

# West Windsor Township Zoning Board of Adjustment

## Minutes – Regular Meeting

November 7, 2019

The regular meeting of the Zoning Board of Adjustment was called to order at 7:00 p.m. on Thursday, November 7, 2019 by Chair Abbey in Meeting Room A of the Municipal Building.

### STATEMENT OF ADEQUATE NOTICE

Pursuant to the Sunshine Law, a notice of this meeting's date, time, location and agenda was mailed to the news media, posted on the Township bulletin board and filed with the Municipal Clerk as required by law.

### ROLL CALL AND DECLARATION OF QUORUM

Present: Susan Abbey  
John Church  
Michael Garzio  
Curtis Hoberman  
Henry Jacobsohn  
Daniel Marks  
John Roeder  
Carl Van Dyke

### CHAIR'S COMMENTS & CORRESPONDENCE

No comments were provided.

### PUBLIC COMMENT

No comments were provided.

### MINUTES

1) June 6, 2019 - Motion was made and seconded to approve the minutes of June 6, 2019 as amended. The vote was 7-0 in favor of those eligible to vote.

### APPLICATION

ZB 18-07 **CELEBRATIONS @ WEST WINDSOR (continued from 8/22/19)**  
**D-1 Use Variance and Concept Plan**  
**Block 21.27, Lot 1**  
**Northwest Corner of McGetrick Lane & Southfield Road**  
**Property Zoned: P-1 District**  
**MLUL: 11/12/2019**

Jeffrey Baron, Esq., stated that he is representing a homeowner who lives across the highway from this proposed development. He advised that the planner hired is in Atlantic City and is unable to attend tonight. He wished to give his legal thoughts about this proposal. Typically a judge tells juries that attorneys are here to give argument about what they feel the case law is and his thoughts are consistent with what the planner has said. The project "Homes of Hope" located in Burlington County is an

affordable housing project that was cited as being inherently beneficial, page 340 of the decision notes that if the municipality meets its affordable housing obligation, substandard housing will continue to exist and judges review each proposal on a case by case basis to satisfy the positive criteria so because affordable housing is being provided is not always considered inherently beneficial and approvable. If there is a need to eliminate substandard housing and replace it with better accommodations then the proposal would be appropriate, there is no proof of this in this case. The character of the area cannot be changed, this site is over 80% of the P-1 district. The nature, the degree and extent of the variation from the zone regulations that are being sought must be considered, including how large the land is when looking at the entire town. The Zoning Board does not have the jurisdiction to change the use for this zone since the entire tract is 80% of the P-1 zone. Many variances are needed with this project, and the result would vary the character of the property.

Use variance approval is needed and 5 members are needed to vote in favor in order for this to be approved. The distance from the perimeter of the district is another variance, a 50-foot setback is required and the proposal offers less than half. The floor area ratio is another required variance, the proposal is four times what is permitted. A height variance is also needed, these are all significant variances and difficult to obtain. There are also a number of waivers which are itemized in the Planner's report, and this is further indication that the character of the property will be changed by what they are asking to do. He asked if the applicant has proven the necessary criteria for getting a use variance, he does not believe that they have. If the proposal changes the character of the area, the Board does not have the authority to make this decision. There are too many substantial changes which are inconsistent with the homes in this area. In addition, the applicant has not approached the governing body about changing this zone to allow this use.

The residents have made it clear that they are not in favor of this project, there is no reasonable way that the Board can conclude that you can approve this use variance. The largest inconsistency is the analysis about how many units would be permitted by right. 420 units are proposed so how many more units are they proposing than what is permitted, because residences are not permitted in this zone the answer is zero. Traffic is another factor that should be considered, there are difficult traffic conditions in the area during peak hours so with 420 units there are at least 420 trips per day. The Board should determine if the use variance is appropriate and if so, what conditions are needed to control the development. One control would be the maximum number of units, height limit and the creation of large buffers for separation. There are many things that could be considered but none have been presented as options by the applicant.

David Novak, planning consultant for the Board, previously sworn in stated that there was a Supreme Court decision that found COAH to be dysfunctional in 2013 and the affordable housing issues were kicked back to trial courts in New Jersey. He stated that there is a long term comprehensive plan for the community and a series of regulations for the district where a property is located. The P-1 zone is zoned for Planned Village Center which permits offices for professional services, restaurants, shoppes, specialty business, banks, veterinary clinics, etc. The Master Plan sets the framework, the intent of a Master Plan is to recognize an area for a use which is appropriate. The municipal land use law finds affordable housing an inherently beneficial use and a value to the community, there is no doubt that this is beneficial but the applicant needs to address the negative criteria. Mr. Novak stated that the Board must consider whether the impact of the requested variance would substantially alter the character of the district and whether the site constitutes a rezoning.

Public comment from the previous meeting remains open.

Kenneth Kerts, 15 Woodland Court, stated that the town needs to manage its growth and putting more people in the area of Route 571 and Southfield is not a good idea and recommended affordable housing be located closer to the train station.

Theza Friedman, 4 Woodland Court, stated that he is concerned about the development and whether the sewer system can handle the additional people. West Windsor needs more office space and this would obliterate that opportunity.

Steve Kelimer, 15 Haverford Road, stated that he purchased his home in 1990 and was advised by the sales representative about a soccer field, golf course and professional offices being developed in this area. This proposed use has a significant impact on him, this is not needed by the town, the land is not zoned for this use and the applicant's consultants have presented misleading arguments.

Jidendra Mucha, 21 Haverford Road, asked if this development is going to support the case of life, liberty and the pursuit of happiness for the residents who live in this part of town.

Stacey Karp, 37 Haverford Road, stated that the property is zoned commercial, if this development is approved then there is a loss of ratables with residential development, traffic will increase and she questioned how the schools can handle the additional children from this development.

Motion was made by J. Roeder to close the public portion of the meeting, H. Jacobsohn seconded the motion. The vote was 7-0 in favor. Motion carried.

Mr. Wolfson stated that he disagrees with some of the remarks provided by Mr. Baron, this is a bifurcated application, the proposal is for use variance approval only and 420 units were never expected. The proposal could have conditions to improve those things that are considered a detriment. Regarding the traffic generated from a professional office development when compared to residential. This property has been vacant and the owners have been trying to develop this property over the past 10 years but every application was denied. The owner cannot find tenants to rent these spaces, it is his opinion that the town purposely kept this use out of this zone and the property is not adaptable for the purposes of the zone.

Mr. Baron advised that he did not have any additional comments.

J. Church asked for clarification about imposing conditions. Mr. Schmierer stated that there are some situations where a local board may reduce the detrimental effects by imposing conditions, the Board can do this if they wish to.

Mr. Wolfson stated that affordable housing is inherently beneficial, the positive criteria have been satisfied by the applicant because any affordable housing is considered inherently beneficial. A concept plan was filed so the Board would get a sense of what may be built on the property if the use variance is granted. The applicant is willing to work with the town to come up with the FAR and number of units because this use is not permitted in the zone. The Board should consider the negative

criteria and balance the negatives against the positives.

Board discussion took place.

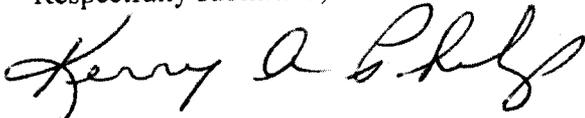
H. Jacobsohn stated that the issue of rezoning should go before the governing body. J. Roeder agreed, the applicant is asking for 80% of the P1 zone for a different use and this is tantamount to rezoning.

Motion was made by C. Hoberman to deny the use variance application, and Chair Abbey seconded the motion. The vote was 7-0 in favor. Motion carried.

For: Church, Hoberman, Jacobsohn, Marks, Roeder, Van Dyke, Abbey  
Against: No one  
Abstain: No one

Being that there was no other business before the Board, the meeting was adjourned at 9:10 p.m.

Respectfully submitted,



Kerry A. Philip  
Recording Secretary