

WHARTON PLANNING BOARD  
REGULARLY SCHEDULED MEETING  
April 12, 2022

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, Mayor William J. Chegwiddden, Councilwoman Nicole Wickenheisser, Ms. Charlotte Kelly, Mr. Roger Steele, Mr. Marc Harris, Mr. Patrick O'Brien, Mr. Peter Rathjens, Mr. Brian Bosworth, Mr. Christopher Fleischman and Ms. Barb Chiappa. Also present were Attorney Alan Zakin, Engineer Christopher Borinski and Secretary Patricia Craven.

The reading of the bills was next. A Motion was made by Patrick O'Brien and Seconded by Marc Harris to approve the bills as read. YEA – 10 NAY – 0

Next, was the approval of the March 8, 2022 Planning Board Minutes. A Motion was made by Brian Bosworth and Seconded by Roger Steele to approve the minutes. YEA – 8 NAY – 0 ABS – 2 (Chegwiddden, Wickenheisser)

The Mayor and Councilwoman were excused from this application.

The continuation of the application for 57 S. Main St., Nouvelle, LLC, was next on the agenda. Mr. Bosworth and Mr. O'Brien have both signed affidavits that they have listened to the tapes of the prior 2 meetings and are eligible to vote on this application.

Both Attorney Zakin and Chairman Loury stated that this is the time for public testimony only and the time for questions has passed. Attorney Zakin explained to the public the process, rules and parameters of what the Board can consider and gave some guidelines for conduct (which is on file with the Board Secretary).

Attorney Zakin stated that the time for questions has passed. This is the time for testimony from the public. He stated that the Board Planner and Board Engineer are paid by the applicant but are employees of the town. The applicants have their own experts here tonight. He stated that both groups of professionals have agreed on the essential elements of the storm water management and flood control and that the application is sufficient in regard to those topics. Also, as far as traffic, parking and snow removal the Board, applicant and Board Professionals have agreed on the plan, design and elements of affordable housing.

Attorney Zakin summarized the application and reviewed the proposed 28 conditions.

1. The buffer between the apartment lot's dumpster and the group home lot's entrance ramp will be ten feet wide.
2. Applicant and Board Engineer & Attorney, Borough Administrator and Attorney will finalize a mutually agreeable solid waste collection plan that complies with all applicable legal prior to final approval.

3. HVAC units must comply with applicable sound and screening standards as approved by Board Engineer and Borough Administrator.
4. Applicant will remove the step and / or add a curb ramp at the end of proposed sidewalk to Main Street so that it is ADA accessible, as approved by Board Engineer.
5. For structure planned for proposed Lot A, applicant will add brick to the center of the front façade of the building, and carry the lower band of brick and vinyl around all four sides of the structure.
6. Four (4) ft fence will surround storm water basin, as approved by Board Engineer.
7. Drainage in basin will dissipate within 72 hours from first accumulation, as approved by Board Engineer.
8. Additional trees will be planted along South Main Street, as approved by Board Planner.
9. If necessary, landscaping for screening will be added to screen from headlights, as approved by Board Planner.
10. Applicant will work with the Board Planner, who will approve final colors and materials for both proposed Lots A and B.
11. The area currently indicated on applicant plans as “Covered Porch” should be relabeled to indicate that is a “Covered Handicapped ADA Accessible Ramp”, as approved by Board Engineer (can be removed from final Resolution if completed by April 12, 2022 board meeting).
12. Board Planner will approve one sign for the residence on each proposed lot. Page 3 of 4
13. No paid, sublet, leased, or reserved parking spaces; notwithstanding any reserved for handicapped and / or electric vehicles, as required by law for both proposed Lot A and Lot B.
14. No Parking sign by apartment dumpster per approval of Board Planner, Board Engineer and Borough Administrator.
15. A new final traffic report will be updated by Applicant’s Traffic Engineer to include all approved sites, including those that have not yet been occupied.
16. Title 39 is applicable for both proposed Lot A and Lot B.
17. If snow accumulation obstructs more than one parking space, snow will need to be immediately removed off site and such condition will be memorialized in Storm Water Management, Operations & Maintenance Manual (“O & M Manual”) for both proposed Lot A and Lot B.
18. There will be cross easement agreements memorialized in the deed, and in the O & M Manual that specifying both the sharing of the storm water drainage system and the maintenance thereof, as well as which lot owner has responsibility for landscaping and maintenance of specific areas. The O&M Manual and any future revisions shall be recorded upon the deed of record for each property as per the Storm water Control ordinance.
19. The O & M Manual, in addition to the specifications provided described in the Conditions herein, will be approved each for Lot A and Lot B to ensure that the conditions so described can be appropriately enforced by the Borough Code Enforcement Officer, as approved by Board Engineer, Board Attorney, Borough Attorney and Borough Administrator.
20. The subject proposed properties on Lot A and Lot B will each be deed restricted for 30 years as Affordable Housing, for all units as proposed and will follow Uniform Affordability Controls, per N.J.A.C. 5:80-26.1 et seq.
21. Subject Application, if approved, will count toward off site Inclusionary Affordable Housing for “Wharton Woods” project in Fair Share Housing Settlement (“Settlement”) memorialized on October 26, 2016, subject to Wharton Woods own pending application being so approved.

Otherwise, subject Affordable Housing credits will be applied to the Settlement's "Unmet Need", to be classified as 100% Affordable Housing.

22. A new deed must be filed with the Morris County Clerk, reflecting the subdivision memorialized, and including appropriate conditions described herein, to be approved by the Board Engineer, the Board Attorney, and the Borough Attorney and Borough Administrator.  
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23. There will be no external egress or ingress to the basement for Lot A.

24. Applicant's Planners Report Outline amended 11/16/21, must be put online for public review (can be removed from final Resolution).

25. Applicant has two (2) years from the date of this Resolution to complete compliance of all conditions memorialized herein, or they have to reapply to the Planning Board. Extensions may be requested by letter to the Board, and will be approved if considered timely, and not considered a material change.

26. In all aspects, other than the terms explicitly detailed herein, the site will conform with the Borough's ordinances.

27. All outstanding taxes, fees, fines or other monies due the Borough of Wharton or any of its affiliates, subsidiaries or departments must be satisfied.

28. Approval and compliance with and by all other Federal, State, County and Municipal Agencies having jurisdiction.

Chairman Loury commented on:

#4 – was this included in the revised plans. Attorney Capizzi stated that they have not done a revised plan and if the application is approved, they will submit a revised plan before the approval of the resolution.

#13 – asked that "for tenants or the public" be added.

Chairman Loury also wants a condition added that they have to maintain the property compliant to the town ordinances subject to the code enforcement officer and Administer of the town. Attorney Capizzi agreed.

Attorney Capizzi stated that they cannot reduce the width of the dumpsters. It was suggested that they move the location to the end of the parking lot along S. Main St. Chairman Loury did not like that location. Attorney Capizzi stated that the best location would be where it is presently located and they can have it emptied 3 – 4 times per week as needed and will work with the Borough. Attorney Zakin stated that the town will be picking up the garbage and the applicant will work with the professionals and the town to come to an agreement on garbage and recycling pick up.

Chairman Loury opened the meeting to the public for public testimony.

Susan Davis, 39 Ford Ave., a resident of Wharton since 1978, was sworn in. She expressed her appreciation to the Board members; she served on the Planning Board when Sterling Heights came before the Board. During those hearings the Police Chief and the Fire Chief expressed concerns with several roads that they believed their emergency vehicles would have trouble accessing and they asked the applicant to redesign those roads. The push back from the applicant was intense but they did redesign some of the roads to create safe access for the emergency

vehicles. She shares this history because she believes the Police and Fire Chiefs both have brought up valid concerns about this development. She asks the Board to listen to the experts. She stated that allowing variances for parking will not add to the quality of life in that area. She asked that they have the developer go back and redesign their plan so there are no parking spaces on Main Street. On a personal note, she stated that the lack of sufficient parking spaces causes anxiety and tension in a neighborhood, in particular, on Ford Ave., and does not create neighborly relationships.

Robert Wagner, 58 S. Main St., was sworn in. Mr. Wagner was concerned about where the cars are going to park if there is a foot of snow? The streets are too narrow, he stated that when the school bus turns onto East Thomas St. there is barely enough room for it to go through especially with parking on both sides of the street. He stated that the big building in the middle of town that they are building has parking in front of it. The road is too narrow for all the traffic to get through, especially the large trucks. With parking on both sides of the road the traffic gets clogged up in that area. Main Street in front of his house is also too narrow, especially with parking on both sides. He saw his next-door neighbor's car get totaled in front of her house. When winter comes, he is sure there will be accidents there. He asked why they can't put this development up on the hill with the Wharton Woods development. He also stated that the owner of this property doesn't care about the neighbors; he doesn't even rake the leaves, which eventually end up across the street in his yard. He doesn't care about this property. Chairman Loury asked if Mr. Wagner wanted the applicant's attorney to address any of his comments. Mr. Wagner stated he did not. Chairman Loury stated that Mr. Wagner's comment about the maintenance of the property is another reason the condition about maintenance of the property was added to the list of conditions.

Dan Murphy, 24 E. Thomas St. a resident there for 36 years, was sworn in. Mr. Murphy brought up the Fire Dept. concerns about the overflow parking. Mr. Murphy stated that there was a recent chimney fire on Main St. just 3 doors down from 56 S. Main St. and a number of streets were locked down due to the responding emergency vehicles. All the streets that were locked down were the same streets that the Fire Chief mentioned in his report of what indeed could happen.

Mr. Murphy stated that the Board should not approve an application that does not have enough onsite parking. The traffic study and testimony by Planner Caldwell stated that 23 parking spaces were required and they are proposing 13 for the low-income housing on site and 10 off-site parking spaces on Main Street and Robert St. Mr. Murphy presented his pictures of Robert Street from last week showing no parking spots.

They were marked into evidence as:

P-1, 4/12/22 – One Picture of Robert Street parking facing south bound taken 7 am, Tuesday - 4/5/21 – Mr. Murphy stated that this photo disputes that Robert Street can be used for overflow parking.

P-2, 4/12/22 – Two pictures of W. Thomas St. taken 7 am Tuesday 4/5/21 showing the parking situation. Mr. Murphy asked where are these 8 cars going to park when this parking is taken away which he said was recommended by the Fire Dept. Chairman Loury stated that this is not part of this application, the Board cannot approve a "no parking" designation on any streets, that would be the Council. Attorney Zakin stated that if the Board votes on this application they are

not voting regarding eliminating parking on W. Thomas St. Attorney Capizzi stated that they have 18 spaces on the property for parking for the apartment building.

Chairman Loury stated that there has been a lot of conjecture about the parking on Main St. being part of this application and that is not true; there was no testimony stating that it was. Planner Caldwell stated that there are 17 spaces proposed for the apartment building. The applicant's traffic engineer noted there are spaces on Main St. but they are not proposing that those are part of the application. The testimony was that all of the parking can be accommodated on site. Chairman Loury stated that the applicant, the applicant's Engineer, the Borough Planner and Engineer all agreed that there is enough on-site parking for the residents. If they have guests there is an overflow, the guests can park on Main St. Planner Caldwell agreed and stated that that is what that type of parking is for; visitors can park on the street. It is the same for anyone in that neighborhood who has visitors they can park on the street. Planner Caldwell again stated that 22 parking spaces are required and they are proposing 17. She stated that the parking demand for affordable housing is much lower than for market rate housing and she agrees that the 17 will be enough. The proposed charging spots for electric vehicles are required for all New Jersey municipalities by state law.

Attorney Capizzi pointed out to Mr. Murphy the 17 parking spots on the plans for the apartments building and the 4 parking spots for the group home. They are required 22 spots minus the 2 for the EV use which gives you 20 and they are proposing 17 spots for the apartments. The RSIS calculation is 22 parking spots and 6 of those are for guests. The need for units out of that calculation would be 14 or so for the residents. He stated that in the traffic study it was noted that in the event that there was not enough parking on site for guests they could park on Main St.

Chairman Loury stated that it is all over Face book and there are signs on Main St. that say "reserved parking for 57 S. Main St." He wants to make it clear to everyone that this is incorrect and there are no reserved parking spaces on Main St. for this property. The spaces are for overflow guests and anyone living in that area can use the parking spots for their overflow guest parking as well. It was also in the testimony that the overflow could also park on Robert St.

Roger Steele agreed with Chairman Loury and stated that neither the applicant nor the Board can designate off-site parking for this site, only the Borough Council has the mandate to do so.

Traffic Engineer Dolan stated that cars can park in the EV spots whether or not it is an electric car; they are not reserved for only electric cars.

Attorney Zakin asked Mr. Murphy to send the exhibits to Secretary Craven so they can be part of the record.

Marked into evidence was P-3 – 4/12/22 – 3 pictures showing the side view of the slope next to the barn facing Mill St. Mr. Murphy stated that the truck in the photo is 6 ft. 10 inches high and the slope is 2 ft above that. Looking at the pictures shows it is a big drop. Mr. Murphy stated that the applicant's Engineer, when asked about the slope, stated that he did not take notice of a significant slope. He pointed this out to the applicant's Engineer. Mr. Murphy stated that he

spoke to the owner of 62 Robert St. who stated that they are experiencing drainage issues in their back lot from water coming down Mill St. and also coming from 57 S. Main St.

Marc Harris asked what conclusion does Mr. Murphy want. Mr. Murphy stated that this application is going to affect someone else's property and life and it should be taken into consideration. He also was concerned as the Fire Dept and Police Dept were concerned about where they are going to put the snow when people are parking off site? Also, where are the people that are parking on the street going to park when there is snow especially since the numbers have changed. Chairman Loury disagreed with his comment that the numbers have changed. He stated that the testimony has been since the beginning that the on-site parking will be satisfy on site and the overflow guests would be on Main St.; the same as anyone else that lives on Main St. Chairman Loury stated that he used to live on Main St. and his overflow guest parking was on Main St. To be clear their numbers have not changed. Chairman Loury stated that one of the conditions that was read was that if the snow was so substantial that one parking space is inactive, the snow would have to be removed off of the site so that they can accommodate parking for everyone on site. Mr. Murphy stated that the Traffic study requires 23 spaces and the applicant is requesting 13 spaces. Chairman Loury stated that in this same document they are requesting 13 and then added the 4 at the second meeting for a total of 17spaces

Attorney Zakin stated that there was testimony by both professionals that flooding would be reduced and the parking was sufficient. Mr. Murphy stated that there was no talk at the last meeting of 4 spots for the group home. Mr. Steele stated that the 4 spots on the plan, in front of the group home, are for the apartment building not the group home. They are located on the apartment building lot. Attorney Zakin stated that on page 6 of the minutes it said that Ms. Dolan stated that their latest plan provides for 17 parking spaces for the 11 unit building.

Mr. Murphy brought up the dumpster being 5 ft. from the group home and also the property line being 3 ft from the residents on Robert St. Mr. Steele stated, looking at the plans, it is a 10 ft. side yard setback and a 12 ft. 5" to the garage. Attorney Capizzi stated that the set back is 12 ½ ft to the garage, 22 ½ ft to the main dwelling and 10 ft. to the edge of the driveway.

Mr. Murphy stated that all the tenants on Robert St. have no idea what is going on because the notice goes to the owner of the property. He stated that 3 of the owners he spoke with did not get letters but they may not have picked them up.

Mr. Murphy stated in closing he thinks that everyone here tonight is against the 11-unit apartment building and not so much the single-family group home. He stated that when Chairman Loury asked if they could reduce the 2 buildings to 1 structure, he was immediately shot down by the applicant because of them using the low-income housing that they are taking away from Wharton Woods. He doesn't know when this was agreed upon but why do we have to deal with the low-income building. If there was enough room on this site it would be fine but they do not have enough room. Chairman Loury stated that he would rather have just 1 structure. Mr. Murphy stated that it is too much in one area. He said they should not give them 1 variance. He also stated that the parking on Main St. is not going to work.

Attorney Zakin stated that the affordable housing would only be tied to Wharton Woods if they are approved and if they are not, then this would be 100% affordable and considered by the state to be inherently beneficial.

Roger Steele stated that if this application is denied and Wharton Woods is approved there affordable housing will all be on-site.

Mr. Murphy asked wouldn't it be better to hear Wharton Woods prior to this application?

Roger Steele stated that Wharton Woods was denied and this application was on the agenda to be heard before the amended Wharton Woods was to be heard.

Mr. Murphy asked why the affordable housing for Wharton Woods has to be in this area instead of being part of Wharton Woods. Attorney Zakin stated that it is a state law that every Municipality has to comply with affordable housing rules. This conforms with our Master Plan and is why they are putting it here, even if Wharton Woods is denied. If it is not tied to Wharton Woods, it then becomes more likely, if it 100% affordable, which is what is inherently beneficial (meaning anything similar to a hospital or school where it is considered so beneficial that unless there is very extreme circumstances where the public would be in some grave danger) it would be accepted no matter where it goes, no matter what the zoning is.

Chairman Loury stated that the job of this Board is to hear and review an application, make recommendations and whether we like it or not we cannot deny an application because we don't like it, that is the law. We do the best we can with what we are presented.

Mr. Murphy stated that this project is too much, too fast, it's all at one time and everyone is overwhelmed. You can't even get through Main St.; there is record number of side mirrors being broken. Mr. Murphy had no evidence of that. Chairman Loury stated that mirrors have been smashed since there was a gas station on Main St. in the 70's.

Marked into Evidence was:

P-4, 4-12-22 –Video of N. Bound S. Main St. – taken 4/5/22 between 3:15 and 4:00 pm. with cars parked on one side of S. Main St. Mr. Murphy stated that this shows the cars and a tractor trailer going north to south driving over the parking spots. He stated that this is the narrowest part of Main St. He also added that when this video was taken it was when he thought that these 5 spaces in front of 57 S. Main St. were reserved for this applicant.

Chairman Loury opened the meeting for questions from the public for Mr. Murphy.

Mr. Steele stated that there was a lot of testimony about Stormwater Management and how the drainage goes into the detention basin and any overflow would drain into the county system. Mr. Steele stated that he walked the property and saw the steep slope that Mr. Murphy was referring too. Mr. Steele specifically asked the engineer at the last meeting would the drainage be better or worse and the engineer stated that it would be better than it is now. Mr. Steele asked Mr. Murphy if he thought it was going to be better or worst with the new system they will be installing. Mr. Murphy stated that the lowest part is going towards Robert St. and Mill St. and personally he thinks it is not going to get any better.

Mr. Bosworth asked Mr. Murphy is he thought the traffic was worst in front of 57 S. Main or between Main St. and Central Ave? Mr. Bosworth goes through there several times a day; he has a large truck and does not worry till he gets past Mill St. Mr. Murphy stated that is because there is a bend in the road and that little swale brings the cars away from the parking spots and more towards the yellow line. Mr. Murphy said that he had to go through 6 people before he got 2 brave souls to park there for his video. Those parking spaces that are to be used for overflow are too dangerous. Mr. Bosworth stated that whether Mr. Murphy parks there or someone else, someone is going to park in those spots; it's not going to make it any worse. The only way to fix this issue is to get rid of the parking on Main St. and that is not going to happen. Mr. Murphy stated that they could eliminate parking on one side of the Main St.; nobody parks in those spots in front of 57 S. Main St. The bus stop is also right there. This area is as tight as in the downtown CBD district. Mr. Bosworth stated that Main and Central is very tight but he thinks it's a little better in this area. Mr. Murphy also stated that on Robert St. near Mill St. there is no room for overflow.

Mr. Capizzi stated that the storm water retention basin has a surface area of 1500 sq. ft.

The meeting was closed for questions for Mr. Murphy.

Michael Bezney, 1 Bartek Lane, was sworn in. Mr. Bezney stated that everyone is upset over the parking. He stated that his mirror was hit the other day. The problem is, just like the large building on Main St., nobody has tried to plan for the future. The solution would be to plan for the future. He stated that if they set back the building a little further it would help the county, in the future, if they decide to widen the road. Mr. Bezney has 2 autistic children and has no objection to the group home but stated that the owner of Wharton Woods had said that he had bought this property to donate to an organization for disabled. Only part of this property is being used for the disabled. He was under the impression that probably all of the property was going to be for disabled. Chairman Loury questioned whether there was any testimony on that. He stated that both uses satisfy the affordable housing requirement and at the Wharton Woods meetings it was said that this would satisfy their affordable housing obligation.

Planner Caldwell explained to Mr. Bezney the credits associated with this site. It is a 1 for 1 credit for rental housing. The group home qualifies for bonus credits and so does the apartments as long as they are rentals. They are getting 4 credits for the group home and 11 credits for the affordable housing.

Mr. Bezney thought it would be better with 1 building on the site, built it further back from Main St. so that in the future they can widen Main St.; maybe ask the applicant to donate some property for that reason. Chairman Loury stated that that it is a County Road and the Board has no authority in that decision.

Mr. Bosworth stated that the houses on both sides of this applicant are closer to the road that this proposed building so to widen Main St. they would have to tear those houses down.



Roger Steele stated that the parking for building at 10 N. Main St. is all on-site parking for the tenants and the retail. They did not need a variance for parking. Parking was never an issue for this building.

Attorney Capizzi pointed out on the plans the dash line and solid line along S. Main St. and Thomas St. The dash line is the existing lot line and the solid line is the proposed lot line. The area in between is being given to the county as a right of way for any future road widening.

Diana Leon, 62 S. Main St., was sworn in. She has lived here for 22 years since she was 10 years old. She sees potential in Wharton and is saddened that it feels like they have been valuing the investment of money instantly into the community instead of the way the community actually feels. She stated that the traffic is terrible and she is lucky, unlike many residents, to have a parking space on her property on S. Main St. The increase in construction in town has created many issues. Many times, she has been late to school and work because she is stuck in traffic and she can only see that increasing. She appreciates the speed monitor in front of her house on Main St. especially because of all the children and adults that walk up and down Main St. every day. Sometimes people avoid Main St. on purpose and she stated that Main Street use to be so beautiful and she does see the potential for Main Street continuing to be beautiful but that is not what she is seeing now. She stated that she is opposed to this construction.

Cheryl Manna, 41 Luxemburg was sworn in. She and her husband bought a 4-family home at 69-75 Robert St., in 1999. There are 4 – 2-bedroom units, built in approximately 1900. In 1988 this site had come before the Planning Board at which time there was another home on the property on 2 full size lots which they subdivided. One of the requirements of the subdivision was that they had to, in 1 year, put in an 8-car parking lot in the rear of the building because there was a parking problem. It was much too congested on Robert St. and there was a danger in terms of fire truck safety and circulation. Between 1988 and 1999 Robert Street was wider than it is now with no sidewalks and parking on both sides. Right before their closing in 1999, they were informed that they were in violation of the Resolution from 1988 because for lack of oversight and enforcement the parking lot was never installed. The \$20,000.00 they had to spend on this definitely hit the return on their investment. She believes the intensity of use with the application site is too severe. If they would scale back the apartment building then she would have no issue with the off-site parking. Her tenants each own 2 cars and if they have children, they will have to park on Robert St. She believes the density of the apartment should be reduced in order to allow their to be sufficient units that do not require a variance for parking. They are asking for special permission. The Board is here to protect the public from detrimental effects, which with this application would be overdevelopment. They are encroaching on areas that already have problems. It is going to affect every homeowner in that area and definitely going to affect her as well. People in that area are already fighting over parking spots. She has no issue with the use on the property. In the area of Central and Main St. and the parking issues, she feels like she is in Union City. She asks the Board to try and keep us safe from overdevelopment.

Marc Harris stated that the use is not permitted in the CBD zone and requires a variance for each proposed lot. Ms. Manna stated that she has not problem with the development of the multi-use housing or a group home. There is multi use housing in the area. Her concern is the size of the development; it has to be scaled back. There are reasons there are requirements and parking

always seems to be an issue and the answer to that is - they will find a spot. They are creating a Pandora's Box of problems.

Laura White, 192 S. Main St. asked if this development is going to inhibit her tenant's ability to park. Ms. Manna stated that yes especially after reading the Fire dept. memo which stated that they were proposing to eliminate all parking on Thomas St. When she travels on Thomas St. there are always about 6 cars parked on the street and if they eliminate that parking where are they going to park. It will definitely affect her income.

Chairman Loury stated that it was 9 pm and the Board was clearly not going to be hearing the Wharton Woods's application tonight. Chairman Loury entertained a motion to carry the application to the next meeting on May 10<sup>th</sup>. A Motion was made by Roger Steele and Seconded by Marc Harris to carry the Wharton Woods application to the May 10, 2022 Planning Board meeting YEA – 8 Nay – 0

Fran Schurgot, 46 Robert St. was sworn in. Ms. Schurgot stated that when she was walking down Main St., she notices a sign that said that 5 parking spaces were reserved spaces. She said that the sign misrepresents the facts and should be removed. Barb Chiappa stated that this applicant did not put up the signs; it is not on the applicant's property but on private property next door. Chairman Loury thinks that a local resident put up the sign because they thought that these 5 parking spots were part of the applicants plan which is not the case, they are overflow parking.

Ms. Schurgot also stated that when the fire occurred a couple weeks ago on Main St. the fire truck hit a parked car on Robert St. With overflow parking on Robert St.; it is going to be more difficult to navigating the roads. She also stated that people don't stop coming down Mill St., she has witnessed this happen and is concerned for the safety of the children in this neighborhood. She stated that there is also a noise issue with the traffic on Main St. and the noise issue with the cars in the town has increased exponentially.

Ms. Schurgot stated that at the corner of Mill and Robert St. there was a sign that said "no parking here to corner" which was removed when they were doing construction of the parking lot and the sign was never replaced. She did not notify the town. Chairman Loury asked the secretary to please notify the town.

Angel ` Galloza, 4 Eileen Ct was sworn in. Mr. Galloza stated that Main St. is a mess. He stated that the town is getting bigger, they are adding all these buildings and there are a lot of seniors that are leaving the town whose homes are being sold to families with children. His biggest concern is the school system with all the new families moving in with children, you are going to need more classrooms and more teachers and where is the money going to come from, are the developers putting any money aside to pay for the new schools and teachers. It will increase the taxes of everyone in the town while the developers reap the profit of building these apartments.

Paula Stoback, 62 Summit Ave. was sworn in. Ms. Stoback's concern was for the Police and Fire Dept., the Fire Dept. is all volunteers. She feels we are going to need a paid Fire Dept. and is this applicant going to help out with that? Chairman Loury stated a paid Fire Dept would be a Council decision not this Board. Ms. Stoback stated that parking is horrible in mid-town

Wharton. She feels are Police Dept is stretched out and our Fire Dept. is minimal and unless this applicant is going to fund more Police and Fire Dept., she is opposed.

Matthew McDermott, 85 New Irondale Rd was sworn in. Mr. McDermott has lived in Wharton for 32 years and moved here because of the small-town feel to raise his family. For the last 15 – 20 years the Main St. beautification project has been going very well and now we have this monstrosity on Main St. Now that they are putting more businesses on Main St., where are the customers going to park. Chairman Loury stated that all the parking for 10 N. Main St. is on site for resident and customer parking during the day. There is also a huge parking lot behind the library with a walkway to get to Main St. Roger Steele stated that parking for 10 N. Main St. was never an issue, they have enough on-site parking and they have added parking to the downtown because it is open to the public for parking during the day. Mr. McDermott was also concerned with where the people who park on Main St are going to park when it snows.

Engineer Borinski stated that parking is 25 feet from a stop sign.

Kevin Finnegan, 81 St. Mary's St. was sworn in. He asked what happens if the retention basin doesn't empty after 72 hours, who is responsible. Roger Steele stated that if it doesn't drain in 72 hours the owners will have to repair it. The Board has made this a condition of approval, it will be in the Resolution and it stays with the 30-year deed. Engineer Borinski stated that it is also in the Operations and Maintenance Manual.

Mr. Murphy asked if the concerns of the Fire Dept. and Police Dept. are not taken seriously and disregarded, why are the even involved? Chairman Loury stated that they are not disregarded, because of the diligence of the Fire and Police Dept. both 10 N. Main St. and the proposed building where the Canal House sits are the safest fire proof buildings being built right now. The main issue of the Fire Dept. in regards to this application is the parking on Thomas St. and that is not a decision of this Board. Mr. Murphy stated that the other issue with the Fire Dept. was the lock down of the street when there is fire. Chairman Loury stated that that would happen with whatever is built on this site. It is a tight community and tight streets. If the structure that is on this property now caught fire Main St. and a few other roads would be locked down. Mr. Murphy stated that all the cars parked on the roads would slow down and hinder the Fire Dept. from getting to the fire.

The meeting was now closed to the public for testimony.

Mr. Capizzi gave a summation to the Board. He stated that they believe they have put together a fair and reasonable application. There is a state mandate for affordable housing and housing for those with physical needs and developmental disabilities as well as a need for both. Both of those goals are met by way of this application. He stated that this kind of housing will not have any impact on the surrounding neighborhood. They have heard the concerns of the Board and the public. They have done the studies and they want to have a successful project. They do projects like this, on behalf of the State of New Jersey throughout the state and they have a reputation to uphold. Looking at the CBD zone they will need some variance relief. The common reoccurring issues they have heard are traffic related, how much are they going to be contributing to S. Main St. and Thomas St., how is that traffic going to inhibit an already existing situation along those

roadways, is firefighting going to be impacted in some sort of way and snow removal. He stated that in Ms. Dolans testimony they compared the trips generated by this type of use and the trips generated by an allowed use such as retail or restaurant and the trips by this proposed use you get less trips in and out of the site on a daily basis. This is important when you have concerns about clogging traffic on S. Main St. They are providing a use that has the least amount of traffic. Another benefit is this site is close to mass transit; you have a bus stop on Main St. in front of this building and are within a 15-minute walk to the train station. The tenants using mass transit will be leaving their vehicles on site which will have less impact on the roadways. This project will add foot traffic and shoppers to the downtown which will benefit the local businesses while again reducing the amount of traffic on the roadways. As far as the concerns of the Fire Dept., they spoke about providing for any future road widening of S. Main St. and Thomas St. They will be providing the County with a road widening dedication which means they will be giving the property to the County for future road widening. They are proposing a 1 story group home, single family dwelling and the 3-story apartment building which is more a 2 ½ story as it presents from the roadway. After adding some of the recommendation from the Board they think it will add to the aesthetics of the neighborhood. S. Main St. is residential in character and having a residential building is more appropriate than something commercial in nature which is another benefit of the project. Thomas St. is a single-family corridor and the 1 story group home helps transition from the larger building on S. Main St. to the residential homes on Thomas St. Attorney Capizzi stated that the drainage on the site will be significantly enhanced. A large percentage of the drainage will all be kept on sited with any overflow going into the County system. Overall, they have paid attention to the concerns of the neighborhood before they came before this Board and have since modified the plans and added conditions after hearing the concerns of the neighbors and Board. He thinks it is a well designed project and will bring a needed housing type to the town while maintaining the needs on site and contributing to the overall neighborhood. As a result of that they ask that the application be granted.

Chairman Loury asked who will maintain the property that they are dedicating to the County until it is widened. Attorney Capizzi stated that they will maintain the property until it is widened and they will include that in the dedication documents with the County. Chairman Loury wants that to be a condition of approval.

Engineer Fisher stated that the dedication was determined based on the 33 ft wide offset from the double yellow center line. The dedication varies between 12 and 7 ½ ft. along 195 ft. property line on S. Main St.

Attorney Zakin described the project at 57 S. Main St., Block 1605 Lot 4. It is a minor subdivision, preliminary and final site plan with use variances and related bulk variances subsumed therein. It is located in the CBD zone where residential use is not permitted on the 1<sup>st</sup> floor of a structure therefore a D-1 use variance is needed. The uses proposed are Lot A – a 3 story, 11-unit, 100% affordable housing if it is not tied to Wharton Woods otherwise it is inclusionary with Wharton Woods. Lot B is a 1 story, 4-bedroom residential group home/ community residence.

Chairman Loury asked Planner Caldwell what other options could go on this site. Ms. Caldwell stated that in the CBD zone retail, office, restaurants and other commercial uses are permitted.

She brought up to the Board that 2 ½ stories are permitted with a height of 35 ft. and that this applicant is proposing a 3 story building that is 33 ft. high and the height is below what is allowed in the zone. From an impact perspective this use is better suited; the 11 units are not going to have a significant impact with cars going in and out, parking and school children. Also affordable housing units typically need fewer parking spaces because they produce less cars. She stated that a busy retail such as Dunkin Donuts would be more impactful to the neighborhood. She thinks this will be a relatively quiet development at the end of the day and doesn't think it will negatively impact the neighborhood.

Marc Harris stated that the CBD offers the option of offset parking where the commercial parking times differ from residential parking times therefore they tend to blend well. Density is a concern with 22 & 23% building coverage proposed versus the 10% that is allowed. Would adding retail to the site be a better use of the property? Planner Caldwell stated that if the concern is the level of intensity of use from the site or the busyness of the site and from a parking and traffic perspective, this proposed use would be less intensive than a lot of uses that are permitted.

Planner Caldwell explained the difference between low income and affordable housing. Affordable housing in New Jersey means it is deed restrictive with certain income levels. One of the conditions is they have to meet uniform housing affordability controls for the state which means that 50% have to be for low income and 50% for moderate income. It means they have to make a certain level of the medium income determined for our region of the state; so they have to have an income. These units are difficult units to get into. Her experience is that they are not problem units because it is not an easy process to get approved for these units. They are highly regulated units by HMFA and are checked annually for qualification. There may be some HUD and federal regulations. The town has to report on the units and get deed restrictions.

Marc Harris stated that his biggest concern is the intensity and density on the site. He likes that they are reducing the drainage on the site. He doesn't like the fact that this property owner is the same owner that owns the site up the hill on Old Irondale that is creating most of the flooding because of the lack of maintenance on that property. He doesn't know how that affects this site. He likes the design and that it will blend in well. He doesn't like the dilapidated building that is on the site now especially because it is on Main St. He knows it is congested in that area but what other use could you put there that would have less impact.

Chairman Loury asked if Mr. Crimi was still the owner and if this is approved then his applicant will purchase the property. Attorney Zakin state that the applicants are contract purchasers and once the property is subdivided Nouvelle would own the apartment unit and Pillar Care Community would own the group home.

Peter Rathjens asked would another use on this property require this large of a basin in someone's back yard. Can the basin be put by the road? He is concerned with how long the water would be in the basin if we have a few storms, one right after another, the odor from the basin, wildlife in the water, etc. He stated that it is right next to residential homes and is an attractive nuisance. There is also no recreation on the property other than 3 picnic tables. Engineer Borinski stated that, for another use, they probably would require a basin; it would depend on the

size of the structure, parking, impervious coverage, etc. With this project being on a county road they must meet the requirements of the county. The OM manual will show the requirements for maintaining the basin and if it is not functioning or draining correctly they will have to fix it so that it is working properly. They have to inspect it annually. Attorney Capizzi stated that the basin will be fenced in and that most of the time the basin will be dry. The basin is not visible from the lower lying neighboring properties.

Marc Harris asked if it is feasible to request recreation on a property of this size.

Chairman Loury likes that there is mass transit right in front of the property. He thinks the impact will be less than a Dunkin Donuts or another business like that.

Roger Steele loves the use, the group home and having affordable housing which is a need in the town that is satisfied. Density is a concern and do to the size of the affordable housing building they had to draw a property line that cuts halfway in front of the group home with 4 parking spots in the front of the group home. Mr. Steele does not like this and wouldn't want someone else's parking spaces in his front yard. They also have a dumpster for the apartment building that is just feet from the walkway of the group home. They could empty it every day and he still would not want to live next to it. If it was a smaller building that had less parking and another place to put the dumpster it would be better. The use is beneficial to the town.

Chris Fleischman likes the grading proposed for the property and thinks it is an improvement. The proposed building is also an improvement to what is there now. The town needs the housing. Is it perfect? No it is not but it is better than what is there now.

Brian Bosworth stated that he has the same issues as the other members of the Board have.

Chairman Loury asked Attorney Zakin to clarify inherently beneficial use versus not inherently beneficial use and what applies to this application. Attorney Zakin stated that if this were 100% affordable housing that would be the inherently beneficial use but here it has to reach the lower standard where it's for the general welfare, where you do have to compare the negative and positive criteria. It would need to comply and not be inconsistent with the Master Plan and zoning ordinance. The inherently beneficial doesn't apply, unless there is something that is so negative and detrimental, to be approved. Because we do not know which it will be we have to have the lesser criteria.

Planner Caldwell stated that a standard D-1 use variance is not considered inherently beneficial and has to meet the negative and positive criteria. On the positive side they must show that they meet the purposes of zoning and one is serving the general welfare. On the negative side there is no substantial detriment to the public good and no substantial impairment to zoning or the Master Plan. Every time we do anything there are impacts but the key here is substantial. The Board has to decide whether the impact is substantial. Affordable housing is considered inherently beneficial in the State of New Jersey. On the positive side are they serving the public good. On the negative side is there a substantial detriment to the neighborhood. Does the positive outweigh the negative?

Chairman Loury thinks the positive has been met, we know it's beneficial and will promote the general welfare of the community. For the negative test is it a substantial impact, they know it is an impact but is it substantial. Something is going to be built here so is this going to be the least impactful use for this area? There may be something that is less impactful or more impactful. There has been testimony that this is a less impactful use than what could go there. It is a decent size lot so there could be a decent size Dunkin Donuts or other business that could be more impactful with egress and ingress on Main and Thomas Streets.

Peter Rathjens stated that Dunkin Donuts or any other business that goes in there is not going to have their entrance on Main St. it will be on Thomas St. and because of that they are not going to choose this site because they will not be able to get the cars in and out fast enough from Thomas St. He stated that an office building or a small retail business with apartments overtop with the shared or off set parking is going to be busier during the day and quiet at night. Chairman Loury stated that it could also be a manufacturer.

Pat O'Brien thinks density is an issue and is still trying to understand why there are 2 separate lots and buildings. He thinks the uses are good.

Marc Harris stated if they removed the group home and get the 10% of the building lot coverage he would not have a problem with it. There would be more space and would be more consistent with the residential area and would eliminate the concern of fighting a fire at the rear location.

Chairman Loury has had a problem with the 2 lots and 2 uses on the property since the beginning of this application. He stated that the Board had pushed back and the applicant came back stating that this was the plan they are presenting and they are not changing so this is what we will be voting on. Chairman Loury stated that he does not like the 2 uses and 2 lots; he would rather have 1 building that may be a little wider to accommodate the 15 units and pushed back further on the property. Aesthetically it would look better but the applicant said no.

Roger Steele stated that it comes down to density. Again, he loves the use on the property; it is a lot better than another retail with residential or any other business. If the affordable housing building was half the size, he would have no problem with it because it would erase most of the issues. He doesn't think there is going to be a big traffic impact at all. It is the way the property is laid out. The use is good and is suited for this site. Again, it comes down to the density and the size. There have been other applications that they have denied because of density and one where the applicant came back with a revised plan with less density and the public was happy.

Attorney Capizzi stated that both buildings are fully sprinklered which he hoped would alleviate some fire concerns. He does not see the correlation between the group home and firefighting somehow exacerbating that. Marc Harris was concerned with them accessing the group home. Attorney Capizzi asked the Board to explain a little more what their density concerns were.

Roger Steele stated as he has said a couple times that if it wasn't so dense, they wouldn't have to put a dumpster up against the group home, they wouldn't have to carve out the property line in front of the group home to get a little more parking for the apartment building which is still

deficient for the parking. Attorney Capizzi stated that none of those require variances. Every variance application is not going to check off every box. Is it going to be a substantial impact on the neighboring properties? Mr. Steele stated that a dumpster next to the front door of a neighboring group home is a substantial detriment to that home. Peter Rathjens stated that it would be there for at least 30 years. Attorney Capizzi stated that Pillar Care signed off on the plans with the dumpster in this location and they do not take issue with it. Brian Bosworth stated that Pillar Care won't be the one living there. Mr. Bosworth stated that he wouldn't do this at his house, put his garbage cans by the front door and is sure that Mr. Capizzi wouldn't do that at his home either so why would they do it here, he does not understand.

Peter Rathjens stated that he has an issue with the location of the basin on the property. Chairman Loury stated that the area of the basin location is a natural slope and the low part of the property. The other Board members had no problem with the location of the basin. Marc Harris thought the location is excellent because a lot of the drainage on the property goes to that location. He would rather see the drainage take 72 hours to drain in the basin than run off into the adjacent properties. Brian Bosworth stated that the drainage on the site will be better with the new drainage system. Roger Steele stated that after walking the property all the drainage from the property now runs off into the surrounding properties so the drainage basin is a big improvement especially to the surrounding neighbors. Chairman Loury's issue with the drainage basin is the shared maintenance of the basin.

Attorney Capizzi, after speaking with his professionals suggested putting the dumpster in the parking lot near the entrance and losing 2 parking spots and then adding 1 spot where the dumpster was originally located. The Board was not in favor of losing a parking spot.

Attorney Zakin stated that there is a hard stop at 10:30 but because the Board feels they are close to a vote they will continue.

Chairman Loury stated that he thinks, legally they meet the general welfare for the positive criteria. What they need to debate is the impact and is it substantial enough to legally say no. We know it's going to impact the neighborhood, anything that goes there is going to impact the neighborhood but will it be substantial.

Planner Caldwell gave her thought on moving the dumpster and losing 1 parking spot. She thinks they are right there on the parking but would like to hear what their Traffic Engineer has to say.

Engineer Dolan referenced her last memo dated 11/17/21 which spelled out a lot about RSIS and the exceptions and that RSIS would allow other ratios based on bedrooms. She had talked about mass transit being available and household characteristics which can also guide them to use other ratios. The latest and 5<sup>th</sup> edition of the parking generation manual by the ITE has an affordable housing land use in it and looking at the average demand for the studied sites you are looking at 11-12 parking spaces being required. If you go to the 85 percentile you get 15-18 required. Her testimony at the last meeting was that their proposal of 17 was pretty much in line with the ITE guidelines for affordable housing. If you lose 1 spot you would be at 16. Based on the bedrooms and units proposed, ITE would give us a suggested demand of 11 – 18 parking spots and 16 falls within that range. RSIS does allow them to look at available on street parking to satisfy any



overflow. Her testimony at the last meeting was that they do not need any on street parking to meet their parking demands.

Planner Caldwell, in her experience with affordable housing has found that the parking demand is much lower. Ms. Caldwell stated that Ms. Dolan is the expert and she would accept what she has to say based on her own experience.

Chairman Loury opened the meeting up to the public for question for Engineer Dolan testimony.

Mr. Murphy asked Ms. Dolan if she did not need the off street parking why did she bring it up. Ms. Dolan stated that the off street parking was discussed; she did counts on Main Street but did not do any counts on Robert St.

Brian Bosworth stated that the Board does not like to have registered parking; they don't control where people can or cannot park.

Cathy Murphy, 20 E. Thomas St. asked Ms. Dolan how do they know that any of the tenants are going to take the bus or the train and how do you know how many cars the tenants are going to have. Ms. Dolan stated that the numbers she has been speaking to do not take any credit for mass transit. They are based on studies of generally suburban sites not within a walking distance of a train station or immediate bus service. So there is no credit in this for mass transit. Brian Bosworth stated that the train station is not within walking distance.

Roger Steele stated that there are 11 units, 3 – 1 bedroom, 6 – 2 bedroom and 2 – 3 bedroom units, even if you had 1 car, which would be the bare minimum. That is 11 cars for 16 spaces and 5 extra spaces. Some of the larger bedroom may have 2 cars. His conclusion is that there will be overflow from this property on the neighboring streets which means first come first serve on Thomas St. and then they move to Robert St. or Main St.

Attorney Capizzi stated that the studies are done and they are not manipulating the data. As far as the dumpster he stated that they can delete the garage on the group home, move the group home over about 10 ft., not lose a parking space and now the buffer between the group home and the dumpster is about 12 – 13 ft. They need 2.5 spaces for the group home and they will have 3 spaces. Engineer Fisher pointed this out on the plans and after removing the garage the buffer between the group home and the dumpster will be 15 feet. This will keep the number of parking spaces at 17.

Roger Steele suggested they flip the house so the front door was on the other side. He likes the dumpsters further away from the house along Thomas St., removing the garage and moving the group home over 10 ft and is ok with losing the 1 parking spot.

Chairman Loury likes the look of the group home with a garage.

Brian Bosworth would rather lose 1 space and put the dumpster by the road. He doesn't like the dumpster so close to the group home.

A straw poll was taken of the Board members as to who liked the dumpster where it is presently located near the group home and who like the location by Thomas St. and the location by Thomas Street won. The concern of the moving the dumpster by Thomas St. was that they did not want to lose a parking space especially when parking was a great concern of the public.

Attorney Capizzi stated that they can remove the garage, flip the house so the entrance is on the opposite side of the house and not on the side of the dumpster. The dumpster would remain where it is and you wouldn't lose any parking spaces on the apartment site.

Roger Steele stated that when he suggested flipping the house he still wanted the location of the dumpster moved to the street. If they keep the dumpster where it is it will now be next to someone's bedroom. Attorney Capizzi stated that they have no problem moving the dumpster towards Thomas St. and flipping the house.

Susan Davis asked if they can have a service that brings the cans out to the curb instead of a dumpster. Brian Bosworth stated that that would mean 11 garbage cans and 11 recycle can and then the storage of them could be a problem.

Marc Harris stated that if they are moving the dumpster to Thomas St. why flip the house and remove the garage.

Roger Steele stated that what they will be voting on is moving the dumpster to Thomas St. and losing 1 parking spot on the larger lot.

Attorney Capizzi stated that they will provide an amended site plan before the next meeting and the approval of the Resolution.

Marc Harris made a motion to approve the application, conditions and the design as discussed, moving the dumpster to Thomas St. and having 16 parking spaces on the apartment lot. It was seconded by Brian Bosworth. YEA - 6 NAY - 2 (O'Brien, Rathjens)

The Redevelopment Plan is tabled till our May 10, 2022 meeting.

A Motion was made by Charlotte Kelly and Seconded by Ken Loury to adjourn.

YEA – 8 NAY – 0

Meeting adjourned at 11:01 p.m.

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Patricia M. Craven – Secretary

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Ken Loury - Chairman