

REGULAR MEETING OF FEBRUARY 9, 2015

The regular meeting of the Fair Lawn Planning Board on Monday, February 9, 2015 was called to order at 7:30 p.m. by Chairman Brent Pohlman in the Council Chambers of the Fair Lawn Municipal Building.

The notice of the Open Public Meetings Law was read stating that the newspapers were notified and a notice posted on the first floor bulletin board of the Fair Lawn Municipal Building.

Roll Call

Present: Chairman Brent Pohlman, Deputy Mayor Lefkowitz, Peter Kortright, III, Larry Metzger, Joan Fragala, Benjamin Bontekoe, Oliver Wilhelm, Amy Hummerstone, James Hughes Absent: Vice Chairman Joseph Mele, Daniel Furphy

Also present: Board Attorney Thomas Randall, Board Engineer Jeffrey Morris, Board Secretary Cathy Hochkeppel

Swearing in of Class II Member

Chairman Brent Pohlman swore in Benjamin Bontekoe as the Class II member.

Approval of minutes

Upon motion by Joan Fragala and a second by Deputy Mayor Lefkowitz, the minutes of the reorganization meeting of January 12, 2015 were approved: AYES: Chairman Brent Pohlman, Deputy Mayor Lefkowitz, Peter Kortright, III, Larry Metzger, Joan Fragala, Oliver Wilhelm, Amy Hummerstone ABSTAIN: Benjamin Bontekoe

Public Comment

Chairman Pohlman opened the matter to the public but no public wished to be heard.

13-09 River Road; Block 5610, Lots 27 and 28

Jeffrey Kantowitz appeared on behalf of the applicant.

Thomas Randall pointed out that the Board is required to make a determination relative to *res judicata*. There was a prior application before this Board for the same property which was not approved. The Board has to make a determination whether the application is sufficiently different from the previous application so that the Board can hear the matter.

Mr. Kantowitz cited case law and explained that this application is substantially different from the prior application and should be heard. Mr. Kantowitz stated that the building coverage has been reduced, the impervious coverage variance and parking variance have been eliminated, the rear yard setback variance has been eliminated and the rear yard buffer has been increased. Three variances have been eliminated. The number of units proposed has been reduced by 20%. Mr. Randall explained that the vote on *res judicata* was not a determination as to the merits of the application but rather whether the matter should go forward with the hearing.

Upon motion by Larry Metzger and a second by Peter Kortright, it was unanimously agreed that this application was sufficiently different from the prior application and should be heard. AYES: Chairman Brent Pohlman, Deputy Mayor Lefkowitz, Peter Kortright, III, Larry Metzger, Joan Fragala, Benjamin Bontekoe, Oliver Wilhelm, Amy Hummerstone, James Hughes

Jeffrey Kantowitz explained the parking situation and that the Mayor and Council are willing to enter into a parking agreement with the applicant. The applicant is willing to enter into a cooperative parking agreement with the Borough for one space.

Robert Weissman, PE, of Midland Park was sworn in and qualified as an expert engineer and land surveyor. Mr. Kantowitz noted that a separate survey was requested by the engineer and was being presented. A copy of the site plan dated December 11, 2014 was marked as Exhibit A-1. The survey was marked as Exhibit A-2. Mr. Weissman explained the site plan in detail. He testified that the current structure and detached garage would be removed and the new three story building would be constructed. He explained the cross-easement access with the southerly property. He further explained the drainage facilities proposed. He stated that the variances requested included building coverage of 44.67% where 40% is allowed, parking under the building, no loading space where one is required, 2nd and 3rd story footprint exceeding the ground level by more than the two feet allowed and tandem spaces under the building. The impervious coverage variance has been eliminated by increasing the buffer in the rear. The parking variance has also been eliminated and the rear yard setback variance has also been eliminated.

The lighting proposed in the rear of the building will be shielded and light will not spill onto the residential properties. There is landscaping proposed along the rear. Mr. Kantowitz explained

that there is a Deed of Easement relative to the cross-easement access. The document was marked as Exhibit A-3.

Mr. Kantowitz referred to the Board Engineer's review letter and Mr. Weissman explained that there will be a striped walkway from the handicapped space into the building. Mr. Weissman referred to the architect relative to the refuse area. Mr. Weissman explained that they have communicated with the county, will be filing a complete application and if the county requires turning restrictions, they will comply. The stacked parking under the building will be dedicated to the residential units and signage will so indicate. The easement was previously addressed. No comments have been received from the Fair Lawn fire subcode official. The drainage calculations are designed for a ten year storm and they will work together with Boswell Engineering to be sure they are in compliance. The plantings include 8 – 10 foot evergreens along the rear of the property. There is some ground cover in the front area. The landscaping plan was marked as Exhibit A-4.

Larry Metzger asked about the cooperative parking and Mr. Kantowitz referred to the resolution adopted by Council that was submitted with the application. Peter Kortright asked about the stop sign in the front of the building and was told it will be a free standing sign. He also suggested that the handicapped walkway be hatched and the applicant agreed. He asked if the vinyl fence on the property to the south would be removed and was told it would be. Mr. Wilhelm asked whether the walkway was in ADA compliance and Mr. Weissman responded in the affirmative. He questioned the location of the columns in the parking and whether they would restrict the spaces. Mr. Weissman stated that he was comfortable with the design which is similar to the property to the south. He testified that there was more than enough room for access. Mr. Hughes questioned the size of the refuse space, and Mr. Weissman testified that it was adequate space for the amount of refuse for this facility. Mr. Hughes asked about snow removal, and Mr. Weissman stated that, if needed, snow would be removed from the site. Joan Fragala asked if there were garbage chutes, and it was explained that the tenants would carry their garbage to the refuse room.

Chairman Pohlman opened the matter to the public and no public wished to question the witness.

Mr. Kantowitz noted that due to a personal matter, Mr. Smartt had to leave and asked the chair if he could testify at this point. Chairman Pohlman agreed.

Mr. Smartt was sworn in and noted that he is the Director of the River Road Improvement Corporation. Mr. Smartt testified that the RRIC has reviewed this application and finds it

consistent with the River Road Master Plan and continues to endorse the application. He hopes the Board will do the same.

Glen Stubaus of Fair Lawn was sworn in and qualified as an expert architect. The architecture plans were marked as Exhibit A-5.1 and A-5.2. He explained the plans in detail. The first floor is retail in front and elevators, staircase and utility areas in the rear. The second floor will have three 2 bedroom apartments and the third floor will have two three bedroom apartments. There is a basement area for storage, maintenance area and fire suppression equipment. He explained the parking calculations and the usage of the stacked parking. He stated it is similar not only to the property next door, but to the way residences normally operate. He explained the refuse area that would require seven 30 gallon cans as well as an area for recycling. The room will be ventilated. The entire building will be fire sprinklered including this room. He explained that by ordinance, this site is allowed a larger building but they were proposing a smaller building than permitted.

Mr. Stubaus explained that the first floor area was reduced from the prior application by moving the entrance to the side and removing the rear sidewalk. Mr. Stubaus explained that the municipal ordinance requires that the trash be on-site or within the building and this trash enclosure complies with the building code. Mr. Stubaus explained that since the rear buffer has been increased from a 5 foot buffer to 9 feet, there is some room to accommodate some snow accumulation. There is also space available on the side. He testified that he believed this design was in keeping with the neighborhood and with the vision of the development of this corridor. Mr. Metzger asked about the trash room, and Mr. Stubaus explained that a multi-family residence can have a trash room pursuant to ordinance that specifically addresses multi-family buildings. Mr. Bontekoe asked about the sprinkler equipment and panel. Mr. Stubaus explained that the sprinkler equipment will be in the basement and the annunciator panel will be in the lobby. The sprinkler equipment will extend to the covered spaces. Ms. Hummerstone asked about the possibility of reducing the covered parking area. Mr. Stubaus replied that they had already reduced the size of the building and were able to eliminate the impervious coverage variance but in bringing the parking forward, the covered parking is necessary. The trash area would contain separate containers for recycling. Ms. Fragala was concerned about the moving in and moving out of the tenants without a loading space. Mr. Stubaus explained that the retail space was small and would not require a loading space. A moving van would be a rare occurrence. Mr. Stubaus testified that a property this size would not normally have a loading space for the few occasions such a truck would need to be accommodated. Mr. Weissman explained that there is a 24 foot aisle shared with the neighbor, and a moving van could sit in the aisle temporarily with cars going around it. There is a means to accommodate a moving van. Chairman Pohlman asked whether

any comments were received from the fire department, and Mr. Kantowitz explained that the application was submitted to the fire official as required but no comments were received. Mr. Morris asked about garbage pickup. Mr. Stubaes explained that the trash cans can be placed at the curb, and the property manager would make those arrangements.

Chairman Pohlman opened the matter to the public and no public wished to question the witness.

Catherine Gregory was sworn in and qualified as an expert professional planner. Ms. Gregory had pictures of the site and surrounding area. The pictures were marked as exhibit A-6. She explained the photographs in detail. She also explained that the current use as a single family home is prohibited on River Road. She testified that the variances can be granted under the C(2) criteria. The other properties developed in the area had 47% building coverage and this property's coverage is less. A variance is needed for loading spaces but based upon the size of the retail units, a loading space is not warranted. Ms. Gregory testified that she has never seen a loading space specifically for people to move in. It is not warranted based upon the limited amount of use. The off street parking underneath the building is not setting a precedent and exists in other developments. It is good protection from the elements. Ms. Gregory stated that all of the variances can be granted in that they further the purposes of the zoning code and master plan. She added that the three salient points are the fact that the development is eliminating a prohibited use, an affordable housing unit is being provided and the development furthers the purposes of the master plan of the River Road corridor. This development provides a better environment for light and space by moving the building forward. It is also a more efficient use of land. Ms. Gregory testified that there is no substantial detriment to the public good. She testified that what is proposed already exists on the same block, and the public is accustomed to this type of building in this corridor. The development further improves the walkability of the street and promotes the parking arrangements identified in the master plan. Ms. Gregory added that all of the variances meet both the positive and negative criteria and can be granted by this Board.

Jim Hughes asked if the testimony was that because the Board at one time allowed parking underneath the building, this Board must also grant that variance. Mr. Kantowitz explained that they are required to show that allowing the parking underneath the footprint provides a benefit that outweighs any detriment. The testimony is that there are benefits including being shielded from the elements and violating this standard does not create any negative detriment. Also, based on the fact that other buildings in this corridor have used this technique and no one has come forward to complain about it demonstrated that there does not appear to be anything detrimental by parking underneath given the size and depth of the properties along this corridor. Ms. Fragala stated that she does not think the neighbors would like this development. Mr. Kantowitz

disagreed and stated that the entire process requiring notice of property owners within 200 feet provides a forum for the neighbors. It is his inference from the silence or absence of anyone objecting that there is no dissatisfaction with this development.

Chairman Pohlman opened the matter to the public and no one wished to question the witness. Chairman Pohlman opened the matter to the public for comments and no public wished to be heard.

Mr. Kantowitz stated that he believed that they have put the appropriate testimony on the record for granting the variances. The conditions were reviewed by the applicants and members of the Board. They included ventilating the trash area, hatching the walkway similar to the neighboring property, entering into a cooperative parking agreement with the Borough for one space, provide screening of 8-10 feet evergreens in the rear, the PVC fencing match the 13-05 property, snow, if necessary, will be removed from the site, property manager to arrange for the proper removal of trash, signage on spaces designating tenant parking, stand alone sign at the ADA parking spot, drainage to be approved by Boswell Engineering and the applicant will obtain approval from Bergen County. Larry Metzger moved that the application be approved subject to the foregoing conditions and Oliver Wilhelm seconded the motion.

Mr. Hughes thanked the applicant for reducing the number of variances. Larry Metzger stated that revitalization of this area has been going on for several years, and he believes that this building will accomplish that goal. Peter Kortright stated that this is a part of the vision of the master plan and the Council and, hopefully, there will be a common driveway all the way up to the Chase lot. Although that is not part of this application, it furthers the vision. Deputy Mayor Lefkowitz thanked the applicant for working with the Board. Amy Hummerstone stated that she does not believe the two large variances are warranted. Chairman Pohlman thanked the applicant for working with the Board and avoiding unnecessary costs of litigation. Upon roll call, the motion was passed as follows: AYES: Chairman Brent Pohlman, Deputy Mayor Lefkowitz, Peter Kortright, III, Larry Metzger, Joan Fragala, Benjamin Bontekoe, Oliver Wilhelm, James Hughes NAY: Amy Hummerstone

Adjournment

Upon motion by Larry Metzger and a second by Joan Fragala, the meeting was unanimously adjourned at 9:45 p.m.

Respectfully submitted,

Cathryn Hochkeppel
Secretary of the Planning Board