

WHARTON PLANNING BOARD  
REGULAR SCHEDULED MEETING  
March 10, 2015

The Regularly Scheduled Meeting of the Wharton Planning Board was called to order with Chairman Ken Loury reading the Open Meeting Statement as required by law.

ROLL CALL was taken and the following members were present: Chairman Ken Loury, Mayor William J. Chegwiddden, Councilman Thomas Yeager, Mr. Roger Steele, Mr. Mark Harris, Ms. Charlotte Kelly, Mr. Mark Harris, Mr. Jared Coursen, Ms. Jennifer O'Malley-Dorr, and Mr. Peter Rathjens. Also present were Attorney Alan Zakin, Engineer Christopher Borinski, Planner Jessica Caldwell and Secretary Patricia Craven. Excused was Mr. Patrick O'Brien. Absent was Councilman Thomas Yeager.

Attorney Zakin Swore in Chairman Ken Loury and Mayor Chegwiddden swore in Member Jared Coursen.

The approval of the bills was next. A Motion was made by Charlotte Kelly and Seconded by Mark Harris to approve the bills. YEA – 9 NAY – 0

The approval of the February 10, 2015 Planning Board Meeting was next. A correction to Planner Caldwell's name was made and then a Motion was made by Jared Coursen and Seconded by Peter Rathjens to approve the minutes as corrected.  
YEA –9 NAY – 0

Next on the agenda was the Presentation of the Highland 2015 Master Plan Reexamination Report given by Planner Jessica Caldwell. Ms. Caldwell stated that what they have before them is the Master Plan Re Examination Report prepared pursuant to the Borough's decision to conform with the Highlands Regional Master Plan. The Highlands has approved the petition for plan conformance. Part of that plan is for the Borough to go through and amend the Master Plan as well as to amend some ordinances. This document reexamines the Master Plan and then determines what changes need to be made.

Planner Caldwell went through and explained the report to the Board and any public. Part of the decision to conform was to establish a Highlands Center. That would cover most of the area where development would occur. A Highlands Center plan needs to be developed for the center of the Borough and what that does is look at ways to promote redevelopment and development that is appropriate within a Highlands Center. Everything outside of that center would be covered by a Highlands Master Plan.

She stated that there are 2 areas of the Borough that they are looking at for areas of redevelopment. One is Meadow Ave. Industrial area and the other is the Air Products Site which she explained in detail.

Planner Caldwell stated that there is also a resolution drawn up if the Board is inclined to adopt the Reexamination plan and report. Ms. Caldwell stated, when asked, that at this point she does not know of any funding through the Highlands to fund any capital projects but hopefully there will be in the future. There may be some grants.

Mayor Chegwiddden stated that when Margaret Nordstrom came before our Board she eluded that there was funding for capital improvements. He stated that a lot of times our money gets so tied up in the planning that there is no money left to do the project and that is where we should tap into the Highlands for is the funding of the project if the Borough is willing to do all the planning. He stated that we had sent out our petition in 2009 and got the approval in 2011, that is not acceptable, we like to move things alone in Wharton. Ms. Caldwell stated that the planning work will be beneficial and will enable the Borough to be eligible to get grants. With respect to the ordinances in terms of the Highlands Center it shouldn't be restrictive we are looking to create development opportunities. Most of the area outside the Center will be exempt, it is mostly residential which is exempt from the Highlands. The area of Meadow Ave. is considered underutilized and could be better utilized. It is a large area with a lot of potential. It is just a recommendation at this point There would be a study done of the areas being considered for redevelopment and the Board would be able to review the study. Mayor Chegwiddden stated that the area along Harry Shupe Blvd is still a redevelopment area and was just given an extention.

The meeting was now open to the public and then closed.

A Motion was made by Mark Harris and Seconded by Roger Steele to adopt the Highlands 2015 Master Plan Reexamination Report with 2 changes on page 1 of the report – remove Zoltan Stupar and Alan Zakin and replace the attorney's name with Steven Azzolini.

YEA- 9                      NAY – 0

The continuation of the CCKK, LLC Gun Range application was next. For the record both Ken Loury and Jared Coursen listened to the tapes of the Gun Range application from the previous meeting. James Pryor, attorney for the applicant, addressed the Board – He stated that they submitted updated architectural renderings, decibel readings and a sketch showing the location of the new signs. They did not submit a planners report.

Architect Steven Bias was sworn in and qualified as an expert architect. He explained the floor plan of the 2<sup>nd</sup> floor of Building C. The shaded areas are the areas that will be effected by this application. He showed the areas of egress and the elevators. They have 11,500 sq. ft with a secure vestibule, reception area with cameras, a retail area, secured firing range area which he explained in detail. They enter the building on the first floor and take the elevator to the second floor. There is access to other tenants from these areas which he showed on the plans. They will occupy the left hand side of the plans and the right hand side is for other tenants. He explained that first floor as typically office space with warehousing behind it.

Chairman Loury was concerned with people leaving the range with guns and having access to other parts of the building. Mr. Bias stated that anyone with a firearm permit can carry the gun in the parking lot, you buy a gun at Dicks and you carry it out to the parking lot to your car. Once you enter the gun range you are in a secure environment. Mr. Steele was concerned with the

other tenants. The sound isolation will be provided in the construction application Mr. Pryor stated that they will insure a reasonable environment for the other tenants. The other tenants have not been notified but typically they do not notify existing tenants that a new tenant is moving in.

He explained that the range area is a contained environment. It is secured with ballistics as well as environmentally. Their main concern is leakage of sound. He went on to explain the structure of the range, the ceilings and the walls. He also explained the safety of the bullet trap and the sound and air quality system. They have relocated the simulation room and the 2 classrooms on the plans. A good portion of their business is the simulation which is like a high tech video system.

Mr. Bias explained that they would follow the manufacturer's instructions and specifics when it comes to the ballistic plating and wall surfaces.

Peter Rathjens was concerned with the fact that the previous testimony referred to a 75 yard and 225 ft. firing range and the plans show a 75 ft. firing range or 1/3 the size of the original range. Will this have any effect on the Engineers report? Mr. Bias explained that the original plan was for the longer range but they changed that because of the limited use and the complications related to that size range. It will be primarily a hand gun range but there will be some rifles. There is a checkpoint at the door to ensure the patrons meet the qualifications when bringing in their fire arms. All the employees are qualified as Range safety officers and these are the employees that will be sitting at the check points. They have a machine that collects the bullets, no one handles the bullets.

Mr. Bias stated that there is another range, RTSP in Randolph that is located in a multi-use facility. Mr. Loury was concerned with bullets going through the wall. Mr. Bias explained the building shell and the shell they will be building inside of this shell. The sound is important to them and are convinced that they can provide an environment that is safe.

Roger Steele asked about the gunsmith area. Mr. Bias explained that this area is where they take care of any general gun maintenance issues such as repair and cleaning of the guns. He also explained that all guns are supposed to be in a locked case, so if anyone has an emergency or needs to use the restrooms the guns should be in the locked case. He also stated that as far as noise, a bowling alley is noisier than a gun range, it's a different kind of sound and much better environment. The occupancy is 120 persons and in the range itself it is 20 people. Jennifer O'Malley-Dorr asked if those numbers include staff. Mr. Bias stated that in the building code they have no formula for occupancy for a gun range. She was concerned with safety especially in an emergency situation. Mr. Bias stated that they have 2 egress doors from the range and a 3<sup>rd</sup> at the other end of the building.

Planner Caldwell was concerned, as far as the occupancy, the number of parking spaces. What had been discussed was 1.2 parking spaces per range space but they also have retail, simulator area and classrooms. There is a lot more going on than what was previously discussed as far as parking spaces. She stated that there are 103 spaces for this building and if the occupancy is full at 120 and everyone brings their own car, there is a problem. Attorney Pryer stated that the previous testimony was that they did not do a formal parking analysis but that there was a great

deal of parking spaces on site. Mr. Bias stated that it would be highly unusual for everything in the range to be occupied at the same time, the 120 was a figure for fire occupancy. More than ½ of the 11,000 sq. ft. is taken up by the range area, bullet trap, prep area and storage. He said it was an oversight on his part that they have such a high occupancy number. Mr. Lory stated that the 103 space are for the entire building. Mr. Pryor stated that the previous testimony stated that the peak hours for the range were on the weekends and evenings when there are no other tenants in the building.

Attorney Pryor stated that they are not at that point where they have written protocol yet for the procedures for the gunsmith, and vault storage and handling of the weapons. They cannot even open until the state and federal agencies come in to inspect them.

Mr. Bias stated that the retail area will have cabinets and kiosks and that the guns and bullets are secured.

Attorney Pryor stated that all employees that are dealing with the public will be range safety officers including the receptionist. He stated that they will provide a parking summary.

Engineer Borinski stated that the parking calculations were based on the number of firing lines which was 9 and the plans show 10 – so that needs to be adjusted. Also, the common area – the stairs, the elevator, and the second floor, there are not changes proposed. Mr. Bias stated there are no changes proposed.

Mr. Bias stated that they will eliminate the #1 one firing line to provide a clear path to the egress in the rear of the firing area that will lead to the 1<sup>st</sup> floor. There are going to be 2 range safety officers in the firing area so that if there is a fire in building the patrons in the firing area would be guided by the officer as to what to do. Mr. Bias explained some fire safety to the Board. Mr. Bias said there is certain enough roof for a waiting area and would pass that request on to Mr. Rebels. The area marked vacant and future tenant on the plans is not for this business, it is for future tenants. There will be no roof top equipment it will be ground or wall mounting. There are guidelines that they follow as far as the overall system itself, the firing line, bullet traps, etc. The packet with these guidelines is given to the construction dept.

The meeting was open to the public and then closed to the public.

Planner Peter G Steck was sworn in and qualified as an expert in the field of Planning. Mr. Steck handed out a 4 page memo which was marked into evidence as:

A-1, 3-10-15 Planning Memorandum

Page 1 aerial photo of 2012 showing the lot lines.

Page 2 aerial photo shows the footprint of the building

Page 3 Use regulations in the I-2 zone

Page 4 He will follow up

Mr. Steck, in preparation for this application, looked at the property and also visited the ranges in Randolph and Elmwood Park where he spoke to the personnel about the operation of the range. The significance is that this one is in an industrial area that is fairly remote from residential uses.

Building C & D are at higher elevations and closer to Route 80 which carries traffic and produces a fair amount of noise. In terms of the use the maximum occupancy by fire code is not necessarily the actual maximum occupancy. The Master Plan supports an industrial use here. Page 3 of his report shows the permitted uses. There is a weak market for Industrial Parks and manufacturing, all around the state the industrial parks are being used for commercial/recreation. The gun ranges are not typical land uses, not a common use and not commonly treated in zoning Ordinances. He referred to page 4 of his report which he went on to explain in detail to the Board. It is a highly sophisticated system as far as the environment. He did visit the facility in Randolph in the evening which is in an industrial park. You cannot hear the shooting from the outside of the building. Because the applicant here is the owner of the property there is an extra incentive to not disturb the other tenants. It is a use that is suited to this building. The very nature of the use is highly unusual, there are only a few in New Jersey and there is a whole host of protections that come along with it, the training personnel, the storing of firearms, the physical accoutrements that protect the public from bullets and the inspections. All of these make it a situation where, subject to certain conditions, in his opinion, it does promote the appropriate use of land, It can meet the negative criteria. The range in Randolph to the best of his knowledge has not had any adverse consequences on other users in the area. With all the safety regulations he feel this can be approved without substantial detriment to the public good and without substantial impairment to the zone plan and zoning ordinance.

Chairman Loury stated that there was testimony that there is a weak demand for industrial space yet this facility is 90- 95 percent occupied. He also questioned his testimony that this use is particularly suited and asked his opinion if it was the optimal use of that space given that it is 90 – 95 % occupancy of less impactful uses. Mr. Steck stated that generically in New Jersey recreational facilities are going into industrial parks. This one happens to be fairly active. He stated that this use is on the 2<sup>nd</sup> floor which is an area that is less attractive to manufacturing and warehousing. It is particularly suited because it is the second floor. Mr. Loury's question doesn't relate to the land use considerations. It is not the criteria for granting a variance. The standard of proof for granting a variance is special reasons and does it meet the negative criteria as to the enhance burden of proof. It is not a criteria is it optimal proof use of the site. It would be a waste of space if it were on the first floor because you don't need all the loading docks and all the access. Recreational uses are popular today and lend themselves to this type of building. Chairman Loury asked if it would be optimal to have a gun range in a mix use scenario. Planner Caldwell said if you are talking about the negative criteria, she thinks what the Chairman is trying to get at is when you are replacing industrial uses in an industrial zone is there a negative impact to the zone plan. Mr. Steck state that they are replacing a non-permitted use, the baseball station with another non permitted use that happens to be somewhat similar. Off peak hours, and it make sense to him as a planner to have a variety of mix uses that don't all peak at the same time. That gives you better assurance that there is enough parking. If the protections on the record are installed he sees no negative issue, also the owner of the range is the property owner and he would not do anything that would hurt his occupancy.

Planner Caldwell asked Mr. Steck for his testimony on the positive criteria. He stated that the public welfare is advanced by having this facility for police officers to be able to get recertified. Also the public benefit to educating the public about firearms goes under the general welfare.

Planner Caldwell would like to see more on the parking to confirm that it is off peak, Because there are so few ranges it could potentially be very popular. She wants to make sure it can be accommodated at that location.

Engineer Borinski asked if the conditions of the Resolution for the Baseball Station will still comply. Mr. Steck stated that he mentioned this in his memorandum on page 2. Attorney Pryor stated the same conditions will apply. They are just switching building.

Chairman Loury was concerned with the parking. He was not pleased with the batting cages moving closer to Route 80 and now we have the trucks in the area of the future building G which might attract the kids from the Batting Cages to that area. Mr. Steck will let the owner address that.

Engineer Borinski stated that in his report dated Feb. 4<sup>th</sup> they listed the conditions of the resolution for the Baseball Station. Mr. Steck read the conditions. The location of the Baseball Stadium in building D will be the mezzanine.

Planner Caldwell stated that in terms of meeting the negative criteria the applicant is willing to add striping and signage to bring the site up to more of a location for general public access which goes to site suitability in the use variance.

Attorney Pryor stated that there is no party room at this facility. Mr. Rebels said that prior testimony was that only people with firearm permits are eligible to use firearms. This is for this facility only and not the rules at other ranges. Nothing was said about minors.

The meeting was open to the public and then closed.

Mr. Turzi addressed the Board about the parking. He stated that the number 120 on the architectural plans is the maximum and he does not believe that the range would have that amount of people condensed into that area. Even if it did the entire site has plenty of parking, they might have to walk across the parking lot. Mr. Loury was concerned with them walking across the parking lot with a gun. Mr. Turzi stated that they would be walking with the gun in a locked case. Mr. Turzi testified that when he purchased his gun at Dicks he walked across a crowded parking lot at Christmas time with the gun in a cardboard box not a locked case, here it would be in a locked case. Again the use is off hours and off peak. There is no reserved parking and there is ample parking. The elevation of Route 80 is about level with the roof of building D. There is a ditch and then a large slope to get up to Route 80. He thought the police chief spoke in his memo about some additional fencing in that area. As far as Building G they have permits into the construction dept. to start that work so they will be moving all of those trucks and equipment. On the Rockaway side they will be cleaning that area up to put in 3 soccer fields and a new parking lot for the fields. As far as the classrooms they are a small square footage part of this application. The mezzanine areas of these buildings are usually used for office space and he does not see much difference between the classrooms and office space.

Roger Steele stated that their hours of operation are during peak hours and he feels they might have a full house and not enough parking. Mr. Turzi stated that other than law enforcement from

what he has heard it is going to be recreational which would be after work and on weekends. During the day Building C might have between 40 – 60 spots taken out of 103 and Building B about 20 spots out of 125. They have very little truck traffic on the site. They are agreeable to putting in cross walks.

Planner Caldwell asked Mr. Turzi to talk about the weak Industrial Market. Mr. Turzi stated that there complex overall is doing well because their price point is very reasonable. The Haunted House occupies 4 units on the 1<sup>st</sup> floor of Building A which had been empty for over 6 months. The second floors are always harder to rent, the second floor of Building A before the Haunted House moved in had been vacant since the building was built in 2003. The mezzanine in Building C is 40 percent vacant and Building D is vacant. Second floor space is very difficult to lease and when they do lease it it is at a reduced rate. The gun range would be fantastic on the first floor but because the second floor is difficult to rent it is an idea to place it there. Mr. Turzi is agreeable to stripping, signage, cross walks and all the other safety issues that have been discussed to make the site safe for suitable for public access. These items, except for the cross walks, were discussed and part of the Building G site plan. They will all be done before they have a CO for the gun range.

Engineer Borinski asked about the parking for the batting cages and the amount of people using them. Mr. Turzi stated that they are very busy on the weekend, they also do training. Mr. Borinski asked about parking for Building C. Mr. Turzi explained that from the loading area in the back of the buildings you cannot get to the elevators. The rear doors in the loading area are only for specific tenants. The warehouse workers park there and go in their specific doors. If you park in the rear of the buildings you have to walk around to the front of the buildings to get to the common areas and

The meeting was open and then closed to the public.

Attorney Pryor stated that the applicant will submit a parking summary as a condition of approval.

Chairman Loury asked Planner Caldwell what the negative criteria of allowing the gun range use and also of it being in a mixed use area. Ms. Caldwell stated that one of the big issues is safety from the concern of it being a gun range and people having guns and making sure that it is being controlled which is a condition of approval and can be mitigated also by whatever rules and regulation are in place, which is out of their control. From a zoning perspective and one of the negatives is the displacing existing industrial uses. There was good testimony as to why it is difficult to lease these second floor spaces. There is not a big demand for office space in general and office space in an industrial center is less of a demand. These types of recreational uses fit in well there. She does not think there is a negative impact to the zone plan. In terms of being mixed use the main concern there is making sure the site is safe and with the improvements planned such as striping, signs, buildings being labelled, fencing along Route 80, fencing along the detention pond, etc. she feels it can work.

Chairman Loury was concerned with a gun range next to a batting cage where there are children present. Mark Harris stated where better to properly discharge a weapon than at a properly run gun range. This range has many controls and feels this is a good application.

Attorney Zakin stated that as far as liability to the town and board if the application is approved he sees none.

Peter Rathjens thought the town had an ordinance about no discharge of weapons in the town. Attorney Zakin will look into that.

Peter Rathjens asked how you get firearms training for children who do not have an ID card. Attorney Pryor stated that they can attend classes. They also have the safety instructors.

Brian Bosworth explained the difference between a simulator and hands on instruction.

Roger Steele agreed with our Planner that within the facility there are plenty of safeguards as well as state, federal and municipal bodies that will control some of the bigger concerns. He is more concerned with the outside safety issues throughout the site and was pleased to hear Mr. Turzi say that he is going take care of all the outside safety issues. Attorney Zakin brought up the concerns of the Police Chief from the last meeting about the site going from an industrial site with trucks to a recreational site with children. Brian Bosworth stated that the Baseball Station has been on this site since 2011. 4 years, and what have we learned. They should look back and see if there were any issues with the facility or with the kids in that area. Roger Steele is concerned because now there are going to be 3 recreational uses on this site and 3 soccer fields going in as well. On a safety basis he would like this site to be treated like a recreational facility that has trucks and industrial uses rather than an industrial facility that has recreational uses.

Mr. Turzi, in reference to Chairman Loury's concern with the Baseball facility being next to a gun range, the baseball facility is on a completely separate road than the gun range and separated by Building D. The site plan for Building G addresses everything except the cross walks that were just mentioned tonight. Engineer Borinski stated that there are some additional items around buildings C & D especially around the loading areas to help with circulation. He has not seen the plans showing how they will be accessing the fields and their parking lot. Mr. Turzi explained that when you come up to the corner of Building D you can turn left into the parking lot for the fields or right to the parking lot for Building D. He will be happy to provide those plans.

Engineer Borinski stated that the majority of the items on the site that were to be addressed in the past have been taken care of except the cleaning of the detention basin. Mr. Turzi stated that once the entire site was finished they were to dredge the basins and add stone to the bottoms. Right now they are acting as sediment basins as well as detention basins. They are trapping the sediment from going into the pond. The fencing around the basins was not part of any prior approvals and has not been done. It was a suggestion of the Police Chief as part of this application and they have agreed to do it as a condition of this application.



Attorney Zakin stated that they had talked about providing an emergency plan and an egress for the gun range. This could be a condition of approval. He went over with the Board what they will be voting on. He stated that they are going from 10 to 9 ports. Mr. Steck stated that rather than limit the number of ports, they will get the compliant means of egress in there and then see how many ports they can get in there. The condition would be adequate access to the east side egress adjacent to the HVAC storage.

Attorney Zakin stated that they are considering a use variance proposed by CCKK, LLC to have a non-stated use of a gun range

Conditions: Approved by the Borough Professionals

1. All appropriate officials agree to a parking evaluation by the applicant's experts.
2. Approval by the Borough Professionals, Fire Chief and Police Chief of an emergency evacuation plan for the gun range.
3. Safety measures taken around Building G area - preconstruction and during construction.
4. Approval by Borough Professionals and Police Chief of a fencing scheme around the detention basin and along Route 80 by Bld. D
5. Approval by the Borough Professionals and Police Chief of all crosswalks, striping, signage, lighting, etc. to keep the site safe for families.
6. Coordinate with Rockaway Township of all safety measures throughout the site.
7. Approval by Borough Professionals of an adequate door from the bullet trap area to the HVAC storage area to allow adequate emergency egress to the east side adjacent to the HVAC.
8. No Age or ID card restrictions was decided after much discussion.
9. All the conditions that were in the prior Resolution from Baseball Station
10. Variance and Site Plan Approval
11. Location change of Baseball Station.

Attorney Zakin will check with the Borough Attorney about an ordinance of no discharge of firearms in the Borough.

The Board feels comfortable voting before they get a traffic study.

A Motion was made by Roger Steele and Seconded by Charlotte Kelly to approve the application with all of the conditions YEA – 6 NAY – 1

A Motion was made by Mark Harris and Seconded Roger Steele to adjourn. Meeting adjourned at 10:30 pm

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Patricia M. Craven Secretary

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Ken Loury Chairman