

Mount Laurel Township Zoning Board of Adjustment
Regular Meeting Minutes
February 5, 2020

Opening

The Second Regular Meeting of the Mount Laurel Zoning Board of Adjustment February 5, 2020 was called to order by Chairman Bailey at 7:00 p.m.

Pledge of Allegiance and Moment of Silence were observed

The Open Public notice was read by Suzanna O'Hagan, Board Secretary

Board Members in Attendance

Chairman Bailey, Vice Chairman Kiernan, Mr. Francescone, Mr. Green, Mrs. Liciaga, Mr. List, Mr. Kramer and Mrs. Jones

Absent

Mr. Killen

Announcements and Review of Board Procedures

Adopting the Minutes

Chairman Bailey asked for a motion to adopt the Reorganization meeting minutes of 1/08/2020, Mr. List moved the motion Mrs. Liciaga second, all present voted affirmatively except Mr. Green who abstained and the motion was carried.

Chairman Bailey asked for a motion to adopt the First Regular meeting minutes of 1/08/2020, Mr. List moved the motion Mr. Francescone second, all present voted affirmatively except Mr. Green who abstained and the motion was carried

Evan Crook Esq. addressed the audience and explained the procedure for testimony and the requirements of proof for a "C", bulk variances.

Memorialized Resolutions

1. Linda Zangari, ZB#19-C-38, 13 Lake Drive, R-2020-ZB03, Chairman Bailey asked for a motion to approve the resolution, Mr. List moved the motion, Mr. Francescone seconded. All present voted affirmatively except Mr. Green who abstained and the motion was carried.

Swearing in of the board professionals

Petitions before the board

1. **Christopher Murray, ZB#20-C-02**, 16 Oregon Avenue, Block 1304.04 Lot 15 in an R-1 zone. This bulk variance is being sought from Mount Laurel Township Ordinance 154-16 to allow a side home addition 9.7 feet from the front property line where 30 feet is required and to maintain the preexisting non-conforming 9.7 foot setback of the main home where 30 feet is required.

Witnesses Sworn In:

Christopher Murray

Mr. Murray's Testimony:

Mr. Murray testified that his home is actually 35' from the street due to a 25' right of way. The addition cannot be placed on the back of the home due to the placement of the septic field. The

addition is a closet and bathroom on an existing bedroom. Moving just the addition back would not work as the floor plan options are very limited.

Chairman Bailey opened the meeting to the public for questions or comments, seeing none, closed the public portion

Mr. Crook summarized the motion to approve a variance from section 154-16 of the Mount Laurel Township Ordinance to allow an addition to be constructed with a 9.7 front yard setback and to maintain the preexisting 9.7foot front yard setback of the existing home.

Chairman Bailey asked for a motion to approve ZB#20-C-02. Mr. Green moved the motion, Mr. List seconded. The roll call vote of eligible Board Members was unanimous in favor. Motion carried, approved

2. **Michael Nossen, ZB#20-C-01**, 47 Braodacre Drive, Block 700.01 Lot 26 in an R-3 zone. This bulk variance is being sought from Mount Laurel Township Ordinance 154-16 to allow 15.5% land coverage by buildings where 15% land coverage by buildings is allowed.

Mr. Robert Washburn Esq. of Flaster Greenberg P.C. represented the applicant.

Exhibits:

A-1, Proposed Architectural Plot Plan & **A-2**, Front and left side elevations. Both exhibits prepared by Michael Nossen PE & Stephen Greenberg Esq.

Witnesses Sworn In:

Thomas D'Arrigo, Sr., of TJD Architects, Mr. Michael Nossen, property owner and Mr. Stephen Greenberg, homeowners father in Law

Mr. Washburn's Testimony:

Mr. Washburn presented the application explaining the that proposed 1,141 SF addition with a shared laundry room is for of Mr. Nossen's in laws while they visit from Florida for approximately 3-4 months of the year allowing the grandparents to be with the children and grandchildren. The applicants will record a deed restriction stating that the home remains single family and the addition can be occupied only by the relatives of the owner. The restriction prohibits rental or sale of this addition separately. The addition creates the need for a variance to allow 15.5% land covered by buildings where 15% is allowed.

Mr. D'Arrigo Sr.'s Testimony:

Mr. D'Arrigo presented Exhibit A-1 and testified that the expansion will include a two car garage, kitchenette, bedroom and living area with a common laundry connecting to the house proper.

Mr. D'Arrigo believes the variance would advance the purposes of the zone and does not conflict with the zone or master plan. They have made an attempt to make the addition consistent with the home and surrounding area. Exhibit A-2 was submitted to show that the design of the addition is harmonious with the surrounding area, provides adequate air and safety and has no substantial detriment to the public good. All bulk requirements are met with the exception of the 15.5% building coverage allowance.

Mr. D'Arrigo further testified that the garage is an important part of the project because the Nossen's require storage for their lawn equipment. Reducing the size of the project would have a negative impact and would make the space substandard for their needs.

Chairman Bailey opened the meeting to the public for questions or comments, seeing none, closed the public portion.

Mr. Crook summarized the motion to approve a variance from section 154-16 of the Mount Laurel Township Ordinance to allow an addition creating a lot coverage by buildings to be 15.5% where 15% is allowed. This resolution of approval is conditioned upon recording of the Deed Restriction.

Chairman Bailey asked for a motion to approve ZB#20-C-01, Mrs. Liciaga moved the motion, Mr. Francescone seconded. The roll call vote of eligible Board Members was unanimous in favor. Motion carried, approved.

3. **Samuel Beitchman, ZB#20-C-03**, 531 Hydrangea Drive, Block 1601 Lot 36 in an R-4 zone. This bulk variance is being sought from Mount Laurel Township Ordinance 154-16 to allow an enclosed patio 11 feet from the rear property line where 20 feet is required.

Witnesses Sworn in:

Mr. Beitchman, Homeowner and Mr. Secreda owner of Catalina Doors and Windows

Mr. Beitchman's Testimony:

The screened in porch will allow him to enjoy the nature in his backyard. The property backs up to woods and the next door neighbor has the same enclosed patio. The room will not have heat or air conditioning.

Chairman Bailey opened the meeting to the public for questions or comments, seeing none, closed the public portion.

Mr. Crook summarized the motion to approve a variance from section 154-16 of the Mount Laurel Township Ordinance to allow an enclosed patio 11 feet from the rear property line where 20 feet is allowed.

Chairman Bailey asked for a motion to approve ZB#20-C-03, Vice Chairman Kiernan moved the motion, Mr. Kramer seconded. The roll call vote of eligible Board Members was unanimous in favor. Motion carried, approved.

Chairman Bailey, acting on the advice of counsel, recused himself for the remainder of the meeting due to a professional conflict with the next application.

A recess was called at 7:45. The meeting was resumed at 7:52.

Vice Chairman Kiernan stepped in to chair the remainder of the meeting.

Evan Crook Esq. addressed the audience and explained the procedure for testimony and the requirements of proof for a "D", Use variance. Mr. Crook explained the requirements of proof for the positive and negative criteria and the meaning of "Inherently Beneficial Use".

Mr. Francescone clarified for the audience that tonight's hearing for Allegro Development is for Use Variance approval only. If the Use Variance is approved Site Plan approval will be addressed at a later meeting.

1. **Allegro Development Company, Inc., ZB#19-D-12**, 1005, 1009, 1013 and 1017 South Church Street, Block 1003 Lots 51, 52, 53 and 54, R-3 zone. This use variance is being sought from section 154-15 to allow the construction of a four (4) story senior living facility in a residential zone.

Mr. Frank Tedesco Esq. with Dilworth Paxson LLP, represented the applicant.

Exhibits:

A-1, color rendering of the building prepared by Meyer Architecture & Design; **A-2**, Aerial photo of the site; **A-3**, series of 10 existing conditions photo's; **A-4**, Aerial Site Plan with proposed project overlay; **A-5**, Use variance landscape plan; **A-6**, Trip generation chart for permitted and proposed uses (2-05-2020). Exhibits A-2 through A-6 were prepared by Paulus, Sokolowski and Sartor, LLC.

Witnesses Sworn In:

Joseph Miklich, Sr. Vice President of Allegro Development; Daniel King, Architect with Meyer Architecture and Design; Robert Espasa PE, Associate with Paulus, Sokolowski and Sartor, LLC.; Wriston Phillips, Licensed Site Remediation Professional & Senior Manager at Whitestone

Associates; James Miller, Professional Planner, Douglas Polyniak, Traffic Engineer with Dolan & Dean

Frank Tedesco's Testimony:

Mr. Tedesco Esq. presented the application. Mr. Tedesco described the property as 26.6 acres with severe problems with respects to wetlands. The applicant will work with DEP to get appropriate approvals for the project.

Joseph Miklich's Testimony:

Allegro is part of the Love Companies based out of St. Louis Missouri, family owned companies in business since 1875. Currently 19 communities are in operation and 4 are in development with 2,500 units expected to grow to approximately 3,200 units in 10 states with 1,400 employees.

The first New Jersey project consisting of 177 units of assisted living, independent living and memory care broke ground about a year ago in Harrington Park, Bergen County, NJ. That will open in December 2020.

They provide a continuum of care model allowing residents to age in place while providing a resort/cruise ship lifestyle. The average age of an independent living resident when coming to the facility is 85 years old. All housekeeping, laundry, maintenance and meals are provided. Independent living units have a full kitchen and are provided two meals per day.

Onsite amenity spaces are in the central core of the design and include, a fitness center, salon spa, multiple dining venue's, bar and physical and occupational therapy spaces. Amenity spaces are for all residents of the community.

Transportation is provided for scheduled outings and private transportation is provided for anywhere within a 10 mile radius of the community free of charge. About 45% of independent living residents will have a car, however the cars often sit in the parking lot as transportation is provided.

Assisted living is for residents who need assistants with everyday living such as bathing, eating getting up and down etc.

Memory Care is a fully secure neighborhood with a memory garden, more staffing, more supervision and physical barriers to prevent elopement outside of the community.

Allegro has been looking for almost two years for a site in Mount Laurel due to the favorable demographic. In the next 5 years there will be a 12% increase in the 65+ population within a 5 mile radius. Allegro is interested in this property because they do not do a lot of advertising and this property has 18,000 trips per day and an ideal setting. The property has been under contract for 15 months. Many studies were done to be sure they could absorb the high cost of remediation.

The applicant has tried to mitigate the impact on the residential homes by implementing a vertical design to accommodate the number of units necessary to make the project economically viable.

The 170 proposed units will consist of 95 independent living, 55 assisted living and 20 memory care units. Mr. Miklich stated that the breakdown of residents is based on demographics and the need in the community.

Allegro held a neighborhood meeting with the residents of Birchfield at their clubhouse and is doing research and working to address their concerns to include improving the runoff at this site.

This community would employ the equivalent of 100 full time employees. The maximum shift would have approximately 35 employees during the day and approximately 10 – 15 employees at night. The caregivers are scheduled during non-peak hour shifts 7am to 3pm / 3pm to 11pm / 11pm to 7am.

Deliveries will be primarily small box trucks once per day with a rare full size moving truck for residents moving in or delivery of a large piece of equipment.

The applicant proposes a temporary sales trailer for 12 months leading up to the opening.

Daniel King's Testimony:

Mr. King presented Exhibit A-1. The building will be an "I", institutional, use group. There are a lot of restrictions for this use group so they tried to make this building compact with a smaller footprint resulting in 4 stories. The height is 48 feet to the center of the roof with a mansard style roof at the request of the Township. This gives the feel of a 3 story building with a roof above.

The independent living units will have balconies.

Robert Espasa's Testimony:

Mr. Espasa presented exhibits A-2, A-3, A-4 and A-5. A-2 an aerial photo of the site with the proposed sight outlined in red. The proposed building is approximately 785 feet to the nearest home. There is a vast wooded area between the proposed building at the north west corner and the development to the east. They flew a drone at 56 feet and at 80 feet. The proposed building is at 48 feet and the trees are over 80 feet and very dense you will not be able to see the building from that nearest home.

There are environmental constraints on the property including wetlands and flood hazard limiting the developable area to about 6 acres.

According to NJDEP guidelines the applicant is required to remediate the soil contamination caused by the former use as a nursery prior to construction.

The building is approximately 56,600 SF with 160 parking spaces, driveway access will be from church street only and the loading area will be in the back of the building screened from South Church St. Amenities on site will include a putting green, gazebo, courtyards, patio areas, fountains and gardens. A sidewalk is proposed along South Church Street. A 50 foot landscape buffer is proposed along South Church Street and Birchfield Drive. Within these buffers will be storm water basins.

Jay Petrongolo, Board Planner notes this is a conceptual plan only, a full landscape plan would be presented at the time of Site Plan approval.

The DEP requirements as well as requirements in the ordinance will reduce the peak runoff of the site to below preexisting conditions. The water runoff from the parking areas will be treated to 80% total suspended solids removal. The remaining 20 acres will be natural growth, no trees will be cut down and no development will occur in the eastern 20 acre area.

Wriston Phillips's Testimony:

Samples of soil and groundwater showed impacts above the NJDEP site remediation standards and groundwater quality standards due to the historic use of the property and imported fill materials. Pesticides, heavy metals and polycyclic aromatic hydrocarbons have been identified as some of the contaminants and.

New Jersey DEP has rules, regulations, standards and guidelines for source removal as well as engineering and institutional controls for removal and remediation of contaminants. The final approval is issued by the Licensed Site Remediation Professional.

James Miller's Testimony:

Mr. Miller presented exhibits A-3 and A-5 walking the exhibits across the room for the audience to review.

Mr. Miller testified the D6 variance is subsumed by the D1 variance.

The facility is an inherently beneficial use based on case law including *Sica vs. the ZBA of Wall Twp.* As an inherently beneficial use the use is considered to presumptively satisfy the positive criteria. There are four steps to the *Sica* balancing test to establishing inherently beneficial use. Step one, identify benefits of the use. This use satisfies purposes A, G and L of

the MLUL. It was determined that from the east / rear of the building there will be no view of the structure. The height creates efficiency in the operation of the facility decreasing the space between the units and amenities which benefits residents with mobility issues. Step two, evaluate potential impact of use. The overall impact will be less extensive than the prior use. Based on field tests and the use of a drone, there will be no visual impact on residence to the East/rear of the property. Step three, evaluate potential mitigation of the impact. Exhibit A-2. There is no potential for the facility to impact the neighboring office complex, the nearest home in Birchwood is just under 800 feet from the proposed facility. There is a substantial buffer between the facility and Laure Acres park with no adverse impact on the park. The visual impact to residents with reverse frontage along church road will be mitigated by

the orientation of the building, architectural design and extensive landscaping. The use will be an enhanced view from the existing condition of the garden center's dilapidation, disrepair and abandoned building supplies.

The use will generate less traffic than with the garden center and similar to the traffic generation of the allowed single family homes.

Step four if the benefit is greater than the detriment, the project is inherently beneficial. The proposed use makes a positive contribution to the public welfare with no detriments to the public.

This use will contribute to the vitality and stability of the residential zone by replacing a more impactful use with a less impactful use. These uses are commonly located in residential neighborhoods and there is no evident impact in any respect on the proximate residential uses. This site has the capacity to absorb any potential activity associated with the use.

Mr. Miller believes the use satisfies the positive and negative criteria.

Board Member Joe Green disagreed that the project would generate less traffic than the garden center.

Mr. Miller responded that the activity level fluctuates.

Board Member Francescone asked Mr. Miller how the traffic impact would compare to uses that may go there by-right. Traffic consequences are essential to determine if the use would be better or worse than allowed uses.

Mr. Tedesco responded that a further traffic study would be done if a Use variance is granted.

Douglas Polyniak's Testimony:

Mr. Polyniak estimated trip generation, using the 10th edition of the Institute of Transportation Trip Generation Manual. He calculated trip generation for the peak hours of 7am to 9am and 4pm to 6pm. Using exhibit A-6 Mr. Polyniak compared the trip generation of a use similar to the proposed use, 13 single family homes, an elementary school and a garden center using International Transportation Engineering data. The trip generation on A-6 is based on a standard for this type of use but not this particular facility.

Jay Petrongolo, Board Planner reviewed his letter dated 11/7/2019. Mr. Petrongolo agrees that this use is inherently beneficial and the Sica balancing test is the appropriate test to use and questions Mr. Millers assertion that the use satisfies purpose G of the MLUL.

A significant benefit to the development of this site is the condition that it be cleaned up, this benefit outweighs any detriment. The space on the site to be preserved as open space should be made a condition of the approval and a deed restriction would be appropriate.

These type of uses are considered lower traffic generators. One of the advantages to the height is that it makes the development feasible, thirteen homes would not be feasible.

Mr. Miller responds that his view of purpose G is that the site is uniquely appropriate for the proposed use and is not appropriate for thirteen single family homes. Approximately 80% of the structure will be obscured by trees.

Board Member Joe Green asked if the property was ever considered for purchase by the township as open space.

Board Member John Francescone responded that is was, but it was unaffordable due to the environmental cleanup.

Bill Long, Board Engineer Prefaced his review explained that this is a bifurcated application and for use variance only. Engineering will be more heavily involved with the Site Plan if the Use is approved. Mr. Long reviewed his letter dated 11/8/2019. The applicant will have to deal with NJ DEP in regard to wetlands and flood plains as they are under state jurisdiction. There are soils issues as well as ground water contamination on the site. There is no obligation on the property owner to clean the site. If this application does not move forward no one will clean up the site until the next application or something happens at the state level.

Michael Angelastro, Board Traffic Engineer reviewed his report dated 11/11/2019. Mr. Angelastro agrees with the testimony provided that this is not an intense use with respect to traffic. The impact is negligible, during peak hours 10 to 15 vehicles on the road is not perceivable. If this continues to Site Plan he will ask for more detailed analysis.

Brian McVey, Fire Marshal reviewed his report 11/4/2019.

Vice Chairman Kiernan called for a break at 9:45pm so the applicants can set up the exhibits for the public to view. The meeting resumed at 9:57pm.

Board Member Alan Kramer asked Mr. Angelastro if there will be a traffic signal required at the intersection of Cobblestone and South Church Street

Mr. Angelastro replied, he suspects the intersection does not meet the warrant for a traffic signal.

Vice Chairman Kiernan opened the meeting to the public at 10:03pm.

All attendees who testified were sworn in before their testimony.

David Searles, 108 Roberts Pl. has concerns about traffic safety, says there are many crashes at that area and encourages the board to consider the project in its entirety. In his opinion the facility does not fit in the area.

Desiree Smith, 3 Ursinia Ct. testified her house is the #1 house impacted by the project, she has concerns about light impact including parking lot lights. Ms. Smith believes the lights would shine in her children's bedroom windows. She has seen numerous endangered species including bald eagles and an Eastern Tiger Salamander and is opposed to this variance.

Brian Potenski, 25 West Daisy Ln. questioned why not somewhere else. He believes Brightview is 3 stories tall. There is a sewage drop off drained many days a month for 24 hours a day.

Svata Simpson, 107 Cobblestone Dr. said there will be more people with this project than with 13 homes. This property will run like a business. Ms. Simpson is concerned about the visual impact from the front as it is too close to the road.

Russel Miller, 21 Holly Hock Ln. believes the proposal does not fit the residential neighborhood. The applicants want to make money at the expense of property values. He asked if the height of 48' is the mean height or the maximum height. He testified there are no stores in walking distance so the residents will drive through Birchfield putting their children in danger. He is opposed to this application.

Vice Chairman calls for a break at 10:20. The meeting resumes at 10:26.

Evan Crook makes an announcement that a board member is having some health issues requiring regular breaks. We will stop the hearing at 11:00pm., if continued this will be the first hearing at the next meeting.

Andrew Turner, 111 Cobblestone Dr. Mr. Turner would like to have been included in the meeting with Birchfield. He questioned is gasoline part of the remediation and if the entire property is part of the remediation or only the part being developed. He expressed concerns about the view from his home and traffic from Route 73 cutting through Ramblewood. He believes the site would be busier on Saturday and the traffic lights should be coordinated to create a continuous flow of traffic. He believes the studies only show incidents and there are a lot of near incidents. A traffic light will be beneficial.

Alison Keating, 7 Snowball Ct. Ms. Keating does not believe this is an inherently beneficial use and she believes that the majority of the proposed facility is age restricted apartments. The facility does not belong on this site. This is not a good long term plan and this building will be empty in 25 years.

Neill Borowski, Marlton NJ. Reporter for 70/73.com. Mr. Borowski questioned why the Chairman recused himself and if he has recused himself on discussions of the application to date.

Mr. Crook replied that the Chairman recused himself due to professional conflict and has never sat on discussions of the application.

Joseph McCormick, 838 Browning Pl. Mr. McCormick believes a traffic light will make traffic worse and this may be a planning nightmare. He watches residents come out of Brightview in Marlton NJ and turn onto Greentree Rd. and it is frightening and this will be the same. He questioned why the owner is not responsible to remediate. Mr. McCormick does not want to lose the character of the neighborhood.

Board Member John Francescone responded that the bank foreclosed on the property.

Joseph Lacy, 135 Cobblestone Dr. the project is not appropriate for the lot. He questioned if there is a cost figure for clean-up.

Karen Cohen, 15 winterberry Ct. believes this is only beneficial to wealthy seniors. She stated that the owners are responsible for remediation and questioned why the township let that happen. Ms. Cohen read from the master plan update 2017, Goals and Objectives and believes this plan is opposed to the master plan.

Carol Aman, 42 Viburnum Ln. the project should go somewhere else and there are other ways to clean up the land.

William Elliott, 121 Yorktown Dr. believes inaccuracies were stated and that 50% of the property is visible from the road. He stated it is not feasible to put 80 foot trees on the property and questions why 160 parking spots are proposed when they only need 60. He believes flooding will be a problem because Laurel Creek is under water when it rains hard. Mr. Elliot believes this will set a precedent.

Vice Chairman Kiernan announced that the public portion of this meeting is being continued to the next Zoning Board meeting and will be the first application heard at that board meeting.

Evan Crook Esq. announced the next meeting will be held on March 4, 2020, there will be no additional notice.

Adjournment:

Vice Chairman Kiernan asks for a motion to adjourn at 11:02 p.m., Mr. Francescone moved the motion, all present voted affirmatively and the motion was carried.

Adopted on: March 4, 2020


Suzanna O'Hagan, Secretary
Zoning Board of Adjustment