

GREEN TOWNSHIP LAND USE BOARD MINUTES

REGULAR MEETING, July 13, 2017

CALL TO ORDER: The July 13, 2017 Regular meeting of the Land Use Board was called to order at the Green Hills School, 69 Mackerly Road, by Mr. Holzhauer, at 7:10pm. He then led everyone in the PLEDGE OF ALLIGIANCE, followed by the recitation of the OPEN PUBLIC MEETING STATEMENT.

ROLL CALL: Present: Mrs. Marie Bilik, Mr. Joseph Cercone, Mrs. Sharon Mullen, Mr. Michael Muller, Mr. Watson Perigo, Mr. Dennis Walker (arrived at 7:25), Mr. Jeff Wilson, Mr. Rick Wilson and Mr. Scott Holzhauer.

Members Absent: Mr. Chirip, Mr. Conkling, Mr. DeYoung, and Mr. Viersma

Motion was made to excuse the absent members by Mr. Perigo and seconded by Mr. J. Wilson.
No Discussion. All in Favor. Motion Carried.

Also present: Mr. David Brady, Board Attorney and Mr. Daren Phil, Board Engineer and Ms. Jessica Caldwell, Board Planner.

MOTION TO APPROVE MINUTES:

Land Use Board Minutes of June 8, 2017.

A motion was made by Mr. R. Wilson to approve the minutes and was seconded by Mr. Perigo.
No Discussion. All in Favor. Motion Carried

Land Use Board Minutes of June 21, 2017

A motion was made by Mr. Perigo to approve the minutes and was seconded by Mr. Muller.
No Discussion. All in Favor. Motion Carried

Mr. Holzhauer introduced Mr. David Brady as the Board's new Land Use Attorney.

Kim announced the next meeting on August 10 is tentatively scheduled for 7th day Adventist because the floors are being done at the school.

RESOLUTIONS: None

OLD BUSINESS:

Application: LU#1705

Owner/Applicant: Ambrosia Real Estate of North Jersey LLC

Block 17 Lot 9 – 73 Pequest Road

Action: Completeness Review/Public Hearing

Mr. Brady started the meeting with the following comments:

- The notice issue was resolved from the last meeting.
- A letter had been received from Mr. James Fox, attorney for a group of residents, identifying those residents (5) he is representing. Mr. Brady clarified those 5 people are not allowed to approach the Board on their own because they are already being represented by an attorney.

•Mr. Fox has taken the position that the Board should not bifurcate this application, he submitted a letter to the Board stating his concerns and Ms. Schepisi had submitted a response. Mr. Brady thought it would be best to hear Mr. Fox on this issue, give Ms. Schepisi a chance to respond and then give the Board his input on their respective positions.

Mr. Fox began with the following statements:

- The bifurcation should not be allowed because it is within the discretion of the Board to decide whether or not a site plan should accompany the use variance. He explains that this is not a normal application.
- The applicant is seeking to change a single family residence into a commercial facility with a very large building being proposed, with no architectural plans submitted, that is 3 times the size of the existing building. The impervious coverage would be substantially increased.
- It would be counterproductive to wait and hear all the testimony first and then decide if a site plan was needed. It would save time and resources and benefit everyone, including the applicant, if the site plan is requested in the beginning.
- He suggested a site plan be filed in conjunction with the use variance so the Board can make a fully informed decision. He believes this is a major project and too important to bifurcate.
- It isn't about the particular use it's about whether this use is appropriate at this location. Lighting, stormwater runoff, turn arounds for emergency vehicles and so on will all be an issue.

Ms. Schepisi cited multiple case law examples as to why this application should still be allowed to be bifurcated. She explained there will be a substantial amount of testimony given about the site and the proposed building including an exhibit of a rendering of that building. She explained there is a buffer of almost 1000 feet surrounding this facility, a traffic report has been provided, building orientation and nature of surrounding properties are some of the site plan details that will be given during the testimony. She also explained that by bifurcating the application the Board gets a "second bite of the apple" in the fact that they may approve the use variance but certain details will be left to the site plan and they could deny on the basis of failure to satisfy the negative criteria. Everything could be resolved to the satisfaction of the Board. She believes the applicant has submitted a tremendous amount of information which should be enough to bifurcate.

Mr. Brady addressed the Board by saying the MLUL allows the bifurcation but there are certain portions of the use variance that site plan details may be relevant to. There may be portions of the site plan design that are driven by the use. The size of the facility by itself drives the use of the property. These are the types of things the Board has to think about in regards to the neighbors and the surrounding area. The Board would have to determine whether it needs the entire site plan to thoroughly decide the impact of the use variance or just portions of the site plan.

The applicant has asked for waivers on the checklist and the Board has to decide if those waivers are going to be granted and if they are, then the application would be complete. If they are not going to be granted then the Board has not received everything it is looking for and it will be deemed incomplete. There could be items that are not on the checklist but the Board feels is so important to the decision that they will request them from the applicant.

Ms. Caldwell briefly discussed the findings in her report dated July 10, 2017 which has been attached to and made part of these minutes.

The applicant is requesting the following waiver be submitted at the time of site plan:

- Item No. 8 - Wetlands** - A 2010 report shows the approximate location of the wetlands are 400 feet from any proposed disturbance.
- Item No. 9 - Sussex County Planning Board**
- Item No. 12 - Survey maps** – The submitted variance plan includes partial information based on a prior survey on the property shows the proposed development is within the required setbacks.
- Item No. 14 - Site plan scale** – the waiver request should be to provide the current plans at the scale submitted. We require a different scale.

- Item No. 26 - Soil Logs** – Soil logs and permeability rates from the existing septic and dwelling are indicated on the variance plan and the applicant is arguing that it should be representative of the work they are proposing on the site at this time.
- Item No. 29 - Topography** – submitted variance plan did include contours of 10 foot intervals as well as steep slopes.
- Item No. 36 - Construction Details**
- Item No. 38 - Soil Erosion and Sediment Control Plan**
- Item No. 48 - Grading Plan** – significant grading could add to the negative criteria of the use variance application on the site and that at least an estimate of proposed grading would help in evaluating negative criteria. If there is a large amount of grading proposed it could impact the surrounding area. Some type of grading plan should be submitted.
- Item No. 65 - Architectural Drawings** – the architectural character of the proposed building can also relate to negative criteria in regards to the size of the entire building and how it looks on the site. Drawings showing proposed elevations, at least the structure, and the proposed lay outs of the building be provided.

Mr. Holzhauer explained there are certain waivers including soil logs, construction details, grading plan and architectural drawings that he feels are important and should be required. He is concerned about the current driveway access and he would like to have plans that show how they are going to change it to work with the facility.

Mr. Muller communicated that he feels that the applicant is asking the Board to consider a number of waivers without additional information. In his opinion, there should be more information given to the Board.

Ms. Schepisi said that the applicant has complied with everything that has been asked of them but she feels that with less than one acre of disturbance taking place the waivers are fairly minimal and should be granted. She stated bifurcation was discussed at the TRC meeting and there was no indication then that it would be a problem.

After a brief discussion about the architecturals, it was established that they should have been submitted 10 days in advance of the meeting and not brought in as an exhibit.

Mrs. Mullen is not comfortable with a bifurcated application and with the large amount of waivers requested.

Mr. Brady explained the Board would now have to determine whether the waivers should be granted and if not, then what is it the Board would like to see, portions of the site plan or the entire site plan.

Mrs. Mullen made a statement that septic and well had not been mentioned at all.

Mr. Holzhauer asked Mr. Phil his opinion on what is needed. He referred back to his report dated July 6, 2017 which has been attached to and made part of these minutes. He explained there were 6 technical items. The soil logs were previously certified and will not be able to be utilized for site plan but they are representative of what is currently there. He isn't very concerned with stormwater management based on ground water discharge relative to the size of the facility and to how much property they have. He is concerned with the driveway. He went on to say that the Board will have the right to request more information as testimony is given but it will in turn, drag out the application longer than necessary. Obtaining the information up front will expedite the process. The checklist waivers that are requested are relative for the use variance. There are many more items required for the site plan.

Mr. J. Wilson said the biggest issue he has with bifurcating this application is there are elements of use that are part of what is needed to see in regards to the site. How can the Board approve the use if there is no way to see how it is being used? One of his concerns is access to the property.

Mr. Brady commented that addressing the negative criteria as it applies to the access design change should be done now.

Ms. Schepisi reiterated the applicant has already submitted a traffic study plus they will be giving testimony and she isn't sure what else the Board would need to see in regards to access to the site.

Mr. Brady responded by saying if the application is not bifurcated then they would need a complete set of plans which would address everything. If it is bifurcated then the Board would request certain aspects of the plan for example, all information pertaining to lights.

Mr. Holzhauer's concern is deciding what the Board would ask for if it is bifurcated, that as the application progressed they would have to keep asking for additional information.

Ms. Schepisi spoke again about the second chance at the site plan if the use variance was granted. She explained they would have sufficient information after testimony was given and if they had any questions afterward they would provide what is requested. She is asking the Board, again, to permit the applicant to bifurcate this application.

Mr. Brady explained the options for the Board are as follows:

1. Go through the waivers to approve or deny. If they are approved then the Board decides if the application is complete and if it will be bifurcated. If they are denied the application is deemed incomplete and the Board still has to decide about the bifurcation.
2. The Board needs to decide about the bifurcation: if it is bifurcated then what site data would the Board need in order to move forward and make an informed decision on the use variance. If it isn't, then the applicant comes back to the Board with a full site plan.

Mr. Holzhauer suggested the Board go through all the waivers and a vote for each one. Mr. Muller agreed.

Mr. Muller explained that a wetland delineation is not needed at this point but will in the future.

Mr. Muller made a motion to approve checklist item No. 8. Kim explained that Mr. Muller was an alternate and unable to vote. (it was her mistake on the agenda that led him to believe he could vote)

A motion was made to approve the waiver of checklist item No. 8 - Wetlands by Mr. J. Wilson, it was seconded by Mr. R. Wilson.

Roll call vote:

Aye: Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

Nay: Mr. Cercione, Mrs. Mullen, Mr. Perigo, Mr. Walker.

No discussion. Motion Denied.

A motion was made to approve the waiver of checklist item No. 9 – Sussex County Planning Board by Mr. J. Wilson, it was seconded by Mr. R. Wilson.

Roll call vote:

Aye: Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

Nay: Mr. Cercione, Mrs. Mullen

No discussion. Motion Carried.

Mr. Holzhauer stated we have an older version of the survey map but that it would need to be re-certified.

A motion was made to approve the waiver of checklist item No. 12 – Survey Map by Mr. J. Wilson, it was seconded by Mr. R. Wilson.

Roll call vote:

Aye: Mr. Cercione, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. All Ayes. Motion Carried.

A motion was made to approve the waiver of checklist item No. 14 – Site Plan Scale by Mr. Walker, it was seconded by Mr. Perigo
Roll call vote:

Aye: Mr. Holzhauer

Nay: Mr. Cercone, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson

No discussion. Motion Denied.

A motion was made to approve the waiver of checklist item No. 26 – Soil Logs by Mr. J. Wilson, it was seconded by Mr. Walker
Roll call vote:

Aye: Mr. Perigo

Nay: Mr. Cercone, Mrs. Mullen, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

Mr. Holzhauer stated the maps that were provided show 10 foot intervals. Mr. Phil explained 2 foot intervals are required.

A motion was made to approve the waiver of checklist item No. 29 – Topography by Mr. J. Wilson, it was seconded by Mr. Walker
Roll call vote:

Aye: Mr. Walker, Mr. J. Wilson, Mr. Holzhauer

Nay: Mr. Cercone, Mrs. Mullen, Mr. Perigo, Mr. R. Wilson

No discussion. Motion Denied.

Ms. Schepisi requested clarification on how to reconcile the fact that item No. 12 was waived and item No. 29 was not because she believes they are interconnected. Mr. Brady responded by saying the Board makes the waiver decision and they were not going to go back and revisit the waivers and explained when the plans are submitted they must show 2 foot intervals.

Mr. Holzhauer asked Mr. Phil to explain what this next checklist item asks for. He stated it involved an example would be the type of lights in a parking lot and how they are constructed, the type of curbing, asphalt pavement box, signage. He said it is the nuts and bolts the site plan. Ms. Schepisi wanted to clarify whether it would include the construction details of the structure, the walls, windows, and the foundation. Mr. Phil explained it would be the site improvement construction details of the site plan not the architectural plans.

A motion was made to approve the waiver of checklist item No. 36 – Construction Details by Mr. Walker, it was seconded by Mr. J. Wilson

Roll call vote:

Aye: None

Nay: Mr. Cercone, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

A motion was made to approve the waiver of checklist item No. 37 – Stormwater Management plan provisions by Mr. Perigo, it was seconded by Mr. Walker

Roll call vote:

Aye: None

Nay: Mr. Cercone, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

A motion was made to approve the waiver of checklist item No. 38 – Soil Erosion and Sediment Control Plan by Mr. Walker, it was seconded by Mr. Perigo.

Roll call vote:

Aye: None

Nay: Mr. Cercione, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

A motion was made to approve the waiver of checklist item No. 48 – Grading Plan by Mr. J. Wilson, it was seconded by Mr. Walker.

Roll call vote:

Aye: None

Nay: Mr. Cercione, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

Ms. Schepisi requested the applicant not provide full complete architectural drawings. Mr. Brady clarified it isn't supposed to be construction drawings, it should be renderings, elevations of each side and floor plans for each floor.

A motion was made to approve the waiver of checklist item No. 65 – Architectural Drawings by Mr. Perigo, it was seconded by Mr. Walker.

Roll call vote:

Aye: None

Nay: Mr. Cercione, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

No discussion. Motion Denied.

Mr. Holzhauer stated and Mr. Brady agreed, that at this point the application has been deemed incomplete and the Board cannot move forward to listen to testimony until the application is complete. Mr. Brady explained that now the question is whether to allow the bifurcation of the application.

Mr. Brady said it is unusual not to bifurcate an application of this type but it is not unusual to ask for more details because they are "integrally related to and driven by" the variance that is requested.

Mr. Muller stated he felt we were going to try and instruct the applicant what we wanted on the plans and it may, in turn, go on and on. It would be better to ask for the full set now and try to save some time.

Ms. Schepisi asked why Mr. Muller was not allowed to vote on the waivers. Mr. Brady stated he was an alternate. He can participate but not vote unless someone is absent.

Mr. Walker mentioned that in all the time he has been on the Board they have never bifurcated an application. The Board has always requested full sets of plans from the beginning and he feels it will save time as well.

Mr. Perigo agreed. He feels without all the information the Board would not be able to make a fair decision on this application.

A motion was made to not allow the bifurcation of the application by Mr. Walker, it was seconded by

Mr. Cercone

Roll call vote:

Aye: Mr. Cercone, Mrs. Mullen, Mr. Perigo, Mr. Walker, Mr. J. Wilson, Mr. R. Wilson, Mr. Holzhauer

Nay: None

No discussion. Motion Carried.

Mr. Holzhauer reminded everyone present that the meeting was still going on and asked the applicant if there were any questions.

Ms. Schepisi asked to make sure the applicant knew what the Board was requesting in addition to the items previously provided under the bifurcated application for the variance. How does the applicant reconcile some of the waivers that were granted at this meeting with the preliminary site plan?

Mr. Brady explained they would have to resubmit and submit all the information on the site plan checklist. If they think some of those items should be waived because they relate to something that was waived this evening then indicate that on the application. If it has been waived tonight then the decision should not be reversed.

Mr. Brady announced he was going to put all of this information in resolution form so it is very clear what is expected.

Ms. Schepisi asked about whether she had to re-notice again for the next meeting. Mr. Brady stated because of the non-bifurcation the notice has changed. He would look at the notice and because it was lengthy there is a possibility she will not have to re-notice but if it only speaks of the d variances then she will have to.

Due to the revisions deadline date of August 21st, the next meeting for Ambrosia would be in September. There is not enough time for all the materials to be submitted to be on the August agenda.

After a short discussion about whether to re-notice or not, an announcement was made to the public that the next meeting for Ambrosia would be on September 14 at 7pm in the Green Hills School gym. The public may or may not receive official notice of this meeting if the original notice is sufficient.

It was established that Crossed Keys on the August agenda. There will be no special meeting on the July 27th for them.

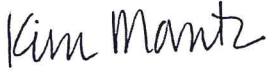
NEW BUSINESS: None

- **CHAIRMAN'S REPORT** - None
- **ATTORNEY'S REPORT** - None
- **CORRESPONDENCE** - None
- **SECRETARY'S REPORT** – None

A Motion was made by Mr. J. Wilson to adjourn the meeting at 8:46pm and seconded by Mr. Perigo.

All Ayes. No Discussion. Motion Carried.

Respectfully Submitted:

A handwritten signature in black ink that reads "Kim Mantz". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Kim Mantz, Land Use Board Secretary

Date Approved: 8/17/17

July 10, 2017

MEMORANDUM TO: Green Township Land Use Board

FROM: Jessica C. Caldwell, P.P., A.I.C.P., Land Use Board Planner

SUBJECT: Use Variance for
Ambrosia Real Estate of North Jersey, LLC
Block 17, Lot 9
73 Pequest Road
Green Township, Sussex County

Dear Land Use Board Members:

The Applicant, Ambrosia Real Estate of North Jersey, LLC, has submitted a use variance application in order to propose a Residential Substance Use Disorder Treatment Facility on the above-referenced site. The facility is proposed to include 40 beds along with classrooms, offices and dining and kitchen facilities. The Applicant has bifurcated the application, meaning that the use variance is proposed separately from a site plan application, which would be submitted to the Board at a later date, if the use variance is approved.

The subject property is located in the AR 5/2 Residential Zone, wherein the proposed Residential Substance Use Disorder Treatment Facility is not listed as a permitted use. A variance pursuant to N.J.S.A. 40:55D-70d(1) for a use not permitted in the zone is required.

The following items were submitted as part of this application.

- a. Application (revised), checklist (revised) and a memorandum.
- b. One (1) sheet titled "Use Variance Plan", prepared by Avila Engineering, and dated May 03, 2017.
- c. One (1) report titled "Arguments in Support of the Use Variance Ambrosia Treatment Facility", dated May 03, 2017.
- d. One (1) report titled "Custom Soil Resource Report for Sussex County, New Jersey", dated March 28, 2017.
- e. One (1) report titled "Operational Report prepared for Green Township- Ambrosia Treatment Center", prepared by Joe Morrison.
- f. Two (2) sheets depicting Aerial View and Street View, prepared by Avila Engineering, dated August 27, 2016.

- g. One (1) report titled "Trip Generation Analysis Ambrosia Treatment Center", prepared by Shropshire Associates; LLC dated May 2, 2017. (Revised June 28, 2017)
2. **Applicant Checklist:** The following waivers from the Application Checklist are requested:

Checklist Item #8, Wetlands. The application is bifurcated, the Applicant requests to defer the LOI for the wetlands on the site to the Site Plan portion of the application. Submitted site plans indicate the approximate location of wetlands (taken from 2010 report) on the subject property and are approximately 400 feet from any proposed disturbance.

Checklist Item #9, Sussex County Planning Board. The Applicant requests submission to Sussex County Planning Board be deferred to Site Plan portion of the application.

Checklist Item #12, Survey Map. The submitted Variance Plan includes parcel information based on a prior survey of the subject property. The proposed development is well within setbacks and boundaries of the property.

Checklist Item #14, Site Plan Scale. The Applicant has submitted Variance Plans including "Proposed Development Overall" at a 1"=100' scale and a "Proposed Development Detail" at 1"=50'. The waiver request should be to provide the current plans at the scales submitted.

Checklist Item #26, Soil Logs. The Applicant requests submission be deferred to the Site Plan portion of the application. Soil logs and permeability rates from the existing septic and dwelling are included on submitted Variance Plan and may be considered representative.

Checklist Item #29, Topography. The Applicant requests submission be deferred to Site Plan portion of the application. Submitted Variance Plan includes contours at 10' intervals as well as areas of steep slopes.

Checklist Item #36, Construction Details. The Applicant requests submission be deferred to Site Plan portion of the application.

Checklist #38, Soil Erosion and Sediment Control Plan. The Applicant requests submission be deferred to Site Plan portion of the application.

Checklist #48, Grading Plan. The Applicant requests submission be deferred to Site Plan portion of the application. Significant grading could add to negative criteria, an estimate of proposed grading would assist in evaluating negative criteria.



Checklist Item # 65, Architectural Drawings. The Applicant requests submission be deferred to Site Plan portion of the application. The architectural character of the proposed building can relate to negative criteria. Proposed building elevations would assist in evaluating negative criteria of the proposal. I recommend that Architectural Drawings showing proposed elevations of the structures and proposed layouts of the buildings be provided.

3. **Existing Site:** The subject site is an approximately 44-acre lot located in the center of the town along Pequest Road. The site is triangular in shape and has a Conrail easement along its rear property line. The site has some wetlands located along its western side. The rear of the site is currently wooded, while the front and the eastern portion of the site are used for farming. In addition, the center of the site is developed with a single-family residence along with a six stall horse barn, a paddock, a pool house and an outdoor swimming pool and spa.
4. **Proposed:** The Applicant is proposing to locate a 40-bed/patient drug treatment facility at the subject site. As mentioned, above the site is currently developed with a single family residence and accessory residential and farm structures. The proposal is to convert the existing residence into the primary clinical care and treatment facility and propose an approximately 19,055 square feet building to house the dining hall, commercial kitchen and the patient residence. A total of 41 parking spaces are proposed.

The site is located in the AR 5/2 Agricultural Residential Zone, wherein the use is not listed as a permitted use thereby requiring a variance pursuant to N.J.S.A. 40:55D-70d(1) for a use not permitted in the zone.

5. **Use Variance Criteria:**

Positive Criteria

The Land Use Board (acting as the Zoning Board of Adjustment) has the power to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons." *Medici v. BPR Co.*, 107 N.J. 1 (1987).

Our courts have held that certain uses are deemed "inherently beneficial" which essentially means that, by definition, the use per se promotes the general welfare. These uses are listed in the Section 40:55D-3 of the MLUL to include but not be limited to hospitals, schools, child care centers, group



homes or a wind, solar or photovoltaic structure. The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the proposed use. Providing proofs that the proposed application promotes at least one of the purposes of zoning found in the MLUL, Section 40:55D-2, also provides one aspect of the positive criteria for a non-inherently beneficial use application.

In a typical non-inherently beneficial use application, the standard the Board must use to determine whether special reasons have been proven is whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the use proposed. Our courts held that proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013).

While the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of "special reasons," the Medici court held that "economic inutility" can also constitute a special reason under the statute.

Negative Criteria

The Board may not exercise its power to grant a "d(1)" variance unless the so-called "negative criteria" has been satisfied. Pursuant to N.J.S.A. 40:55D-70: "No variance or other relief may be granted without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan.

As to the zone plan and zoning ordinance, the Medici court held that the applicant must prove and the Board must find by an "enhanced quality or proof" that there will be no substantial impairment. The applicant must "reconcile" the use proposed with the ordinance's omission of the use from those permitted in the zone.

Comments

The Applicant is making the case that the proposed use is an inherently beneficial use. Per N.J.S.A 40:55D-4, an inherently beneficial use is defined as "a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to a hospital, a school, child care center, group home or a wind, solar or photovoltaic energy facility or structure."



Our courts have held that in some instances drug treatment centers may be deemed as hospitals and therefore are inherently beneficial, however, it is unlikely that all drug treatment centers qualify as a hospital depending on varying circumstances. The Applicant cites *Scerbo v. Orange Bd. Of Adjustment*, 1221 NJ Super 378 as an example of recent court decisions that have deemed such use as a "hospital". Important proofs in these cases would include substantial evidence of a community need for the drug treatment facility proposed in the location proposed, including proof that the need is not met by other facilities. Therefore to qualify as an inherently beneficial use, the Applicant would have to provide these proofs along with others showing that the general welfare is inherently served by this facility. Further, the determination of whether any uses are inherently beneficial is also a legal determination and we defer to the Board Attorney for specific guidance. I believe that rather than spending excessive time on proving inherently beneficial use status, the Applicant should make the case for a d(1) use variance according to the criteria noted above for a non-inherently beneficial use.

6. **Traffic Generation Analysis:** The Applicant has submitted a traffic generation analysis which provides an anticipated peak a.m. and p.m. traffic generated by the proposed facility. For the analysis, a similar facility was studied in Medford Township in Burlington County. The report states that the proposed traffic generation by the facility would be comparable to that of a single family subdivision. The report indicates that visitation to the Center is to be conducted during off-peak hours limited to the first Sunday of every month. The Applicant should discuss the findings in the report with the Board and also provide the delivery truck timings including food material delivery, garbage truck pick-up and medical supplies delivery.



7. **Bulk Regulation:** The subject site is located in AR 5/2 Residential Zone:

Regulations	AR 5/2	Existing	Proposed
Min. Lot Area	2 acres	44.06 ac	44.06
Maximum Depth (ft.)	600	complies	complies
Width at Street Line (ft.)	130	complies	complies
Width at Setback Line (ft.)	210	777.81	777.81
Min. Front Yard Setback (ft.)	100	659.56	659.56
Min. Rear Yard Setback (ft.)	100	195.63	195.63
Min. Side Yard Setback (ft.)	35	274.59	274.59
Max. Bldg. Coverage (%)	15	0.42%	1.41%
Max. Height (ft.)	35	To comply	To comply

(e)- existing non-conformity

(v)- Variance

- (a) **Principal Building:** Per Section 30-62 of the Ordinance, only one (1) principal building per lot is permitted except for the following:

- public or institutional buildings;
- research industrial and manufacturing; and
- multi-family dwellings.

A variance for a second principal structure is required. The proposed structure represents a second principal structure on the property, the first being the existing dwelling. This is also a d(1) use variance for a use or principal structure not permitted in the zone.

- (b) **Commercial Vehicles:** Per Section 30-69, no more than one (1) commercial vehicle up to 15,000 pounds and not exceeding 20 feet in length is permitted to be parked overnight upon premises in AR and R Districts. The operational report submitted indicates a total of two (2) passenger vans and some staff vehicles to be used on premises. The Applicant should confirm the total number of vehicles proposed to be stored at the site. A variance would be required for overnight parking of more than one (1) commercial vehicle.

- (c) **Parking:** Per Section 30-17.2m, for uses not specified, a parking ratio of 1 space for every 200 square feet is required. The total building square footage is:



19,055 square feet + 6,600 square feet = 25,655 square feet

Therefore, the parking required is:

$25,655/200 = 128$ parking spaces.

Per the Variance Plan, 41 spaces are provided.

A parking variance is required. Further, the Applicant should confirm the number of vehicles proposed to be parked on-site and the number of spaces proposed for visitors.

The Ordinance permits that whenever it may be demonstrated that because of the nature of the proposed use the parking requirements of this section are unnecessary or excessive, a development plan may be approved showing less paved parking area than is required by this Article; provided, however, that a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking requirements in the event that actual experience or a change of use of the lot shall make such additional off-street parking space necessary. Whenever any exemption from the required parking area is made pursuant to this section, the Certificate of Occupancy for the particular lot shall be valid only for the particular use for which it was issued, and any change of use shall only be permitted after a new site plan shall have been submitted and reviewed and approved by the Board. While seeking a parking variance, the Applicant should testify to as to the ability to bank parking on the site.

(d) **Bulk Variances:** Currently, the Applicant is seeking use variances for the proposal with a bifurcated site plan. Therefore, the site plan application would be applied for a later date. Additional bulk variances may occur during that application. Currently, variances for number of parking spaces and parking of commercial vehicles are noted. Bulk variances can be granted by the Board pursuant to N.J.S.A 40:55D-70c where two provisions exist for the granting of bulk variances.

- 1) The first provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(1) where the Board must find whether there has been a showing of peculiar exceptional practical difficulties or exceptional undue hardship arising out of the exceptional narrowness, shallowness, or shape of a piece of property, or by



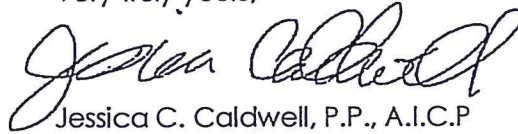
reason of an extraordinary and exceptional situation uniquely affecting this specific piece of property or the structures lawfully existing thereon. The negative criteria must also be met.

- 2) The second provision for granting a "c" variance is under N.J.S.A. 40:55D-70c(2) where the Board must find that the application relates to a unique situation on a specific piece of property, that the purposes of the MLUL would be advanced by the requested deviation, that the variance can be granted without substantial detriment to the public good, that the benefits of granting the variance outweigh any detriments and that the variance will not substantially impair the zone plan or ordinance.
8. **Operation and Security:** Given the nature of the proposed use, the Applicant should testify in detail regarding the day to day operations of the proposed use. This should include security management of the facility. In the application, the Applicant has indicated that location would be equipped with IP color cameras that capture the entire exterior of the facility, location of these cameras should be depicted on an exhibit. Further, the Applicant should discuss the location of motion detectors and sensory lights and also discuss the 24-hour monitoring of residents by staff. Lastly, the Applicant should discuss the impact of the proposed development on the Township's emergency services including EMS services and the Fire Department.
9. **Signage:** The Applicant should indicate if any signage is proposed for the facility at the entrance of the subject site. Details of this would be required to be provided during site plan application.

Given that all information has yet to be provided, additional comments will be provided as new information is submitted.



Very truly yours,



Jessica C. Caldwell, P.P., A.I.C.P.
J. Caldwell & Associates, LLC
Green Land Use Board Planner

cc: Via E-Mail Only

Kim Mantz, Land Use Board Secretary
Daren J. Phil, P.E., P.P., C.M.E., Board Engineer
David B. Brady, Esq., Board Attorney
Holly T. Schepisi, Esq, Applicant's Attorney





July 6, 2017

Via Electronic Mail (landuse@greentwp.com) and Regular Mail

Township of Green
P.O. Box 65
150 Kennedy Road
Tranquility, New Jersey 07879

Attn.: Kim Mantz
Land Use Secretary

Re.: Township of Green, County of Sussex, State of New Jersey
Application LU#1701 – Ambrosia – Use Variance
73 Pequest Road; Block 17, Lot 9
Use Variance Review
Our File No.: SCE-R09328.011

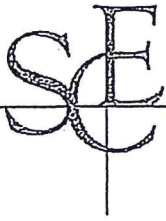
Dear Ms. Mantz:

As directed, SUBURBAN CONSULTING ENGINEERS, INC. (SCE) has reviewed the following in reference to the above-captioned application. It should be noted that since the applicant has submitted a significant amount of additional information this letter will supersede our initial letter dated May 31, 2017 in its entirety.

- Green Township Land Use Board Universal Application Form.
- Application Checklist – Township of Green – County of Sussex, New Jersey.
- A written description of the proposed project, indicating use, nature of operations, number of proposed employees, number and timing of shifts, anticipated traffic and future expansion plans.
- Rider A – Statement as to any requirements for which waivers are sought, together with a statement of reasons why waivers should be granted.
- Township of Green Application Planning Board and Zoning Board of Adjustment Form#2 Property Tax Status Statement Request (previously submitted).
- Township of Green Application Planning Board and Zoning Board of Adjustment Form#3 Request for list of Property owners within 200 feet of property affected by application before the Board (previously submitted).
- Township of Green Application Planning Board and Zoning Board of Adjustment Form#5 Affidavit of Applicant (previously submitted).
- Township of Green Application Planning Board and Zoning Board of Adjustment Form#6 Corporation of Partnership Form (previously submitted).
- Township of Green Application Planning Board and Zoning Board of Adjustment Form#7 Site Inspection Form / Application Fee Statement (previously submitted).

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- Ambrosia Treatment Centers Operational Report prepared for the Township of Green (previously submitted).
- The Physical Plant (previously submitted).
- Arguments in Support of the Use Variance Ambrosia Treatment Facility (previously submitted)
- Agreement of Sale for property in question (previously submitted).
- Custom Soil Resource Report (previously submitted).
- Google Earth Overview and Street view Images for site generated by Avila Engineering (previously submitted)
- Trip Generation Analysis Ambrosia Treatment Center prepared by Nathan B. Mosley, PE, CME of Shropshire Associates, LLC, dated June 28, 2017
- Plan entitled "Ambrosia Treatment Center; Block 17, Lot 9; 73 Pequest Road; Green Township; Sussex County, New Jersey," prepared by Avila Engineering, dated 5/3/17 revised through June 28, 2017.

The application proposes to utilize the existing structures on site, construct additional structures and operate an inpatient substance abuse treatment facility. The applicant has elected to bi-furcate the Use aspect of the project from the Site Plan and has submitted an application seeking a Use Variance for the proposed development. The details and supporting information associated with a request for Site Plan Approval are not submitted at this time. However, it should be noted, that the applicant is required to provide enough supporting documentation relative to the site so an informed decision can be made relative to the site to be able to support the proposed use and corresponding intensity.

APPLICATION COMPLETENESS

SCE defers to the Board Secretary and the Board Attorney as to the satisfactory submission of items one through six (1-6), however, they appear to be complete.

The applicant is seeking waivers from checklist items 8, 9, 12, 14, 26, 29, 36, 37, 38, 48, & 65. SCE has reviewed the applicant's written justification for each waiver request and given the nature of the application, SCE has no objection to the Board granting these waivers from the checklist.

The applicant has also deemed required checklist items 10, 33, 40, 63, 64, 66 not applicable to this application and has given reasons for this determination. Upon review, SCE agrees with the applicant's rational and recommends the Board deem these items not applicable to this application.

All other required checklist items have been provided. Should the Board accept our recommendations above, SCE has no objection to the Board deeming the application complete.

GENERAL COMMENTS

1. SCE defers to the Board Planner as to the satisfactory presentation of the proofs required for the Board to proceed with the Use Variance Application.



2. The applicant should provide testimony and corresponding data as to the sufficiency of the site to support this type of facility. Specifically, the applicant should provide:
 - a. Soil Tests or other data to support a general stormwater management facility. This application appears to meet the criteria of a Major Development and shall comply with all requirements of Section §30-17.1A of the Township Ordinance. As such, the entire development area will be required to be analyzed for stormwater management in accordance with the New Jersey Stormwater Management Rules and the New Jersey Best Management Practices. Stormwater reduction, water quality, and groundwater recharge calculations shall be performed for the entire project limits. The fact that the subject property is in excess of 44 acres with only a portion proposed for development, there does not appear to be an issue with the ability of the applicant to comply with the governing regulations. Subsurface soil log data from 8-27-84 has been provided in support of the proposed use variance application that was from the previous improvements on the subject property. The data illustrates favorable soil conditions that are consistent with the additional data provided by the applicant from the US Department of Agriculture. It should be noted that additional site investigation and associated testing will be required for designing future facilities on the subject property. This data will be required in accordance with present governing regulations in support of any site plan application.
 - b. Soil Tests to support the installation of a proposed septic system. It should be noted that the Applicant will need to verify that a septic disposal system can be constructed in accordance with N.J.A.C. 7:9A. and Township of Green Chapter BH:IV entitled Individual Sewer Disposal System Code. It appears that this facility would generate in excess of 2,000 gals/day of sanitary flow and as such, a NJPDES Permit along with a Treatment Works Approval will be required from the NJDEP. The applicant should address the stipulations associated with the requirements of these regulations relative to groundwater mounding, nitrate loading etc. and how the property is suited to support the proposed use. See above comment regarding existing and future soil testing requirements.
 - c. The applicant should address the regulatory requirements associated with compliance of providing potable water supply to the proposed facility. The map and supporting data provided does not indicate the location or capacity of the existing well and its overall condition. The existing well record has been provided that is dated 7/26/85 indicating that the well is cased to 50 feet and is 300 feet deep with a yield of 25 gallons per minute. It should be noted that additional testing of the well water relative to quantity and quality will be required in accordance with present governing regulations in support of any site plan application.
3. The applicant is providing 41 parking spaces where a minimum of 129 parking spaces are required for the proposed 19,055 SF facility and existing 6,600 SF structure based on 1/200 SF of facility area. The applicant shall verify the proposed use of all existing structures and provide testimony in support of the parking variance being requested.



4. The site does contain steep slopes as indicated on sheet 2 of 3. The proposed development does not affect any steep slopes except for any possible driveway widening improvements that may be deemed necessary (see comment 6 below).
5. Freshwater wetlands and associated transition areas are provided on sheet 2 of 3. The proposed development is outside the regulatory limits as mapped. The applicant should provide testimony regarding the status of this delineation and any requirements anticipated relative to the development of the subject property as proposed.
6. The applicant has provided an assessment of traffic trip generation relative to the subject Use. However, the assessment does not address the accessibility of the property relative to emergency response vehicles. The present driveway configuration appears to be restrictive relative to width and steepness and most likely requires significant site improvements. The frontage of the property does exhibit steep slopes that may be impacted to provide adequate sight distance and vehicular turning clearances. The applicant should address this issue and how the property will be able to support such improvements.

Recognizing that this application has been bi-furcated and does not include the details associated with site plan approval, additional site concerns may arise during the application review and the Applicant's presentation of supporting testimony. Therefore, further requests for additional technical data in support of the application may be required at that time.

Should there be any questions regarding this review letter, please contact our office.

Very truly yours,
SUBURBAN CONSULTING ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'D. Phil', is written over the company name.

Daren J. Phil, PE, PP, CME
Township Engineer