

**BOROUGH OF NEW PROVIDENCE
BOARD OF ADJUSTMENT
MEETING MINUTES – MONDAY MAY 21, 2012 – 8:00 p.m.**

Present: Mr. Nadelberg, Mr. Grob, Mr. Hoefling, Mr. Karr, Mr. Ping, Ms. Polesak, Mr. Mr. Wycko, Craig Bossong, Substitute Board Attorney, and Margaret Koontz, Secretary.

Absent: Mr. Pennisi and Mr. Van Schoick

Also present: Mr. Keith Lynch, Director of Planning Development, Ms. Marcia Shiffman, Borough Planner and Paul Niehoff, Borough Engineer.

A. CALL TO ORDER

Chairman Nadelberg called the meeting to order at 8:00 p.m.

B. ROLL CALL

C. PUBLIC NOTICE

Chairman Nadelberg stated that this is a meeting of the Board of Adjustment of the Borough of New Providence, County of Union, and State of New Jersey. Adequate notice of this meeting was given in accordance with P.L. 1975, Chapter 231, in that a notice was made in conformance with Section 13 of the Act. He also stated the protocol for the meeting.

E. PUBLIC HEARINGS SCHEDULED FOR MAY 21, 2012

Shantivan Management LLC

Application #2012-09

14 Birch Lane, Block 73, Lot 3, R-2 Zone, New Providence, NJ

Chapter 310, Article IV, Section 310-10, Schedule II for permission to construct an addition. The side yard setback to the 2nd floor addition is 9.5 feet with a combined total of 17.2 feet whereas 12 feet with a combined total of 30 feet is the minimum required. The existing driveway is 19 feet wide with no setback to the property line whereas 16 feet is the maximum width allowed and must maintain a setback of 6 feet. The existing right corner of the house is 39.6 feet from the front property line whereas 40 feet is the minimum required.

George Townsend, attorney for the applicant, Roger Gupta, principal of the property, and Michael Bengis, architect for the applicant, were sworn in. Mr. Gupta and his wife are principals in Shantivan Properties which buys properties, rehabilitates them and then sells them. Shantivan Properties bought the house which was in poor condition but located in a good neighborhood. An oil leak on the property has been cleaned up. The property was previously a rental property. Mr. Gupta planned to do minor work prior to selling the property but then decided to add a second floor. The house is a three-bedroom cape with the bedrooms on the first floor. With the alterations, there will be four bedrooms on the second floor and living space on the first floor. Mr. Gupta looked at alternate plans but these didn't work as well as the proposed plan.

Mr. Gupta answered questions from the Board. The garage, which was converted to an office, will be returned to garage space. The footprint will remain the same with the addition going up. Mr. Gupta's original intent was to add a dormer. He did not buy the

property with the intention to add a second floor but changed his mind when he saw the additions in the neighborhood. Forty to fifty percent of the homes in the neighborhood have two stories.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

There were no questions from the public.

Michael Bengis, architect for the applicant, was accepted as a licensed architect. The house is a modest size: One story built on a slab so there is no basement. The present garage is an office but will be returned to a garage. Mr. Bengis used a combination of shingles, stone, panels and siding on the addition. The side-yard setbacks are existing non-conformances. The second-floor addition does not change the side-yard setback. The front-yard setback is non-conforming. The second floor is stepped back, except for the 11-foot wide foyer, and conforms to the front-yard setback. The new construction will be an asset to the neighborhood since the house hasn't been maintained.

Mr. Bengis responded to questions from the Board. Mr. Bengis agreed with Mr. Grob that he used too many material types and will remove the paneled areas and use vinyl siding instead.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

There were no questions from the public.

No one else appeared to testify for this application. The hearing was opened to comments from the audience.

There were no comments from the audience.

Discussion: The footprint is not being increased and the architect will simplify the materials. There will be a real garage making the house more conforming to the zoning requirements.

Ms. Polesak moved to approve the application with the condition to change the building materials. Mr. Karr seconded the motion. A Resolution will be passed at the next meeting. Those in favor: Mr. Grob, Mr. Karr, Ms. Polesak, Mr. Wycko, Mr. Ping, Mr. Hoefling and Mr. Nadelberg. Those opposed: None.

Redwood-ERC

Application #2012-05

535 Mountain Avenue, Block 320, Lot 17, RL Zone, New Providence, NJ

Preliminary and final site plan and variance approval to construct a continuing care retirement community ("CCRC") on the Property, proposed to consist of up to 275 independent living units and approximately 85 assisted living units/nursing beds in 5 buildings, and other related improvements, including, without limitation, an indoor swimming pool, driveways, parking spaces, landscaping, curbing, drainage, signage, and other site improvements.

Glenn Pantel, attorney for the applicant, recapped the previous hearing on April 16, 2012, at which the Board heard testimony from the architect and engineer.

Dennis Boggio, architect for the applicant, who was previously sworn in, testified about four open items from the previous hearing: 1) The garage door as viewed from Mountain Avenue, 2) photo simulations of the site from South Street, 3) north wall elevation of building 3, and 4) amenities. A View from Mountain Avenue was marked as Exhibit A-34, May 21, 2012. The exhibit shows the garage door that leads to the first level of parking. The garage door will have a residential look and scale and will be slated to match the Hardy plank on the building so that it becomes part of the façade.

View from South Street, a photo simulation, was marked as Exhibit A-35, May 21, 2012. The photo was taken 150 feet south of the drive on South Street looking up the hill. A second photo simulation, View from South Street, was marked as Exhibit A-36, May 21, 2012. This photo was taken next to the stop sign on the drive on South Street and shows that the scale of the complex is a lot less than approved.

A rendering of the north elevation of building 3 was marked as Exhibit A-37, May 21, 2012. Mr. Boggio added windows to the north side of building 3 (top right of exhibit) to the area that was previously sided.

Lower Level 3 – Overall Floor Plan was marked as Exhibit A-38, May 21, 2012. The independent living units have 27,760 square feet of amenity space encompassing a fitness center, pool, three restaurants, theatre, bistro, retail areas, game rooms, living rooms and spiritual center. The applicant intends to apply for a liquor license. The health center has 5,912 square feet of amenity space including living and dining rooms, salon/massage and specialized facilities.

Mr. Boggio responded to questions from the Board. The plans are still at the conceptual level so Mr. Boggio does not have the exact details for the garage door but it will be residential looking. It is possible that there will be two garage doors separated by a brick column. The protrusion for the garage is similar in scale with the rest of the building. The garage entrance is not visible from South Street.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

There were no questions from the public.

Brian McMorrow, senior engineer at Bohler Engineering, was sworn in and accepted as a professional engineer. Cross Section Plan View dated May 14, 2012, was marked as Exhibit A-39, May 21, 2012. Cross Section, sheet 2 of 2, dated May 14, 2012, was marked as Exhibit A-40. Mr. McMorrow described the position of the proposed buildings as compared to the location of the HT Mountain buildings. Building 5 is 35.7 feet farther from South Street than the building proposed in the HT Mountain application. Exhibit A-40 correlates to Exhibit A-39 and provides vertical and horizontal sightlines of the proposed buildings from South Street, Mountain Avenue and Candlewood Drive in comparison to the HT Mountain Buildings (red lines). Mr. McMorrow compared the sight lines of the proposed buildings to the HT Mountain buildings as viewed from South Street, Mountain Avenue and Candlewood Drive. The photo simulation from South Street (Exhibit A-36) shows that the view of the building which is a little higher than

approved is not significant. The view of the proposed buildings from Candlewood is basically the same. The absolute height of building 4 is 17 feet higher than HT Mountain building 2 and will be a little more visible from Mountain Avenue; however, the building sits back farther than the HT Mountain buildings. At the longest point, the proposed building is less than half the length of the HT Mountain building.

Mr. McMorrow reviewed the heights of the buildings as calculated on sheets 15-18 on the site plan. Building 1 is 46.0 feet high; building 2, which is five stories, is 56.0 feet high which is one foot lower than the HT Mountain Building; buildings 3 and 4 are 54.0 feet high; and, building 5, the building closest to South Street, is 36.0 feet. The pool building is 15.0 feet high. The proposed design is more sensitive to the residents and drivers on Mountain Avenue and fits the topography. Constructing five buildings that work with the topography reduces the amount of fill to be removed from the site by 25,000 cubic yards.

"Alternate" Site Plan was marked as Exhibit A-41, May 21, 2012. Mr. McMorrow reviewed changes made to the plan based on suggestions at the previous hearing regarding noise, truck deliveries and trash. The loop road has been eliminated and replaced with an access drive to the service area which reduces the impervious coverage. An additional walking trail was added where the previous loop road was. Eliminating the loop road allows for a continuous line of landscaping to screen the view. A concrete pad has been added at the northwest corner of building 2 for the chiller and is 33 feet below the abutting grade. The chiller will not be visible by neighbors to the west.

Mr. McMorrow responded to questions from the Board. The absolute height of building 2 is 86.05 feet and the absolute height of building 1 is 77.25 feet. While the absolute heights seem extreme, the design is sensitive to the grade of the property and the neighbors. The building heights are internal to the building complex and not the neighborhood so that the neighbors to the west will only see the top five floors of the buildings and not the lower three floors. Building 1 is seven stories when viewed internally but this is not visible externally. The absolute height of building 2 at the southwest corner is 57.67 feet and 56.67 feet at the southeast corner. The applicant can provide reinforced turf on the west side of the site which would provide 360° access around the site for emergency vehicles although some grading changes may have to be made because of the existing drainage swale.

The front of building 4 is visible from the backyards of Candlewood Drive. The higher buildings are behind building 4 but because they sit lower, they are not visible from Candlewood Drive. The parking spaces behind building 3 cannot be double loaded because of the 60-foot grade change. Box trucks not tractor trailers will be deliver to the site and can turn around using K turns. The delivery area has been located as far back on the site as possible to reduce the beeping noise from trucks backing up. The parking garages are sprinkled and concrete with smoke evacuation standpipes and will comply with international fire code and Borough ordinances. Compartmentalizing the indoor parking lots with access from the ground level increases life safety as do the short ceilings. The emergency protocol for the site will be shelter in place. Residents will be instructed to stay in their rooms with the doors shut. The Board asked about landscaping screenage at the bottom of the site along Candlewood rather than screenage up by the parking lot. Mr. McMorrow agreed that landscaping closer to

Candlewood would provide more screenage for the neighbors but is concerned about the survival of plantings at that location.

The trash compactor will remain behind building 2 as in the previous site plan. A decision has not been made whether the trash compactor will be located inside or outside of the building but the applicant wants to keep the sound level down. The snow can be handled by pushing rather than trucking it from the site. It is relatively level behind the site but drains could be added to prevent the runoff from melting snow from going down the hill.

The infrastructure for all the buildings will be completed at the same time regardless of whether the applicant opts to construct buildings 3 and 4 at a later date. Blasting is anticipated for building 2 because of the rock but not for buildings 3 and 4. Blasting is highly regulated by the state. All of the side-yard set backs are less than what was proposed in the HT Mountain plan. While the highest building is on the highest spot on the site, there is no adverse visual impact because the site has been broken into segments. The lighting on the new walking trail will be low.

Mr. McMorrow continued with his testimony describing the numbers of trees, shrubs, groundcover and perennials to be planted that will offset the loss of 67 shade trees. The applicant will save the 18 trees in the front yard. Front Yard Tree Maintenance & Removal Plan was marked as Exhibit A-42. The exhibit shows the trees to be removed and those to be maintained. The dead trees to be removed are closer to South Street. The applicant does not have an issue with the Board retaining jurisdiction over the plantings for a designated period of time. The site will have a soil erosion and conservation plan in place as well as tree protection and silt fence during construction. The area will be fenced appropriately to protect the trees. Mr. McMorrow stated that it is reasonable to expect that the applicant will replace the trees to be removed.

Mr. McMorrow answered additional questions from the Board. Mr. McMorrow does not believe that eliminating the loop road will be a safety issue. The residents will have parking spaces in the garage so the parking lot will be used for staff and visitors. Deliveries will be made between 8:00 a.m. and 6:00 p.m. The access drive will be widened. Mr. McMorrow has not looked at extending the sidewalk on South Street or steps at the driveway in detail yet. There are some trees there that would have to come down and some re-grading may be required but a sidewalk would provide a better pedestrian connection and sight line. The complex will have one emergency generator to service all of the buildings.

Mr. McMorrow continued with his testimony. The applicant will get services letters from the utilities. Mr. McMorrow has talked to Maser Consulting and the sewer authority about sanitary sewer flow meters to be installed on the property to ensure adequate capacity.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

Ken Esposito, 25 Candlewood Drive, asked why a "Y" cannot be added to the entrance from Mountain Avenue for the truck traffic to eliminate the noise at the back of the site and decrease the stress on the traffic on South Street. He also asked where the church congregation will park since the church uses the lot for overflow parking, why the loading

dock is not internal and expressed concern about blasting. Mr. McMorrow responded that neighbors would probably hear more truck noise if the entrance were moved to the front because the grade is higher. Also, it is not a viable option to connect the driveway off of Mountain Avenue to the service area because there is a 30-foot grade change that would require the construction of a 2 to 2 ½ story retaining wall. The ridge would have to be blasted to connect the driveway with the service area.

Corey Chase, project manager at Atlantic Traffic & Design Engineers, Inc., was sworn in and accepted as a licensed professional engineer. Mr. Chase referenced his traffic impact statement dated January 19, 2012, adding that much of the information was prepared for the previous application. The trip generation tables in his report provide a comparison of existing versus proposed use during peak weekday morning and evening hours and on Saturday. The continuing care retirement community will generate less traffic during the weekday morning and evening peaks than was previously there and what is permitted which represents a substantial benefit. There is a 100-car reduction per hour with the proposed use over the existing use.

The sight-distance analysis for Mountain Avenue was marked as Exhibit A-43, May 21, 2012. The sight-distance analysis for South Street is included in the Traffic Impact Statement of January 19, 2012, and shows that the sight distances looking to the left and right onto South Street both exceed the required distances. The sight distances for the driveway on Mountain Avenue looking to the left and right also exceed the required distances. Mr. McMorrow believes there is safe and sufficient ingress/egress to the site.

Mr. Chase answered questions from the Board. He did not look at queuing traffic down South Street because the reduction in traffic from site does not require such an analysis. He also did not look at accident data. The Board expressed concern about vehicles turning left onto South Street. Mr. McMorrow agreed with adding the sidewalk on South Street and clearing the South Street entrance to increase the sight distance for left turns. Mr. Wycko noted that the sidewalk was required as one of the conditions of approval for the HT Mountain application last year. The Board discussed prohibiting left turns onto South Street during designated hours. Mr. Chase does not believe this is necessary because people adjust their driving if they see a problem and would probably use the other driveway if it is difficult to make the left onto South Street plus truck drivers sit up higher and are professional drivers. The staff at the site works in shifts which are off peak so this shouldn't impact traffic. There will also be a jitney service for residents so they do not have to drive. Mr. Pantel noted that residents often move in with cars and then give them up because they don't need them. Deliveries will be made between 8:00 a.m. and 6:00 p.m. and can usually be scheduled during off-peak hours. Mr. Chase believes the internal traffic circulation is adequate.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

Olivia Esposito, 25 Candlewood Drive, asked about the number of employees and the trip generation. Mr. Chase does not know the number of employees. The trip generation was calculated using the Institute of Transportation Engineers (ITE) standards which are based on the number of units.

Michael Tobia, a land planner, was sworn in and accepted as a professional planner. Mr. Tobia reviewed the previous variances. The proposed plan is compliant with what

was previously approved and has been improved. The applicant is seeking variances for steep slope disturbances in three categories, front yard parking, number of stories of the buildings and size of parking stalls.

Mr. Tobia testified that the applicant has improved upon the predicted slope variances. The slopes to be disturbed are previously disturbed slopes and are man-made fill and grading. The steep slope disturbances are minor and it would be a hardship to work around the slopes. They are all within the envelope approved for the HT Mountain plan. The slopes on Mountain Avenue and Candlewood, the kind of slopes to be protected, will not be disturbed. The topography on the site is not the kind of topography that was intended to be protected when the ordinance was written.

Building 1 is the “front desk” for the complex and 23 parking stalls are strategically located in a horse shoe configuration with some spilling into the front yard where only 12 spaces are permitted. Depending on the interpretation of the ordinance, Mr. Tobia believes only three spaces are in the front yard, but the applicant is seeking a variance so there is no question in the future. The parking spaces in the front are located a football field’s length from Mountain Avenue and will not be visible from Mountain Avenue. Elderly guests do not want to have to walk around from the back of the site.

The HT Mountain application was approved for five stories. The northwest corner of building 2 is now 8 stories because of the sharp grade change but is only 62 feet wide so it is a small façade. The remainder of the building is seven stories. The back of the building facing Candlewood Drive is five stories as approved. Building 1 is seven stories but this is only viewed internally.

The site does not have the required number of parking stalls that are 9 feet by 20 feet. The parking spaces around the perimeter can overhang by two feet to meet the requirement. There will be 78 stalls that will meet the requirement if allowed to overhang where 41.5 are required. The sidewalks are 6.5 feet wide so the sidewalks will not be blocked if the cars overhang.

Mr. Tobia believes there is an absence of negative criteria for the variances requested and he does not see a substantial detriment in granting them. The fix to avoid the steep slope disturbances would be worse. The number of parking stalls in the front yard is reasonable and allowing the overhang for the parking stalls reduces the amount of impervious coverage than if the spaces had to be paved. The seven and eight stories face internally and are not visible from Mountain Avenue. There will be a landscape screen of eight- to ten-foot evergreens on the west side of the site. The neighbors to the west will see five stories.

The number of employees on the site is 147 over three shifts. Seventy of the employees will be on the site during the morning shift. Employees will typically filter in and out based on the type of function they perform.

The application promotes land use under Municipal Land Use Law (MLUL) encouraging use for residential use and has adequate air, light and open space with lots of room. The application provides senior citizen housing and promotes more efficient use of the land that has been vacant for many years. It revitalizes the site and is a redevelopment project where new buildings replace a building that has outlived its life.

Mr. Tobia reviewed the Community and Fiscal Impact Statement and the estimated cost of the site development which is an \$87 million project excluding the health care units and \$100 million when they are included. The ratable on the \$87 million project is \$45 million and would be 20% higher if the health care units are included. The proposed application represents good land use. It is a self-contained site with 24/7 nursing onsite as well as onsite and visiting doctors. There will be a contract with a private ambulance (Atlantic Ambulance) that will handle 99% of the calls so there will be minimal impact on the borough's emergency services. The application has zero impact on the schools but pays into the Board of Education. The application represents a projected surplus of over \$269,000 to the Borough.

Mr. Tobia responded to questions from the Board. The restaurants will not be open to the public. Blasting is highly controlled and regulated. The medical facilities are only for residents.

Ms. Shiffman noted that she looked at the parking spaces on South Street and believes these are the ones at variance for the number of front-yard parking spaces not the ones on Mountain Avenue. She believes the ordinance needs to be refined at some point but that the testimony is sufficient to grant the variance. Mr. Tobia stated that these parking spaces will not be visible from South Street and are necessary for employee parking: If moved, they would probably have to be shifted closer to Candlewood Drive. Ms. Shiffman agrees with the total tax revenue yielded and that the municipal services will be limited; however, she disagrees with the \$269,000 projected surplus but this won't be known until the complex is built. She believes that development of the site will be beneficial to the Borough.

The Board had no further questions for the witness. The hearing was opened to questions from the public.

There no questions from the public.

Mr. Pantel provided information on the scholarships for high-school students and pricing of the units as raised at the previous hearing. The scholarships are open to students that work at the facility for 1,000 hours and maintain a 2.0 average. The scholarships are up to \$500 per semester for up to eight semesters. Mr. Pantel provided prices based on the Erickson facility in Cedar Crest where the entry fee ranges from \$170,000 to \$560,000 depending on the unit. The monthly fee ranges from \$1,800 to \$3,200 also depending on the unit and the number of occupants in the unit.

Mr. Pantel summarized the application. It is an inherently beneficial use and as such supports granting the variances. The impervious coverage and building height has been reduced from what was granted last year. Less soil is being removed, the front yard and trees are being preserved. The rear buffer is being enhanced and the rear loop drive has been eliminated. There is no negative impact. The site is architecturally attractive and meets MLUL including senior housing. There will be a private ambulance. The steep slope disturbances are all within the existing distribution and the slopes are manmade. Nine-feet by 18-foot parking spaces are common and the spaces on Mountain Avenue and South Street are shielded by landscaping and the grades. The number of stories is generally adhering: The internal heights are a result of working with the grades. The application is true to the previously approved conditions, and the

applicant has done its best to enhance the previously approved plan. The site plan is worthy of approval.

No one else appeared to testify for this application. The hearing was opened to comments from the audience.

There were no comments from the public.

Discussion: Mr. Hoefling stated that the facility will allow residents to sell their homes and stay in New Providence. Mr. Grob commended the applicant and design team for the improvements to the plan. Ms. Polesak expressed appreciation of the design. The applicant could have proposed an altogether different plan but stayed close to the plan previously approved. Mr. Karr believes it is an outstanding application and good for New Providence: Moving the driveway in the back is great. The plan has come a long way since the application from Faith Lutheran Church. Mr. Wycko believes the applicant did a good job and has no real reservations approving it knowing that the Borough officials will see it through.

Mr. Wycko moved to approve the application with the conditions discussed during the hearings. Mr. Ping seconded the motion. A Resolution will be passed at the next meeting. Those in favor: Mr. Grob, Mr. Karr, Ms. Polesak, Mr. Wycko, Mr. Ping, Mr. Hoefling and Mr. Nadelberg. Those opposed: None.

Mr. Wycko moved to approve the application with the conditions discussed during the hearings. Mr. Ping seconded the motion. A Resolution will be passed at the next meeting. Those in favor: Mr. Grob, Mr. Karr, Ms. Polesak, Mr. Wycko, Mr. Ping, Mr. Hoefling and Mr. Nadelberg. Those opposed: None.

F. REVIEW OF UPCOMING HEARINGS FOR JUNE 4, 2012

Dianguo Zhang and Linghong Fu Application #2012-08
452 Charnwood Road, Block 24, Lot 18, R-2 Zone, New Providence, NJ
Chapter 310, Article IV, Section 310-10, Schedule II & III for permission to construct an addition. The proposed side yard setback to the addition is 10.22 feet whereas 12 feet is the minimum required. The proposed FAR is .277 whereas .252 is the maximum permitted.

Carried from April 7, 2012

New Cingular Wireless PCS, LLC and Sprint Spectrum, L.P. Application #2012-13
1778 Springfield Avenue, Block 191, Lot 1, C-2 Zone, New Providence, NJ
For permission to construct a temporary 100' ballast frame monopole with related equipment placed at the base of the pole.

Mr. Lynch stated that this is for a temporary pole. Cingular Wireless and Sprint Spectrum have to be off the pole behind the Prestige Petroleum site by August so the lattice work tower can be replaced. The temporary pole will be located at 1778 Springfield Avenue for two to three years.

G. MISCELLANEOUS

No miscellaneous business.

H. EXECUTIVE SESSION

No Executive Session.

I MINUTES FROM 5/716/12

The minutes of May 7, 2012, were approved as submitted.

J. ADJOURNMENT

The meeting was adjourned at 11:10 p.m.