



Borough of Woodbury Heights Planning/Zoning Board
500 Elm Avenue Woodbury Heights, New Jersey 08097

Minutes
April 3, 2017

Mr. Farrell called the Meeting to order at 7:01 pm.

PLEDGE OF ALLEGIANCE

ROLL CALL: Present: Harry Elton Jr., Bruce Farrell, Joseph Martino, Sean Flynn, Mayor Conley, Lou Deeck, Stephen Hart, Councilman Pye, Victoria Holmstrom, Michael McCabe, Scott Norcross
Absent: Erin Carney Frombach, Debbie Sesko

ALSO IN ATTENDANCE:

SOLICITOR: B. Michael Borelli

ENGINEER: Mark Brunermer, PE, CMC

PROFESSIONAL PLANNER: Tiffany Cuviallo, PP, AICP

“THIS MEETING HAS BEEN DULY ADVERTISED AND HAS BEEN POSTED ON THE BULLETIN BOARD IN THE MUNICIPAL BUILDING AND CONFORMS TO THE DIRECTIVES OF THE ‘OPEN PUBLIC MEETINGS ACT’ OF THE STATE OF NEW JERSEY”

APPROVAL OF MINUES:

A motion was made by Mr. Martino to approve the minutes from the February Regular Meeting. The motion was seconded by Mr. Deeck. The minutes were approved by the following roll call: Mr. Elton, yes, Mr. Martino, yes, Mr. Flynn, yes, Mayor Conley, yes, Mr. Deeck, yes, Mr. Hart, yes, Councilman Pye, yes, Mrs. Holmstrom, yes, Mr. Norcross, yes, Chairman Farrell, yes.

Bruce Farrell, Chairman

APPLICATION:

Application #17-0005-Conifer Realty, LLC: Block 84 Lots 6 &8 “Use Variance”.

Mr. Borelli explained, that as an application for Use Variance, thus a Zoning Board matter. Mayor Conley and Councilman Pye recused themselves. Seven board members, not including Mayor and Council, would be voting on this application. In the event that the variance is granted it would be conditioned upon Site Plan approval. The applicant has separated the variance from the site plan. If denied tonight, it would put an end to the application. If granted, they would return for the site plan. Matter would remain before the Zoning Board. If approved a special meeting may be needed. If they do return for the site plan, they would still have to prove the negative criteria in that application.

Mr. Borelli asked if there were people in the hallway, to please make sure everyone has a chance to hear what is presented. He also asked the audience to fill in every chair. After several minutes, the audience settled.

Victoria Fannon, of Parker McCay, stepped forward to represent Conifer Realty, LLC. All five witnesses were asked to stand and be sworn in. Mr. Borelli asked for each witness to be named. Ms. Fannon presented the following witnesses: Mr. Charles Lewis, Mr. Robert Stout, Mr. Nathan Mosely, Miss Mary Johannesen and Mr. James Miller.

Ms. Fannon proceeded. The applicant is seeking use variance approval, and the board would be acting as the Zoning Board, as it is a zoning matter. They ask for D1 Use Variance approval, to permit 70 affordable housing units on Block 84 Lots 6&8, located on Glassboro Rd & King Ave, in a Limited Industrial Zone. She introduced the plans for the 70 units with a 2748 sq. ft. club house and various recreational components.

Ms. Fannon explained that her five witnesses will demonstrate positive and negative criteria under law. She presented the following: As an affordable housing unit, this plan is deemed as an “Inherently Beneficial Use”. A standard of proof will be considered by the board with respect to the *Sica Balancing Test*. As an affordable housing project, it would meet the positive criteria; the applicant must then demonstrate negative criteria. The witnesses will present the negative criteria which the applicant must demonstrate, as well as the impact this may have on the surrounding community and the zone.

With no questions from the board, Ms. Fannon introduced Mr. Charles Lewis from Conifer Realty (applicant).

First Witness: Mr. Charles Lewis, Senior Vice President of Conifer Realty. The accomplishments accolades and several projects completed by the applicant were listed. The Conifer business model, as a company maintaining and operating their own developments was also presented. Mr. Lewis went on to clarify what is meant by “affordable housing” and who would qualify for it and that it is not public housing. This included income maximums and minimums. Mr. Lewis briefly described some programs such as financial management and after school programs offered to tenants. He explained that background checks and credit checks are included in the application process.

Mr. Lewis then discussed how the property could help the town meet their Mount Laurel (affordable housing) requirement. He deferred to the professionals to elaborate on potential bonuses with rental housing.

Security measures were discussed (cameras, key fobs etc.). That concluded Mr. Lewis’ testimony.

With no questions from the board, Ms. Fannon introduced Mr. Robert Stout. She also reiterated, as this application is for a Use Variance, more detailed testimony would be provided with the Site Plan.

Second Witness: Mr. Robert Stout, Civil Engineer (B.S. Civil Engineering, Spring Garden College (1985), Licensed Professional Engineer & Land Surveyor (1993), and Managing Member & Owner of Stout & Caldwell Engineers. Mr. Stout was hired by the applicant to prepare the plan being presented to the Board. He identified the plan as exhibit "A1". Exhibit A1 is a 2001 aerial image with the tax map superimposed. Mr. Stout presented the visual. He discussed site constraints such as the wetlands, and threatened/endangered species. Exhibit "A2", the colored version of the use variance plan submitted with the application was presented.

Mr. Stout reviewed the plan, including 70 buildings. He stated that the criteria met those of similar zones (RM & RM2), with the exception with the RM2 accessory building setback of 50 ft. This setback would apply to the trash enclosure. He reiterated that the plan conforms to the plans in all three existing zones. He also reminded the Board; the previously approved senior housing plan had a density of 134 units, with building heights of 61 ft. in comparison to the plan being presented with a density of 70 units and height of 40 ft.

Mr. Stout did not elaborate on the design of the site plans because the application was for a Use Variance; rather, he discussed the plans for the site itself. He explained, they are not asking for a vacation of Woodland Ave. He discussed the looping of the water system for safety. He stated that the presented plan is actually improving the site, making it less impervious and conforming to DEP criteria.

Mr. Stout discussed traffic circulation, landscaping and lighting. He mentioned county road improvements, as well. All of which would be addressed in the site plan portion. He also pointed out the locations of the maintenance shed, tot lot and the club house, to provide an idea of the overall layout. He concluded by stating that he believes the presented plan fit the need, fit the criteria and respected the environmental issues coinciding with the site.

Mr. Stout concluded. The floor opened to The Board for questions.

Mr. Martino, asked Mr. Stout to clarify what he meant by less impervious. Mr. Stout explained that there would be less run off as a result. Due to state guidelines, the wetlands run off would be reduced.

Mr. Elton asked for further explanation of the water looping. Mr. Stouts explained that this plan would consist of tying in to the main on Chestnut Ave & Glassboro Rd. This plan would provide flow when fighting fires from both directions, as to not lose pressure. Mr. Elton asked if it was the New Jersey American main or the town's water main. Mr. Stout stated that they would not be touching the New Jersey American main. Mr. Elton questioned, the town's main will be feeding the project. Mr. Brunermer interjected, that it is too early to discuss. Mr. Elton clarified that it is the intent of the developer to use the town's main to feed the entire project, and although he is not a professional, he did not think this would provide enough water. Mr. Stout, explained there are options to suffice for firefighting use, to be determined by the engineers.

Mr. Elton also asked, regarding Woodland Ave, was there any intention of using the right-of-way. Mr. Stout said there was not. Mr. Elton also asked about the rear approaching Academy

Avenue. Mr. Stout maintained that there was no intention of coming through with an entrance, emergency entrance etc. He cited the existing housing in that location.

Mr. Farrell reminded The Board, this application is for Use Variance only. All Site Plan matters would be addressed at a follow-up meeting.

With no questions from the board, Ms. Fannon introduced Ms. Mary Johannesen of Kitchen & Associates Architects.

Third Witness: Mary Johannesen, partner at Kitchen & Associates. Mrs. Johannesen referred to Exhibit "A2". She again stated that they would be building an apartment community with 70 apartments consisting of one bedroom, two bedroom & three bedroom units. This would consist of seven residential buildings and one clubhouse, centrally located. The first floor apartments would be flat, with a townhouse above it. Each resident would be provided a private front door. Ms. Johannesen presented Exhibit "A3". Exhibit "A3" depicted a color rendering of a typical residential building, as well as the clubhouse. Ms. Johannesen elaborated on the details depicted in said exhibit such as possible uses of the clubhouse, as well as the inclusion of patios on each building. That concluded Ms. Johannesen's presentation.

The floor was opened for questions from The Board.

Mr. Farrell asked how the lots would be configured. Ms. Johannesen explained that the first floor would contain a one story apartment, with a two story townhouse above.

Mr. Hart asked if these apartments are one or two bedroom. Ms. Johannesen clarified that the apartments are one, two and three bedroom apartments.

Mrs. Holmstrom asked where the balconies are located. Ms. Johannesen stated that they are on the back, pointing to the Exhibit "A3". She clarified the fronts of the buildings face the parking.

With no questions from the board, Ms. Fannon introduced Mr. Nathan Mosley, P.E...

Fourth Witness: Mr. Nathan Mosley, Professional Engineer, Project Manager with Shropshire Associates, B.S. Civil Engineering, Drexel University. With the Boards approval of Mr. Mosley's qualifications, his testimony continued. Mr. Mosley informed The Board that his firm was hired by Conifer Realty to prepare a traffic engineering assessment for the proposed project. Mr. Mosely referred to exhibit "A2", he reviewed the access driveway on Glassboro Rd, a county rt.

Mr. Mosley discussed his analysis of the traffic patterns on Glassboro Rd. The traffic count took place at peak hours from 7-9am and from 2-6pm. Mr. Mosley described his determination of traffic, using trip generation rates provided by the Institute of Transportation Engineers. He explained that he has done 6-7 similar analysis with Conifer Realty, and used rates that would apply to such a development. He testified that although Conifer locations usually generate less traffic, for conservative purposes he used typical apartment rates in

Gloucester County. Mr. Mosley described his analysis in detail. A detailed copy of this analysis is on file in the Municipal Building. Mr. Mosley's presentation concluded.

The floor was opened for questions from The Board.

Mr. McCabe asked for clarification, if the data was based on a 35 mph speed limit? Mr. Mosley confirmed this. Mr. McCabe then stated that nobody actually goes 35 mph on that road. He also mentioned about possible school bus stops, as well as the elevated hill area on Chestnut Avenue. He asked if this was considered in the analysis. Mr. Mosley explained that his analysis was done during peak hours, and those conditions cannot be predicted. Discussion ensued.

Mr. Flynn asked for clarification, as Mr. Mosley had testified that there are 70 units and 36 departures in the morning. Mr. Mosley cited other studies at similar sites. He also explained that the 36 trips occur during one hour at peak times, rather than all the morning hours. He also explained that in the afternoon you will see more traffic within the hour.

Mr. Hart asked how many vehicles were passing, Mr. Mosley responded that there would be approximately 800 vehicles during peak hours.

Mr. Mosley stated that as a county road, Gloucester County would have final jurisdiction over the roadway conditions.

Mr. Farrell asked about left hand turns going north, and if this was taken into account with the study or with the design. Mr. Mosley responded that it would be considered with design, but was also considered during the study. He believed the design criteria would be met with this plan.

With no questions from the board, Ms. Fannon introduced Mr. James Miller AICP, PP.

Fifth Witness: Mr. James Miller, PP. M.CRP Rutgers Univ., qualified as expert witness in over 230 municipalities, and by state and federal courts. Mr. Miller stated that he reviewed the proposal before the board. Mr. Miller confirmed that he reviewed the proposal before the board. Mr. Miller added that he also reviewed the Borough's Master Plan as well as the zoning ordinance and map applicable to the borough as well as Deptford Twp. He visited the site, as well. He explained his report and findings. Mr. Miller reviewed the zoning of the surrounding area. Mr. Miller explained that a D1 Use Variance is what they were seeking. He then cited a few cases as criteria for the proof necessary. He cited DeSimone v Englewood, Homes of Hope v. Eastampton, and Salt & Light v. Willingboro. He explained that these cases prove that affordable housing is an inherently beneficial use. He then defined inherently beneficial use as: A use which is universally considered a value to the community because it functionally serves the public good and promotes the general welfare. Mr. Miller then explained, "With inherently beneficial uses, the positive criteria are soon to be met by the character of the use." He then referred to the Sika balancing test, as well as our planner's letter and its explanation. He then reviewed the steps of the test, as well as an amendment made by the state to the test. Mr. Miller addressed each step and how the application and testimony presented applies to each step. While addressing each step, Mr. Miller elaborated on the obligations of Woodbury Heights under the 1st

and 2nd COAH rounds, including 55 units of affordable housing, and a possibility of an additional 177 units under the third round. He explained that the plan presented would address 70 units at minimum and as many as 120 units. Mr. Miller also explained that the proposed plan would be advantageous as it is 100% affordable housing, whereas the alternative could be a set aside otherwise market project (builder's remedy), under which units would be determined by litigation. He stated that usually 20% is affordable housing, with 80% market housing under those circumstances. He then summarized that the presented project would allow for the Borough to meet its Mt. Laurel obligation without the additional units included in a set aside project.

Mr. Miller also stated the advantages of having a company like Conifer to manage the complex. He described Conifer's management program, including the community center's services, as well as their security and safety aspects. He then explained that the project is financed through tax credits for which the location must qualify and the location of the project makes it ideal to satisfy such qualifications; citing its proximity to schools, transportation and retail services. This concluded his presentation of the benefits of the project.

Mr. Miller then elaborated on the potential impacts of such a project, which he stated were, from a planning perspective, to be limited impacts. The traffic, social impacts (although addressed through the services) and the small number of units (70). Mr. Miller stated that he believes this project has minimal impacts, and those that do exist are addressed by the management of the property. He referenced exhibit "A2" and discussed the self-contained element of the project, with a limited visual impact, as well as the fact that it is replacing an industrial structure with a residential structure, which he believed more compatible with the surrounding area. He noted that the project presented is half the density of other projects in zones that permit the use.

Mr. Miller continued his testimony by stating that he believes the benefits far outweigh the detriments of the presented project and meets the criteria of the Sika balancing test. He reiterated that this use advances the public welfare, by contributing to housing obligations without substantial impairments to the purpose of the zone plan, and by removing an industrial element from an otherwise residential area, as well as removing a vacant building. He cited the variance granted previously for an age restricted project.

Mr. Miller concluded by referencing the security and landscaping as factors that allow the harmonizing with the surrounding community, as well as meeting the goals of the Master Plan.

The floor was opened for questions from The Board.

Mr. Flynn asked for clarification if the community would be gated or not. Mr. Miller responded that he misspoke, the "gating" is in reference to the monitored entrance.

Mr. Martino asked if Mr. Miller had encountered other plans like the one presented other than from Conifer Realty. And if so, what were the pitfalls. Mr. Miller acknowledged that he has. He stated that he is also a developer, citing a project in Woolwich Twp., Weatherby, in which he provides a substantial amount of their affordable housing obligation. He listed more projects, elaborating on the positive aspects of the communities.

Mr. Martino asked if the proposed plan is ahead of those properties. Mr. Miller, explained that this proposal is a more buffered with woods, and of a lower density.

Mr. Martino asked if through the years Mr. Miller had seen better ways of doing certain things, and implemented them into the plan presented. Mr. Miller agreed, and emphasized the clubhouse/community center and services for teenagers, such as the importance of providing activities and after school programs. He explained that the properties with problems are the ones without the management capabilities of Conifer.

Mr. Farrell asked for clarification that there is no Builder's Remedy Suit involved in this application, and the units would go against the COAH obligation. Mr. Miller stated that this is correct.

Mr. Martino asked if having one entrance would be a detriment. Mr. Miller, stated he did not see it as such. He then compared the current industrial use to the potential residential use. He stated he saw no need to have multiple entrances.

Mr. Hart asked for the central negative connotations that may come with a project like this, stating that he hadn't actually heard him say "negative point". Mr. Miller responded that overloading of the site could be a potential detriment, but other than the income bracket in which the residents would fall, there is no difference than with other residential developments. He also explained that he himself lives within a few blocks of such a community, and you would not know it was affordable housing unless you are asked to look into it.

With no further questions, Ms. Fannon suggested opening to the public. Mr. Farrell reminded The Board and the audience, that what is being presented is the Use Variance, granting the use from an industrial use to a residential use. He explained that the look and function would be addressed by the site plan application.

Mr. Farrell asked the professionals for their reports.

Mr. Brunermer, began by stating there would be many details to be ironed out with the Site Plan. He acknowledged that he asked for the traffic comparison, which they provided, to get a sense of what it could be under industrial use. Noting it is difficult to grasp traffic patterns in an hour, but that the findings were based off of decades of data. He also explained that the entrances would be dealt with during the site plan. He explained that the three different zoning criteria are listed, and they are all met. There would not be numerous bulk variances, and include buffers as to not encroach on the setbacks with the exclusion of the trash enclosure.

Mr. Brunermer then asked if the applicant could elaborate on the use of the shed with their site plan. He also added that they are providing for more parking than required. Mr. Brunermer's Report is on file in the municipal building, available for review.

Ms. CuvIELLO then presented her report. The report is on file in the municipal building, available for review. She noted, this report does not address any site plan comments. Ms. CuvIELLO mentioned that if the application was approved, as it is being put forward as an inherently beneficial use as affordable housing, they would satisfy the criteria of the ordinance. Ms. CuvIELLO stated that she concurred with the testimony that the proposed project would be an

inherently beneficial use based on their testimony and court decisions, and satisfy the Sika balancing test. She acknowledged the four steps were acknowledged by the applicant's planner and in her report. She reiterated that the Borough does have an affordable housing obligation, and there has not been finalized variance hearing with the court. Therefore, the Borough has not finalized their obligation with the court.

Ms. CuvIELLO explained that the board would need to determine what the impacts of the use would be. She gave examples such as traffic, buffering, and noise. She explained they could be balanced and referenced, once again, her report and the Sika balancing test. She explained that the board will then need to identify the negative criteria. She cited the traffic report provided for other uses to be factored into the Board's decision making. Ms. CuvIELLO, referenced the fiscal impact report, provided by the applicant. It addressed population estimates cited in the report, in which multipliers from Rutgers University were used. She validated the data and summarized that about 196 person would reside in the community, and about 49 would be school aged children. She validated these figures with her own studies using the same numbers, referencing a study in which she was able to go back and check figures with the Board of Education. Ms. CuvIELLO thus agreed with the findings of the applicant's report.

Ms. CuvIELLO also instructed the Board not to take the PILOT proposal into consideration, as it was only provided for informational purposes, and not a concern of the land use board. Ms. CuvIELLO concluded her report.

Mr. Farrell clarified that the school aged children referenced in the fiscal impact report includes high school and elementary school aged children.

Mr. Farrell inferred that the Borough's COAH obligation had a lot to do with the beneficial use. He asked for an elaboration on the impact on the Borough's obligation.

Ms. CuvIELLO recalled the Borough's adoption of a housing element, creating a vacant land adjustment. As the Borough did not have the capacity for substantial development. Thus, the future obligation would not be more than the 55 units from rounds 1 & 2. Ms. CuvIELLO explained that this plan has not yet been accepted, and the 227 units are what is currently required by fair share housing. She stated the approval of this project would work somewhere in the middle, and the court will be aware that there is development available, as this meeting is of public record.

Mrs. Holmstrom asked for elaboration on the claim made during testimony that 70 units could count as more than 70. Ms. CuvIELLO discussed the affordable housing requirements, and the bonus units potentially available through rental units. She also stated that 25% of the Borough's obligation can be bonus units. She concluded that 56 units are available as bonus units with the proposal.

Ms. CuvIELLO emphasized that the proposal gives lower density and more credits, as a completely affordable housing project.

Mr. Deeck stated that the borough has met the 55 units required, and another 177 units are required by fair share housing, but that does not add up to the 227 that has been indicated by the professionals, but to 232.

Mr. Flynn stated that he was still not clear on the number.

Ms. CuvIELLO explained there are two ways to bring the number 177 down, to settle or litigate. She discussed the Borough's argument that they are justified in an adjustment, and the site in question was included in that, as accommodating 36 units, only looking at one lot.

Mr. Flynn expressed his concern that the project may exceed the Borough's obligation. Ms. CuvIELLO assured him this would not be the case, unless considerable litigation occurred. She explained that the inherently beneficial aspect has nothing to do with the number, but the fact that it is affordable housing.

Mr. Borelli encouraged the board to consider the fact that affordable housing is an inherently beneficial use, and to rely on the merits of the balancing test.

Mr. Flynn commented that this proposal is the best they've seen.

Mr. Elton stated that the Borough has been dealing with the affordable housing issue for over 20 years, and that the tax payers have spent over \$500,000 in legal costs fighting these projects. He said the application is inherently beneficial compared to what has been presented before, and that no member wants to see any of it. He asked if the Borough is going to spend hundreds of thousands of dollars in legal suits, to end up back in the same position.

With nothing further from the Board, the floor was opened to the public.

Fran Gavin, 608 Chestnut Ave: Mr. Gavin asked how a small town such as Woodbury Heights is supposed to come up with 232 units of housing. He asked if it is due to the extra land. Mr. Farrell deferred to Ms. CuvIELLO. She stated, although no easy explanation, the formulas given by the courts determine base the calculations on income levels, potential for growth among other factors in a complicated formula. She acknowledged that there are discrepancies among planners, but it is distributed in your COAH region, not just Woodbury Heights. Discussion ensued. Ms. CuvIELLO stated she does not have the numbers for every municipality in the area, but regardless of what other townships are given, we could argue and compare but it would cost a lot of money. Mr. Gavin then asked what if this space didn't exist. Ms. CuvIELLO explained that you would do a vacant land adjustment, which wouldn't relieve the obligation, but it would hold the obligation until redevelopment is available. The obligated would be put aside as an unmet need, until the sites become available. The unmet need would then be addressed in a housing plan. She acknowledged that this is not a Builder's Remedy, but a site that had a development for 180 units approved.

Mr. Farrell then explained that COAH is the "Council of Affordable Housing", "a state mandate that all municipalities must adhere to".

John Morris, 1007 Chestnut Ave: Mr. Morris stated that he lives on Chestnut, off of Glassboro Rd, and has been nearly rear-ended several times. He believes this will become a hazard. He worked for the Police department in Woodbury, in traffic. He noted that if a vehicle is making a left turn it is illegal to pass the car. He then asked how many parking spots will be on the property. The applicant responded with 153 spots. Mr. Morris stated that would be about 2 cars per family, which he is fine with. Another concern Mr. Morris had, being a Woodbury cop and working with affordable housing, a police presence is needed. He stated he is worried about the water and the schools. Mr. Morris said although the report estimates about 49 kids but the average family has two kids, and with 70 families that's about 140 kids. He expressed that the schools cannot handle those kids. He also claimed that after school programs for teenagers so not work.

Mr. Farrell, interjected that as far as the numbers, they come from Rutgers and that is all the Board can go by. Ms. CuvIELLO also asked that Mr. Morris consider how many children will be in a 1 bedroom unit vs. a 2 bedroom unit vs. a 3 bedroom unit. She explained that with the affordable housing requirements and the monitoring on the property, you must provide a place for every person and you cannot have a child sleeping in the same room as the parent, unless of the same sex. Therefore, a one bedroom unit cannot be rented to a family with children. She also explained that the occupancy requirements are monitored yearly through the housing control act. She explained the population calculations are based on the one bedroom, two bedroom and three bedroom units. The report found 14 one bedrooms, 38 two bedroom units (2.7 persons/household), 18 three bedroom units (3.82 persons/household). That totals 196 people. She elaborated: one bedroom units would have estimated 2 children total, 2 bedroom units would have 24 children total, and the three bedroom children would have 23 children. She emphasized that these are school aged children. Ms. CuvIELLO also stated that although not exact, she had done a fiscal analysis using those same multipliers with the ability to go back and check her numbers, and she found less than a 10% differential from the estimates and who was occupying. She clarified that that project included affordable and regular units.

Mr. Morris continued by stating that Ms. CuvIELLO had said 1.6 children, and then 2 children, which would be three children, in a one bedroom unit. Ms. CuvIELLO clarified that there is estimated to be two children total in all of the one bedroom units. Mr. Morris again stated that he works in Woodbury and they have in place housing regulations in their ordinance. He does not believe Woodbury Heights does. He asked who was going to monitor it. He stated we lived in a one cop town. Mr. Morris then expressed concern about the apartments being rented by a grandmother and it filling with family members.

Mr. Farrell stated that Woodbury Heights does have ordinances in town, and not, Mayor and Council will have to address that. He stated that the board does not have the ability to address those concerns, but does have the ability to take it into consideration with their decisions

Rich Williams, 732 Chestnut Ave: Mr. Williams asked if a list of other properties managed by Conifer Realty be made available to the public. Mr. Lewis responded that he would provide a list to the board. This list is filed and will be made available to the public in the municipal building.

Jared Moskowitz, 459 Oak Ave: Mr. Moskowitz began by stating a concern with Conifer's relation with Conifer of Rochester. Mr. Lewis stated that they are the same company. Mr. Moskowitz then stated that the board must be made aware that this company is currently involved in an investigation of corruption in New York State. He also referenced the traffic study, and Mr. Mosley's statement about passing on the shoulder, and that this is illegal. He then claimed the study is not accurate because of this suggestion. Mr. Moskowitz then referred to the meaning of "inherently beneficial". He explained that they were not referring to the development not being what is inherently beneficial to the residents. He also suggested that when citing case law and precedent, it would be a good idea to reference precedent that refers to affordable housing, rather than childcare and halfway houses. Mr. Moskowitz reiterated that "inherently beneficial" is going to be about how it benefits everyone, not just our community. He then stated that the Board needs to hire an independent contractor of their own, to weigh the inherent detriments, as opposed to just trusting what is presented. Mr. Moskowitz then stated that he is a school teacher in Philadelphia. He continued by stating that this would increase the size of the elementary school by 12.5%. He explained that adding two or three pupils per class at \$15,000-\$18,000 per student is a big deal. He suggested a study be done.

Mr. Lewis addressed the concern regarding the investigation. He stated that there is an investigation into a public official in New York. He has a partner with whom he does business, and they do business with the partner not the official. He also stated that a number of businesses including them have had their records subpoenaed, and they have cooperated fully.

Mr. Moskowitz asked if the company or any member of the company had made political contributions. Mr. Farrell stated that the board does not have jurisdiction.

Ms. Fannon interjected that she would like to address the case law concern. She explained that the case law in Mr. Miller's testimony was giving examples of what could be considered inherently beneficial uses. She stated that there have been cases regarding affordable housing, which they could provide to the board solicitor.

Mr. Borelli responded that the courts have decided that this is an inherently beneficial use, and that the definition of inherently beneficial is the legal definition not one found in a dictionary. It is not the common definition.

Mr. Farrell asked to clarify that the state has determined that affordable housing is an inherently beneficial use. Mr. Borelli concurred. Ms. Cuviallo pointed out that Mr. Miller did cite those cases. Mr. Borelli agreed that it is considered by the courts to be inherently beneficial. Ms. Bannon reiterated that some questions are specific to the site plan, but the application has been bifurcated. Mr. Borelli clarified that although the site plan questions are relevant to the decision, they will not be addressed at the meeting.

Mr. Farrell asked to hasten the meeting, to hear from the public in a more general sense, rather than site plan specifics or litigating a case.

Bob Seibert, 350 Poplar Ave: Mr. Seibert explained that as a retired officer, he is an expert. He stated that there will be accidents and a turn lane would need to be added to eliminate the potential of accidents. He said with 6/10 of a second to react, that there is no way to prevent accidents. Mr. Farrell responded that because the road is a county road, it would need to go before the county planning board, and a designated turning lane would be requested but ultimately up to the county. Mr. Seibert, then stated that he wanted to board to be aware.

Thomas Ohara, 808 Chestnut Ave: Mr. Ohara stated that he has spoken to several state troopers and Deptford police officers, and they all stated that any kind of project like this is detrimental. He believes that even a small project will sink the town. He stated that even if cost the \$500,000 a year, would be \$20 a year per household in tax dollars.

Al Afflerbach, 560 Chestnut Ave: Mr. Afflerbach asked for clarification if the development would be apartments, condos, and/or section 8. He suggested the people coming in would be coming in by bus because they can't afford cars. He asked what would happen to the residents when these people come. He then stated that the previously mentioned road on Academy Avenue would be opened up, in contrast to what was said during the testimony. He claimed to deal with low income people all the time. He asked again what is to be done about section 8.

The applicant responded by explaining that the screening process consists of criminal background checks, financial background checks, and checks with prior landlords. He also stated that it is not a section 8 development, but they cannot legally turn down people with section 8.

Mr. Afflerbach described the people he anticipated being residents of the apartments as having 20 bikes, one bedroom, non-working, drug heads. The applicant then reiterated that they are inspected by the state, and they are using tax credits with investors, who also buy the tax credits and do annual inspections. He explained that they do not make money with 20 people living in an apartment, it is not in their best interest to enforce the laws in place. Mr. Afflerbach questioned if the applicant really believes that and asked if he would be checking at 9 o'clock at night. The applicant cited the tag readers. Mr. Afflerbach again stated that these people would be on foot and buses.

Harold H. Holmstrom, 1055 Glassboro Rd: Mr. Holmstrom asked about the survey of water runoff, and if the lake was taken into account, as a wetlands area. Mr. Lewis responded by explaining that they will be reducing the runoff. Mr. Holmstrom asked how. Mr. Lewis pointed out that the current plan has the location as less impervious. Mr. Holmstrom expressed concerns about the water backing up into properties. Mr. Lewis explained that the development will lessen the amount of water, by state law they are required to. Mr. Farrell interjected that these are site plan issues, which will be addressed later on. Mr. Holmstrom asked if the water issue with American Water has been addressed. Mr. Farrell responded that is not the Planning Boards jurisdiction. Mr. Elton explained that if more water had to be bought from American Water, a commitment is already in effect. He stated that the water that gets used will be billed to the property, but the amount of water the town is allotted from American Water the town is far below their allotment. Mr. Elton believes that the project will have to draw from the American

- Commercial main. Mr. Brunermer explained that water and sewer is governed by Mayor and Council, and the planning board will have to submit the same plans to Council, and any upgrades would be the applicant's responsibility and all water sewer matters would have to be approved by Mayor and Council, and the state before that. Mr. Holmstrom cautioned the board that the people presenting the application are smart; the Mamco site will be next, with 300-400 units. He claimed that the police department will not be sufficient, and you cannot have 1/8 of a person. He advised that whatever is approved here will also be wanted at the Mamco site.
- Laura Afflerbach, 560 Chestnut Ave: Ms. Afflerbach asked to clarify if the idea is to change the property from industrial to residential, and if the property has already been purchased. Mr. Borelli explained that there is an agreement. Ms. Afflerbach then asked what is more beneficial tax wise? Mr. Borelli stated it is legitimate to consider the changing from one zone to another, but the board cannot make a decision on finances alone. Mr. Farrell elaborated that there is nobody asking to build anything industrial in that location.
- Mary Anne Wurst, 1215 Glassboro Rd.: Mrs. Wurst stated that she disagreed with the traffic report. She claims it take her 5-8 minutes to make a left onto that road. She stated that she has lived in town her whole life, and she has almost been hit quite a few times, and she predicts that it will be a problem. She also stated that she has no water pressure, and is concerned about the project worsening it. Mr. Farrell explained that they did not testify to that, and they do not yet know how it would be handled. Mrs. Wurst also expressed concerns about school buses.
- John Eckert, 436 Chestnut Ave: Mr. Eckert stated that his property backs up to the wetlands. He claims to have had issues with runoff water and flooding at his property. Mr. Eckert said he did not understand how they will get rid of the runoff. Mr. Lewis explained that the old developments were not required to retain the water on site, but it is the law as of now. Mr. Lewis used a bathtub analogy to explain. Mr. Eckert asked if the taxes would go down for the surrounding houses. He explained that he has a house in Paulsboro, which he cannot sell. Mr. Farrell reiterated that the taxes cannot be considered.
- Dave Marconi, 804 Chestnut Ave: Mr. Marconi asked if anyone has thought about the children. He suggested doing a study on Chestnut's traffic as well. He also stated that his street does not have sidewalks. He asked that the safety of the children be considered, as he had witnessed a child killed. He reiterated that he is worried about the children.
- Bill Braaksma, 620 Chestnut Ave: Mr. Braaksma stated that his house backs up to the potential site of the dumpsters. He also asked if the township has a firetruck that could accommodate the height of the potential development. Mr. Braaksma asked the board to guarantee that nothing has happened, and that nothing has taken place. Mr. Farrell promised, this is the first time the board has seen anything regarding this development. Mr. Braaksma said he knows they own the property. Mr. Farrell stated that they do not own the property. Mr. Braaksma claimed if they can develop it, they own it. He then states that he is willing to spend \$20 more for the next 20 years. He asked if the Borough had no land to be developed, how would more housing be able to come in? He asked where the land would come from if there's nothing to build on. Mr. Elton cited the development with Penn Medicine, he explained that if the situation came about again they would require that be made into affordable housing. Mr. Braaksma asked if they would make them close their building. Mr. Elton explained it would be if they closed on

their own. Mr. Elton said it could be the Wendy's. Mr. Braaksma said nobody would live at Wendy's. Mr. Elton stated it could be the lumber yard, or the Contarino property. Mr. Braaksma suggested the matter be put to a town vote. Mr. Farrell explained that is not how it works. Mr. Braaksma questioned if the board gets to decide what's good for the town. Mr. Farrell explained that meeting like this are how it is handled, and everybody can give their opinion. Mr. Braaksma declared that nobody would be here without Facebook. Mr. Hart interjected that they grew up together and he loves this town, and raised his children here. He assured Mr. Braaksma that the board hears everything that he said, and explained the COAH and section 8 are two separate things. Discussion ensued.

Diane Skala, 604 Elm Ave: Ms. Skala asked a question in regards to zoning. She asked for clarification with what is being done with drainage. The applicant explained that conditioned of what happens at the meeting, they are still in the process of designing the basin. He explained that it would adhere to state, county and borough regulations.

Rose Yerka, 601 Stratford Ave: Mrs. Yerka what would happen if the town was to win the case, and the units required were actually 55. Would we be over the quota with the new project, and would we convert the variance back? Ms. CuvIELLO explained that although it is highly unlikely, but if it were the case, an unmet need would still exist. She also added that if the unmet need were to disappear, there will be more rounds of obligation. Ms. CuvIELLO explained that there would be round 5. Mrs. Yerka stated that there are currently 40 empty homes, with 40 less tax payers. She referred to the Mamco property and stated that she agrees that what happens at this meeting will effect what happens with that property.

Joe Brasberger, 562 Chestnut Ave.: Mr. Brasberger asked if a study has been done to drill for gas tanks, or any environmental studies. Mr. Brasberger was assured by the applicant that clean ups will be done as due diligence of the development. Discussion ensued. Mr. Brasberger references the traffic study, and asked how the development would plan for overflow parking. Mr. Mosley explained that the design is designed to exceed the requirements set forth, and he believes that there will be more than enough parking. Mr. Brasberger asked if Conifer will ever give up the property. Mr. Lewis stated that in over 40 years, they have never sold a property. Mr. Brasberger also asked if a habitat study has been done. The applicant responded that is in the works. They referred to exhibit "A2", to show that the rear portion of the site will remain in its natural state.

It was questioned if any money would be spent on investigating the truth to the testimony of the applicant. Mr. Farrell explained that is the job of the Board professionals. Mr. Farrell reiterated that the applicant would be back for further analysis with the Site plan, such as the storm water runoff. Discussion ensued. Mr. Deek expressed the board's confidence in their professionals' judgement. Ms. Fannon reiterated that if the variance is granted, they would return for site plan approval. The variance would be conditioned by such approval, providing more layers of review.

Bob Morison, 133 Beech: Mr. Morison asked if the variance would be for this exact plan. Mr. Farrell explained the variance is contingent to that plan. Mr. Borelli reiterated, that the variance would be attached to the plan presented. Mr. Morison asked if something were to come back with other testing, they can continue to modify the project as long it doesn't

- change the number of units. Mr. Borelli explained only small changes could be made such as the shifting of a few feet. Mr. Morison asked if major changes were needed would they be required to return for another approval. Mr. Borelli explained an amendment would be needed. Ms. Fannon clarified the application is for 70 units with the clubhouse and the concept plan is meant to provide the board with as much information on the project as possible. Mr. Morison then asked who is responsible for unanticipated changes to the infrastructure. Mr. Elton stated that the board would be responsible, but the professionals have to be relied on. He stated that they have been around for a long time because they are reliable. Mr. Elton reiterated that the board doesn't know what may happen with the Mamco property, and the COAH obligation. He stated that the approval of this site would give the town a number, to use as possible leverage for the next round. Mr. Elton stated that four generations of his family lived in town, and that he is worried, and he has to believe the professionals. Mr. Morison asked can we protect ourselves from whatever may happen? Mr. Elton asked who will be the governor in two years. Mr. Morison thanked the board for their efforts. Mr. Martino expressed to the audience that the town is bound by the laws of the state.
- David Bronum, 1056 Glassboro Rd.: Mr. Bronum asked if an absorption test had been done. The applicant responded reiterating the process of reducing runoff. Mr. Bronum stated that he will be recording the traffic on Glassboro road and will bring the data before the board at the next meeting.
- Willy Hess, 348 Chestnut Ave: Mr. Hess asked what the applicant's procedure is if drugs are found being dealt in the apartments. Mr. Lewis stated that they can be evicted. Mr. Hess asked if this would occur after one time. Mr. Lewis stated that he believed it would happen after one offense, but he would have to check. Mr. Hess then asked if the buffers would be fences or just buffers. He expressed concerns about foot traffic cutting through the yards. The applicant said it would not be fenced. Mr. Farrell pointed out that this could be a requirement put forth by the board. Mr. Hess then cited the fire at Mamco, and the difficulties of putting out that fire. Mr. Elton responded that the New Jersey American line is now in place for that. Ms. Cuvillo added that if approved, the fence can be evaluated with landscaping.
- Joe Oriti, 604 Chestnut Ave: Mr. Oriti asked about the procedure and the time table of the vote. He stated that the board must weigh and evaluate. He then asked when will the decision be made. Mr. Farrell explained that the vote would occur tonight.
- Mrs. Yerka pointed out that no negatives were presented, but only by the public.
- Mr. Moskowitz asked about the power grid, and if all the units would be on the local power grid with all the security. Mr. Farrell explained that this would be a part of the planning board checklist on the follow up application,
- Shelly Bronum, 1056 Glassboro Rd: Mrs. Bronum asked about the lighting in the development. The applicant responded that the lighting would be low lighting, residential in nature. The list of other Conifer Realty projects was labelled as Exhibit "A4".
- Rose Yerka: Mrs. Yerka asked if the project would be three stories. The applicant confirmed this. She cited the height ordinance, and asked if any changes are to be made. Mr. Farrell asked if the applicant was seeking variances for height. Mr. Borelli explained that both the LI and the RM zoning allows for 45ft. Ms. Cuvillo stated that the RM height does not apply, and the height may need to be addressed as a condition of the site plan, as only the LI height (35ft) applies. Discussion ensued among the professionals. Mr. Miller cited

case law in which a “D” variance with bulk standards do not apply to the use variance. He explained that the height is subsumed within the use variance. Mr. Miller stated that the height is part of the request within the variance. Mr. Borelli explained that this could not be addressed in the site plan review. Ms. CuvIELLO explained the height requirement in the RM zone. She said that the height could be extended to 60ft under three stipulations. Mr. Martino asked if the board would be approving the 40ft height tonight. It was clarified by Mr. Miller, and agreed upon by the board that it is 40 feet to the peak. Mr. Brunermer read from the ordinance. Mr. Farrell clarified that the similar ordinance of Woodbury Heights allows for 35 feet to the peak.

Harold Holmstrom: Mr. Holmstrom asked if this matter would be addressed had it not been brought up by a member of the public. Ms. CuvIELLO stated this was not true, as it would have been addressed at site plan. She stated it was a valid question. Mr. Holmstrom asked that if the use variance was granted, then the board would be agreeing to a five foot increase. Ms. CuvIELLO recommended that if the board agreed to the 40 feet, they meet the conditions of the fire protection act. Discussion ensued.

With no further questions a motion was made by Mr. Deeck and seconded by Mr. Elton to close the public portion. Ayes closed the public portion of the meeting.

Mr. Farrell asked the board for any questions before the vote.

Mr. Martino stated that it was his opinion that he was not convinced the project would operate as presented.

Mr. Farrell asked Ms. CuvIELLO if the town is still susceptible to a Builder’s Remedy. Ms. CuvIELLO clarified that the town has filed a motion for declaratory motion, which would protect from Builder’s remedy, while the town is attempting to meet their obligation. She also stated that this doesn’t mean an applicant cannot file a motion to intervene. She did state that the board could be sewed at any point in time. Mr. Borelli advised the board not to put too much weight on the COAH situation, as it is outside of the scope of the Zoning Board.

Ms. CuvIELLO recommended that while doing the balancing the board focus on what is allowed to go on the site vs. what is imposed and the land use impacts. She also advised that the fiscal report is not a balancing factor. She indicated that these matters would be addressed eventually in the process.

Mr. Borelli agreed and stated that those are not legitimate factors. He stated that valid considerations would be the traffic, the height and so on. Mr. Borelli reminded the board that the alternates would not be voted, and five positive votes are needed to pass the variance.

Mr. Elton expressed his concern with the density of the project. He stated that this is 70 units, and the potential of the site allots for much more. He said he is concerned that worse than what is being presented could come in.

Ms. Fannon closed by stating that the board has heard their testimony on the 70 housing units, and the board has the ability to weigh and balance the positive and negative criteria under the

Sika balancing test. She reiterated that it is an affordable housing development, and the testimony about the previously approved project was higher in height. She requested the board look at whether there is substantial detriment to the zoning plan. She stated that she believes that the criteria has been met, and if the variance is granted the applicant would have to return to address the site plan. She reiterated that outside agency approvals would need to review as well. She concluded by asking the board grant the use variance and by implication the height variance. She thanked the board.

Mr. Elton made a motion to approve the Use Variance with the Height Variance. Mr. Borelli reiterated that it would be conditioned upon application and approval of the site plan as well as the stipulations in the professional reports. Mr. Flynn seconded the motion. The motion did not pass by the following vote: Mr. Martino, no, Mr. Flynn, no, Mr. Elton, yes, Mr. Deeck, yes, Mr. Hart, no, Mrs. Holmstrom, yes, Mr. Farrell, yes.

Mr. Borelli clarified that the application did not pass because 5 votes were necessary to do so.

OTHER BUSINESS:

Wawa, Inc.: Block 4 Lot 1: Request for Extension of Site Plan Approval

Mr. Farrell presented the request for site plan approval extension from Wawa. Mr. Borelli stated nobody from Wawa is present, but the board was provided with a copy of the letter. Mr. Borelli stated that the site plan was approved in September 2015, and due to the number of stores, a one year extension is being requested. Mr. Brunermer clarified that they are allowed three extensions.

Mr. Martino made a motion to extend the approval for Wawa. Mr. Elton seconded the motion. The motion passed with the following vote: Mr. Martino, yes, Mr. Flynn, yes, Mr. Elton, yes, Mr. Deeck, yes, Mr. Hart, yes, Mrs. Holmstrom, yes, Mr. Farrell, yes.

Mr. Farrell asked if the appointment of the fence committee could be postponed to the following month. Mr. Martino made the motion to postponed the matter. Mr. Elton seconded the motion. All agreed. The Motion passed.

A motion was made by Mr. Deeck to close the meeting. The motion was seconded by Mr. Hart. All agreed. The meeting was closed.

Shannon Elton, Secretary

Bruce Farrell, Chairman