

MINUTES

PLANNING BOARD

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Special Meeting

June 10, 2013

A Special Meeting of the Planning Board was called to order at 7:30 PM by Michael Einbinder in the Public Meeting Room.

Mr. Einbinder confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Einbinder, Mr. Johnson, Mr. Bruno, Mr. Niceforo, Mr. Franchino, Mr. Hall, Mr. Russo and Ms. Perna. Mr. Graziano, Mr. Cuocci and Mr. Monaco were absent. Mr. Cresitello, Board Attorney, and Mr. Solfaro, Board Engineer, were also present

Application for Review:

App. #SP-4-12: CVS Pharmacy (First Hartford Realty Corp.), Springfield Avenue & Lone Pine Drive, Block 701, Portion of Lots 2 & 3

First Hartford Realty Corporation proposes to construct a new CVS pharmacy with two drive-through lanes. The property currently contains a Pizza Hut which is not in service and is proposed to be demolished as part of the pharmacy development. (DD Zone)

Joseph Murray, attorney for the applicant, acknowledged receipt of the traffic report prepared by Henry Ney. Mr. Murray advised that the applicant has obtained a modification to the lease arrangements between CVS and the shopping center the purpose of which is to remove and exclude from the lease arrangements a provision for exclusive parking for the CVS facility. The issue of exclusive parking would have in his opinion caused a severe problem with regard to the definition of a shopping center which required a sharing of parking. He has provided a copy of the amendment to Mr. Geneslaw and sent one to the Board Secretary. Subject to Mr. Geneslaw's concern that a copy of the signatures rather than an original has been provided, he is willing to stipulate that if an original is provided he would not have a problem with authenticity.

Mr. Geneslaw noted that he did receive a copy of the lease amendment and based on Mr. Murray's representation that it is authentic he does not have any issue with the Board accepting this document. He does have a legal issue in this regard but has no objection to the Board accepting the document.

Mr. Murray advised that variance requests relating to interior lighting and the number of driveways have been withdrawn.

Mr. Geneslaw stated that he has three witnesses, two of which are present tonight, and Mr. Ney will be present on June 19 for his testimony. Mr. Geneslaw noted that it has been his understanding that First Hartford is the applicant and that they have an interest in the property. The lease amendment that has been provided is between the Landlord, Berkeley Development L.P. and identifies the tenant as New Jersey CVS Pharmacy LLC. By statute the applicant must be a developer with an interest in the property such as the owner, tenant or a party having an option. It appears that First Hartford does not have any interest in the property and therefore cannot be the applicant. Mr. Geneslaw stated that this is a significant issue because it deals with jurisdiction of the Board. Also, in looking through the documents in his file he did not see a corporate disclosure statement that is required by municipal land use law.

Mr. Murray stated that this is the first time this issue has been presented even though the paperwork has been on file for a year or so. To the extent it is necessary to tie First Hartford to CVS he will provide that information before the next meeting on June 19.

Mr. Cresitello advised that the Board may proceed but needs to know who the entities are and this issue does need to be addressed.

Mr. Geneslaw said he would respectfully disagree. He will respect the Board's decision about proceeding but in his opinion until this issue is resolved the Board does not have jurisdiction to proceed.

Mr. Cresitello noted that First Hartford is the applicant and the developer and the application was deemed complete. The Board can proceed but the applicant is proceeding at its own risk.

The Amendment to Lease was marked as Exhibit A-1 6/10/13.

Michael Tobia, professional planner, was sworn, gave his educational background and professional experience and was accepted as an expert witness.

Mr. Tobia reviewed the variances required. With respect to the variance relating to parking setback on Lone Pine Drive where 4' is proposed and 10' is required, Mr. Tobia

stated that the advantages of widening Lone Pine Drive outweigh the detriments. The widening will provide safe circulation and customer convenience and the improvements to this site will be in the best interest of the town. As to interior parking lot landscaping 8% is required and 5.1% is proposed. Meeting the 8% requirement would result in the loss of nine parking stalls that would kill the project. A variance is being requested for the landscape buffer along Springfield Avenue since the 85% screening requirement is not met anywhere else in town. A variance is also required for coverage that is necessary to meet the parking requirements. The loading area will be located on the side facing Lone Pine Drive for which a variance is required and a variance is needed for the driveways that will be wider than 24' in order to facilitate turning maneuvers. The signage has been revised to eliminate three wall signs facing Springfield Avenue but a variance is required for 9 signs where 2 are permitted. A variance is required for the wall signs that will be internally lit. The lighted signs will be shut off one half hour after the building closing. The monument signs will be externally lit. Mr. Tobia further stated that the hours of operation will be 7 a.m. to 11 p.m. Walgreens stays open until 12 a.m. CVS does not deem this an appropriate site for 24 hour operation.

Mr. Tobia stated that now there is an empty, neglected Pizza Hut building and the Drug Fair has also been lost on this property. The requested variances do not amount to a substantial detriment to the public good or impairment to the zoning ordinance. The applicant is promoting the public good and having CVS on this site will be a benefit not a detriment. The proposed use is a permitted use and there are no homes in the area that would be impacted by this development. He would describe the variances as minor in scope and he does not see anything that amounts to a substantial detriment or impairment.

Mr. Tobia stated that the applicant is requesting some waivers including a waiver for loading area buffering, building orientation, parking in the front yard, historic light fixtures throughout the parking lot and height of the light fixtures.

Mr. Tobia expressed the opinion that this project is a good thing for the town and CVS will be a good addition to the shopping center. He would recommend that a developer's agreement be entered into between the developer and the municipality.

Discussion took place with regard to the historic lighting and whether the lights will be left on at night. It was noted that this issue should be addressed by the Township Council and Mr. Hall said he will bring that up at the next Council meeting.

Open to the Public

The hearing was opened to the public for questions with regard to Mr. Tobia's testimony.

Howard Geneslaw, representing Stop & Shop, asked what total number of variances and design waivers are required for this project and if there are any other additional items of relief that will be requested.

Mr. Tobia stated that there are 11 variances and 5 design waivers and to the best of his knowledge that is correct.

Mr. Geneslaw asked what number of parking spaces would be lost if the applicant complied with the ordinance requirements for landscaping and whether the parking lot screening requirement is appropriate for this location.

Mr. Tobia stated that 9-10 spaces would be lost. CVS wants 64 for that area and if they lose stalls in the front of the building they probably would not proceed. The screening requirements are appropriate in a residential area but it would not be practical to screen the whole frontage of Springfield Avenue.

Mr. Geneslaw asked if the parking will encroach on the right of way and if Mr. Tobia can direct the Board to a provision in the ordinance that allows that condition to exist. Mr. Geneslaw also asked about parking in the easement on Lone Pine Drive.

Mr. Tobia said it is a long standing condition and there is a section in the code that speaks to non-conforming conditions and says they are allowed to continue. The parking on Lone Pine Drive is existing and not proposed by the applicant.

Mr. Geneslaw asked if this building is typical for CVS or unique for this site.

Mr. Tobia said the building has been customized for Berkeley Heights.

Mr. Geneslaw asked questions regarding the application for the proposed hotel and Mr. Tobia noted that he was not involved in that application.

With regard to the building height, Mr. Tobia stated that the proposed building is basically a one story building with a mezzanine section that is not open to the public. Technically that makes it a two story building that requires a minimum height of 30' and 28' is proposed. He views this as a one story building in which case no variance is needed but he would not see any detriment in granting that variance.

Mr. Murray advised that the applicant's testimony is concluded.

Mr. Geneslaw introduced Daphne Galvin, professional engineer. Ms. Galvin was sworn, gave her educational background and professional experience and was accepted as an expert witness.

Ms. Galvin stated that she has reviewed the application, plans and supporting documentation. She has been present at the hearings and read the transcripts and is familiar with the testimony that has been presented. She has evaluated the parking and concluded that the accurate building area has still not been provided. Ms. Galvin presented Exhibit O-1 6/10/13 – VHB's plan revised through May 3, 2013. She stated that there is a discrepancy between the square footage provided in reports prepared by Ms. Burke and Mr. Page. She believes it is critical that the Board require a plan be provided so that an accurate evaluation of parking can be performed. Ms. Galvin stated that they have identified parking spaces included in the parking calculation that they did not feel should be included. Ms. Galvin presented Exhibit O-2 6/10/13 - photographs taken in March 2013 showing construction vehicles used for maintenance of the shopping center that are parked in the rear of Building A.

Ms. Galvin stated that by her calculation the total parking demand would be 454 spaces and there are 449 spaces. However, there really are not 449 because of the spaces being used by maintenance vehicles, the parking spaces along Lone Pine Drive that fall into the easement and the 21 spaces in front of the post office.

Mr. Einbinder stated that he visits the shopping center at least once a week and the Mayor goes there every day. He has never seen the parking lot fully occupied and does not think there is a problem that cannot be resolved.

Ms. Galvin stated that based on their evaluation the lot is deficient by 29 spaces. There are currently vacancies in the shopping center and parking demand will increase once those spaces are occupied and CVS is constructed.

In response to a question from the Board, Ms. Galvin stated that she does not know if there are any issues affecting Stop & Shop with the present parking but there are changes that will result from this application. She did not know if there were any problems with parking when Drug Fair and Pizza Hut were open in the center.

With regard to the parking spaces located in the Lone Pine Drive right of way, Ms. Galvin stated that she believes the application should be re-evaluated by the County. The width of Lone Pine Drive is 30' where 50' would be typical and there is no room for other typical improvements. That is why the easement is proposed. If the road were widened to 50' the parking would have to be eliminated.

Mr. Einbinder expressed the opinion that there is no problem with parking in the shopping center. Mr. Bruno expressed the opinion that the parking at CVS will not impact Stop & Shop.

Mr. Geneslaw noted that the proposed parking behind building A is not practical since some tenants, including Stop & Shop, do not allow employees to come and go through the rear doors because of safety, lighting concerns. Simply because there is space in the back doesn't mean that those spaces are usable.

Ms. Galvin stated that the proposed easement starts out 10' wide and then narrows down to 6' and then opens up again. It appears that the narrowing is to accommodate what is happening at CVS but that area is too tight. In addition, with all the changes that have occurred there is actually an increase in impervious coverage and the basis for the design of storm water management has changed. This has not been addressed. The increase is .04% which may be a minor change but the State standards are very specific and that needs to be addressed.

With regard to the sidewalk adjacent to CVS on Lone Pine Drive there is not enough room for landscaping or buffering and the retaining wall will create issues with respect to street lights and landscaping. Ms. Galvin questioned whether the building will fit and still allow for maneuvers around the building without losing parking.

Mr. Solfaro noted that Ms. Galvin raises some good points but the applicant's engineer is not present to respond. Some realignment may be required but it is hard to say.

Ms. Galvin stated that there was no testimony by the applicant with regard to construction staging. Stop & Shop is concerned and believes that a construction staging plan should be provided. Ms. Galvin further stated that a new plan should be provided to address the reconfiguration of the drive-thru lane and she assumes that the plan has to be resubmitted to the Union County Planning Board. There is also concern about the existing conditions and features of the property shown on the survey submitted by the applicant as well as restrictions on the property that are not shown on the survey.

Open to the Public

The hearing was opened to the public for questions with regard to Ms. Galvin's testimony. There were no members of the public who had questions and the hearing was closed to the public.

Mr. Geneslaw introduced Ed Colling, Professional Planner, who was sworn, gave his educational background and professional experience and was accepted as an expert witness.

Mr. Colling stated that he has examined this application from a planning perspective and reviewed the application, the plans, the Master Plan and ordinance. He has attended most of the hearings and listened to the testimony. The intent of the zone plan is to revitalize

the commercial area of the downtown district in a more traditional way with buildings that face the street, encourage pedestrian activity, improve the appearance and make the sidewalk more attractive and accommodating. This indicates to him the municipality's intent to have a more traditional downtown. The Master Plan refers to the downtown district standards adopted as Section 19 of the ordinance.

Mr. Colling stated that the Master Plan encourages pedestrian circulation but with this plan the sidewalk has been narrowed, is not attractive and does not form a good pedestrian streetscape. He also noted that under the ordinance parking lots are to be in the rear of buildings.

Discussion took place regarding the pedestrian use of the downtown area. Mr. Colling stated that he understands that people in Berkeley Heights may not walk in the downtown area now but that may change if the hotel is constructed and other land uses come in. The ordinance does talk about pedestrian access to buildings from the sidewalk system. Mr. Colling referred to the Department of Transportation manual on development of complete streets. He stated that if the County wants to promote use of alternate means of transportation other than cars then the right of way needs to be used. In his opinion it is not beyond the realm of possibility that Springfield Avenue could be widened for a bike lane.

In response to a question from the Board as to whether the proposed CVS building will be better in that location than what is there now, Mr. Colling stated that an active use is better than an inactive use. In his opinion the building could be oriented in a different way and he questions whether the drive-thru is appropriate or permitted. The proposed orientation is not consistent with promoting a pedestrian environment and a corner property should not have a loading area. The Board has to look at what is there today and what they want to accomplish in the future. The Master Plan says the possible future use of Lone Pine Drive should be addressed. Mr. Colling further stated that it is his interpretation of the ordinance that the proposed drive-thru is an accessory use that is not permitted in this zone. In his opinion granting of the variance for building height would result in substantial detriment to the intent and purpose of the zone plan.

Open to the Public

The hearing was opened to the public for questions with regard to Mr. Colling's testimony. There were no members of the public who had questions and the hearing was closed to the public.

The hearing of the application was carried to the Regular Meeting of the Planning Board on June 19, 2013 with no further notice required.

Adjournment:

A motion was made by Mr. Einbinder, seconded by Mr. Niceforo, to adjourn the meeting. The voice vote was unanimous and the meeting adjourned at 10:38 p.m.

Regina Giardina, Secretary Pro-Tem