

## **WORK SESSION/REGULAR MEETING OF FEBRUARY 7, 2022**

The meeting of the Fair Lawn Planning Board on Monday, February 7, 2022 was called to order at 7:00 p.m. by Chairman Ari Ludzki in the Council chambers of the Fair Lawn Municipal Building and virtually.

The notice of the Open Public Meetings Law was read stating that the newspapers were notified and a notice posted on the first floor bulletin board of the Fair Lawn Municipal Building. Chairman Ludzki announced that Board Attorney Gregg Paster was present via telephone.

### **Roll Call**

Present: Councilmember Gail Rottenstrich, Larry Metzger, Chairman Ari Ludzki, Shana Cohen, Oliver Wilhelm, Jorge Reyes, Grant King, David Mangual, Amy Hummerstone  
Absent: Joseph Mele, Anna Aleynick

Also present: Board Engineer Lyra Knust, Board Secretary Cathryn Hochkeppel

### **Approval of minutes**

Upon motion by Oliver Wilhelm and a second by Grant King, the minutes of the meeting of January 10, 2022 were unanimously approved. AYES: Councilmember Gail Rottenstrich, Larry Metzger, Chairman Ari Ludzki, Shana Cohen, Oliver Wilhelm, Jorge Reyes, Grant King, David Mangual, Amy Hummerstone

### **Approval of escrow bills**

Upon motion by Grant King and a second by Councilmember Gail Rottenstrich, the escrow bills were unanimously approved. AYES: Councilmember Gail Rottenstrich, Larry Metzger, Chairman Ari Ludzki, Shana Cohen, Oliver Wilhelm, Jorge Reyes, Grant King, David Mangual, Amy Hummerstone

### **Resolution 357-2021**

Chairman Ludzki stated that the Council referred the Nabisco property to the Planning Board to investigate whether it should be declared an area in need of redevelopment. Ms. Hochkeppel

stated she was looking for authorization to obtain a quote from CME. Oliver Wilhelm moved that Ms. Hochkeppel be so authorized and Larry Metzger seconded the motion which was unanimously passed. AYES: Councilmember Gail Rottenstrich, Larry Metzger, Chairman Ari Ludzki, Shana Cohen, Oliver Wilhelm, Jorge Reyes, Grant King, David Mangual, Amy Hummerstone

### **Appointment of Court reporter**

Upon motion by Chairman Ludzki and a second by Shana Cohen, Laura Carucci was unanimously appointed as court reporter. AYES: Councilmember Gail Rottenstrich, Larry Metzger, Chairman Ari Ludzki, Shana Cohen, Oliver Wilhelm, Jorge Reyes, Grant King, David Mangual, Amy Hummerstone

### **Public Comment**

Chairman Ludzki opened the matter to the public and no public wished to be heard.

### **19-00 & 15-00 Pollitt Drive, Block 4804, Lots 1 & 8**

Amy Hummerstone noted that she was recusing herself on advice of Counsel.

Stuart Liebman noted that this was a continuation from last meeting. He added that testimony was given by the architect, engineer and representative of the developer. He stated that they took note of the Board's comments and will be making revisions accordingly.

Michael Sommer, Executive Vice-President of Kushner properties, was reminded he was still under oath. He testified that he met with representatives of the Ambulance Corp. twice. There were two issues that were raised and they were resolved. One was access to the complex. They have agreed to have a passcode through an electronic door entry for emergency personnel. There was also concern about a power outage. They will install a generator on the roof which would accommodate one elevator as well as an area on the first floor where tenants could congregate. They will also have a Shabbat elevator.

Chairman Ludzki thanked the applicant for making these changes.

Councilmember Rottenstrich asked if the volume of calls was discussed with the Ambulance Corp. personnel. Mr. Sommer stated that they did discuss this at their meetings and he gave examples of properties they currently maintain. He stated that the volume of calls at a 55 and over complex

is very different than an assisted living residence. The members were fully satisfied and were comfortable with his numbers.

Oliver Wilhelm asked about the space that will be lit in an outage. Mr. Sommer stated it was the lounge area which is about 4,000 square feet. Larry Metzger asked about the slope in front of the building. Mr. Sommer explained that if there was snow and ice, there was a secondary means of access by way of the ADA ramp. Grant King questioned the size of the lounge area. Mr. Sommer stated that most people stay in their apartment during a power outage but if people wanted to congregate, this space should be adequate.

David Minno was reminded he was still under oath. Mr. Minno testified that they looked at the application for sustainability. He noted there were 22 items contributing to the sustainability of the site. He listed all of them including that the site is transit oriented. There are bicycle facilities. There will be electrical charging stations. They have light pollution reduction. They are using environmentally favorable materials. Construction and demolition waste will be 75% diverted. It will be smoke free environment. There will be individual water meters which cuts down on water usage. There will be low flow toilet fixtures. They will use energy star appliances. They will be using a very efficient system for their heating/air conditioning system. There will be individually controlled HVAC. There will be programmable thermostats in all units. There will be 100% LED light fixtures. There will be a light colored roof. Grant King asked about the sprinkler system and was told it will be type thirteen. He also asked about stand pipes in the stairwells and was told that was possible. In response to Councilmember Rottenstrich's question, Mr. Minno explained that solar panels would not be possible because with the equipment they are putting on the roof there will not be a large area to even produce enough energy for the hallways. Councilmember Rottenstrich also suggested covered parking areas and was told that it was not contemplated at this time.

Chairman Ludzki opened the matter to the public and no public wished to be heard.

Leonard Sevino was reminded he was sworn in. Mr. Sevino testified there was a question about fire trucks. A circulation plan revised February 7, 2022 was marked as Exhibit A-13. Mr. Sevino stated that they met with the fire official and chief and used Fair Lawn's large truck which was two feet longer than the one previously used. It demonstrates that the truck can circulate easily on the site. The other question was regarding fire hydrants. A fire hydrant coverage plan dated January 18, 2022 revised February 7, 2022 was marked as Exhibit A-14. They have extended the line and connected it on the east side. There are existing fire hydrants along Pollitt Drive. They added two additional hydrants to give complete coverage. Mr. Sevino stated that there were also

comments about the trash enclosure. They will now provide a masonry enclosure for the dialysis trash area. It will remain in the same position. Mr. Sevino also testified that there will be approximately 8,500 square feet of additional pervious coverage on the site. Mr. Metzger asked if there will be stop signs in the exits and entrances and was told there will be stop signs. Grant King asked about the size of the fire truck and was told it was 47 feet long. Grant King stated that that was the longest truck in the fleet. Mr. Sevino stated that they increased the radius on the southeast corner and southwest corner. Councilmember Rottenstrich asked about the electric charger spaces. Mr. Minno stated that there will be 18 initially and others will be added over a 6 year period.

Marla Roller was sworn in and qualified as an expert landscape architect. A colorized landscape plan was marked as Exhibit A-16. She explained the plan in detail and the requirements. There are a wide variety of plants. In the courtyard there are 34 different varieties. They did extensive landscaping near the street frontage with a variety of trees. Ms. Roller explained the different varieties in detail. Five sheets that depicted the plants and trees that are going to be provided was marked as Exhibit A-17. There are a variety of colors. She explained the selection of trees based upon their shapes and colors. Ms. Roller explained the islands in the parking lot which include plants and trees and will provide shade. There is a variety of evergreen trees for the buffer. There are 100 trees in the parking area where 41 would be required. Ninety-one trees will be provided on the perimeter as well as 1,728 plants and 976 ornamental grasses. They are removing 20 trees but are adding many more trees. They are also adding some trees and supplementing the foundation planting around the dialysis building. Ms. Roller explained the active courtyard landscaping. There is a pool, lounge chairs and a barbecue grill station. There is a double pergola. There is a planting strip in front of the pool. Four sheets titled overall landscaping plan last revised 12/17/2021 was marked as Exhibit A-18. Ms. Roller explained that there is also a fire pit area with seating. The landscaping includes a significant number of trees. There are many plants and shrubs. Ms. Roller stated that Courtyard B is more of a passive courtyard. There is a lawn area in the center which is a flex space. There is a fire pit and bocce court as well as a putting green. There are intimate sitting areas and many benches. There are many trees, shrubs, flowers and grasses. Ms. Roller stated that there will be an irrigation system. Mr. Liebman asked if there should be openings in the islands so rainwater can flow in. Ms. Roller replied that the grading on the site didn't lend itself to this technique. Ms. Roller stated that there can be salt in the parking lot which can hurt the plants. She added that in a heavy downpour, whatever plant is the first one there, takes the brunt of the water and can drown. Ms. Roller said she could comply with all of the suggestions of the CME letter as noted in the Langan letter of December 29, 2021. The only comment that she disagreed with is switching the Ginko trees to Zelkova. Ms. Roller stated that although having the same kind of trees can be beautiful, the trend

is away from planting all the same type of street tree in case of disease. She stated that they feel a variety of trees is the better option. Board Engineer Lyra Knust stated that they could keep the Ginko trees. Shana Cohen asked about the aesthetics of different trees and Ms. Roller explained that the trees are grouped and will be aesthetically pleasing. It will not look sporadic or disjointed. Ms. Roller also noted that some of the existing street trees are not on the rendering and, if necessary, they will add more street trees. Councilmember Rottenstrich asked about the irrigation system and was told that it will probably be a drip system. She also commented that according to the plans the materials "must be inspected by the municipal landscape architect." She noted that the Borough does not have a landscape architect. Ms. Roller stated that they include that note on their plans to ensure that the proper materials are planted. Board Engineer Knust noted that she works with licensed landscape architects at her firm and could have them make the inspections of the landscaping. Councilmember Rottenstrich asked about shading in the parking lot and Ms. Roller explained that in addition to the islands, there will be trees around the perimeter so there will be shade from all angles. Grant King asked about a rain barrel system and Ms. Roller stated that it would work on a smaller site but this site is too large. Oliver Wilhelm asked about the size of the trees 10 to 15 feet wide and 25 feet high. David Mangual was concerned about the trees in the corner and was told that they are specifically shade tolerant trees. Ms. Roller added that they are not removing trees at the dialysis center. Larry Metzger commented that he believes that the landscaping will be beautiful.

Alan Weitzman, 11-17 stated he was impressed with the landscaping plan but wondered how many people the courtyard could accommodate. Ms. Roller said that it is designed to make many different areas available. Mr. Minno stated that the courtyard is 136 feet x 85 feet at the tightest dimensions and it goes deeper than that in some areas. The other courtyard is 102 x 136.8 feet. Mr. Liebman asked if he thought the space was appropriate for the building and Mr. Minno stated it was appropriate.

Chairman Ludzki recessed the meeting at 8:45 for ten minutes.

The meeting reconvened at 9 p.m. with all members present as previously indicated.

Douglas Polyniak was sworn in and qualified as an expert traffic engineer. Mr. Polyniak stated he was familiar with the application and circulation plans. A traffic impact statement was marked as Exhibit A-19. From a traffic impact perspective, the proposal as shown will actually reduce traffic from existing conditions. He explained that they used the ITE design manual. Mr. Polyniak explained that during the peak hours there are fifty five less peak hour trips in the morning and less thirty-five peak hour trips in the evening. There is a reduction in traffic when compared to

the office building. On Saturday, the proposed building will generate 50 additional trips which will not have an adverse impact of the roadway network as there is less traffic on Saturday than during weekday rush hours. Mr. Polyniak explained that traffic impact studies should be performed when a development generates 100 or more new traffic trips. They also reviewed the site plan relative to parking and circulation. He noted one driveway will be eliminated. Parking spaces will be dimensioned properly. They are required to provide 344 spaces and 401 are proposed. Based upon those parameters, Mr. Polyniak stated that detailed traffic impact analysis is not warranted as overall traffic operations will be better. Mr. Polyniak also testified that they took no credit for the proximity to the train station. Mr. Liebman noted that they had received two communications from the Police Department indicating that they did not have any concerns relative to the traffic for this site and Mr. Polyniak agreed.

Grant King asked about pedestrian trips and Mr. Polyniak indicated that there wasn't much data on pedestrian trips but noted that the site was surrounded by sidewalks. He also noted that most pedestrian trips would be outside of peak hours. Chairman Ludzki asked about crosswalks particularly on the south side. Mr. Polyniak said he would look at it. Mr. Liebman stated that if they can fit it without losing parking spaces, it would be accomplished. Councilmember Rottenstrich asked if the current office building was occupied and was told it was not. Jorge Reyes asked if the pandemic changed the trip generation numbers and was told it did not change the way they made the calculations. Chairman Ludzki asked that the resolution indicate that crosswalks be investigated at the southern end of the building.

Chairman Ludzki opened the matter to the public and no public wished to be heard.

John Taikina was sworn in and qualified as a professional planner. Mr. Taikina stated he was familiar with the plans, property and the master plan and zoning ordinances of the Borough of Fair Lawn. Mr. Taikina noted that there were existing conditions that will remain. Mr. Liebman also noted there was one new variance with regard to the monument sign. Mr. Taikina noted that there are three variances, two of which are existing. The continuation of the dialysis center helps to create a more sustainable development. He stated that the existing setback is 6.7 feet where 15 feet is required. The loading spaces that exist at the dialysis center are smaller than the requirement. Mr. Taikina stated that they have been functioning at the reduced size and will continue to function efficiently. A new variance is for the sign. The overall area is approximately 30 square feet where 12 square feet is permitted. Mr. Taikina stated that the variances can be granted advancing the principles of the municipal land use law without detriment to the public good. Under the C(2) requirements, the benefits for granting these variances outweigh any detriments and the variances do not impair the intent and purposes of the zoning plan. Mr.

Taikina testified that the variances specifically relate to this piece of property as this property was zoned by the Council for senior housing. This property advances the purposes of Municipal Land Use Law specifically purpose (L) to encourage senior citizen housing construction and for more efficient use of land. Mr. Taikina testified that in regard to the sign, it is a modest deviation and is appropriate for the size of the building. It is important that the building be adequately identified. He also noted that a waiver was required for the location of the trash collection on the dialysis site. The standard is that it should not be visible from public streets. Mr. Taikina testified that it has existed in that area for many years. They are also going to add an aesthetically pleasing enclosure around the collection site. Mr. Taikina stated that the granting of this waiver is reasonable as it has been existing and it will be improved with a screen. Mr. Taikina concluded that the Board can grant the variances and waiver requested.

Board Engineer Knust noted that she had a request from the Borough's Engineering Department that the railway easement be vacated. Mr. Liebman stated that he does not know if it can be vacated as other property owners might have rights to that. Mr. Liebman stated that he will look at that and if it is feasible to vacate, they will do it.

Chairman Ludzki opened the matter to the public and no public wished to question the witness.

Chairman Ludzki opened the matter to the public for comment.

Alan Weitzman, 11-17 Fairhaven Place, stated he was representing the design committee of the Fair Lawn EDC. Gregg Paster stated he reviewed the letter and it is not under consideration by the Board. It is simply input by citizens. Chairman Ludzki stated his concern is nothing in the letter is within the purview of the Board with regard to this application since it doesn't refer to specific zoning regulations or ordinances. The Board has a specific understanding of what is in their purview. The Planning Board has to follow Municipal Land Use Law. Mr. Weitzman stated that as a Fair Lawn resident he might consider moving into this type of development but not as it currently is presented. Mr. Weitzman read the letter into the record (see attached Exhibit O-1).

Board Attorney Paster noted that none of those concerns that he heard are within the Board's purview to consider as a grounds for denial of the application. They may be good design suggestions but the Board does not have the right to require these changes. The Board must make its decision based upon the current ordinances and zoning for the site. In this case, the applicant has sustained that burden and they are asking for very little variance relief. The use was specifically allowed by the borough council. Although the suggestions are legitimate from a planning perspective, they cannot be required as conditions of approval in this situation.

Mr. Liebman stated that he agreed with Board Attorney Paster. The comments are more appropriately targeted for the creation of the zone. He respects the authors of the letter but it is five people who are giving you their opinion and it doesn't tie into economic development. Mr. Liebman stated that they believe that the current design is good. He noted that Mr. Sommer testified that he has substantial experience with these type of developments throughout New Jersey and other states. He noted that the developer is the one who needs to rent it and keep it occupied and the developer has experience and knowledge. There are no zoning or site plan elements brought forth by this letter.

Baruch Gadot, 26 Koenig Court, stated he was a member of the design committee. He asked what the proposed rental for these units will be and Mr. Liebman stated that the rents have not been set. Mr. Gadot questioned who has the obligation to look at the design to see if it is really benefitting the town. He does not feel that the proposed project is addressing the town's needs. Chairman Ludzki stated that recently there has been tremendous work on how to keep our seniors in town. There was significant consideration given by the Council. When the Planning Board receives an application, they have to follow the laws and ordinances of the Borough and Municipal Land Use Law. The Board considers the various variances and waivers requested. As this Board sits now, we have to consider the ordinances that exist presently. Councilmember Rottenstrich said that the Council has worked hard to encourage senior housing. She would have preferred to have these comments when the Council was considering the ordinance. Mr. Gadot stated that outdoor parking is difficult for seniors when it snows. He doesn't want an unsuccessful project. Chairman Ludzki stated that the Board must consider the application before it now and the Board cannot purposely slow the application. .

Gregg Paster stated this zone and density were addressed by the Council in developing the overlay zone. If it is too far for people to walk or they require covered parking, they won't rent there. There are certain things that can't be regulated and are beyond the scope of governmental regulations. Clearly, they have had experienced professionals handle this application. There is very little that is contrary to the ordinance.

Ravit Gilletti, 8-06 Melvin Place, stated she is very active in the community. She stated that there was survey asking seniors what they needed. The response was senior housing and they thought the community was going to take care of them. She believes there is a safety issue relative to snow. She recanted a story regarding having to shovel out her parents as her father might of had to go to the hospital. She stated that the people in charge are not listening and she is disheartened. She encouraged the developer to do the right thing.

Mr. Weitzman stated that there are over 5,000 people in Fair Lawn over 65. He lives in a four bedroom cape. He noted that there are regulations for handicapped people and for schools. He said there are no regulations for seniors. He wondered where the people will be coming from as he didn't believe they would be coming from Fair Lawn.

Mr. Liebman stated that he and his wife have lived here many years. He understands that people can be passionate but he is a little disappointed with some of the comments. Nobody did anything wrong here. There is nothing wrong with the process or the ordinances. The developer did nothing wrong in putting together a building that will address the market for 55 and over. He noted that they are not talking about assisted living and/or skilled nursing. Those are different products. Many seniors are looking for 55 and over. He noted that he is 65 and he can make the hallway walk and deal with the parking lot. He noted that 55 and over is not a feeble community. He noted that assisted living is a different product and there were many of those in the area. Mr. Liebman added that Bergen County probably has 300 options including assisted living and independent living. This development is for more active individuals who live in town and wish to remain in town. It has amenities for seniors. Mr. Liebman stated that if you live in a house or apartment, you have to deal with the snow. If someone doesn't want to deal with the snow, they would choose a different product. Mr. Liebman added that this is a very good development. It is suitable for the people of Fair Lawn. Plenty of people from Fair Lawn will want to live in this development. Mr. Liebman added that they are also creating 46 affordable units. Mr. Liebman stated that his client is a big developer and understands the responsibilities of ownership. He added that he does not know of any zoning regulation throughout the state or anywhere that dictate the length of a hallway. Aesthetics and architectural design are not permitted to be regulated under land use law. Mr. Liebman added that if other zones are created in the future, perhaps some of the suggestions could be implemented if they are legal. Mr. Liebman added that at this point in time, he is bringing to the Board an excellent development for a need that currently exists. Mr. Liebman stated there are very minor variances and a waiver being requested. He encouraged the Board to approve the application at this time.

Gregg Paster noted that there were two existing variances that will be continued as well as the sign variance. He also asked the Board members to recollect the applicant's expert testimony and the comments of the Board's experts. He also noted that comments from the public, although they can be useful, are not expert testimony. He stated that he will get all the conditions from Mr. Liebman, Ms. Knust and the minutes of the meeting.

Mr. Liebman identified the variances as the front yard setback of the dialysis center, the under-sized loading spaces that exist at the dialysis center and the sign variance. A waiver is also required for the location of the dumpster for the dialysis center. He noted that the applicant will be providing screening for that trash area.

Shana Cohen asked why underground parking wasn't considered. Mr. Liebman replied that there is adequate surface parking. Parking under the building creates issues relative to building height and usable area. He added that it is also very expensive and affects the pricing of the units. If a developer has enough land to build the surface parking, that is what they will deliver.

Chairman Ludzki suggested that Grant's comments relative to the stand pipe in the stairwell be included as a condition. The architect stated that it is a code requirement.

Councilmember Rottenstrich asked the actual length of the hallways. She was told the longest leg of the corridor was approximately 170 feet. Councilmember Rottenstrich stated her mother's apartment is 170 feet from the elevator. Architect Minno stated that he does not believe any apartment is farther than 170 feet since there are four elevator locations.

Chairman Ludzki stated that he appreciated the applicant's indulgence of the public comments. He reiterated that upon advice of Counsel, the Board has a very specific purview of what they can consider in approving or denying this application. He asked that the developer consider some of the suggestions, if feasible.

Larry Metzger moved that the application be approved and Oliver Wilhelm seconded the motion which was unanimously passed. AYES: Jorge Reyes, Shana Cohen, Councilmember Rottenstrich, Grant King, Oliver Wilhelm, David Mangual, Larry Metzger, Chairman Ludzki

Mr. Liebman thanked the Board and stated that his client will be working with staff at the Senior Center to help them with programs.

## **Adjournment**

Upon motion by Shana Cohen a second by Grant King, the meeting was unanimously adjourned at 10:30 p.m.

Respectfully submitted,

Cathryn Hochkeppel  
Secretary of the Planning Board