

WHARTON PLANNING BOARD
REGULARLY SCHEDULED MEETING
April 9, 2019

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 as well as the Judicial Proceeding Statement.

ROLL CALL was taken and the following members were present: Chairman Ken Loury, Ms. Charlotte Kelly, Mr. Roger Steele, Mr. Mark Harris, Mr. Peter Rathjens and Mr. Patrick O'Brien. 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. Christopher Fleischman, Mr. Jared Coursen and Mr. Brian Bosworth.

The Pledge Allegiance to the Flag was next.

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

The Minutes of the March 12, 2019 Planning Board Meeting was next. A Motion was made by Roger Steele and Seconded by Peter Rathjens to approve the Minutes.
YEA - 6 NAY- 0

The Resolution for escrow refund for Dewey Assoc. A Motion was made by Charlotte Kelly and Seconded by Marc Harris to approve the resolution as read. YEA – 6 NAY – 0

Next, under New Business was the Update on Wharton Industrial by Engineer Christophe Borinski. He stated the rock crushing by their contractor Gallen Contracting was to start soon and that the crushed stone will be used around Building E & F as well as Building G. As far as the west driveway, JCP&L have installed the poles and they are waiting on the rewiring of the lines. Millings have been removed from the hill going up to the water tower and the area has been graded and the erosion control mat is in place. The millings have been used on site at Buildings E & F. The revised plans dated 2/28/19 were approved 3/11/19 and have been submitted for NJDEP and MCSCD for approval. The fill will be removed and used onsite at Building G. There are no issues with the mines on the site. The wayfinding signs have been installed. They have changed from the approved backlit signs to goose neck style signs.

Attorney Zakin asked if Mr. Borinski could get target dates from CCKK, LLC and JCP&L. He will reach out to them.

Next, on the agenda was the continuation of Equinet LLC. Attorney Wyciskala gave a quick recap of the application. This is a bifurcated application and they are applying for a use, height and bulk variances to allow the development of a multi-family residential development. Existing now on the property is a restaurant and 27 housing units. Initially they were proposing

82 units between Building 1 and Building 2. Each building has 4 levels of apartments over parking. Building 1 had below grade parking and Building 2 had grade level parking. After the December 11, 2018 meeting, they agreed to eliminate 1 floor from Building 2 reducing it to 45 ft and from 82 units to 74 units. At the March 12, 2019 meeting they submitted the revised plans which also showed the relocated dumpster, changes to the traffic flow and parking as well as addressing the fire concerns.

Attorney Wyciskala stated that they have now decided to eliminate 1 more level on Building 2 reducing it to 2 levels over parking and 34 ½ ft high bringing it below the 35ft. allowed for residential homes in that zone. The majority of Building 2 sits at a lower elevation than the homes on Fern Ave. so the perception would be less than the 34 ½ feet. They are proposing a maximum of 70 units. They believe the off-street parking is a true diminimus exception to the RSIS standards. 131 parking spaces are required and they are proposing 124 spaces. Under this new proposal they are looking at a ratio of 2 spaces per unit for 9 of the units that will be using the tandem spaces and 1.74 spaces per unit for the other 61 units. They believe it is more than adequate for tenant and visitor parking.

Attorney Wyciskala thanked Chief Dorr for meeting with their fire consultant and Mr. Reimers. Mr. Wyciskala and Chief Dorr both prepared a report summarizing the meeting. Mr. Wyciskala was in full agreement with Chief Dorr's report.

Exhibit A-11 4-9-19 Proposed Building 2 Height Reduction Calculations was presented by Attorney Wyciskala.

Attorney Alan Zakin informed the applicant that we have 6 members of the Board here tonight.

Planner David Karlebach of Fort Lee, N.J. was sworn in and qualified as an expert Planner. He is familiar with the site. The zone permits single family dwellings on 7500 sq. ft lots and 2 family dwellings on 15,000 sq. ft lots which would yield to 5.8 dwellings per acre. Their original plan had a development density of 44.9 dwelling units per acre and now has been reduced to 38.3 units per acre. They have gone from 87 units to 70 units proposed.

The Building Height for this zone for single family homes is 2 ½ stories and 30 ft.

Building 1 is 4 stories - originally 50.5 ft - now 47.0 ft

Building 2 was 5 stories- originally 58.1 ft - now 3 stories - 34.5 ft.

Parking Requirements – originally 155 spaces required and they proposed 124

Now 131 spaces required and they are proposing 124 -shortage of 7 spaces

They have relocated the dumpster away from residents.

Unit Breakdown is 51 – 1 bedroom, 18 – 2 bedroom and 2 – 3 bedroom units.

This is a bifurcated application and the applicant will be returning with a fully revised site plan if approved and will discuss the bulk variances at that time.

This is a RM75 residential zone district and apartments are not permitted so they need a use variance. They also need a D-1 variance for 2 principal buildings on one lot as well as height variance for both Building 1 and 2. Building 1 is 47 ft with 4 stories and Building 2 is 34.5 ft. Maximum permitted is 30 ft. and 3 stories.

Density is 5.8 per acre and they are proposing 38.3 per acre.

Parking relief is for 7 spaces. It is a de minimis exception from the RSIS standard.

Mr. Karlebach read from the 1994, 2005 and 2015 Master Plan in reference to the housing goal which is a variety of housing types and densities and balance housing supply in appropriate locations to serve the borough. It also notes that the Borough needs to initiate land use policies to further the appeal and success of the commercial district. He stated that this site is 1 block away from Main Street. It used to be years ago that the local businesses supported the resident population but now we find that the residential population supports the local businesses.

The surrounding land uses are a mixed-use area with Orchard Street being 2 family, Fern Ave being 2 family and single family and Kossuth being 2 family. There is a large Industrial Building 200 ft east of the site and north of that site is the Wharton Business Campus.

The rationale for granting a D variance, he referenced the findings in Maduchi which provides Planners with guidance on use variance that do not involve inherently beneficial uses. Mr. Carlback stated that they feel the site is well suited for this type of use because of its proximity to residential areas and local businesses, walkability and the fact that this is an oversized lot and the large open space afforded by the adjacent industrial use. The apartments will support the Wharton Business District. There is an abundance of single and 2 family homes in the area and the apartments will help to diversify the housing. It is a very modest site with limited curb appeal. This project will revitalize the site with 2 new buildings with modern architectural treatments, new paving, new lighting, landscaping and signage. It will have an immediate effect on beautifying this site. It will eliminate 2 non-conforming uses and replace it with a more appropriate use at this location.

They need a variance for multiple principal building on one site. It is common for apartment complexes to have multiple buildings. The 2 buildings were proposed to work with the geometry rather than one big massive building and would be more at odds with the single and 2 family residential neighborhood. Building 2 is much more in scale with the surrounding residential area.

As far as the height variance Mr. Karlebach stated that they have guidance from the case of Rosso vs. Spring Lake Heights which is the leading case on height variances. With the height variance they have a different burden of proof. From the Rosso case - is it consistent with the surrounding neighborhood and the structure would not interfere with the penetration of light or air onto the surrounding areas. As he mentioned before, Building 2 is much more consistent with the height of the residential development in the neighborhood. Building 1 is appropriate given the large portion of land to the east and the setback from any residential homes. Building 1 is about 100 ft from the nearest home on Lot 14.01 and Building 2 is about 67 ft from the nearest

home on Lot 3. The RM-75 requires a front yard of 25 ft and rear yard of 20 ft. and they far exceed those setbacks.

The under-building parking adds 1 level and about 10 ft to the overall height of the building. To achieve the amount of parking on site they have to have underground parking. The building height enables the underbuilding parking and furthers the appeal of the building by creating parking that is protected from the elements and is safe and secure. Shadowing and overcrowding are not evident on this application as the site plan benefit from the expanded setbacks and attractive building design.

The density variance must meet special reasons and those reasons must promote the purpose of the Municipal Land Use Law. Particular suitability is not an issue with density variances. Mr. Karlebach feels this density does satisfy the Grubs test. The density here is a good thing, it offers much needed housing and supports the local businesses. The density as proposed is needed to develop this site.

The proposed parking now is 1.77 parking spaces per apartment which is consistent with standard planning practices. All units will get 1 reserved parking space leaving 54 spaces for visitor and overflow usage. No on street parking is proposed. They are short 7 spaces. He stated that Ms. Dolan's testimony showed a bus stop at the end of the street on Main Street which further reduces parking demand on this site.

The Bulk variances are either a C-1 – hardship or a C-2 opportunity for improved planning and zoning. Mr. Karlebach believes this application does advance the purpose of the land use law. They believe multi family dwelling units at this location does achieve many planning objectives. It provides new and diverse housing and supports the local businesses. It also provides for adequate air, light and open space by lowering the height of Building 2 and bringing it more in scale with the residential homes in the area. They are providing a variety of homes by adding multi family dwellings. They are providing a desirable visual environment by eliminating the present buildings with much more attractive buildings and adding fencing and landscaping. This is a much more efficient use of the land.

The proposed development will clean up this site. It will add more attractive residential buildings to the area which will promote the public good by supporting the local businesses, adding lighting, parking, landscaping and storm water management. Building 1 is at the rear of the site away from the residential homes and closer to the Industrial uses which is a logical place for this Building. Much of the parking is hidden from the public view. He sees no substantial detriment to the public good or the zone plan. He stated that Ms. Dolan's testimony stated that there is no change in parking demand versus what is there on the site now.

Attorney Zakin stated that after the meeting of Chief Dorr, Mr. Reimers and Mr. Naylis, Attorney Wyciskala and Chief Dorr both put out a memo. Attorney Wyciskala earlier tonight stated that he was in agreement with Chief Dorr's memo.

Fire Chief Dorr addressed the Board. He stated that he had met with Mr. Reimers and Mr. Naylis. The reduction in height of Building 2 has changed their whole outlook. The rear of this

building is now accessible and they can access the balconies with their 24 ft. ground ladders because they don't need the distance of angle to approach the building. The reduced height is no more than a residential home. They would have to walk their ladders to the back of the building. They had a preliminary drawing done on the computer and their 100ft truck aerial can reach the roof from a further distance of the parking lot as well as the back of the structure and they are out of any collapse zone. They added egress size windows to Building 1 at the front of the building in the stairwells of each landing. This would help get into the building as well as rescue out of the building. They also removed the fire dept. standpipe connection system from the stairwell and put them in the parking garage. They also added a sprinkler head at the egress doors of each apartment. They will install residential hood suppression systems in each kitchen. These systems are equivalent of the hood systems in a restaurant. They will be maintained yearly. It is one of the safest properties that he has seen. They are adding flush curbing on the corners of the islands which will allow the fire dept. apparatus to mount the curb and continue without damaging the apparatus or property. They ask for no oak trees planted in the islands. They also confirmed that the water line is 8" to the fire hydrant on Orchard St. This is where the developer will be tapping to add another fire hydrant which is more than sufficient for fire operations for 1 or the other buildings. There were a lot of changes and changes in the right direction. He was not concerned about a collapse zone if the fire was contained to one apartment because of the revised construction and sprinkler heads which should keep it contained in 1 apartment. If it spreads then they would have to go into a defensive tactic and move all their equipment back away from the building. At some point they may have to access the Industrial Park. The 2-hour stairwells on each end of the buildings make the buildings stronger. The aerial truck would be a safe distance from any collapse zone and could still reach almost to the center of Building 2. He pointed out on the plans where they would place the aerial truck on site to reach different areas of the buildings. These building do not have attics but flat roofs. It is a mansard roof that drops in and shields the HVAC units. There is access to the roof from both ends of the buildings.

Attorney Zakin went over the conditions relating to fire.

1. Fire and police emergency access from all 4 sides of the building.
2. Traffic turn radius for fire truck access approved by the Fire Chief.
3. Chief Dorr's letter dated 3/29/19 – applicant to agree with the specifications of this letter.

The meeting was now open to the public for questions for Chief Dorr. Hearing no questions, the meeting was now closed to the public.

Attorney Wyciskala clarified for the record in addition to the parking variance and D variances they do need the following bulk variances:

1. Front yard setback for Building 2 of 32 ½ feet where 50 feet is required. They are requesting a variance for 17.5 ft. where it parallels Kossuth Street.
2. Impervious Coverage – 40% required - the existing site is 70% and they are proposing 81%.
3. Lot Coverage or Building Coverage - 20% allowed and they are proposing 30%.

Planner Karlebach explained that when you have a use variance application all of the C variances are assumed under the D variance merits. By approving the D variance and the site plan you are also approving all the other Bulk variations.

Attorney Zakin stated that there may be more C variances when they present the site plan. Attorney Wyciskala stated that they hope that they had captured the majority of the bulk variances.

A-12 4/29/19 A – Photo looking down Kossuth to Canal House + 21 units.

12-B - Close up view

12-C - Close up of the small unit building, residential annex front

12-D – Kossuth looking to the right side of the property with rear of homes on Fern Ave.

12-E – Kossuth looking towards Main Street where Building 2 will be located

Attorney Wyciskala stated that Planner Karlebach has not been the planner on this project since the beginning but is now the planner. Michael Tobia was the Planner from the beginning and was not available for this meeting.

Chairman Loury asked Mr. Karlebach when he made the assumption that this project was well suited for this site, did he take into consideration the impact of the Port Oram site. Mr. Karlebach stated that he definitely did. He considered the size of this site and looked at it as an opportunity of what could be removed and replaced with something, he believes is a better fit for this neighborhood.

Mr. Steele stated that the site is particularly suited for residential use but he does agree with the size of the project. All the variances they are asking for are because the site isn't big enough for the density of the units that they are proposing. Mr. Karlebach stated every application has an economic component to it. It may not be feasible to develop this property unless a certain density is achieved. You need the density to support the redevelopment of the site. By leaving the site the way it is the Restaurant it could become more successful and have more of an impact on the neighborhood. Mr. Harris stated that this plan is a good solution to the density needed.

Mr. Rathjens asked about the negative impact of the shading onto the residences around the site. It was determined by Planner Karlebach that the shadows from the buildings will not be on any of the surrounding residents. The buildings 34 ½ foot height is marginally above what is permitted. Chairman Loury stated that the building is 4 ½ ft over what is permitted and doesn't feel that 15% higher than what is allowed is not marginal. Mr. Masucci stated that the shadows will fall on the parking lots.

Attorney Wyciskala stated that they eliminated 1 floor of building 2 which eliminated 8 units. They are going to try and redesign the layout to include 4 of those 8 units. Their goal is to have a maximum of 70 units. The change will be in the 1-bedroom units.

Attorney Zakin asked what the basis is for the 7 parking spaces that they called de minimis. Mr. Karlebach was relying on the testimony of Ms. Dolan that the parking was sufficient. The ratio is 1.7 per unit compared to the 1.3 parking spaces per unit that is the standard for a development such as this.

Mr. Harris asked if Mr. Karlebach considered the design of the property and the building to be consistent with the nature of the neighborhood. Mr. Karlebach felt it was a logical placement of

the buildings. They have 2 buildings rather than 1 large massive building. It is somewhat of an irregularly shaped site so everything on the site has to make sense such as the underground parking, buildings, parking and circulation. He stated that it is a safe site and a logical arraignment of the buildings. With lowering the height of the building, it definitely blends in well with the neighborhood and Building 1 has a much stronger relationship with the industrial buildings and does not feel it is impactful on the neighborhood.

Roger Steele asked if Building 1 was a story or so higher and Building 2 did not exist what does that do to the site. It takes away a lot of the issues; more space and less encroachment on Fern Ave. Mr. Karlebach stated he was not here for the other meetings but to him the plan now is a logical arraignment and the scale of buildings is appropriate and not offensive to the neighborhood. Generous setbacks, building heights and everything in combination aids in integrating this into the rest of the neighborhood. Roger Steele stated that the setbacks are adequate. The setback behind building 2 is 10 ft. What makes that generous. Mr. Karlebach stated that relative to the established development in the area, the 67 feet that is being maintained is certainly enough. The 10 ft set back applies to a building that is 30 ft. high and their building is 34.2 ft. high. He doesn't consider that to be a significant deviation in terms of open space, crowding and blocking of light.

Mr. Steele stated that one of the challenges is that there is only 1 road in and out and that is not something that can be remedied. Also, as far as all the other challenges that were previously discussed relating to traffic, parking and density as it relates to the 1 road in and out, what is Mr. Karlebach's opinion. Mr. Karlebach stated that they are not proposing anything that could currently occur on the property. He stated that he is relying on Ms. Dolan's testimony and agrees with her findings. Chairman Loury stated that right now there are only 21 units on the property and asked Mr. Karlebach to explain his statement that they are not proposing anything that could currently occur on the property. Mr. Karlebach stated that if they had a very, very successful restaurant it could generate a huge amount of traffic and probably not the type of traffic that they would be interested in in terms of night time hours. Mr. Steele stated that is true but that is the situation we've been handed but this is an opportunity to not perpetuate it if they don't think it's the right thing to do. Mr. Karlebach agreed 100 percent and thinks this is a great opportunity.

Some discussion followed about making it a condition of approval that there be no parking on one side of Kossuth St. at the discretion of the Mayor and Council. Mr. Steele stated that it had been discussed and decided earlier that the Board send a letter to the Mayor and Council recommending them to look into parking and circulation of this entire area.

Planner Caldwell asked if Mr. Karlebach reviewed the Borough's Housing Element and Fair Share Plan and the ordinances in respect to our Affordable Housing. He is aware of that requirement in the ordinance. She asked if it had any bearing on the D variances since there has been no testimony on affordable housing. Attorney Wyciskala stated that they are required to have a 15% set aside for affordable housing. Their position, relative to that, is that they will comply. That is the basis for the 3 bedrooms that they have and will comply with COAH. Ms. Caldwell stated that 15% would be 3 – 3-bedroom units. Attorney Wyciskala stated that currently they are proposing 70 units. Currently on the site there are 21 units and their proposal is that their 15% should be based on the net increase being the 49%. There is nothing in the

regulations that say they cannot do it. In the prior methodologies there were challenges and the outcome was that the set aside was based on the net residential growth. There is no deed restricted affordable housing units there now.

Planner Caldwell stated that the issue is that the Borough entered a court settlement and part of that settlement they got what is called the Vacant Land Adjustment. Which means they got their numbers adjusted down because we do not have a lot of vacant land. As part of that settlement the Borough agreed to any new development such as this redevelopment where they get a density bonus or the density is greater than 6 units to the acre the developer would provide a 15% set aside for rental and 20% set aside for sale units. The concern is that this is an untested method based on regulations that were thrown out. If they are out of compliance with the court settlement by a decision allowing them to go with less than 15% who does the burden fall upon. She suggests that the Borough Attorney review their proposal and make sure there would be something in the file with respect to that decision. In 2020 they have to report back to the courts.

Attorney Zakin stated that a condition would be that they are COAH compliant and be reviewed and approved by the Borough Attorney. Ms. Caldwell thinks it should be 15% satisfied based on the statute and it would be up to the Board whether they want the Borough Attorney to review this. Mr. Wyciskala thinks it should be 15% of the net rather than the actual. $15\% \text{ of } 49 = 7$ vs $15\% \text{ of } 70 = 11$. The applicant would be compliant with whichever one is decided on. Ms. Caldwell stated that it is a legal argument and would rather it be a legal decision by our Borough Attorney. The Board agreed.

Engineer Borinski asked since the plans were not revised would the building footprints change. Mr. Wyciskala stated that the footprint would not change.

Acting Chief Young stated that with the 124 proposed parking spots and 131 required he is concerned with all the other development in town, where the 7 vehicles will park off site. All the adjacent roads fill up at night. John Wyciskala stated that the RSIS standards for residents and visitor provides for 1.4 – 1.6 spaces per unit. Ms. Dolans testimony of 74 spaces was well within the ratio. Now with the revisions it is 1.7 per unit. Her testimony concluded that there were no issues with parking and there should be no need for on street parking. She also presented traffic reports in respect to trip generation in her 12/31/18 report which showed 40 trips in the am which would be 1 car every 2 minutes. Evening peak hours shows 1 car every 3 ½ minutes. This would be reduced with the reduction of units to 70. Engineer Borinski stated that RSIS does allow for the de minimis exception and says that it better reflects local conditions, you can adjust for it. Planner Caldwell does agree that there have been multiple studies that show that these types of developments tend to have lower parking demands than RSIS typically assigns. RSIS is more designed for suburban models and even where there is not a lot of mass transit people have fewer cars than what RSIS accounts for. 1.7 would be a reasonable parking calculation for the development. Ms. Caldwell suggested that the management of the complex monitor the parking and if they are running out of spaces, they may have to limit the number of cars per unit. Attorney Wyciskala agreed and stated that if the number of spaces was limited then this complex may not be the complex for people with multiple vehicles.

Acting Chief Young asked for Title 39 and Attorney Wyciskala agreed. Acting Chief Young stated that they are doing a survey of the current residence in that area as to how many cars, parking spaces and who is parking on the street. They are looking into residential permits for parking in that area. There is a problem, they are over their street capacity for parking and are now looking at parking ordinances.

Rick Reimers explained that they are going to assign 92 – 95 spaces to their tenants which is basically 1 per bedroom. This will be done internally. The rest of the spaces will be for guests. There won't be 7 extra cars with no where to park. If they violate their lease, they will get kicked out. If someone has a 2 bedroom and only needs 1 space then there is an extra space that they can give to someone else. For a 3 bedroom who has 3 cars they will only assign 3 spaces if they are available.

Attorney Wyciskala stated that when they do a full site plan there will be more details such as signage, striping and traffic flow and the police will be able to review it at that time.

The Board took a five-minute break.

ROLL CALL was taken and the following members were present: Chairman Ken Loury, Ms. Charlotte Kelly, Mr. Roger Steele, Mr. Mark Harris, Mr. Peter Rathjens, Mr. Patrick O'Brien Attorney Alan Zakin, Planner Jessica Caldwell, Engineer Christopher Borinski and Secretary Patricia Craven.

The meeting was now open to the public.

Linda Bencivenga, 39-41 Fern Ave. pointed out her Lot 3 on the map and asked where they got the 67 ft. from. Mr. Karlebach stated the 67 ft was from building to building. He also pointed out the Building 2 setback from her property varies from 12 ft to about 20 ft.

Paula Biseglia, 2 Orchard St. pointed out on A-12C the lights on the 1 story building that is next to the Canal House. She stated that the glare from that small light shines into her back yard and into her bedroom so can you imagine when there are 5 stories there. She was also concerned with the parking spaces that face her property and the headlights shining on her home. Mr. Karlebach stated that because of the fences she would not have any headlights shining onto her property. Her concern is the height of Building 1 and the light that would shine on her property. Attorney Wyciskala stated that when they come back with their detailed site plan there will be shields on the parking lot lights as well as any building lights. There will be no lights that will shine off of the property. Mr. Masucci stated that they typically have a down light with a horizontal shield that blocks any light from shining out from the building. Ms. Biseglia feels she is the house that is getting it all. She has been there 32 years in this tiny residential neighborhood.

Linda Bencivenga thanked them for taking the 1 level off of Building 2. She asked what the height would be if she added 2 more floors to Building 1 and took away Building 2. Mr. Karlebach stated that the design theory was to have the heights consistent with the building heights in the neighborhood. Having 2 buildings on the site and minimizing Building 2 he feels it better integrates with the surrounding residential area. Having a high-rise structure would

definitely be out of context with the environment. You would then have a big sea of asphalt throughout the rest of the site.

The meeting was now closed to the public.

Attorney Wyciskala stated that this concludes their presentation. They will come back next month with their summation.

A Motion was made by Roger Steele and Seconded by Charlette Kelly to adjourn.

Meeting adjourned 9:31 p.m.

Patricia M. Craven – Secretary

Ken Loury - Chairman