

## MINUTES

### **PLANNING BOARD**

#### TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

September 4, 2019

The Regular Meeting of the Planning Board was called to order at 7:30 PM by Michael Einbinder in the Public Meeting Room.

Mr. Einbinder confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

#### **Roll Call:**

Members present were Mr. Einbinder, Mr. Graziano, Mr. Hall, Ms. Schwartz, Mr. Mangold, Ms. Poage and Ms. Greenwald. Mr. Robertson, Board Attorney, Mr. Solfaro, Board Engineer, and Mr. Hughes, Township Planner, were also present.

#### **Application for Review:**

#### **CARRIED FROM AUGUST 14, 2019, WITH NO FURTHER NOTICE REQUIRED:**

#### **App.#SP-3-19 Lone Pine Drive Urban Renewal, LLC, Bl. 703, L. 3, 4 and 8 ("Mill Creek" / "Modera Berkeley Heights")**

Applicant is seeking preliminary and final site plan approval for the redevelopment of the property. The proposed project consists of a 3-story apartment building containing 170 residential units, including 26 affordable housing units, with a 4-level parking garage and other amenities and related site improvements. (Zone DH-24 Redevelopment Area)

Mr. Robertson advised that this is a continuation of the Mill Creek application and it has been verified that three members of the Board had read the transcript of the previous hearing and would be eligible to vote on the application.

Samantha Alfonso, attorney representing Objector Chemtrade, stated that Chemtrade is the immediately adjacent property owner and they are very concerned about emergency access to the property. The fire official has recommended an emergency access out of the property to Snyder Avenue. Chemtrade is willing to give that access as long as the

parking garage is relocated. She said she can either start that discussion with the applicant or continue with presentation of expert testimony.

Michael Dipple, engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. He stated that he was retained by Chemtrade to review the site plan and DEP applications.

Mr. Dipple presented Exhibit O-1 – depiction of flood hazard area, Exhibit O-2 – definition of flood way, and Exhibit O-3 – aerial photograph of the property including the flood hazard area and flood way. He discussed the DEP requirements relating to the flood hazard area and access way. Mr. Dipple stated that Chemtrade is not trying to stop redevelopment but is concerned about having another accessway and is proposing that there be a second accessway through its property.

In response to questions from the Board, Mr. Dipple stated that a 100-year storm would create a problem and he does not know if the parties could agree to a road that could be used all the time.

### **Open to Public**

The hearing was opened to the public for questions regarding Mr. Dipple's testimony. There were no members of the public who had questions.

Charles Chelotti, engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Chelotti stated that his firm has been retained to determine how Chemtrade could be buffered from the proposed development and has proposed the relocation of the parking garage to provide that buffer. Mr. Chelotti presented Exhibit O-4 – proposal for relocation of the parking garage, and Exhibit O-5 – proposal for emergency access road.

In response to questions from the Board, Mr. Chelotti discussed the benefits of buffering between industrial and residential development and other options for buffering including landscaping.

Ms. Alfonso stated that Chemtrade does not believe landscaping would be sufficient buffering since this is an active chemical manufacturing site. They are concerned about residents, particularly children, entering the Chemtrade property.

Mr. Chelotti raised questions with regard to the traffic report and the methods used for gathering information.

Mr. Norin questioned Mr. Chelotti with regard to his testimony and his familiarity with the redevelopment plan for the property and the extensive negotiations that took place regarding this application. He noted that the design is in conjunction with the redevelopment plan and Mr. Chelotti is suggesting that the applicant start over.

Mr. Chelotti stated that they have not done a complete analysis but he believes the proposed plan could comply with the RSIS and fire code. They are suggesting a redesign of the parking garage.

Ms. Alfonso stated that Chemtrade believes changing the location of the garage would be a minor change. She noted that the Board has jurisdiction to review the safety of the site.

In response to a question from Mr. Robertson regarding compliance with the international fire code, Mr. Chelotti said there are no fire access lanes around the building and he does not believe the current plan allows for emergency access to the building.

**Open to Public**

The hearing was opened to the public for questions regarding Mr. Chelotti's testimony. There were no members of the public who had questions.

Ms. Alfonso stated that Chemtrade has retained a fire expert and planner who are not available tonight but would be available for the next hearing date.

Mr. Norin stated that the applicant would like to have a vote tonight and he would like to present some rebuttal witnesses.

Eric Giuliano, engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Giuliano said he has reviewed the Chemtrade plan and in his view it is not consistent with the redevelopment plan. With the Chemtrade plan the amount of square footage of the project would be about 10,000 square feet less. Their plan has units that would face the railroad tracks and in his view that is not a good architectural plan for marketable units.

In response to questions from Ms. Alfonso, Mr. Giuliano stated that in the applicant's plan the units on the train side are buffered by a corridor. In his opinion the Chemtrade plan is not possible without significant changes.

In response to questions from the Board regarding fire safety, Mr. Giuliano stated that the garage is made of concrete and has a ventilation system. He explained how vehicles would enter and exit the garage and how emergency vehicles would access the site.

Richard Murphy, representative of Mill Creek, previously sworn, stated that there may be some residents who will not have a car and will not want to pay extra for a parking space. The zoning ordinance does not prohibit them from charging for parking.

**Open to Public**

The hearing was opened to the public for questions regarding Mr. Giuliano's testimony. There were no members of the public who had questions.

In response to questions from Ms. Alfonso, Mr. Murphy stated that the 10,000 square foot difference in the plans would result in about 60 square feet less for each unit.

Eric Keller, engineer, previously sworn, discussed the DEP requirements and stated that the applicant's plan complies with those requirements. He further stated that the plan is compliant with the fire code. He has reviewed the Chemtrade plan and in his opinion it is not consistent with the redevelopment plan or with the Residential Site Improvement Standards.

Mr. Keller presented Exhibit A-3 – power point presentation containing three slides showing the constraints of the alternate plan.

Mr. Norin stated that the applicant does not believe it is the Board's role to review Chemtrade's plan. They believe it is not a viable plan and that the objector is only concerned about their operations.

Mr. Keller stated that the Chemtrade plan encroaches into the wetlands and the transition buffer area. Their plan would only provide 296 parking spaces and 323 are required. The Mill Creek plan complies with storm water regulations and the Chemtrade plan does not and would require detention which is not feasible on this site.

**Open to Public**

The hearing was opened to the public for questions regarding Mr. Keller's testimony. There were no members of the public who had questions.

Richard Murphy, previously sworn, stated that the reduction of the square feet of each unit is significant and reducing the size of the units would reduce the amount of the rent. All these numbers were negotiated with the governing body and the court master. It would not be viable to have residential units with windows up against the train tracks.

In response to questions from Ms. Alfonso, Mr. Murphy stated that the majority of the units have walk-in closets. In his opinion the Chemtrade plan would not work.

Mr. Keller responded to questions from Mr. Chelotti with regard to the traffic report.

Ms. Alphonso stated that Chemtrade has retained the services of two additional witnesses and they request that the hearing be carried to the next meeting.

**Open to Public**

The hearing was opened to the public for questions or comments.

Paul Spatz was sworn and stated that he and his brother have owned the property since 1947 and have never had any significant flooding problem on the property.

James Hopkins, Deputy Chief Fire Official, stated that he feels that emergency access through the Chemtrade property out to Snyder Avenue is important for a number of reasons.

Mr. Norin stated that Mill Creek is happy to provide that access and Chemtrade has said they will allow it if the town deems it necessary. It is not a requirement for approval of the application.

In response to a question regarding the international fire code, Mr. Hopkins said he does not know the answer but can research it. He stated that if Lone Pine Drive became impassible it would be impossible for the fire department to get through without emergency access. Emergency vehicles probably could not turn around without the emergency access and could not drive through the garage.

Discussion took place regarding Ms. Alphonso's request that the hearing be adjourned. Ms. Alphonso stated the objector's opinion on the issue and Mr. Norin expressed the applicant's view. He suggested that the applicant would be willing to enhance the landscape buffer on either its property or Chemtrade's property.

Drew Fleming, manager of Chemtrade, previously sworn, discussed the kind of complaints that Chemtrade anticipates it will receive from residents of the proposed development. He stated that they would be willing to sit down and talk about landscaping but they need something more substantial.

Ms. Alphonso discussed the problems that Chemtrade has experienced in the past with Berkeley Heights residents who have complained about activities on the property.

Discussion took place regarding potential complaints about Chemtrade from residents of the proposed project. It was noted that the Township has limited ability to respond to such complaints.

Following discussion, it was determined that the hearing would be carried to the next meeting of the Board on September 18, 2019 to allow the applicant and the objector to continue discussions regarding emergency access and landscape buffer. They will report to the Board if there is any agreement and the Board will vote on the application. There will be no further notice required and no further testimony. The applicant granted an extension of time to the extent required.

**Adjournment:**

A motion was made by Mr. Einbinder, seconded by Mr. Graziano, to adjourn the meeting. The voice vote was unanimous and the meeting adjourned at 11:20 p.m.

Regina Giardina, Secretary Pro-Tem