

**Mount Laurel Township Zoning Board of Adjustment
Special Meeting Minutes
September 16, 2020**

Opening

The First Special Meeting of the Mount Laurel Zoning Board of Adjustment September 16, 2020 was called to order by Vice Chairman Kiernan at 7:00 p.m. This meeting was held via Zoom

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

Vice Chairman Kiernan, Mr. Francescone, Mr. Green, Mr. Killen, Mrs. Liciaga, Mr. List, Mr. Kramer and Mr. Andrew Pizzo.

Absent

Mrs. Jones and Mr. Bailey

Board Professionals in Attendance

Joseph Petrongolo, Planner – William Long, Engineer – Michael Angelastro, Traffic Engineer – Brian McVey, Fire Marshal and Evan Crook, Board Solicitor

Announcements and Review of Board Procedures

Swearing in of the Board Professionals

Petitions before the Board

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. This is a continuation of the Zoning Board meetings held February 5, 2020 and March 4, 2020.

Frank Tedesco Esq., Dilworth Paxson, represented the applicant.

Exhibits:

A-7, Traffic Impact Assessment dated February 18, 2020; A-8, Power Point presentation & A-9, Rebuttal Submission packet

Witnesses sworn in:

All witnesses sworn in at the February 5, 2020 and March 4, 2020 Zoning Board meeting were reminded and acknowledged that they remain under oath.

Vice Chairman Kiernan reopened the public portion.

Board Secretary explained the process to raise ones' hand on the Zoom application, using the raise hand function is the only way to testify during the hearing.

Mary Joe Cooper, 2 Bridle Lane was sworn in. Ms. Cooper expressed her support of the application. She testified that she is a 35-year resident and believes this project will allow the elderly to stay in the community near their family's with no stress on the school system.

Cornelis Kanoke, 118 Cobblestone Dr. was sworn in. Mr. Kanoke testified he is a 37-year resident and his main concern is traffic and the height of the building. He is concerned that currently people take a shortcut from Cobblestone Drive to South Church Street and the deliveries and traffic during holidays will make traffic worse. Mr. Kanoke questioned if the entrance is across Cobblestone Drive, if so it will be bad traffic.

Mr. Tedesco Esq. replied that the entrance will be there.

Janice Campagna, 4 Lavister Drive was sworn in. Ms. Capagna suggested a turn lane and expressed her support for the project because it does not increase school enrollment. She questioned if the contamination onsite was found to be in allowable limits.

Mr. Tedesco Esq. responded that testimony of the applicant's professionals will answer that question.

Charles Lang, 818 Braddock Terrace was sworn in. Mr. Lang disagreed with the comparison made by the applicant between Lutheran Crossing and Evergreen in Moorestown with proposed project. He is concerned with traffic and the height of the building.

Katherine Kaplan, 5 Ursinia Court was sworn in. Ms. Kaplan stated that a four story building is a bad idea and it will affect her property value. Concerned that people will make a right turn out of the project into Birchfield to turn around and the over use of the water stressing the MUA.

Agnes Maderich, 1622 Hainesport Mt. Laurel Rd. was sworn in. Ms. Maderich has concerns about wetland area and the impact on the Township Master Plan as well as traffic with respect to employee arrival and departure. Mrs. Maderich questioned the parking plan, the environmental contamination, Wetlands, traffic report, the professional reports and the positive and negative criteria.

Mr. Tedesco Esq. responded that the applicant's professionals will address these issues with testimony

Amy McLeer, 121 South St. Andrews Drive was sworn in. Ms. McLeer expressed concerns about traffic on Ramblewood Parkway and has asked for expert testimony regarding of the two lights at either end of Ramblewood.

Adrew Turner, 111 Cobblestone Dr. was sworn in. Mr. Turner asked the Zoning Board to consider the possibility of overflow parking onto Cobblestone Dr., traffic and the impact on property values. Mr. Turner questioned what guarantees the performance of the applicant and what remedy there is if there is a negative impact on the area.

Mr. Crook Esq. explained that this hearing is solely for the Use variance. If this is approved Site Plan will be the next step. Bonds are posted to guarantee performance. The conditions are enforceable by pulling the bonds or revoking the approval.

Daniel Shabel, 587 Ridgewood Terrace was sworn in. Mr. Shabel expressed his support for the project. The former use was commercial with high traffic. Mr. Shabel believes the building is attractive and the placement is appropriate. Allegro will provide jobs for the neighborhood and increase the tax base.

Donna Sneddon, 135 Cobblestone Dr. was sworn in. Ms. Sneddon questioned why this property.

Joseph McCormick, 838 Browning Rd. was sworn in. Mr. McCormick questioned what other locations have been considered.

Karen Dellaratta, 108 Roberts Place was sworn in. Ms. Dellaratta questioned why the township can't purchase the property, what the cost of clean-up is and if there is proof of contamination.

Magen Baker, 276 St. David Dr. was sworn in. Ms. Baker referenced the Curaleaf application heard at the September 2, 2020 Zoning Board Hearing.

Vice Chairman Kiernan explained that each application is reviewed on its own merits.

Seeing no more raised hands, Vice Chairman Kiernan closed the public portion at 8:02.

Joe Miklich, Sr. Vice President of Allegro Development, acknowledged that he is still under oath.

Vice Chairman Kiernan asked the professionals to keep their comments in response to the questions raised tonight and to please not reiterate previous testimony.

Mr. Miklich's Testimony

Mr. Miklich presented exhibit A-8, and stated that the applicant looked at 30-40 other sites in Mt. Laurel and at one time was under contract on another property, however that fell through due to title issues. The required site characteristics including visibility and a residential setting is what brought Allegro to this site. Allegro also thought the clean-up of the property was beneficial to the township. Because of the wetlands, the buildable space was such that a four story building was necessary to allow for the required number of units. Allegro tried to negate the impact with the Mansard roof. The peak daytime weekday shift will have approximately 35 employees employed in different capacities arriving at different times. The vast majority will arrive and leave at non peak hours. Visitors rarely brave rush hour traffic to visit loved ones.

The applicant has a verbal agreement with Twin Ponds to utilize their parking spaces for overflow events such as mother's day, holidays or special events. An LSRP will testify to the contamination of the property. It is not registered with DEP because Allegro does not own the property and the owner has not opened a case. The foundation of the building is part of the remediation therefore the cost of the remediation includes the building itself.

Douglas Polyniak, Traffic Engineer acknowledged that he is still under oath.

Mr. Polyniak's Testimony

Mr. Polyniak referred to and summarized Exhibit A-7, Traffic Impact Assessment. The Township and County Traffic Engineer agree that project has low traffic impact. The site traffic does not warrant a left turning lane. Based on analysis, review of accident history, the characteristics, discussions with Mr. Miklich and discussions with the county Mr. Polyniak anticipates there will be no substantial impacts on the surrounding neighborhood or the intersection with respect to traffic.

Mike Angelastro, Board Traffic Engineer

Mike Angelastro testified that he is in agreement with the finding of the applicants Traffic Impact Assessment. South Church Street is a County Road therefore the County has jurisdiction with respect to any and all improvements. Mr. Angelastro believes the entrance on Cobblestone Drive is the safest placement for the entrance and a left turn lane is not warranted.

John Francescone asked how this use compares to the previous use and what is allowed to go there by rite.

Mr. Polyniak responded the uses that could be developed are single family home, schools or churches. The trip generation associated with the previous use of the garden center is significantly higher.

Alan Kramer questioned why only one day was studied for the traffic study and expressed concern for speeding on South Church St. He asked how may 80-85 year olds drive.

Mr. Polyniak responded that one day is the standard for a traffic study and that he looked at accident reports for the previous 6 years. Those showed that speeding accidents did not occur.

Mr. Miklich responded that in the Tampa location 15% of independent living residents have a car and in St. Augustine 40% of independent living residents have a car. Allegro provides group and private transportation for the residents.

Brian List asked would the intersection benefit from a traffic light.

Mr. Angelastro, Township Traffic Engineer, responded it will not be installed as the traffic does not meet the required standards.

Mr. Polyniak added that a traffic signal increases rear end collisions.

Mr. Angelastro, Township Traffic Engineer agreed.

Andre Pizzo asked how would people get from the overflow parking at Twin Ponds to the facility.

Mr. Miklich responded that he believes they will install a sidewalk and parking would be primarily for employees and there will be a shuttle.

Wriston Phillips, Licensed Site Remediation Professional and Senior Manager at Whitestone Associates acknowledged that he is still under oath.

Mr. Phillips Testimony

Mr. Phillips referred to Exhibit A-8. Allegro conducted a Phase I Environmental Site Assessment and a Phase II Site Investigation as well as supplemental site investigations. The Phase 1 ESI identified areas that needed further investigation such as the former agricultural use dated back to 1931, multiple hazardous material storage areas, fill material, multiple stockpiles of various materials, above ground heating oil storage tanks, 2 open NJDEP spill cases relating to heating oil releases and potential of septic systems and dry wells. The Phase II was conducted for further investigation of soil and ground water. This included a geophysical survey and a total of 29 soil borings. Remedial actions are required. At the conclusion of the remediation an LSRP will certify the work was done in accordance with guidance and rules and will ultimately submit a Response Action Outcome Letter to the State which will be open to a 3-year audit period.

Vice Chairman Kiernan asked what the cost would be to complete the described work.

Mr. Phillips responded that part of the remedy is capping therefore the development will offset some of the cost but it is a wide range anywhere from \$75,000.00 to \$2,000,000.00.

Vice Chairman Kiernan called for a break at 8:52 and reconvenes at 9:07.

Vice Chairman Kiernan asked for a motion to proceed with the hearing past the 1.5 hour time limit and to conclude at 10:00pm.

Mrs. Liciaga moved the motion, Mr. List seconded. All present voted affirmatively and the motion was carried.

Mr. Kramer asked what is meant by "capping"

Mr. Phillips explained that capping is an engineering control to prevent contact with contamination, this would be achieved by the foundation of the proposed project.

Mr. Green questioned if this were to be purchased as open space would it need to be remediated.

Mr. Petrongolo, Township planner responded that open space needs to be used for recreation and for that reason the property would need to be remediated.

Mrs. Liciaga questioned who is responsible for the clean up

Mr. Tedesco responded that the applicant will pay the cost.

Daniel King, Applicants Architect, acknowledged he is still under oath.

Mr. Kings Testimony

Mr. King presented the elevations in exhibit A-9.

Mr. Green questioned how long until the trees are as large as shown in the rendering.

Mr. King responded the trees will grow 6" – 12" per year and the rendering shows approximately 20 years into the future.

Robert Espasa, PE acknowledged that he is still under oath.

Mr. Espasa's Testimony

Mr. Espasa presented Exhibit A-9 referencing the landscape buffers and landscaping along South Church Street including the Arborvitae and Maple Trees as well as plan views from various points around the property and site lines. Mr. Espasa testified that the wetland lines on the plan are verified by the DEP and there is an active Letter of Interpretation on the property.

James Miller, AICP, PP

Mr. Miller's Testimony

Mr. Miller opined that the trees and landscaping mitigate the visual impact of the potential site. Mr. Miller compared this application to the Jayber v. Municipal Council case stating that the proposed use is virtually identical to the congregate care use which was determined to be an inherently beneficial use in that case.

Mr. Petrongolo, Township Planner agreed that the proposed Allegro use is similar to the Jayber v. Municipal Council use and that the proposed use meets the criteria established in the Sica case as an inherently beneficial use. However, a need for the use also needs to be shown.

Mr. Crook Esq., Township Solicitor stated that he reviewed the Jayber case and exhibit K-1, he believes the Jayber case could be a basis to find the proposed use inherently beneficial.

Mr. Francescone asked if it is true that there are environmental contaminants on the entire property and what will be done with the area where the building will not be capping the contaminants.

Mr. Tedesco Esq. responded that yes, if the board approves the application the property will be remediated in accordance with the Department of Environmental Protection. The applicant will do anything that the DEP requires them to do.

Mr. Killen questioned if the property will be available for unrestricted access.

Mr. Phillips responded that there will be certain restrictions on the property.

Mr. Killen questioned if there will be a barrier to prevent children from playing on the contaminated property.

Mr. Petrongolo, Board Planner, asked Mr. Phillips if the DEP will allow the applicant to remediate certain wetlands.

Mr. Phillips responded that typically, no. The DEP would rather you leave it alone.

Mr. Killen asked if there is a fence or barrier to prevent children from entering the property.

Mr. Miklich responded that if it is required by the DEP they would.

Mr. Francescone asked if the applicant would agree to the fencing as a condition of approval if the DEP says that portions of the property cannot be remediated. Mr. Francescone stated that he would not vote yes on this application unless the applicant agrees to the condition.

Mr. Miklich responded that they will agree.

Mr. Petrongolo explained the inherently beneficial use argument and the Sica balancing test of the positive and negative criteria as well as purpose "L" of the purposes of zoning, to encourage senior citizen housing.

Mr. Crook Esq. clarified that all Bulk and Site Plan issues would be handled at the time of Site Plan approval and that this approval is for use and height only.

Mr. Crook Esq. summarized the motion for approval of the use variance for construction of a 56,672 Square foot 4 story senior living building with associated improvements. That the proposed use is inherently beneficial based upon the Jayber case and the Sica case and does fulfil the purposes of

Zoning by encouraging senior citizen housing and that the site is particularly suited for the proposed use. For those reasons the positive criteria have been met. The positives of the variance outweigh the negatives and can be done without substantial impairment to the zone plan or public good. Therefore, the negative criteria have been met.

The approval is **conditioned** upon the installation of fencing or some other barrier to secure the property from access by individuals who may potentially be impacted by any remaining environmental conditions on the property in spite of DEP required clean up and adherence to the testimony regarding parking and hours of employees not being timed to arrive and depart during peak traffic times with the exception of emergencies.

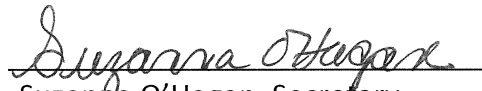
Vice Chairman Kiernan called for a motion to approve application ZB#19-D-12 with the condition stated. Mr. Killen moved Mr. Francescone seconded. Those in favor, Mr. Killen, Mr. Francescone, Mr. Kramer, Mr. List, Mrs. Liciaga and Vice Chairman Kiernan. Those opposed, Mr. Green citing Jay Petrongolo, Board Planners letter dated November 7, 2019 section 4 Number 2 letters a, b and d.

With 6 affirmative votes and 1 dissenting the motion is approved.

Adjournment:

Vice Chairman Kiernan asked for a motion to adjourn at 10:30pm, Mr. Francescone moved the motion, all present voted affirmatively and the motion was carried.

Adopted on: October 7, 2020


Suzanna O'Hagan, Secretary
Zoning Board of Adjustment