

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
SEPTEMBER 18, 2019**

Mr. Don Travisano called the regular meeting of the Planning Board to order at 7:31 P.M.

Adequate Notice of this meeting of the Planning Board was given as required by the Open Public Meetings Act as follows: Notice was given to both The Chatham Courier and the Morris County Daily Record on September 3, 2019; notice was posted on the bulletin board in the main hallway of the Municipal Building on September 3, 2019; and notice was filed with the Township Clerk on September 3, 2019.

Answering present to the roll call were Mr. Travisano, Mr. Franko, Mrs. Swartz, Mr. Hoffmann, Mr. Kelly, Mr. Nelson, Mrs. Ozdemir, Mr. Sheth, Mr. Coviello and Mr. Tarasca. Ms. Hagner arrived late.

Also present were Board Engineer John Ruschke, Township Planner Frank Banisch and Board Attorney Steve Warner.

Approval of Minutes

Mr. Nelson moved to approve the minutes of the August 19, 2019 Planning Board minutes. Mrs. Swartz seconded the motion, which carried unanimously with abstentions by Mr. Travisano, Mrs. Ozdemir, Mr. Sheth, Mr. Coviello and Mr. Tarasca

Notice of Hearings

Mr. Warner reiterated that adequate notice of this special meeting was provided in accordance with the provisions of the Open Public Meetings Act. He also confirmed with the applicant's counsel that the notice required by the Municipal Land Use Law for the hearing of the applications was also provided. Mr. Warner said that his legal opinion is that the Board has jurisdiction to continue the hearings at this meeting.

Mr. Warner also addressed attempts made by members of the public to send ex parte communications to the Planning Board. He explained that because the Planning Board is a quasi-judicial board, any evidence presented must be presented at a public hearing and under oath so as to afford everyone their constitutional rights to due process.

Mr. Travisano noted that the Board has given the public wide latitude for the scope of their comments.

Mr. Warner said at the last meeting when the hearings were adjourned, it was noted that some legal and engineering matters needed to be resolved. He said that the matters have since been resolved, and an executive session is not needed. Mr. Warner said that the issues pertained to stormwater management at the Dixiedale site and the layout of the Skate Park site.

Hearings

PB 19-48.16-117.27 (February 22, 2019) SOUTHERN BOULEVARD URBAN RENEWAL, LLC, (Arbor Green at Chatham) 401 Southern Boulevard, BLOCK: 48.16 LOT: 117.27.

Mr. Kasuba said that a superior way to lay out the site was suggested, and that layout will be presented at this hearing.

Exhibit A-11 was entered into the record. Mrs. Ruskan said that the exhibit is a site plan concept, and shows the Arbor Green site with modifications. The area of improvement has been reduced to 3.4 acres, and the two buildings have been combined into a single building. Mrs. Ruskan said that the proposed building conforms to the redevelopment plan. A single parking area with 37 spots is proposed, with the possibility of adding two additional spots. The trash enclosure area has also been relocated. A tot lot is also included on the plans. The stormwater management facility is in approximately the same spot as originally proposed. The architectural style is not being changed.

Mr. Ruschke noted that the redesign was a major undertaking, and it addresses the Township's need for additional land surrounding the police headquarters. He also noted the limited options due to wetlands constraints on the property. Mr. Ruschke also said that the proposed building does not exceed the height requirements. Mr. Kasuba said that a bulk height variance is still requested, but that has not changed from what has been previously proposed. Mr. Ruschke said that the traffic testimony will not have changed. He also said that there are not any proposed changes to the parking provisions, and the stormwater management will follow the same principles as previously discussed.

Mrs. Ruskan noted that with the proposed changes, a hotbox will not be needed and the building will have a meter room.

Mr. Ruschke said that the Police Department and Fire Departments reviewed the updated plans, and they had the same concerns as expressed previously. The concerns will be handled administratively. He noted that the buildings will be constructed in accordance with the Uniform Construction Code, which addresses fire safety as part of the permitting process.

Mr. Hoffmann commended the applicant for proposing the lot line change, as it will help the Township address the parking needs and the Department of Corrections required upgrades to Police Headquarters. Mr. Hoffmann also said that he spoke with Chief Zalis of the Green Village Fire Department about the risk of fires, and there is always a risk. They also discussed the turning radius of the GVFD's equipment. Mrs. Swartz noted that Chief Zalis expressed a concern about emergency access to the rear of the building. Mr. Ruschke said that access is available, but they will not be able to get an apparatus to the rear of the building. Mr. Hoffmann noted that changes were made to the application to make it easier for a fire apparatus to access the parking lot.

Mr. Banisch said that the plan presented conforms to the redevelopment plan. He also recognized the applicant for changing their plans. Mr. Warner said that there are some variances and waivers to be discussed. Mr. Kasuba said that the variances and waivers will be ready for discussion at the next hearing.

Mrs. Swartz asked about the slope of the property, and if the parking lot is expected to be sloped or level. She suggested that the parking lot be level for drainage purposes. Mrs. Ruskan said that the slope will be under 5%.

Mr. Kelly said that there is a grove of mature trees by the Police Department that will be preserved with the new proposed layout.

Mrs. Ruskan said that the redevelopment plan calls for the Skate Park to be removed, as it falls within the wetlands buffer.

Mrs. Swartz expressed her comfort with the new layout, and that the new layout is less obtrusive.

Mr. Travisano opened the floor for the Public to ask questions.

1. Rez Estevez, 126 Southern Boulevard, asked about the Township's former litigation with the Fair Share Housing Center. Mr. Warner said that the Township Committee and/or Township Attorney can provide information on that litigation, and it would not be relevant to the application being discussed. Mrs. Estevez asked if there is any legal impediment to the Dixiedale application, and how the applications are linked. Mr. Kasuba said that the partial settlement with the Fair Share Housing Center links the two applications, and the litigation involving Dixiedale has been resolved. Mr. Warner said that the prior litigation is not an impediment to the application. He also addressed inclusionary projects, and the Arbor Green application is essentially the inclusionary component of the Dixiedale application. Mr. Travisano noted that the Planning Board was not a party to the litigation.
2. Bailey Brower, 16 Driftway, asked why the applicant cannot be given an approval for Dixiedale separate from the Arbor Green application. Mr. Kasuba said that the question should be addressed when the Dixiedale application is being discussed. Mr. Brower indicated that his question is for the Planning Board rather than for the testifying witness.

Mrs. Swartz asked when the applicant expects to have more information to present regarding the Arbor Green application. Mr. Kasuba said that updated engineering drawings should be ready for the October 21st Planning Board meeting. He also said that the applicant hopes that the application will be ready for the Board to take a vote. Mr. Travisano asked for architectural plans to be presented at that time as well.

3. Rich Matlaga, 36 Dale Drive, asked about the lot line change. Mrs. Ruskan showed on the revised layout where the new lot line will be. Mr. Matlaga asked about the number of parking spots, and if consideration has been made to banking property for additional parking if a future need arises. Mr. Ruschke said that the Township cannot allow any

additional encroachment on the property line due to the needs for the Police and DPW facilities. He also noted that wetlands buffer on the other side of the proposed layout. Mr. Travisano asked if additional units will be built at a later time. Mr. Kasuba said that the project will only be the 24 units. Mr. Matlaga also asked about overflow parking. Mr. Kasuba said that overflow parking was previously addressed by the applicant's traffic engineer.

4. Mr. Brower said that there is a sidewalk on Southern Boulevard, and it terminates by the Police Department driveway. He suggested that a means for crossing Southern Boulevard other than the existing crosswalk be devised. Mr. Ruschke said that he can discuss the matter with the Public Works Department and the County.
5. Sue Ligertwood, 26 Heritage Drive, asked how the changes impact the existing parking for the Police Department. Mrs. Ruskan said that 21 existing spaces will be removed, and they are spaces closer to the Skate Park. Mrs. Ligertwood asked about the wetlands buffer area. Mrs. Ruskan showed on the map where the wetlands buffer is delineated. Mrs. Ligertwood asked if additional parking could be placed on the spot where the Skate Park is currently located. Mr. Travisano said that the applicant's testimony has been that the application provides for sufficient parking. Mrs. Ligertwood asked about applying to the DEP for additional space for parking. Mr. Kasuba addressed the LOI application that had been submitted to the DEP, and the applicant is unable to relocate the wetlands.
6. Stacey Ewald, 54 Nicholson Drive, asked if it is possible to preserve the Skate Park at the present site. Mr. Kasuba said that it is not possible.
7. Ellen Krhoun, 2B Heritage Drive, said that she received a Brower Watchdog Report in the mail, and she would like to enter it into the record as evidence. Mr. Warner explained that the time for the public to give sworn testimony will come at a later time, and this portion of the meeting is for questions directed to the applicant's witness.

Seeing no further questions, Mr. Travisano closed the floor.

Mr. Kasuba asked that the hearing be carried until October 21st without further notice, with anticipation of a vote on the application at that meeting. Mr. Warner concurred that the hearing could be carried. Mr. Kasuba also said that the applicant consents to an extension through the month of October for the Board to act on this application. Mr. Warner asked for the applicant to follow up in writing regarding the extension.

The Board took a recess at 8:45 PM.

The meeting was reconvened at 8:53 PM.

PB 19-66-1 (February 7, 2019) STERLING/SUN AT CHATHAM, LLC, (Dixiedale) 351 Hillside Avenue, BLOCK: 66, LOT: 1.

Mr. Kasuba gave an introduction to the stormwater analysis that was conducted. He also said that following the testimony at this meeting, a request will be made to carry the hearing until the October 21st meeting.

Mrs. Ruskan presented the stormwater analysis.

Exhibit A-21 was entered into the record, which is an aerial image of Chatham Township with the Dixiedale area outlined in red. Mrs. Ruskan pointed out the relative location of Heritage Greene, and said that a review letter from Mr. Ruschke raised a concern about the potential impact of additional stormwater runoff volume on the Chatham Glen community. She also pointed out the location of an off-site pond located in Heritage Greene to which water will drain, and noted that only a portion of the water draining there comes from Dixiedale. Mrs. Ruskan discussed the stormwater calculations for the site and the potential impact. She also discussed the infiltration basins designed to mitigate stormwater.

Mrs. Swartz asked if there are potential unintended consequences to wildlife and vegetation from the reduced water runoff draining to the offsite pond. Mrs. Ruskan said that the reduced drainage would not be discernible to the naked eye.

Mr. Ruschke said that the revisions to the report were painstaking, and there is no net impact. Mr. Warner said that the stormwater analysis was a reason why the application had been adjourned over the past few meetings. Mr. Kasuba concurred that conducting the field work and analysis took some time, and he thanked the Board for allowing that time.

Mr. Travisano said that there have been some hot button issues regarding this application, one of them being the potential for stormwater impact on the Chatham Glen area.

Mr. Coviello asked who decides when the infiltration basins get maintained. Mr. Ruschke said that the Homeowner's Association will have responsibility for the maintenance, and summons can be issued if necessary. Mr. Kasuba said that a stormwater maintenance manual has been submitted. Mr. Coviello asked how the Board can ensure that requirements will not be forgotten by Mr. Ruschke's successors. Mr. Ruschke said that larger commercial developments submit annual reports.

Mr. Warner asked if any further engineering testimony is anticipated. Mr. Kasuba said that a response to Mr. Banisch's review letter was submitted, and he asked the Board to review it prior to the next meeting in case anything needs to be addressed.

Mr. Travisano opened the floor for the Public to ask questions about stormwater and drainage.

1. Mr. Brower provided some background on water drainage in the subject area. He asked if there is a flow pipe that will keep water in the Chatham Glen pond if conditions become too dry. He also asked about the size of the piping. Mrs. Ruskan said that there are existing pipes along River Road, and she addressed the flow to the storm sewers. Mr. Travisano said that the report has been reviewed by Mr. Ruschke, who agreed with the

applicant's conclusions. Mr. Travisano also asked if there is any concern about sediment buildup in the Chatham Glen pond due to the discharge from Dixiedale. Mrs. Ruskan described the sediment controls that will be employed. She also noted that there is a maintenance manual. Mr. Ruschke said that many older developments where stormwater management failed were designed to a different standard. He also said that the systems are designed to a hypothetical 100 year storm, and discussed how stormwater management controls are engineered. Mr. Ruschke also said that the applicant is only required to mitigate water from the Dixiedale site, not from other sites. Mr. Travisano asked about post-approval assurances that stormwater management controls are maintained. Engineer Ruschke said that approvals remain with the property, and the maintenance manuals govern compliance. Mr. Brower noted that River Road is a heavily travelled road. He also addressed the need for delineations such as curbing. Mr. Brower also asked about sediment in the existing pond. Mr. Ruschke said that the pond was designed to capture runoff from Dixiedale.

2. Ms. Ligertwood said she is Vice-President of the Heritage Greene Trustees. She said that the as of June the pond was full following heavy rain. With the proposed development, Mrs. Ligertwood said she is concerned about potential additional runoff. Mrs. Ligertwood said that the Association has spent a lot of money to maintain the pond, and asked how the Association will be responsible for the additional burden. Mr. Kasuba said that the testimony was that there will be a decrease in the amount of stormwater runoff coming from the Dixiedale site. Mrs. Ruskan concurred with Mr. Kasuba's summary of the testimony. Mrs. Ligertwood asked about the proposed location of the infiltration basins. Mrs. Ruskan pointed out on Exhibit A-2 where the basins are proposed to be located. She also described the direction in which the basins will drain. Mrs. Ligertwood said that the existing pond is fed by a natural spring, and asked why that area was not proposed for water detention. Mrs. Ruskan agreed that there is drainage from the western side of River Road toward the intersection of Heritage Drive. She also said that what Mrs. Ligertwood described as an existing pond is actually a wetlands area, and a DEP permit would be needed to have water retention in that location. Mrs. Ligertwood asked about the percentage of water flowing to the Heritage Greene pond from the Dixiedale site. Mrs. Ruskan said that 17% of the water comes from Dixiedale, and reiterated that there will not be an increase. Mrs. Ligertwood asked about mitigation of stormwater on a subject property. Mrs. Ruskan said that the infiltration basins are the main component for the proposed development, and they will also mitigate some of the stormwater from the property on the north side of Hillside Avenue. Drainage upgrades will also be made to River Road.
3. Mrs. Krhoun asked about the infiltration basins, and if the water will flow into the ground. She also asked what happens when the ground is already saturated. Mrs. Ruskan said that the design compensates for ground saturation, and she described the permeability calculation process. Mrs. Krhoun said that most of the land is clay and does not have good permeability. Mrs. Ruskan said that there is a sandy spot on the Dixiedale property where the infiltration basins will be located.

4. Frank McNicholas, 4B Heritage Drive, asked for clarification that less water runoff will come from Dixiedale, and asked what percentage the stormwater affecting Heritage Greene will be reduced. Mrs. Ruskan said there are different values based on the type of storm. The peak flow rates will be reduced as follows:

2 Year Storm: Peak flow reduction of 23%; Volume reduction of 1.6%

10 Year Storm: Peak flow reduction of 7%; Volume reduction of 0.2%

100 Year Storm: Peak flow reduction of .8%; Volume reduction of 0.1%

Mr. McNicholas said that the reduction will be negligible. Mrs. Ruskan said that it is still a reduction.

5. Susan Hoag, 76 Canterbury Road, said that there are a number of underground streams coming from Fairmount Ave down to Hillside Ave. She asked if these streams were factored into the stormwater calculations. Mrs. Ruskan said she is not aware of any underground streams, and no underground streams were observed during the geotechnical testing at Dixiedale. Mrs. Hoag said that the streams come down from Hillside. Mrs. Ruskan said that surface runoff is being captured. Mrs. Hoag said she is not referring to above-ground runoff, but rather water that is 50-100 feet under the property. Mr. Travisano asked what time of year the geotechnical testing was performed. Mrs. Ruskan said that it was performed in October.

Mrs. Swartz asked what the correlation would be between stormwater and underground streams. Mrs. Hoag said that during a storm, water infiltrates into the ground creating the streams which flow into the Passaic River. Mr. Travisano said that this discussion would be more appropriate at a time when Mrs. Hoag can be sworn in to give testimony. Mr. Ruschke asked if the streams are more recent, noting that 2018 had above average rainfall. He also said that Heritage Greene deals with a large drainage area. He also discussed the application of State standards to this project.

6. Mr. McNicholas asked where the water ultimately goes. Mrs. Ruskan said that the existing flow will be reduced. Mr. McNicholas said that reduction is not elimination.

Seeing no further questions, Mr. Travisano closed the floor.

Mr. Kasuba requested that the Board carry the hearing to the October 21st meeting, at which time the planning testimony will be presented. He also said that he anticipates asking the Board to vote on the application at that time.

Mr. Warner noted that the Board members who have missed meetings have listened to the recordings and submitted their certifications, thereby allowing them to vote on the application.

Mr. Ruschke encouraged the Board members to ask any remaining questions regarding the engineering testimony.

Ms. Hagner asked about the naming of the proposed new street. Mr. Kasuba said that there has been discussion of naming it after the former property owner, and the family will be contacted for their consent. Ms. Hagner also asked about the proposed trail, and if a sidewalk around the site would be a viable alternative. Mr. Kasuba said there was previous discussion about sidewalks, and there did not appear to be consensus from the Board to give direction for a sidewalk. Mr. Kasuba also noted that the applicant was operating under the assumption that maintaining the character of the area was desired. Ms. Hagner noted that an ordinance requires an interior sidewalk at this site. Mr. Coviello said that an exterior sidewalk would help connect areas of the Township. Mr. Travisano said this is the first direction the Board is giving for sidewalks to be explored. Ms. Hagner asked why the current design is the best design. She also said that the amount of fill to be brought in makes her wonder if it is the best design. Mr. Kasuba said that Mrs. Ruskan can address the questions at the next meeting.

Mrs. Ozdemir asked about construction traffic. Mr. Travisano said that the truck route issue was discussed and satisfied at a prior meeting.

Mr. Warner asked that the applicant confirm in writing that consent is given for time to act be extended through October.

Public Comment

Mr. Travisano opened the floor for general public comment.

1. Bailey Brower asked if Mr. Warner's comments at the beginning of the meeting were in reference to a Brower Watchdog Report that he had distributed. Mr. Travisano said that the comments were partially in reference to said report, and they were also in reference to additional correspondence that followed. He said that such ex parte evidence is not allowed, and all testimony needs to be made on the record at a meeting. Mr. Brower said that he never considered the condo residents to be step-children, and he said he has a right to send newspaper clippings to the members of the Planning Board. Mr. Brower also said that he does not like having the Board Attorney instruct the public on the Board's procedures. Mr. Travisano said that the Board relies on their legal counsel to provide guidance as to what can and cannot be considered. He also said that the Brower Watchdog Report was not the proper legal venue for evidence to be presented. Mr. Travisano also said that judgment had not been made on the content of Mr. Brower's report, however proper procedure needs to be followed.

Mr. Warner said that it is his job to provide the Planning Board with legal advice, which included protecting the integrity of the Board's proceedings. He also said that when a member of the public wants to submit what could be considered material relevant to the merits of an application, there is a proper legal procedure. Mr. Warner said that ex parte communications related to the merits of an application received outside of a properly noticed hearing under OPMA and the MLUL jeopardize the proceedings. Such testimony must be made under oath at a public meeting. Mr. Warner encouraged anyone having evidence to share to do so at the appropriate time. Mr. Brower said his attorney advised him that he has a right to send a letter to a newspaper. Mr. Warner said he can

send letters to a newspaper, however if something that was submitted to the Board outside of a properly noticed public hearing is considered by a Board member, then the Board's action could be nullified by a court of competent jurisdiction.

Mr. Warner noted that the counsel and the principal of the applicants who were heard at this evening's meeting were present to hear this discussion regarding the procedures employed by the Board, and as such the applicants' rights have not been violated.

Mr. Travisano reiterated that there will be a proper time for general comments and testimony from the public on the application. Mr. Brower proceeded to speak in favor of the application. Mr. Travisano said that every member of the Board understands the importance of the application.

2. Susan Hoag said that one of her neighbors was offended by the content of the Brower Watchdog Report and had emailed Mr. Travisano about it. Mrs. Hoag said that Mr. Travisano had appropriately indicated to the resident about the legal procedure for testimony needing to be presented to the whole Board. Mrs. Hoag said she has a copy of her neighbor's letter to be read into the record, and asked if this is an appropriate time. Mr. Warner said that the hearing has been closed for this evening, and the October 21st meeting would be the appropriate time for the public to submit evidence relevant to the applications.

Seeing no further public comment, Mr. Travisano closed the floor.

Mr. Coviello moved to adjourn at 10:40 PM. Mr. Franko seconded the motion which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary