

## MINUTES

### PLANNING BOARD

#### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

June 19, 2013

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

#### **Adoption of Minutes:**

Regular Meeting June 5, 2013

A motion was made by Mr. Einbinder, seconded by Mr. Bruno, to adopt the Minutes of the Regular Meeting of June 5, 2013 as presented. The voice vote was unanimous.

#### **Application for Review:**

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

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.

Joseph Murray, attorney for the applicant, stated that an issue has been raised regarding the identity of the applicant in this application and the suggestion by Mr. Geneslaw that First Hartford did not have a proprietary interest in the property. He has therefore submitted a request for amendment of the application to name New Jersey CVS Pharmacy LLC as the applicant. New Jersey CVS Pharmacy LLC has been participating in the process from the beginning and the notices to the public

have indicated that this is an application for a CVS Pharmacy. CVS has provided a signed consent stating that it will ratify all of the action undertaken by First Hartford with respect to each of the public hearings, filings, etc. All fees with respect to the application have been paid by CVS and no money has been advanced by First Hartford.

Mr. Murray presented the following exhibits:

Exhibit A-1 6/19/13 – Ground Lease cover page and signature page.

Exhibit A-2 6/19/13 – Certificate of Ownership of New Jersey CVS Pharmacy LLC – stating that it has no stockholders holding 10% or more in the LLC

Exhibit A-3 6/19/13 – Ratification signed by New Jersey CVS Pharmacy LLC

Exhibit A-4 – cover letter from Mr. Murray transmitting the documents.

Exhibit A-5 – Consent of the owner dated June 19, 2013 from Berkeley Development Company LP.

Mr. Murray stated that he has provided these documents to the Board Secretary before the start of this meeting. He did not give a copy to Mr. Geneslaw since he brought them with him. Mr. Murray respectfully submitted that the applicant has presented its case for change of the applicant and authority for this Board to proceed with this application.

Mr. Geneslaw stated that he is just seeing these documents for the first time and he assumes that the documents indicate what Mr. Murray has stated and they correct the jurisdictional issue. However, none of these documents were on file 10 days before the hearing. Also, Mr. Murray indicated that CVS has been participating throughout the process but to his knowledge there have been no witnesses or testimony from CVS so he does not agree that CVS has been participating from the outset. Mr. Geneslaw suggested that the Board's Attorney should have an opportunity to review the documents to evaluate whether they are adequate for purposes of proceeding with the hearing.

Mr. Einbinder questioned whether this issue makes any difference. The Board knows that Berkeley Development owns the property and that CVS has a lease agreement with the owners of the shopping center. The application is to construct a CVS on the property. Mr. Murray has presented the application, called witnesses and Mr. Geneslaw has had the opportunity representing Stop & Shop to cross examine the witnesses. He has also introduced his own witnesses and will introduce an expert in the field of traffic engineering. All the meetings have been properly noticed. Mr. Einbinder expressed the opinion that regardless of who is actually named on the application the testimony would

not have changed and changing the name of the applicant does not affect any other aspects of this application. Further discussion took place and the consensus of the Board was in agreement with Mr. Einbinder's opinion.

Mr. Cresitello said he would concur with the chairman's analysis and does not see any prejudice to the objector as a result of the change in the name of the applicant. He would be comfortable with proceeding with the application.

Mr. Geneslaw noted his objection for the record.

Ed Colling, previously sworn, Planner for the objector, stated that he was present for Mr. Tobia's testimony. He has reviewed the hotel application and resolution of approval. Mr. Colling stated the opinion that the CVS application will have a significant impact on the zone plan and that the proposed development will be a substantial detriment to the Master Plan. He does not agree with Mr. Tobia's conclusion that the variance should be granted because of hardship. The hardship is on the applicant and not a hardship relating to the property. He does not believe the applicant has met the hardship test as to lack of landscaping, buffering, lighting and front yard loading dock.

With respect to building height, Mr. Colling noted that Mr. Tobia stated that the proposed building is technically a two story building because of the mezzanine but should be considered a one story building. He does not believe this is correct and in his opinion it is a two story building and should be treated as such. Mr. Colling also stated the opinion that this development will impact the hotel approval as to signage and parking.

Mr. Colling presented Exhibit O-1 6/19/13 – resolution in the hotel application, Application SP 05-08 dated July 21, 2008, and Exhibit O-2 6/19/13 – transcript from application SP 05-08 hearing on June 23, 2008. As part of his review he has reviewed the transcript of the proceedings in that matter.

Mr. Colling stated that parking in the Springfield Avenue right of way functions now but if it is ever restructured it may not function properly. In his opinion those spaces should not be included in the parking count for the hotel application.

Mr. Colling further stated that he reviewed the applicant's plans against the zoning ordinance to determine if there are items that require relief that the applicant did not request or did not present testimony on. Variances should have been requested for the number of buildings on the easement, parking in the front yard on Springfield Avenue, setback for the new parking created in front of the post office, building location and parking lot location.

### **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 with questions and the hearing was closed to the public.

Mr. Murray stated that to the extent that the witness has indicated that the applicant's notice did not incorporate those items he referred to, the notice did include a catch all provision to incorporate those items. The applicant will present further testimony as to issues related to parking and the applicant's compliance with the parking ordinance.

Henry Ney, traffic engineer, was sworn, gave his educational background and professional experience and was accepted as an expert witness.

Mr. Ney stated that he has prepared a report in this matter dated June 7, 2013. He has reviewed the site plan and attended all the hearings in this matter. He has visited the site, reviewed the traffic engineer's report and familiarized himself with the existing conditions. He noted that the applicant's report did not have any consideration for the vacant space in the center and traffic from Snyder Avenue was not considered.

Mr. Ney presented Exhibit O-3 – 6/19/13 – blow up of the site plan prepared under his instruction indicating truck turning from the right hand lane and showing that the truck enters and has to stop. He received today a plan prepared by the applicant that shows a truck turning from the center lane into the site and not having to stop. Mr. Ney suggested that the Board require the Board Engineer to review this to its satisfaction. Mr. Ney also presented Exhibits O-4 and O-5 showing how a truck cannot make the turn from the center lane.

Mr. Ney presented Exhibit O-6 figure 4 from the report showing that a trailer cannot come in from Snyder and cannot come in from Lone Pine. Springfield Avenue is the only way a trailer can enter the site. Mr. Ney noted that Dunkin Donuts does deliver by semi-trailer and presented Exhibit O-7 – the applicant's plan of parking distribution and expected trailer activity created by the adjoining Dunkin Donuts property.

Mr. Ney stated that there is a potential safety issue that should be considered with regard to the proposed 26 back-up parking spaces along the busiest traffic aisle. He further stated that he agrees with elimination of the left turn.

With regard to parking, Mr. Ney stated that in his opinion Berkeley Heights has very low parking standards and Stop & Shop has their own standards as to what is necessary. He has analyzed the parking requirements for the various components of the center and concluded that 272 parking spaces are needed and there are only 236 being provided.

The CVS parking was not accounted for in the hotel application and the hotel will create an onus on the property that is not there today. Stop & Shop's position is that the hotel and CVS will endanger their ability to do business. In his opinion there are safety issues on the site that should be looked at and he believes that Stop & Shop has genuine reason for concern that they will be impacted by this project.

Mr. Ney further stated that Mr. Page's parking report did not include field sheets and it would have been helpful to have additional information about the parking count that was done. There were certain hours and critical times that were not counted and in his opinion the Board has been given a reasonable estimate but not an exact count.

### **Open to the Public**

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

In response to questions from Mr. Murray, Mr. Ney stated that his study of the parking took into account a diversity of uses in the center but he did not make any adjustments for restaurants. If he were advising the Board with regard to parking he would use a different number for the parking requirements since in his opinion the requirements under the town ordinance is too low.

Philip Morin, attorney representing Berkeley Development, asked if Mr. Ney in conjunction with his review of the parking study and parking requirements was provided with a copy of any lease agreement with respect to the Stop & Shop and if he is aware whether Stop & Shop agreed to a certain allocation of parking spots for their space and for the shopping center overall.

Mr. Ney said he is not aware of any allocation and he has not reviewed the Stop & Shop lease.

Mr. Geneslaw stated that he had no further witnesses but did have some cross examination questions for Mr. Page.

Sharon Burke, applicant's engineer who was previously sworn, presented Exhibit A-6 6/19/13 – three page exhibit. She said the exhibit is a revision of the previously submitted overall plan showing the proposed CVS with Lone Pine Drive improvements. The drive-thru has been changed to a single lane and the width of the sidewalk increased to 6'. Everything else is the same except some of the numbers change in impervious coverage because of the reduction of the drive-thru. The variance for the distance from the easement to the curb line was previously 4' and now it is 2.5' because of the increase in the width of the sidewalk.

With respect to parking, Ms. Burke stated that if the County requires it the spaces along Springfield Avenue could be pulled back into the shopping center property without losing more than one parking space. Also, the easement along Lone Pine Drive can be reduced so it does not affect the 26 spaces there. Ms. Burke indicated on the plans where the landscaping, retaining wall and lighting can be located. She also indicated the modifications that were done to the truck maneuvering diagram to show truck turns and said she is confident that this will work safely. There will be a condition of approval that if the plan does not work CVS will be required to use smaller trucks to access the building and the delivery truck will be scheduled at a low traffic hour.

Mr. Cresitello noted that the plan will be submitted to Mr. Solfaro for review and if he determines that the large truck does not work he will specify the size truck that CVS can use. If they do not agree to use that size truck they will have to come back to the Board.

Ms. Burke stated that there was a variance requested for lighting but the lighting has been reduced to eliminate that variance. Ms. Burke presented Exhibit A-7 – lighting plan. With regard to coverage, it has gone from 80.5 to 80.4. Mr. Solfaro has reviewed the storm water calculations and she does not think there is any reason to revisit those calculations.

### **Open to the Public**

The hearing was opened to the public for questions with regard to Ms. Burke's testimony.

Mr. Geneslaw noted his objection to consideration of Exhibits A-6 and A-7 since they were not on file 10 days prior to the hearing. With respect to A-6, he asked Ms. Burke to indicate any specific areas where a tractor trailer would encroach on improvements.

Ms. Burke indicated the location where a truck would encroach over the island which is made mountable for that purpose. A tractor trailer would encroach over the exit driveway on Springfield Avenue but the actual wheels do not go over the curb.

With respect to the driveway, Mr. Geneslaw asked if a variance is required for the width of the driveway and if that variance is being increased as a result of the revisions.

Ms. Burke said a variance is required for the width of the driveway and it is not increasing as a result of the revisions. The driveway has been adjusted per Mr. Ney's comment.

Kevin Page, engineer who was previously sworn, stated that the driveway in front of Building B is 29-30' wide where only 18' is required. The width makes for easy in and out but if the County ever widens the road, the driveway will be totally within the

property. He designed Lone Pine Drive which has a 30' right of way with no parking. Lone Pine Drive is intended to serve as access for the hotel and tractor trailers that serve Stop & Shop. In both cases where it was suggested that these cannot be legal spaces, the Springfield Avenue parking and Lone Pine Drive parking can be made "legal". With regard to the design of parking along the east/west aisle behind Building B, not having cars there could encourage speeding.

Mr. Page explained how the parking study was done by an employee of the shopping center owners. The study was done over a 10-day period in February and presented to the owner and to Stop & Shop. It was submitted to the Board two months later and if someone thought something was missed there was plenty of opportunity for someone to do their own study. He believes it was a good analysis and is comfortable that it is accurate.

With regard to the hotel application, Mr. Page stated that there is no lease yet for the hotel. He hopes that there will someday be a hotel but it has not happened yet so discussion about how much parking will be needed is pointless. There are people in town who have used the parking lot for 20 years and have never seen a parking problem. He believes there is sufficient parking and that the owners have tried to remain flexible with their tenants. There will be additional parking in the rear of Building A and the owners are also open to the idea of adding parking for postal employees. They are not at the maximum impervious coverage on this property.

### **Open to the Public**

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

Mr. Geneslaw asked if the Lone Pine Drive improvements that were part of the hotel application have changed since the hotel approval and if those changes would require an amendment to the hotel approval.

Mr. Page stated that Lone Pine Drive has been changed to include the intersection proposed by Harbor Consultants and he does not believe an amendment is required. The only changes are that it is wider and has a traffic light and he does not think a variance is required for parking along Lone Pine Drive.

With regard to whether parking is necessary along the east/west aisle, Mr. Page stated that it is more common to have parking along an aisle. He does not think it is unsafe to have parking backing up to the aisle. He would recommend that the owner speak to their tenants about having employees parking in the rear to leave parking spots up front for the customers.

Mr. Geneslaw asked if Mr. Page had done an analysis to determine if a variance is needed for the parking in back of the building and Mr. Page said he did not think so since they are just going to stripe the area where people are already parking.

In response to questions from Mr. Geneslaw with regard to the parking study, Mr. Page stated that the study did not reflect unoccupied space and he assumes the parking counts would be higher when the buildings are complete. There are approximately 10-12 postal employees parking in area A which is as far away from Stop & Shop as they could be. He estimated that there are about 24 spaces being used by patrons of Delicious Heights and he anticipates that those patrons will continue to try to park in the same area after CVS is built.

Gary Dean, traffic engineer who was previously sworn, stated that when the parking counts were done in 2011 Pizza Hut was open and none of that traffic was deleted from the traffic study.

#### **Open to the Public**

The hearing was opened to the public for questions with regard to Mr. Dean's testimony. There were no questions and the hearing was closed to the public.

#### **Open to Public**

The hearing was opened to the public for questions or comments with regard to the application. There were no members of the public with questions or comments and the hearing was closed to the public.

Mr. Murray had no final comments on behalf of the applicant.

Mr. Geneslaw stated that this application has been pending for quite some time. There were a number of hearings at the beginning that focused on the Lone Pine Drive improvements, the traffic signal and some procedural issues. The reason why the application has taken so long is because of problems with the application and not because of the objector. He understands the desire to remove Pizza Hut but that doesn't mean that this application should be approved. Regarding jurisdiction, he has not examined the documents and reserves the right to examine them as well as the plans that were submitted tonight. With regard to parking, his client believes that the applicant is proposing insufficient parking and that the parking for the hotel is also an issue. They believe there will be a shift of parking demand toward Stop & Shop and make it more difficult for Stop & Shop customers. With respect to traffic, Mr. Geneslaw stated that the objector believes there were flaws in the traffic study. Mr. Geneslaw further stated that there are variances and design waivers required for which the applicant has not applied

and not provided testimony. He believes that the applicant has not met its burden of proof, there are material issues that should not be deferred to a developer's agreement and that the hotel application is significantly impacted by this application. In conclusion, Mr. Geneslaw stated that it has been suggested that Stop & Shop has some sort of hidden agenda but in reality they have presented numerous real issues with regard to adequacy of parking, safe ingress and egress and fair enforcement of the zoning ordinance. They believe that the applicant has not met the burden of proof and that the application should be denied.

#### Board Comments

Mr. Bruno stated that he has listened to testimony on this application since last June and the main theme seems to be parking. As a resident of the community and frequent customer at Stop & Shop and Dunkin Donuts he has been in this shopping center every day and has never seen a parking problem. He does not think the owners of the center are foolish and would overbuild and cause problems for their tenants. This is a quality application that will beautify the town. A vibrant CVS will be a better look for the town than an abandoned Pizza Hut that is an eyesore and he will vote in favor of the application.

Mr. Hall stated that this application was very complex and addressed a wide range of issues. Parking is a chronic issue in town and the Board has to be very thoughtful with respect to all applications because parking is always a major consideration. He will vote in favor of the application and applauds the applicant for working with the town to address issues. The applicant worked with the Council and the end result was very constructive and will make Springfield Avenue safer to cross by car and on foot. The Pizza Hut building is not very aesthetically pleasing and CVS will be an improvement.

Mr. Niceforo said he appreciated the professional approach exhibited by the applicant's engineer and the objector's engineer. He listened to the objections raised by Stop & Shop and he feels that the burden of proof has been met. This is a good application and he would vote in favor.

Ms. Perna said she is not eligible to vote but she did appreciate the objector's testimony. She does not think there will be people from CVS parking in the Stop & Shop area and does not think the hotel will impact the Stop & Shop parking. She does not consider a drive-thru objectionable but is glad that it was reduced from three lanes to two. She does appreciate the objector's discussion of the truck maneuvering into the shopping center and hopes that restrictions will be imposed on the times that trucks can come in and that if they start holding up traffic a remedy will be sought.

Mr. Russo said he appreciates the points raised by Mr. Geneslaw but he does not think parking will be an issue in the future. Overall he thinks it is a good application and will vote in favor.

Mr. Einbinder said he agrees with the other board members. The Board doesn't take sides and wants everyone, including CVS and Stop & Shop, to prosper. He likes to see applications move forward and believes some of the objector's points were designed to prolong the application. Mr. Einbinder stated that the Board seriously considered all the comments made by the objector's witnesses and he commended the applicant's witnesses and the objector's witnesses for the testimony. He has lived in town for 30 years, passes by the shopping center every day and has never noticed it being overcrowded. He is confident that there is adequate parking. He would be inclined to vote to approve the application but would include a condition specifying times for delivery trucks either late at night or early in the morning. Also, if Mr. Solfaro determines that the design does not allow tractor trailers the applicant would either not use tractor trailers or they would have to come back with a new plan.

A motion was made by Mr. Einbinder, seconded by Mr. Niceforo, to approve Application #SP-4-12: CVS Pharmacy (First Hartford Realty Corp.), Springfield Ave. & Lone Pine Drive, Block 701, Portion of Lots 2 & 3 (DD Zone), for preliminary and final site plan approval for development of a CVS pharmacy with drive-thru as presented to the Board and including all variance relief and design waivers testified to, subject to the conditions discussed during the hearing, and the requirements, restrictions and limitations that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting.

The Motion was carried 5-0 with Mr. Einbinder, Mr. Bruno, Mr. Niceforo, Mr. Hall and Mr. Russo voting in favor. There were none opposed.

**Adjournment:**

A motion was made by Mr. Einbinder, seconded by Ms. Perna, to adjourn the meeting. The voice vote was unanimous and the meeting adjourned at 11:06 p.m.

Regina Giardina, Secretary Pro-Tem