

Minutes of the Re-Organization Meeting of the Morris Plains Board of Adjustment held on February 23, 2015 at 7:30 p.m. in the Council Chambers, 531 Speedwell Avenue. The following members were present:

Mr. Michael Bozza, Chairman
Mrs. Ruth Mills
Ms. Joan Scaccia
Mr. David Schulz, Vice Chairman
Mr. Robert Webster
Mr. John Cox
Mr. Shaji Eapen
Mr. Mark Karr

Ms. Liz Leheny, Borough Planner
Mr. Leon Hall, Borough Engineer
Mr. Michael Sullivan, Board Attorney

Absent: Mr. Roy Stewart

PLEDGE OF ALLEGIANCE TO THE FLAG

Mr. Bozza requested a Moment of Silence in remembrance of former Board member Rosemary Lopez who unexpectedly passed away in late December.

The meeting was called to order by Mr. Bozza. Mr. Bozza made the statement that adequate notice of this meeting has been published and posted in accordance with Chapter 231 of the Public Law of 1975, "Open Public Meetings Act."

Mr. Bozza advised that Messrs. Schulz and Stewart have been re-appointed as Board members for four years, Mr. Karr is now a full member replacing Mrs. Lopez, Mr. Cox was appointed as Alternate No. 1 and Mr. Eapen was welcomed to the Board as Alternate No. 2.

NOMINATIONS OF OFFICERS

Mr. Bozza turned the meeting over to the Board Secretary for nominations.

NOMINATIONS FOR CHAIRMAN

Mrs. Mills nominated Mr. Bozza for the position of Chairman, seconded by Mr. Schulz.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas:: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Eapen

Nays: None
Absent: Mr. Stewart
Abstain: Mr. Bozza

Motion carried.

Mr. Bozza thanked the Board for his election as the Chairman.

NOMINATIONS FOR VICE CHAIRMAN

Ms. Scaccia nominated Mr. Stewart and Mr. Bozza nominated Mr. Schulz for the position of Vice Chairman, Mr. Karr seconded Mr. Schulz.

The Board Secretary asked if there were any additional nominations for this position. Hearing none, she requested a roll call.

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Webster, Mr. Cox,
Mr. Bozza
Nays: None
Absent: Mr. Stewart
Abstain: Mr. Schulz

Motion carried.

The Board Secretary turned the meeting back over to Chairman Bozza

APPROVAL OF THE BOARD'S LEGAL REPRESENTATION

Mr. Bozza commented that the Board must approve legal representation for the calendar year 2015. It was recommended that Michael Sullivan, Esq. continue in his role as the Board's legal representative.

Ms. Scaccia moved that Michael Sullivan, Esq. be approved as the Board's 2015 legal representative, seconded by Mr. Karr

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster
Mr. Cox, Mr. Bozza
Nays: None
Absent: Mr. Stewart

Motion carried.

APPROVAL OF BOARD SECRETARY

Mr. Bozza stated the next item of business was the approval of the Board Secretary, Karen Coffey, for the calendar year 2015.

Ms. Scaccia moved that Karen Coffey be approved as Board Secretary for 2015, seconded by Mr. Webster

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Bozza

Nays: None
Absent: Mr. Stewart
Abstain: None

Motion carried.

APPROVAL OF 2015 MEETING DATES

Mr. Bozza stated the next order of business is to adopt the Resolution to approve meeting dates for 2015, Board of Adjustment Resolution #15-01-**“Notice of Meeting Dates”**.

BOARD OF ADJUSTMENT-RESOLUTION NO. 15-01
LEGAL NOTICE
BOROUGH OF MORRIS PLAINS
MORRIS COUNTY, NEW JERSEY

NOTICE OF MEETINGS

BE IT RESOLVED by the Board of Adjustment of the Borough of Morris Plains, County of Morris and State of New Jersey, this 23rd day of February 2015 as follows:

1. The *Morris Daily Record* and the *Morris News Bee* (or, as an alternate to the *Morris News Bee*, the *Star Ledger*), are hereby designated as the two newspapers to receive notice of meetings as required by any and all sections of the Open Public Meetings Act, it appearing that said newspapers are most likely to inform the local public of such meetings.
2. The location for posting of notice of meetings shall be the bulletin board in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey where notices of this kind are normally posted.
3. The schedule attached hereto and made a part hereof entitled "Notice of Scheduled Meetings for the remainder of the year 2015" is hereby adopted and the Secretary of this Board is authorized and directed within seven (7) days of this scheduled meeting to: (a) post said meeting schedule and maintain the same posted throughout the year on the bulletin board in the Borough Hall, 531 Speedwell Avenue, Morris Plains, New Jersey; (b) mail a copy of the same to the *Morris County Daily Record* and the *Morris News Bee*; (c) mail a copy of the same to those persons who may request such mailing provided they comply with the regulations providing for the mailing of such notices; (d) the sum of \$5.00 per notice is hereby fixed as the amount to be paid by any persons requesting individual notice of meetings as provided in Section 14 of the Open Public Meetings Act; and file a copy of said schedule with the Clerk of the Borough of Morris Plains. The Morris Plains Board of Adjustment has their meeting date on the fourth Monday of

every month except for May and December when the meeting is scheduled for the third Monday.

**NOTICE OF SCHEDULED MEETINGS FOR REMAINDER OF THE YEAR
2015**

Please take notice that the Board of Adjustment of the Borough of Morris Plains will meet to discuss or act upon public business at 7:30 P.M. prevailing time on each of the dates set forth below in the Council Chambers at 531 Speedwell Avenue, Morris Plains, New Jersey: February 23rd, March 23rd, April 27th, May 18th, June 22nd, July 27th, August 24th, September 28th, October 26th, November 23rd, December 14th and January 25th, 2016.

* * * * *

Ms. Scaccia moved that Board of Adjustment Resolution 15-01 be approved with the date in the second line corrected to today's date, seconded by Mrs. Mills.

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Bozza

Nays: None

Absent: Mr. Stewart

Motion carried.

APPROVAL OF MINUTES

Mr. Bozza stated the next matter for action at this meeting is the approval of the Board minutes for the December 15, 2014 meeting.

Ms. Scaccia moved to approve the minutes of the December 15, 2014 Regular Meeting, seconded by Mr. Schulz.

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Bozza

Nays: None

Abstain: None

Absent: Mr. Stewart

Abstain: None

Motion carried

COMMENTS FROM THE PUBLIC

Mr. Bozza opened the meeting to the public to speak on matters other than those on the agenda. Seeing no one, he closed the public portion of the meeting.

BA-3-14 Ralph and Danielle Mendoza
56 Glenbrook Road – Block: 27 Lot: 2

Mr. Bozza stated this application is for completeness only. He requested comments from the Borough Professionals.

Mr. Hall referred to their report of February 19, 2015 and reviewed the completeness checklist information. He commented on specific checklist items and provided explanations/commentary relevant to each. He also recommended appropriate waivers as requested by the Applicant.

He stated that if the Board agrees with his recommendations for waivers, he believes the application should be deemed complete from an engineering perspective.

A question was asked concerning Checklist 19 – Waiver for Easements. Is there an attestation that there are none; how does the Board know there are none?

Mr. Hall replied there were two surveys done by two separate people. The only sure way to answer this question is to have a survey certified or relying on the title binder at the time the property was purchased. He also did his own research. No easements were identified.

Mr. Schulz moved that this application be deemed complete with the waivers as described, seconded by Ms. Scaccia.

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Bozza

Nays: None

Absent: Mr. Stewart

Abstain: None

Motion carried.

Mr. Bozza advised the public hearing on this application will be scheduled for the Board March 23, 2015 meeting.

BA-2-14 CSH Morris Plains, LLC
361 Speedwell Avenue, Block: 23 Lots: 1, 1.07

Mr. Bozza advised this is a continuation of the public hearing on this application.

Mr. Podvey advised he has one witness still to provide testimony – Michael F. Kauker. He provided a summary of what has taken place between this meeting

and the Board's December meeting, primarily letters received from the Borough's Engineer, Planner, and Traffic Engineer. He stated that most of the letters the Applicant has complied with. He mentioned that there were a number of open items discussed in these letters; the Applicant will comply with all of them. This includes signage and signage location.

Mr. Sullivan swore in the Board Professionals.

Mr. Hall stated he had not seen a certain E-mail, but he did not indicate he needed to see it at this point in time.

Cross discussion about a December 11, 2014 report including, the Applicant's compliance with what is contained in this item.

Mr. Podvey called Mr. Kauker who was sworn in by Mr. Sullivan.

Mr. Michael F. Kauker provided a business address of 356 Franklin Avenue, Wyckoff, New Jersey. He also offered information concerning his educational and business credentials. He stated his firm Kauker and Kauker provides municipal planning services and gave detailed information as to the work they are engaged in. He stated he has worked on approximately 18 assisted living projects. He is the planner on project proposed in this application.

Mr. Kauker stated he has monitored the progress of the application process, reviewed the reports as appropriate, including a report submitted by Mr. Hall, specifically commenting on the section on page 2 where Mr. Hall refers to the Kauker and Kauker report. This related to potential future emergency calls to the Borough's police department and rescue squad. He commented on calls received from the Sunrise Assisted Living residence.

Mr. Kauker next spoke about traffic and the possible increase in traffic related to the assisted living project. He also referred to a comment that relates to page 7 of his report where there is a discussion about the consistency of an established pattern of use. There was also reference to the fact that the proposed residential project will largely be surrounded by commercial business although there is a multi-family residential development nearby. He agrees with Mr. Hall that this is a mixed-use neighborhood. He stated this concludes his comments with regard to issues raised by Mr. Hall. Mr. Kauker commented on issues relating to variances. He mentioned a revised January 22, 2015 report prepared by Ms. Leheny. He specifically commented on the D-1 use variance regarding that in the B-2 Zone assisted living residences are not permitted or recognized as a permitted use. He, however, believes this is an inherently beneficial use. He provided commentary on his thoughts regarding the benefits of assisted living, general demographic information as to typical populations living in assisted living residences, certain case law relating to beneficial/positive use criteria (*Sica* case), burdens of proof, the surrounding

population demographics, that this proposal locates the assisted living residence in a location that is appropriate as a transition from the current business on the site; it is a benign, but effective and beneficial use of this property, any negative aspects of the application, landscaping, preservation of the green areas of the streetscape, that the proposed structure can and will be property integrated into existing neighborhood, attractiveness of the existing commercial neighborhood, and that he does not believe this project will impose any substantial negative impacts on the existing neighborhood or on the Zone Plan of the Borough.

Mr. Kauker asked if there were any questions.

He was advised to continue with his testimony and that any questions could be dealt with later.

Mr. Kauker next discussed issues relating to Floor Area Ratio (FAR) and parking issues. The justification for their request for a FAR of 57%, far in excess of the 35% maximum for B-2 Zone commercial uses, relates largely to the benign nature of their proposed use, significantly less traffic that would be generated, and that they will have 39 parking spaces on the site. He referred to 68,000 SF and a retail formula of one parking space to every 200 SF of use. Having the smaller requirement for parking spaces enables the Applicant to construct a large building, retaining adequate yard space in the front. He also commented on the more than adequate side yard setbacks. There is sufficient space around the structure being proposed. Assisted living residences serve a much different use than the typical uses normally allowed within B-2 districts. Mr. Kauker commented on details for the proposed construction process of the assisted living residence and the reason it is important to have the proposed amenities to provide a good quality of life for the residents and one that the community can be proud of. Mr. Kauker next discussed the height variance being sought, a C variance because the Applicant is less than 10% in excess of what is allowed. He explained why they are seeking this variance. It relates to enhancing the interior living space in the building, particularly having an 11' 8" floor height for the first floor. The reason for this is because roughly 80% of the amenities provided are located on the first floor as well as the main entrance. The amenities cover approximately 25% of the entire interior floor area of the building. He provided additional floor height information for other floors (10' 10" for the second floor and 9' 0" for the third floor). He does not believe there will be any detriment associated with this additional height. Mr. Kauker commented on setback issues, primarily related to the appropriate location(s) of signage. Mr. Kauker concluded his testimony.

Mr. Hall asked if Mr. Kauker has ever checked back after completion of any assisted living residences he has been involved with to acquire information from emergency services personnel in those communities to learn precisely how many calls they received over time. He also asked about the amenities taking up roughly 25% of the total interior floor area.

Mr. Kauker stated he has never taken a formal survey, but he has checked with one or more of these municipalities. His findings indicate about one or two a week, four a month, but all were somewhat less than the Sunrise experience which is a bit high. He reviewed the architectural floor plan layout to conclude the 25% total for the amenities interior floor area on the first floor.

Mr. Hall stated he understands there are 82 units, 14 of which are two-bedroom and 68 that are one bedroom.

Mr. Kauker replied this is his understanding, too.

Mr. Joseph F. McElwee who previously testified and remains under oath provided information concerning the 68 one-bedroom units and the 14 two-bedroom units stating this does not mean that each bed in the two-bedroom units will be in use always. They could be used as semi-private units or could be used as a private unit. He also commented on the requirement to house 10 Medicaid residents. The total bed capacity will be 96. He also clarified that the amenities area spoken about by Mr. Kauker includes common area and the kitchen and hallways. Roughly 60% of the facility would be residential rooms and 40% would be common area and hallways.

Mrs. Leheny asked about the requirement to provide beds for 10 Medicaid residents. Why was the landscape area in the northeast section of the site diminished? She indicated some concern about the FAR variance and some issues about the proposed building.

Mr. McElwee stated this is correct and it does relate to requirements of the State.

Mr. Kauker was unable to provide an answer to this question.

Mr. Hall stated that he believes it relates to a few additional parking spaces.

Mr. Kauker commented on open coverage and footprint issues and how much area is covered by the structure; roughly 82% of the area is not covered by structure.

Mr. Hall asked what the ultimate maximum number of beds that are permitted.

Mr. McElwee responded the ultimate number of beds is 96 beds. For its purposes, the State rounds the 96 number up to 100. It will not exceed 96 beds.

A question was asked as to how many residents might have their vehicles and will need to keep them parked on site?

Mr. Kauker stated that very few residents have their own vehicles parked on site – maybe 10%. Parking is typically used by employees and visitors for the most part. Very few residents will have vehicles on site.

Brief cross discussion as to whether such assisted living facilities are ever all Alzheimer residents.

Mr. McElwee replied memory care facilities are beginning to be built around the country. Such facilities are generally smaller – typically 45 to 60 units of all memory care with more intensive staffing care. The closest such facility to Morris Plains that he is aware of is Manor Care off East Hanover Road near a Care One nursing home.

Ms. Leheny recommended that in the resolution reference be made to the requirement to provide housing for a certain number/percentage of Medicaid residents and Medicaid waivers.

Mr. McElwee stated the requirement is that 10% of the beds that are indicated in the Certificate be reserved for Medicaid eligible residents. For the assisted living facility being proposed by this application must allot 10 Medicaid beds. He believes these 10 beds equate to Coalition on Affordable Housing (COAH) equivalents since in the past they typically were.

Mr. Sullivan stated he believes the Applicant will be agreeable if a condition is included in the resolution stating “that 10% of the beds contained in the Certificate of Need shall be Medicaid beds.”

Mr. McElwee agreed to this statement.

A question was asked by a Board member as to why there is a difference in height for the second and third floors.

Mr. Kauker replied that he does not know the precise reason for this, but he thought it might relate to attempts to come as close as possible to complying with maximum height allowed of 35’.

Mr. McElwee added that there he believes there are also some mechanical items between the first floor and the second floor, but the third floor ceiling does not have any such items.

A question was asked by a Board member as to how the FAR of the proposed facility compares to the other 15 or so facilities that Mr. Kauker has worked on.

Mr. Kauker replied that it is on the higher side. The site having two acres plus is not too small, but is still on the smaller side of the scale based on his

experience. Sites typically range anywhere from three or three and a half acres.

A question was asked by a Board member as to how the proposed facility compares to other sites on outdoor amenities. It appears to be a somewhat constrained site.

Mr. McElwee provided a response stating the proposed site is in the middle in size of the smaller and more urban sites. Some larger sites, such as Madison, contain approximately 3.5 acres. With the average age of entry to an assisted living facility being 82, residents tend to stay in their community and in general it is recognized that four or five acres of land is not necessary to satisfy the needs of the residents. This site is approximately 2.93 acres, and larger than some sites, and slightly smaller than others.

Mr. Bozza opened this portion of the meeting to questions from the public of this witness. Hearing none, he closed this portion of the meeting.

Mr. Podvey presented a closing statement on behalf of this application stating this is an application for CHS Assisted Living for an assisted living facility to be located on the site of the current Bretton Woods. It is situated in the B-2 Zone of the Borough. The site is 2.86 acres. He commented on the planned amenities for the facility and the overall definition of what constitutes assisted living and why. The Arbor Company will be the managing company for this facility, a company with a long history in assisted living management. There will be no impact on the school district and will add to the Borough's ratable list. He also reviewed the variances being sought.

Mr. Sullivan commented on Mr. Podvey's mention of the four variances and the exception that is needed for the 9' x 18' parking spaces. There are additional exceptions needed: (1) for the loading area and (2) the style of the light fixtures proposed by the Applicant. The Applicant is seeking four variances and three exceptions.

Mr. Sullivan read his list of all the conditions of approval to refresh the Board members of earlier discussions and testimony.

Mr. Hall recommended an additional condition. It relates to Item D-12(a) of his February 13, 2015 and further relates to an existing well on site. This well should be shown on the Site Plan and noted "Abandoned". He also stated he is providing the Applicant with time to consult with its consultant in connection with Item D-12(b).

Mr. Sullivan will add this as a condition.

Mr. McElwee stated he will be following up to obtain the necessary information for Mr. Hall. He stated “Things like spills based on his experience with that kind of reporting . . .”

Mr. Sullivan stated the first condition will be amended to include Items D-12(a) and D-12(b) in Mr. Hall’s February 13, 2015 memorandum.

Cross discussion about the two elevators proposed for this building including, a need for stretcher-size elevator space; an independent call buttons on each of the two elevators; and testimony provided the architect on these two issues.

Mr. Hall commented on changes to architectural plans and related information.

Mr. Sullivan confirmed that the height of the building will be confirmed prior to the issuance of a Certificate of Occupancy.

A question was asked by a Board member concerning the LLC status of the Applicant and how this project is being funded, continued operation by other facilities referred to in testimony, how residents pay for living at the facility and what happens if intensive nursing care is needed/must transfer to a nursing home. What is the target occupancy rate?

Mr. McElwee replied that there is about 40% equity in the firm and conventional financing. The finalization of the funding will occur once the Board approves the application and the Certificate of Need is received. The referenced facilities are still in operation. He stated that if intensive nursing care is needed/a transfer to a nursing home is needed, this is actually addressed in part by the facility license (appropriate placement). A resident would need to be discharged to go to a nursing home. Assisted living residents must meet the stated criteria for living in an assisted living facility. He explained the payment for living at the proposed assisted living facility; it is a monthly rental, a one-year agreement. The target occupancy rate is 93%.; this rate for other area facilities they studied averaged 98%.

Mr. Schulz moved that this application be approved with all the conditions recommended by Mr. Sullivan, seconded by Mr. Webster.

Roll Call

Yeas: Mr. Karr, Mrs. Mills, Ms. Scaccia, Mr. Schulz, Mr. Webster,
Mr. Cox, Mr. Bozza

Nays: None

Absent: Mr. Stewart

Abstain: None

Motion carried

Mr. Bozza congratulated the Applicant and advised the resolution will be memorialized at the Board's March meeting.

The Applicant thanked the Board for its time and consideration.

CORRESPONDENCE AND BILLS

There was no correspondence and no bills.

OLD BUSINESS

Mr. Bozza advised that Mr. Karr has agreed to prepare the Board's annual report. He thanked Mr. Karr.

Mr. Sullivan provided an update in connection with legal items.

NEW BUSINESS

None.

ADJOURNMENT

There being no further business, Mrs. Mills moved the meeting be adjourned, seconded by Mr. Karr. Voice vote. All in favor. **Motion carried.**

Karen M. Coffey
Commission Secretary

Maureen Sullivan
Recording Secretary