I-phone and e-mailed directly to the Architect.

Discussion....location & angles are reviewed.

Mr. Colyer is satisfied and has no further questions.

Mr. Nicks from Hackensack steps forward. (Previously sworn) steps forward.

Mr. Nicks questions the Landscaping Plan proposed.

Mr. Milanese answers the question by testifying they have a detailed landscaping plan proposed.

No further questions.

Mr. Newman asks if there are any other questions from the General Public based on the new testimony. Seeing none,

Mr. Newman closes this portion, calls for a recess.

RECESS:

ROLL CALL: Mr. Seibel, Ms. Perchuk, Mr. Lowenstein, Mr. Puzio, Mr. Racenstein,
Mr. Naveh, & Mr. Newman. Present.

Mr. Huntington (Applicant's Attorney) recalls Mr. Milanese. (Previously sworn)

Mr. Huntington states at this time he would like to review the conditions they consider appropriate as discussed during the course of the hearings...

Mr. Newman (Chairman) clarifies this statement. These are conditions that were discussed or only ones they are interested in adhering to?

Discussion...

Mr. Huntington moves to pass along a memo to all Members & Board Professionals.

Marked as Exhibit A-27

Mr. Huntington speaks to the following conditions:

Parking: The Board may require the Applicant to include 5 additional parking spaces on the Northeasterly side. They had removed these under the recommendation of the Board Professional but they are willing to replace these if need be.

The Board may require additional parking if the Vanderbeck house is not to be moved. An additional 12 spots. They do not think this is necessary but will comply if the Board feels this to be necessary.

Additional Bumper Landscaping. The Applicant proposes a Tree bank. Funding turned over to the Municipality for the location of 50 trees onsite, in addition to the landscaping plan. If the building is built and there is a gap in the landscaping, these trees can be placed there.

Road Widening. There has been discussion on the widening of the other side of the Dunkerhook Extension. This falls under the jurisdiction of the County and as of yet, they have not agreed to do this. Their proposal is; they are willing to do this if the County will let them do it. They would post a Bond.

Amendments to the Site Plan as promised during the course of the proceedings...

1. Signage along the Dunker hook extension to promote safety for bikes and pedestrians.
2. A striped walkway where the Truck Turn-a-round is proposed.
3. Garbage Pick-up will be a Private Hauler and not the Borough of Fair Lawn.
4. A note stating that prior to the commencement of Construction, there will be soil tests near the Naugle house to be sure there will be no disturbance to the Naugle house as a consequence to the nearby activity.
5. Geo-physical testing to be sure there are no historic gravesites on the premises. A report will be prepared and forwarded to the Board Engineer.
6. If the Vanderbeck house is moved, the colonial portion of the house will be moved down to the entrance way, it will be used as an accessory use for the Healthcare Facility.
7. A Snow removal plan will be presented and submitted for approval. A Snow plow plan will include provisions the snow will be appropriately be disposed of.
8. The building tone will be in Earth Tones. The exact shade would be subject to Borough approval.
9. They reiterate there are additional approvals required by other agencies and they do understand any approval from this Board would be subject to granting of approvals from these other agencies.

Mr. Huntington believes this takes care of all of the agreements of substance and asks Mr. Milanese if he is agrees with these amendments.

Mr. Milanese (Applicant & Developer) agrees to all.

Mr. Newman (Chairman) notes the Agencies whose additional approval would be required.

Bergen County Planning Board.

Bergen County Soil Conservation District.

N.J. Department of Environmental Protection approval for Wetland, Letter of Interpretation, Wetlands General permit for Outfall structure, Flood Hazard Area Individual Permit including Water Quality and Storm Water Management. Treatment Water Approval for Sanitary Sewage Extension- Borough Safe Drinking Water Permit.

Discussion continues.....

Mr. Huntington states for the General Public's awareness, during construction they would be subject to the ongoing observation and supervision by the Board's Design Professionals, all of which is done at the Applicant's expense.

Mr. Newman asks if the Board Members have any questions regarding these conditions.

Grave Sites are questioned. What the procedure would be if found.

Mr. Milanese refers to a subdivision done years ago in Franklin Lakes where 4 Gravesites were found. There was an open space and they put an easement around it but there was a provision if they wanted to move them, it could have been done...

A condition to be added is discussed regarding having their own "on call" Ambulance because of the additional effect it would have on the Fair Lawn Ambulance Corp as discussed during the Proceedings.

Mr. Newman defers to Mr. Rosenberg (Board Attorney)

Although Mr. Rosenberg believes this is a good point, he does not think it would be a reasonable condition to say they would only utilize the services of a private ambulance service in the event of an emergency. Whether or not it could actually legally be imposed on them....

Discussion on other possible conditions are discussed amongst the Board Members..

Mr. Rosenberg clarifies what Mr. Huntington is saying. The Board has the ability to impose conditions whether the Applicant agrees to the conditions or not as part of its deliberations of this application...speaks to the Sica Balancing requirement....

Discussion continues amongst Board Members regarding what type of conditions could be imposed...

Mr. Azzolina (Board Engineer) questions the road widening easement dimensions...clarification on the width.

Discussion.

Mr. Milanese (Applicant) states the proposal was 25ft.

Mr. Azzolina believes earlier testimony stated 30ft. proposed.

Mr. Newman swears in: Andrew Missy (Applicant's Professional)
12-Route 17 North
Paramus, N.J.

Mr. Azzolina questions Mr. Missy on the road widening width being proposed curb to curb.

Mr. Missy speaks to the westerly portion...presently, it's approximately 10 ft. and the most it could be widened under the proposed conditions would be 25ft. The limitations has to do with the Dunkerhook spur which cannot be widened due to the presence of the Open Space Land and the Naugle House.

Mr. Missy clarifies the easterly side would be widen to the max of 25ft. right of way from the center line.

Discussion continues...

Mr. Azzolina states being this is all subject to County approval, if the applicant would agree it would be widened to 30ft. if at all possible. Notes; any improvement to the Dunkerhook Road extension is a benefit to the Borough, to the County for access to their Park, etc...

Mr. Milanese states he will change the condition language to 30ft. possible.

Mr. Miskovich (Board Traffic Engineer) refers to the discussions at other meetings regarding prohibiting a left turn from the main driveway onto Century Road...asks if this is agreeable to the applicant, that it be restricted to "right in" and "right out" and a dividing island put in the center to reinforce this restriction, subject to County review and approval.

Mr. Milanese would agree to this condition.

Ms. Beahm (Board Planner) refers to earlier testimony, would like clarification on some provisions in a letter dated December 8, 2014-to the applicant, Page 12, Refers to the 3-4 items of the plan, do they agree to comply?

Review from the Applicant & Applicant's Attorney.

Discussion on the circulation plan, etc....

Mr. Huntington (Applicant's Attorney) has no objections to any of them, but would like to make a clarification to one. Refers to the Vehicle access to the rear walking path. A Motor Vehicle could not pass there, so they have provided a proximity point and gates...

No further questions or conditions recommended from Board Professionals or Board Members.

Mr. Newman (Chairman) recommends the next discussion be the Vanderbeck House. Since we are discussing conditions, whether or not moving the house is a proposed condition.

Mr. Newman asks if anyone has thoughts...seeing none, Mr. Newman asks if anyone is opposed to the Applicant moving the house.

Mr. Lowenstein (Board Secretary) asks the Board as a condition of approval, the historic portion of the Vanderbeck house be re-located and maintain the southern orientation.

Mr. Newman would agree to this suggestion as long as no other Board Member is opposed.

Mr. Zharnest (Board Member) questions the arrangement of parking spaces. If the house was or was not moved? Does this affect the total # of parking spaces?

Mr. Milanese testifies right now the parking they have, even with the move meets the code...explains details. The total number of parking spaces is determined to be 62 with the ability to add 5 more if necessary.

Discussion & clarification continues.....If the house was moved, would be done in a manner best designed to preserve the integrity of the structure and least designed to cause any harm or damage.

Mr. Newman questions & clarifies the earlier testimony of Mr. Milanese stating he would have a Company that specializes in moving historical homes be responsible.

Mr. Milanese explains there are companies that specialize in moving structures but his company would be the one to do the work of the foundation and to preserve the foundation stone and rebuild from this, etc.

Mr. Puzio (Vice-Chairman) asks Mr. Milanese if he could clarify the exact restoration he is planning to do on the facility if he moves it.

Mr. Milanese explains how this is done.

Mr. Racenstein (Board Member) questions the loss of the historical value if they cannot move the whole house intact. Does it lose its value.

Mr. Milanese states according to experts who testified, once moved it would lose its historical value.

Discussion continues....

Mr. Rosenberg (Board Attorney) recommends & believes there is a need for an oversight regarding this home. Whether it comes from the Board Engineer or the Historical Preservation Commission of the Borough, the obligation of the applicant to pay for an expert on behalf of the board in terms of making sure that everything Mr. Milanese is testifying to is done, this is something that has to be memorialized either in the Resolution, if approved or in a Developer's Agreement. Even a possibility of bonding....

Discussion with Mr. Milanese and Board Engineer, Paul Azzolina on Mr. Rosenberg's recommendations....Additional conditions are discussed.

Mr. Newman asks the Board Planner, Ms. Beahm to highlight her report and also put her feet to the fire on the inherently beneficial use situation...

Ms. Beahm starts by stating the Applicant has put testimony on the record which addressed the Sica Balancing Test which is necessary for a D-1 inherently beneficial use and identifying the four items that are essential in establishing if the use is absolutely beneficial...

Review of the Sica Balancing requirements.

Ms. Beahm testifies after review of the minutes and preparing a memo which basically summarizes the information the applicant has put forth identifying the use, feels it falls within the inherently beneficial category and she agrees it meets the prongs to make it inherently beneficial....explains & details the positive and negative impact...

The Board needs to make a decision regarding the positive attributes of this housing type, an Assisted Living Facility providing for those ageing in place, the testimony asserted, benefits associated with providing this type of facility at this location outweighing the detriments...what the applicant has agreed to regarding conditions, restricting left turns, widening of roads, etc., then take into account all the comments heard from the Public as to the negative impacts.

In ending, Ms. Beahm states in her opinion, based upon the testimony of the Professionals and review of the documentation that has been submitted, she would not disagree with what has been provided in terms of the benefits outweighing the detriments.

Mr. Newman asks if any other Board Professionals would like to add other testimony, seeing none, Mr. Newman moves to questions from Board Members.

Mr. Seibel (Board Member) questions Ms. Beahm on the inherently beneficial nature of this Assisted living...

Discussion...

Questions continues on negative criteria....how do they constitute what is a “substantial” detriment to the public good?

Discussion continues....

Ms. Beahm reiterates that ultimately the decision rests with the Board as to what constitutes substantial.

Questions continues....Master Plan is referenced & discussed. Square footage is clarified.

Mr. Newman asks if there are any other questions from Board Members. Seeing none, Mr. Newman calls for a brief recess and will open with questions from the Public for Ms. Beahm on her testimony only.

RECESS:

ROLL CALL: Mr. Seibel, Ms. Perchuk, Mr. Lowenstein, Mr. Puzio, Mr. Racenstein,
Mr. Naveh, & Mr. Newman. Present.

Mr. Newman calls the meeting back to Order.

Mr. Newman opens to Residents living within 200ft. of the Applicant for questions regarding Ms. Beahm’s testimony.

Mr. Newman swears in: Paul Wittenberg
15-09 Saddle River Road
Fair Lawn, N.J.

Mr. Wittenberg asks in regards to conditions. Are conditions something that has to be met? If it is not met, does it mean construction cannot be continued?

Ms. Beahm (Board Planner) states; this is correct and explains. Should the Board act favorably and impose conditions, the Attorney drafts a resolution in which the terms are identified and must comply to these conditions prior to the Board signing off the Resolution Compliance. A building permit cannot be pulled until the resolution compliance is complete.

Discussion continues...

Mr. Wittenberg questions the Road widening. If the County does not approve, etc...

Mr. Rosenberg (Board Attorney) clarifies the testimony in relation to conditions discussed in relation to the road widening & County approval.

Mr. Wittenberg moves to his 2nd question relating to Historic Preservation...Master Plan recommendations.

Discussion in length of what is deemed inherently beneficial...

Mr. Rosenberg notes the case Law; there are multiple prongs that have to be met...special reasons the site is particularly suited and when there is an “inherently beneficial use” as everyone has determined this use is, then the applicant is deemed to have satisfied by operation of Law that 1st prong, so this aspect is removed from the Board’s consideration & deliberation...and what is left is the 2nd prong which is the negative criteria...and whether or not the negative on balance outweighs the positive criteria of the “inherently beneficial use”...it is up to the Board members to weigh all the various factors they have been presented by the applicant, the public, the professionals over the last year during the deliberations...

Lengthy discussion in reference to Court Action and if the Court determines that the Board action is inappropriate and reverses the decision of the Board with the conditions imposed.

Ms. Beahm states the Court has the right to go through all the conditions and determine whether they are appropriate. They may impose all, they may impose none, but this would be up to the Court.

Questions continue from Mr. Wittenberg regarding her testimony...

Mr. Newman swears in: Mr. Simon Fridman
15-08 Landzettel Way
Fair Lawn, N.J.

Mr. Fridman questions Ms. Beahm. There is no real way to measure what is inherently beneficial. Whether it is; whether it is somewhat beneficial. Is it a negative effect, is it a very negative effect? That is subjective opinion? Is it not?

Discussion & concerns on other facilities that are deemed inherently beneficial being built...

Mr. Newman swears in: Jay Morgenstern
42-00 Fox Court
Fair Lawn, N.J.

Mr. Morgenstern refers to a memo from Ms. Beahm regarding the impact this facility would have regarding the 3 surrounding homes on Landzettel Way...does she feel his home which is 85ft. from the building would be considered an impact?

Ms. Beahm reiterates the memo is testimony the Applicant provided. Explains...this is not her opinion, this is her regurgitating what the Applicant had provided to the Board...in no way did she intimate directly or indirectly that his house being 85ft. away is not important to be evaluated...

Clarification & testimony continues. In her professional opinion, the applicant has met its burden but the board ultimately makes the decision.

Mr. Newman explains to the Public, an “Inherently beneficial use” could be a confusing issue and he wanted the public to ask questions. Explains; the reports prepared and the opinions by our Professionals are to help guide the Board to follow very specific criteria that is written into Law that this Board must follow when making a decision....

Mr. Newman explains this is a Balancing Test this Board is required by Law to follow.

No further questions from Mr. Morgenstern.

Mr. Newman asks if there are any other residents within 200ft. with questions that have not been asked.

Mr. Newman swears in: Raya Moskovich
15-00 Landzettel Way
Fair Lawn, N.J.

Ms. Moskovich has a question regarding the inherently beneficial portion. How is it more beneficial to have this facility versus 10 single family homes?

Discussion again on the 4 prongs that must be met and how this proposal meets this criteria. There was not an evaluation done on whether this is more beneficial than a different use...

Mr. Rosenberg (Board Attorney) refers to the Municipal Land Use Law (MLUL) and reads Section 40:55 D-5...reiterating the types of inherently beneficial facilities, etc...

Mr. Newman swears in: Maina Fridman
15-08 Landzettel Way
Fair Lawn, N.J.

Ms. Fridman would like clarification on why this facility would be considered beneficial when it would be built surrounded by one family homes. What about the need for another High School? Why should this facility be built?

Mr. Newman (Chairman) notes he does not think anyone has an answer for this.

Mr. Newman asks if there is any other resident within 200ft. with questions for Ms. Beahm. Seeing none, Mr. Newman closes this portion.

Mr. Newman opens to the General Public.

Mr. Newman swears in: Ms. Leah Wittenberg
18-14 Chandler Drive
Fair Lawn, N.J.

Ms. Wittenberg questions conditions attached to an approval. Can they be imposed on the facility itself? Questions if there are limits to how many “inherently beneficial facilities can be built in one area?

Discussion and answers..

Mr. Bal steps up to the Podium. (Previously sworn)

Mr. Bal questions Ms. Beahm on the use variance required and asks; if the Board finds the proposed development would substantially impair the intent of either the Master Plan or the Zoning ordinance, then there is no balancing test, no consideration of any beneficial use and the zoning board should deny the application.

Ms. Beahm does not wholeheartedly agree. Explains...this would be a multi-prong question.

Discussion continues on the Sica Balancing act...

Mr. Newman swears in: Howard Mark
12-23 Ferry Heights
Fair Lawn, N.J.

Mr. Mark asks how it is beneficial to the safety of the patients on two floors if there is a Fire.

Discussion on the definition of “inherently beneficial”....

Ms. Peck (Assistant Zoning Officer) interjects to state the Fire Department has no issues with the two floors and it has already been testified to.

Mr. Newman swears in: Mr. Robert Moss
17 New Street
Bloomfield, N.J.

Mr. Moss notes he is here as Green Acres Issues Coordinator for the N.J. Chapter of the Sierra Club. Questions Case Law that specifies a facility such as the one being described in all this testimony with no medical personal regularly on duty and not adjacent to a Nursing Home that states this is inherently beneficial?

Mr. Rosenberg (Board Attorney) notes; not to his knowledge...

Mr. Newman swears in: Kimmy Wei
13-08 B Sperber Road
Fair Lawn, N.J.

Ms. Wei has a question regarding an “inherently beneficial use”...understands a Medical Facility is, but questions a Commercial Assisted Living Facility that is not a Medical facility. Is it in fact inherently beneficial?

Discussion.

Pamela Coles steps up to the Podium. (Previously sworn)
13-34 George Street

Questions if an inherently beneficial use is a necessity?

Ms. Beahm reiterates the definition of an inherently beneficial use has been read into the record, discussed in length and the word necessity was not mentioned.

Discussion.

Ms. Coles questions the detriment to Zoning Laws...

Ms. Beahm reiterates her testimony regarding the detriments being mitigated to the maximum extent possible and does not rise to the level of substantial detriment...the benefits outweigh the detriments based upon testimony heard.

Discussion continues...

Mr. Newman reiterates and reads for the benefit of the Public what the definition of an “Inherently beneficial use” is....

Discussion.

Mr. Newman states this will be the last question from the General Public.

Mr. Newman swears in: Christian Panas
8-23 Palmer Ave
Maywood, N.J.

Ms. Panas questions if the positive outweighs the negative...refers to the flooding...the County Park, etc...does the County get involved?

Ms. Beahm addresses the question. The County does get involved. Explains...the County reviews and approves any application that would impact county roads and drainage system... All is evaluated. Compliance is regulated, etc...if the County has a problem that results in a modification of design, the applicant has to come back.

Mr. Newman closes this portion of questioning from the General Public.

Mr. Rosenberg (Board Attorney) before closing wanted to discuss the condition memo. Refers to Exhibit A27/Item 4D and has to do with the Naugle dwelling...refers to soil borings to test the fracture rate in the proposed right of way off of the Dunkerhook extension...

Discusses testimony heard regarding the impact to the Naugle House during construction of any project and they have to make sure if there is an approval resolution that the Applicant agree to have the Engineer be involved with respect to ensuring there is no structural damage to the structure itself and he asks it be a condition in any action the Board may take.

Mr. Milanese (Developer) notes as long there is a condition there is a structural inspection because it looks to be falling down already.

Mr. Azzolina (Board Engineer) states he would agree with Mr. Milanese visual assessment of the existing older house...speaks to the false wall holding up the westerly portion of the structure and does understand why he would not want the blame for something like that...

Discussion continues...

Mr. Rosenberg refers to Mr. Azzolina's letter of April 29, 2015 where he does note if the Board is inclined to act favorably on the application, the Board should act only on a preliminary site plan approval and make final site plan approval subject and contingent upon certain aspects being satisfied, including an easement, etc....

Mr. Rosenberg notes if the Applicant would agree to make sure these are conditions that will be satisfied...

Discussion....

Mr. Azzolina notes it is his understanding the Applicant is trying to get the use and the preliminary approvals, going to the outside agencies for the further approvals required, then come back before the Board for final site plan with any modifications the outside agencies may or may not require...

Discussion continues....

Mr. Huntington (Applicant's Attorney) agrees to all discussed.

Mr. Newman asks if there is any other suggestions or any discussion from Board Members before asking for a summary.

Mr. Newman calls for a brief recess:

Mr. Newman calls the meeting back to Order

ROLL CALL: Mr. Seibel, Ms. Perchuk, Mr. Lowenstein, Mr. Puzio, Mr. Racenstein, Mr. Naveh, & Mr. Newman. Present.

Mr. Newman asks the Applicant's Attorney, Mr. Huntington to please summarize for the Board.

Mr. Huntington steps forward and thanks the Board, the Board Professionals and the Public for all the time they have given to this application...

Mr. Huntington believes in his opinion the application is based on the premise the use is inherently beneficial under the Laws of the State of N. J. by definition...entitled to Special consideration.

Mr. Huntington continues review of the application and why it is inherently beneficial. Speaks to the 4 part analysis, positive & negative aspects, etc...States an owner of real estate has no obligation whatsoever to maintain a park like setting for the neighborhood or the community. People are entitled to use their land, so any discussion this applicant should leave this land vacant so people can enjoy the views is misplaced...

There are likely to be impacts but are not impacts that are substantial in his opinion...reviews the specific impacts...drainage, onsite traffic flow, parking, etc...all have been worked out, amended, revised or mitigated...

Mr. Huntington speaks to the removal of Trees, changes in grade and loss of the Park Like setting....this proposal is no different than what might occur on any other proposals...

Speaks to the Historical issue, noting Mr. Milanese has agreed to save the Vander beck house at his expense, to relocate, etc...which is a far cry better than demolishing it, and more than he is legally obligated to do...

Mr. Huntington states; on balance, there has been no evidence of any substantial, significant, unusual impact resulting from this development which would tip the scales on a balancing test against it...He sees nothing in the impacts that negatively affects it.

Speaks to the Zone code...no substantial detriment to it. Explains...

Mr. Huntington in summarizing notes he thinks the Board should approve this application because it is the right thing to do.

Mr. Newman asks Board members to deliberate before making a motion to approve or deny.

Board Members begin deliberations...

Mr. Lowenstein does not think the proposed facility as inherently beneficial in his opinion, although the Courts disagree. He has listened to testimony from the Public and believes there are substantial detriments and negative impacts to the surrounding areas. Explains...he also does not entirely agree with the public that single family homes would be a better solution. He believes a smaller lower in size and scope application is preferable to the one that is currently before them. On ultimate balance, finds the detriments outweigh the benefits and therefore he supports this application subject to the conditions noted.

Mr. Racenstein speaks to the pros and cons and safety issues. Reviews the intersection of Saddle River Road and Century road where there is a high rate of automobile accidents and traffic issues which may cause valuable time lost in a Fire emergency.

Mr. Seibel struggled with this proposal. Has weighed all the evidence, the complex studies and testimony. Walked the site numerous times...reviews all the issues that impact negatively with this proposal. He does not see how this fits into the Master Plan. This is not a residential property, this is a business. It is though, inherently beneficial...he is struggling with this one. It is important to the Town we get this right.

Ms. Perchuk also grew up in Fair Lawn and considers the Town a unique community. A family oriented community and believes because of this an Assisted care facility may be good for Fair Lawn but no one wants it in their backyard. There is an ageing population in Fair Lawn that may need to use this. There is also not enough of Intern opportunities in our High School...feels this

may be an opportunity for Fair Lawn. She does have some issues with this proposal and is also struggling with this...

Mr. Newman thinks the applicant has presented a concise and clear case...the rendering that was presented this evening was helpful in seeing what this entire structure would look like from the Park. This Board this evening has a lot to consider by Law and thinks the Balancing Test this Board has to consider was clearing and concisely laid out this evening. Does believe on balance, the applicant has met all the legal proofs they have to meet. He does think it meets the criteria of an inherently beneficial use and ...

**RECORDER FAILURE.
NO FURTHER TESTIMONY CAN BE HEARD.**

VOTE: Ms. Perchuk, Mr. Naveh, Mr. Lowenstein & Mr. Newman, **YES.**
Mr. Seibel, Mr. Racenstein & Mr. Puzio, **NO**

**4-3
Motion does not carry.
APPLICATION DENIED.**

Respectfully submitted.

Cathy Bozza
Assistant to Zoning Officer

