

WHARTON PLANNING BOARD
REGULAR SCHEDULED MEETING
July 11, 2017

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, Ms. Charlotte Kelly, Mr. Mark Harris, Mr. Brian Bosworth and Mr. Peter Rathjens. Also present were Attorney Alan Zakin, Planner Jessica Caldwell, Engineer Christopher Borinski and Secretary Patricia Craven. Excused were Mayor William J. Chegwiddden, Councilman Thomas Yeager, Mr. Roger Steele, Mr. Jared Coursen and Mr. Patrick O'Brien. , Ms. Jennifer O'Malley-Dorr arrived after roll call at 7:05 p.m.

The Pledge Allegiance to the Flag was next.

The reading of the Bills was next. A Motion was made by Mark Harris and Seconded by Charlotte Kelly to approve the bills as read. YEA – 6 NAY – 0

The Minutes of the May 9, 2017 Planning Board Meeting was next. A Motion was made by Peter Rathjens and Seconded by Brian Bosworth to approve the minutes.
YEA - 5 NAY- 0 ABST – 1 (O'Malley-Dorr)

The Resolution for Morristown Cornerstone Escrow Refund was next. A Motion was made by Charlotte Kelly and Seconded by Peter Rathjens to approve the resolution YEA- 6 NAY – 0

The Resolution for Lastra/Filipski Use Variance Application was read
Corrections:

- Page 5 - first line – 11.4 inch should be 11.4 feet.
- Page 6 – 3rd paragraph – the date should be July 11th.
- Page 6 – there is no item d. to be relettered.

A Motion was made by Brian Bosworth and Seconded by Mark Harris to approve the resolution as corrected. YEA – 6 NAY – 0

Attorney Zakin told the Board that he has spoken with Attorney Johnson about the draft timeline ordinance that was discussed at our last meeting and that Attorney Johnson was making some minor changes to it and will be recommending it to the Mayor and Council in the some future months.

The Variance Application for Michele Hobaugh was next. Michele Hobaugh was sworn in at this time. Attorney Zakin stated that Michele Hobaugh is the applicant but in her papers she referenced Infinite Fitness and Health, LLC. As an applicant she does not need representation by an Attorney but an LLC does. Michele Hobaugh stated that she is the owner and is applying as a sole proprietor not Infinite Fitness and Health, LLC. They want to contract with Infinite Fitness and Health, LLC. in the future.

Michele Hobaugh introduced her friend Christopher King of 11 Evergreen Terrace, Succasunna, who will be her Director of Operations. Mr. King was also sworn in.

Attorney Zakin told the applicants that the Board of Adjustment has 6 members present tonight to hear their variance application and they will need 5 affirmative votes. Ms. Hobaugh agreed to proceed tonight with their application.

Chairman Ken Loury stated that it has been brought to the Board's attention that there are new violations on the site, not on their application. The Board is going to take a recess and go view the site. They will then come back and hear the application. Attorney Zakin stated that a letter was sent to the owners of the site, CCKK, LLC, telling them that no CO's would be issued until they have satisfied the concerns of the Borough Attorney and Borough Engineer. The letter was also forwarded to tonight's applicant, so they are aware of it. He also advised the Board that they are not on the record now and that there should not be any discussions about any business before the Board.

A recess was taken at 7:23

Roll Call was taken at 8:07 pm and the following members were in attendance: Chairman Ken Loury, Ms. Charlotte Kelly, Mr. Mark Harris, Mr. Brian Bosworth, Ms. O'Malley-Dorr, Mr. Peter Rathjens, Attorney Alan Zakin, Planner Jessica Caldwell, Engineer Christopher Borinski and Secretary Patricia Craven.

The application continued with Michelle Hobaugh addressing the Board. She works with special needs kids at Morris Hills High School up to the age of 21. She wants to offer physical education classes to these children as well as job skills classes. She is also hoping to foster a relation with other businesses in this complex that might want to employ these children. They are also planning to offer self-defense classes to Senior Citizens.

Chris King stated that he is adaptive athlete certified from Cross Roads Adaptive Athletes Association and has worked with amputee soldiers at Walter Reed hospital. He has dedicated the last 6 years of his life working with and helping these soldiers. He also works with people with MS, Spina Bifida, spinal injuries, traumatic brain injuries, etc.

Michelle said that they feel they can make a great difference in people's lives. She has worked for the Wharton Board of Education and loves the community, she thinks that the community will love what they have to offer.

Chris explained that their hours are off hours, 5am to 6am and 5pm to 6pm. There would probably be no more than 8 people during the day. Kids are bused in and their classes are 1 hour classes. Their facility is in Unit 8 on the plans but they are showing their layout in Unit 6 on the plans. Chris King did the sketches on the plans that show their layout and went on to explain what was on the plans. They will have mats on the floors and kick shields. The rooms are handicapped accessible. They will have a reception area, an office/conference room, 2 bathrooms and 3 separate larger rooms which he pointed out on the plans. They do not have exercise machines. The walls dividing the rooms are only 14 ft. high which separates the mat room from the gym area and exercise room. They do a lot of one on one with their clients. This is a fitness facility. Their unit is handicapped accessible from the outside. They have an emergency handicap exit with a ramp at the rear of the unit. They will not be selling anything other than readymade packaged items such as health food and energy drinks. They will have a break room for the staff with a refrigerator. They plan on having monthly rest bits for parents. They also plan on getting involved in the community and community events. Their hope is to be granted a temporary C/O.

Attorney Zakin asked the applicant if she would like to amend their application in reference to page 3 to say that they are the owner of the facility making this application. Ms. Hobaugh agreed. She also stated that they are Cross Fit trained and will be affiliated with Cross Fit.

Planner Caldwell referenced her report dated 6/16/17. As part of completeness they are seeking a waiver of site plan approval. They are not changing the exterior of the building and they are utilizing the existing parking lot. She stated that there are violations on the site. They are asking for a D-1 use variance. She went over the criteria they need to meet. Their testimony does show that the use promotes the general welfare, they are helping to rehabilitate people. This facility provides for a unique use, not something that you hear of everyday and it is an efficient use of the land. They did show that they are particularly suited for this property. The layout, the handicapped access, off hours, parking is different from the surrounding uses and the site is readily adaptable and particularly suited to their use. As far as the negative criteria and any impact to the neighborhood there really is none because it is an industrial area.

Planner Caldwell asked them to talk about getting their clients into the site safely and show that there is no negative interaction with the industrial use. Ms. Hobaugh and Mr. King explained that the classes will be held inside and the children are bused and dropped off right at the door. The handicapped spaces are right in front of their door. They meet all the children at the door. Most of the children have aids with them. The buses will be able to go around the building. The class sizes are 14 or less.

Planner Caldwell stated that given the unique factor of the use would detract from any negative impact of the Master Plan and the Zone Plan. Ms. Hobaugh stated that some of the uses surrounding this unit are batting cages, escape room, haunted house, warehousing and a graphics company. 16 parking spaces is what they would need and are available. There will be a sign above their door as well as on the map. Planner Caldwell stated that the owners need to submit an amended site plan.

Engineer Borinski stated that there is a directory sign as well as color coded building signs. There are also have tenant ID signs over each door. If the tenants have more than one door the sign is over the main door. The main violation is the conservation easement. A stop work order was issued for that dated 6/14/17. The DEP was on site on June 28, 2017 and should report back in the next few weeks. There have been a number of amended site plans over the years. Buildings A through D have been constructed in Wharton Borough and E & F are approved by Rockaway Township and are under construction now. The original site plan showed those 2 buildings and the driveway configuration showed access to D, E & F were the same driveway. They did not build the driveway according to the plans so that was one of the amended approvals. They are now in the process of construction the driveway the proper way. The driveway is located in both Rockaway and Wharton and they need an amended approval for the new driveway. Building G, located in Wharton behind Building D was approved. They have not started construction of the building but have started construction on the site. They have placed fill, moved rocks and placed millings which were not part of the original approval so they need an amended approval. They were notified of this. Construction of Building G is probably 2 years out. The stop work order is just for the conservation easement and not the whole site.

Chairman Ken Loury asked if they could issue a stop work order on the entire site since there is no amended site plan. Engineer Borinski stated that they probably could. Chairman Loury would recommend that they do that. Engineer Borinski stated that one of the conditions of Building G was the circulation to be reviewed by the Police Dept. After they met out there with CCKK, they did put

additional striping. Some discussion followed about the violations, safety of the site, striping, crosswalks and the detention basin which was a concern of the Police chief.

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

Speaking about the applicant Mr. Harris stated that it is a very well thought out application and would be beneficial to the town. Chairman Loury's question was do we burden this application with the violations to the owner of the property. Some discussion followed. Brian Bosworth stated that it was the Chief of Police who had all the issues with the property and its safety and he would like to hear from him. Attorney Zakin stated that a condition could be added that the issues would have to satisfy all the professionals before a CO can be issued. The Board was not in favor of that. A bond was also discussed to be put up by the owner of the property instead of the burden being on this applicant. The issues are with the owner not this applicant. Chairman Loury would like to see a stop work order placed on the entire site.

The meeting was open to the public. Tucker Kelly of 16 Megan Rd., Rockaway Township was sworn in and addressed the Board. He stated that this application is a perfect fit for Wharton Borough. He is a friend of Christopher Kelly for over 35 years. He stated that Chris is making lives better for people. He and Michelle both have a passion to help people. This is something that the community needs and will attract more people to come into the community and benefit other businesses. It could also attract other businesses to the area. Hearing the discussions about compliance concerning the owner of the property he mentioned to the Board different areas that they can look under the law to deal with the non-compliance issues such as:

1. Municipal Land Use 40-55D
2. Administration Code Section 523 and 523, 1.4 of the permit process and prior approvals which can help revoke a CO.
3. They can also call the DCA.
4. Have the construction official impose fines.

These can help the town go after the land owner without punishing the tenants. The Board agreed they want compliance of the property owner and enforcement.

Engineer Borinski stated that he has no concerns specifically for Building C as safety and security.

Peter Rathjens had some concerns about the buses and wants to make sure the egress is maintained. Possibly one way in and one way out.

Planner Caldwell agreed that they can contain the conditions as far as safety and welfare for Building C. Also work with Engineer Borinski as far as the violation on the entire site, starting with fines for violation of prior approval. Ms. Caldwell stated that this applicant has been fined, per Jon Rheinhardt by the construction dept.

Administrator Jon Rheinhardt was sworn in by Attorney Zakin. He testified that administratively they found out 2 months ago about this issue of them bulldozing the mountain. He then contacted all the Borough officials and they drove to the top of the mountain to decide what to do. Letters were then send out to the owner giving them 30 days to respond. They are trying to work with them and at the same time try to fix it. They will continue to push the issue. They have been fined from the

construction side but it has not changed his activity. He suggested that they come back to this Board with an updated site plan.

Engineer Borinski stated that the construction on the site right now is on Buildings E & F which are in Rockaway Township and he is also working on the driveway which encroaches on Wharton Borough property. Attorney Zakin suggested the stop work order and to have them come back with an amended site plan for the changes to the entire site.

Chairman Loury stated that a condition of approval of this application would require approval by our experts as to the public safety, health and welfare as well as egress and ingress related to Building C and not the entire site. The Board agreed.

Attorney Zakin went over what the Board would be voting on. The D-1 Variance application of Ms. Hobough is for a recreational (fitness) facility in Building C in the Wharton Industrial Site.

Conditions:

1. Signage that conforms with the zoning ordinance
2. Ingress and egress not blocked around Building C and maintained at the satisfaction of our professionals
3. Public Safety, health & welfare be maintained at the satisfaction of our professionals

A Motion was made by Mark Harris and Seconded by Brian Bosworth to approve the application with the conditions just listed. YEA - 6 NAY - 0

Next, on the agenda was the discussion of the violations and overall site plan for Wharton Industrial and what if anything the Planning Board can do. After much discussion about holding the owner of Wharton Industrial accountable and not pulling CO's of any businesses in the complex, the Board was in agreement to:

- 1 - Have Engineer Borinski Issue a stop work order on the entire site.
- 2 - Condition of the stop work order is that they come back before the Board for Site Plan approval for any modifications to the site plan that were not currently approved.
- 3 - Have Engineer Borinski ask for a Cash Bond to guarantee that they bring back any conservation easement impact that was not approved (Engineer Borinski can do this as part of his letter on the conservation easement)
- 4 - Have Engineer Borinski ask for a Mine Study of the Site at the expense of the owner.

Chairman Loury stated that the owners claimed that they filled in mines and that is why they needed the road there. Engineer Borinski stated that the owner of the property claimed that they had to fill in the mines, which is fine but they need a plan for what they are doing. He stated that a representative from the Department of Mines recently did about a 1 minute inspected of the site and did not see any evidence of a recent collapse. Engineer Borinski will contact him to see if he has any report that he can send us. He stated that there are a couple of depressions there that were labeled on the old plans from about the year 2000. He does not know if any of them have been collapsing. Chairman Loury asked about requiring a mine study, at the expense of the owner as well as evidence of how he filled them in and remedied the issue.

Planner Caldwell stated that if they do not comply with the stop work order he can be fined up to \$2000.00 per day. They may also be able to drive him into Municipal Court for the violations. He can also be fined by the DEP.

Engineer Borinski is expecting to hear from the DEP in the next couple of weeks.

Peter Rathjens brought up the possibility of rezoning this area to include recreation. Planner Caldwell and Attorney Zakin agreed that that would make sense.

Chairman Loury brought up about an escape room at the Haunted House that is locate on this site. He stated that the escape room was not part of the Haunted House application. Secretary Craven stated that the construction official was going to check with the tenant about the escape room.

A Motion was made by Mark Harris and Seconded by Peter Rathjens to adjourn.

YEA -6 NAY -0

Meeting adjourned 10:20 p.m.

Patricia M. Craven - Secretary

Roger Steele - Acting Chairman