

**MINUTES
PLANNING BOARD
TOWNSHIP OF CHATHAM
MAY 2, 2022**

Mr. Sullivan called the Regular Meeting of the Planning Board to order at 7:34 P.M.

Adequate notice of the meetings of the Planning Board of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2022, and January, 2023 was published in the *Chatham Courier* and the *Morris County Daily Record*, a copy was filed with the Municipal Clerk and a copy was placed on the bulletin board in the main hallway of the Municipal Building.

Answering present to the roll call were Mr. Sullivan, Mr. Choi, Mrs. Ozdemir, Mr. Duemling, Mrs. Felice, Mr. Hoffmann, Mr. Kahn, Mr. Miller and Mr. Neibert. Mr. Hamilton arrived a few minutes late.

Also present were Board Attorney Steve Warner, Board Engineer John Ruschke, Board Planner Frank Banisch and Board Manager Kali Tsimboukis.

Approval of Minutes

Mr. Neibert moved to approve the minutes of the April 18, 2022 meeting. Mrs. Felice seconded the motion which carried unanimously with an abstention by Mr. Miller who was absent.

Resolutions

PBA-22-003 Fenix I, LLC & Fenix II, LLC, Longview Avenue, Block: 9 Lots 1 & 1.01, Block: 32 Lot:1, Block 33 Lots: 1. 1.01, 1.02, 14, 14.01, 17 & 20

Mr. Sullivan stated that the resolution will be considered at the next meeting. Mr. Warner stated that the draft is still being circulated for review by professionals, and will be available for the May 16th meeting.

Mr. Ruschke asked if the developer could be held responsible for final paving three months from this meeting rather than from the May 16th meeting. Mr. Warner said that it will be addressed and clarified with the developer.

A recess was taken at 7:37 PM.

The meeting was resumed at 7:41 PM.

Hearings

PBA-22-001 Chatham Family Apartments LLC, 522 Southern Boulevard, Block: 128 Lot: 2
Requesting Final Major Site Plan

Mr. Choi recused himself from this application.

Mr. Warner announced that the applicant had noticed the original hearing date, and voluntarily re-noticed for this hearing date.

Damien Del Duca, an attorney representing the applicant, provided an overview of the application. Mr. Del Duca stated that the application is for Final Major Site Plan Approval for 63 units at 522 Southern Boulevard. He stated that it is an affordable family community and is municipally sponsored. Mr. Del Duca also noted that the units will be rental apartments. Preliminary major site plan approval was granted in August 2021.

Mr. Del Duca further commented on the Township's settlement agreement with the Fair Share Housing Center which was approved by the Superior Court. He further addressed the Redevelopment Plan that was adopted for the subject property.

Mr. Del Duca stated that the Township's application for Final Judgment and Repose is marked as Exhibit A-6 and the Judgment Order is marked as Exhibit A-7.

Mr. Del Duca stated that the purpose of final site plan approval is to confirm that the applicant has complied with the conditions of the preliminary site plan approval, and to give final approval so that the development can become a reality.

Mr. Del Duca entered the following exhibits:

- A-1 – An aerial photograph of the site
- A-2 – A color-rendered site plan dated April 18th
- A-3 – A site plan
- A-4 – Architectural Floor Plans and Elevations

Mr. Del Duca described the differences between A-2 and A-3. He also discussed the changes made to the site plan to conform to the conditions of the preliminary approval.

Mr. Del Duca stated that the timing of the approval is critical to the viability of the community. He stated that the Settlement Agreement requires that construction of the development starts within one year of the notification of the tax credit award or no later than December 31, 2022. Mr. Del Duca said that the preliminary approval was needed before the tax credit application could be submitted. Mr. Warner asked when the tax credit was awarded. Mr. Del Duca stated that it was in early December. Mr. Sullivan asked what funding is at risk with the timing. Mr. Del Duca said his client can address that.

Mr. Banisch, Mr. Ruschke and all the applicant's professionals were sworn in to give testimony.

Joseph Del Duca, the owner of the Walters Group, provided testimony. Mr. Del Duca said he has been personally involved in working with the Township and with the development of the site plans. He also commented on the financing of the development and the requirements set forth by

the HMFA. Mr. Warner asked if the Township could reapply for the tax credit if it was lost. Mr. Del Duca said that the loss of a prior tax credit would count against the re-application. He also indicated that the Township would need to make up the shortfall.

Mr. Hamilton asked what the burden would be to the Township if the final site plan approval is not granted. Mr. Warner described the purpose of a final site plan approval. He also read from the MLUL the conditions under which the Planning Board shall grant final site plan approval, and the circumstances under which the Planning Board can require the developer to seek preliminary site plan approval again due to substantial changes. Mr. Del Duca said that preliminary and final site plans are always different, and the changes for this application are consistent with the requirements set by the Planning Board.

Mr. Ruschke asked if a response has been submitted in connection with the DEP Review Letter dated April 6, 2022. Mr. Del Duca said that a response is being finalized.

Mr. Miller stated that the development will be served by the Green Village Fire Department, and the plans have not been reviewed by Chief Zalis. Mr. Ruschke said that the Fire Marshal reviews plans for compliance with the appropriate fire prevention codes, and there is often a courtesy review by the fire departments.

Michael Citerone, an engineer representing the applicant, provided his qualifications and was accepted as an expert.

Mr. Citerone addressed the changes made to the site plan since preliminary approval was granted. He noted that the traffic circulation was altered, a basketball court was removed and a tot lot was relocated as a condition for preliminary approval. Mr. Citerone also said that the traffic enclosure has been adjusted to provide easier access for a garbage truck. He further noted a change in the fencing as a condition of the preliminary approval.

The conditions of preliminary approval were reviewed individually so that Mr. Del Duca and Mr. Citerone could discuss the compliance therewith. Some conditions were noted to be carried forward.

Mr. Miller commented on the need for screening trees in the rear of the property.

Mr. Citerone noted a pocket of wetlands in the southeast corner of the property and addressed the minimal disturbance. He further addressed the clearing of trees and DEP regulations that limit when trees can be removed so that the Indiana Bat will be protected. No clearing of trees will occur until September.

Mr. Miller asked if road opening permits have been sought from the County. Mr. Ruschke said that the applicant will have to make such applications.

Mr. Citerone commented on sewer service and said that at TWA is not needed. Mr. Ruschke disagreed and said his opinion is that a Treatment Works Approval is needed. Mr. Del Duca said

that the DEP will be contacted for clarification. Mr. Miller asked about availability of capacity. Mr. Ruschke stated that the sewer plant is getting close to capacity.

Placement of a hotbox was discussed. Also discussed was the description of sidewalks as having porous pavement. Mr. Citerone addressed the materials to be used for the pavement and discussed the absorption of groundwater. Mr. Warner noted that additional references to porous material were added to the updated site plan. Mr. Del Duca addressed the porous materials and stormwater regulations. He also discussed the tax credit and how it would be affected by an increase in construction costs. Mr. Ruschke commented on the developer's requirement to comply with stormwater regulations, and stated that the stormwater system will need to be maintained during its lifetime. The need for a variance for impervious coverage was discussed, as was the percentage of impervious coverage proposed. Mr. Ruschke said that the DEP's interpretation of the code should be used.

Mr. Miller asked if the proposed sidewalk material has been used before in the Township. Mr. Ruschke said that applicants have requested its use before, and he has treated it as impervious material because of the maintenance involved. He also said it is more applicable to commercial properties than residential.

Mr. Hamilton said that the preliminary plans were not clear that all pavement was considered porous, and raised a concern that people could cover a lot with the material if it is not considered impervious. He asked if there is a mechanism to qualify a variance with maintenance or inspection requirements. Mr. Warner stated that there is no such thing as precedent in the Municipal Land Use Law. He also noted that there is a distinction between commercial and residential property. Mr. Warner also stated that any variance is a deviation, and there is an expectation of conditions of approval. Mr. Ruschke commented on the need for compliance with DEP regulations.

Mr. Hoffmann asked about the maintenance for the sidewalk. Mr. Ruschke said that the developer will maintain it. Mr. Del Duca said the maintenance agreement will be filed with the Township. Mr. Hoffmann asked about a potential additional variance for 6.7% of impervious coverage.

Mr. Miller asked what the normal impervious coverage would be. Mr. Del Duca said 50% is allowed. Mr. Miller asked if the groundwater levels are known. Mr. Ruschke said that will be ascertained. Mr. Miller asked if the variance could set a precedent. Mr. Warner said that it would only be applicable in this case. Mr. Miller asked about use of salt on the sidewalks when it snows. Mr. Ruschke addressed the maintenance of the sidewalk.

Jonathan Alderson, a landscape architect representing the applicant, provided his qualifications and was accepted as an expert.

Mr. Alderson presented A-2, which was the color-rendered site plan. He discussed the placement of tree screening on the property.

Exhibit A-9 was entered into the record, which was a picture of trees near the property line. Mr. Alderson clarified that the trees were on the subject property.

Mr. Miller asked about the number of parking spaces. Mr. Warner said that the application requests and RSIS deviation, and the application conforms to the redevelopment plan. Mr. Miller asked what measures can be taken to prevent people from parking at ShopRite. Mr. Del Duca said that there will be sufficient parking at the development. He also said that parking can be regulated through the lease agreements. Mr. Del Duca addressed the angled parking spaces.

Mr. Sullivan opened the floor to questions and comments from the public.

1. Maureen Kelly, 67 Mountain Avenue, was sworn in and asked where the sign for the project will be located and the name of the development. When asked about the name, Mr. DeLuca stated that other developments they have done in the state have been called Cornerstone, but no final decision on the name has been made by the Planning Board.
2. Mr. Del Duca addressed where the sign will be located, which will be 12 sq. ft. He said the community will be called Cornerstone at Chatham.
3. Jen McNally, 100 Noe Avenue, was sworn in to give comments. She asked how the development will be lit at night and asked for details. Mr. Del Duca stated that the lighting plan is compliant. Mr. Citerone provided details on the lighting plan.
4. Mark Lois, 15 Gates Avenue, was sworn in. Mr. Lois asked about the lap siding. Mr. Del Duca said it will be Hardie plank siding. Mr. Lois asked about planting native species. Mr. Alderson discussed the tree selection. Mr. Lois questioned if the impervious coverage was a labeling issue, and noted that the applicant represented to the DEP in an email that they would reduce the impervious coverage. He also addressed off-site mitigation of stormwater and asked if a contribution could be made to a fund instead. Mr. Del Duca said it would be inconsistent with the Settlement Agreement and existing law. Mr. Banisch said that unnecessary cost-generating conditions cannot be imposed. Mr. Lois discussed reducing impervious coverage by removing the sidewalks and removing the entry doors facing Southern Boulevard. He also suggested removing the gables to scale down the building. Mr. Del Duca addressed the entry doors facing Southern Boulevard. Ferdinando Micale, an architect and planner representing the applicant, was accepted as an expert. Mr. Micale addressed the character of the housing. He said it is important not to strip it down. He also addressed the purpose of having access toward Southern Boulevard. Mr. Miller asked about restrictions on use of the front yard space for safety purposes. Mr. Del Duca said that a particular plan had not yet been developed. Mr. Hamilton asked if the type of siding needs to be specified. Mr. Warner said that it is a stipulated condition.
5. Michael Choi, 42 Van Houton Avenue, asked if the applicant would provide anticipated details on the maneuvering of a garbage truck. He also asked that a circulation map with truck turning radius be submitted. Mr. Del Duca said that a truck turning template can be submitted. Mr. Choi asked about the economic consequences to the Township if the

applicant fails to meet the timeline of the Settlement Agreement notwithstanding the Township's timely approval. Mr. Banisch stated that the Township would need to make up the shortfall. Mr. Warner stated that the Planning Board does not have jurisdiction on that matter, and should focus on the question of Final Site Plan Approval. Mr. Sullivan stated that the Township's agreement is with the Fair Share Housing Center, and he does not believe that they will hold it against the Township if the developer fails to meet the timelines.

Seeing no further public comment, the floor was closed to the public.

Mr. Warner provided a summary of the relief sought and the stipulated conditions. Mr. Del Duca stated that the Hardie plank will be a neutral color.

Mr. Del Duca also said he does not agree with the clarification to the DEP. Mr. Ruschke addressed the need for him to enforce stormwater regulations. Mr. Miller noted the hard deadlines that the Township needs to meet. Mr. Banisch said that if the Township has taken appropriate steps to approve the application and another authority such as the DEP prevents the development, that will not fall back on the Township.

Mr. Miller moved to grant Final Major Site Plan Approval with the Redevelopment Plan and RSIS deviations and all stipulated to conditions. Mrs. Ozdemir seconded the motion.

Roll Call: Mr. Sullivan, Aye; Mr. Choi, Recused; Mrs. Ozdemir, Aye; Mr. Duemling, Aye; Mrs. Felice, Aye; Mr. Hoffmann, Aye; Mr. Kahn, Aye; Mr. Hamilton, Aye; Mr. Miller, Aye; Mr. Neibert, Aye.

Mr. Hamilton moved to adjourn at 11:17 PM. Mrs. Felice seconded the motion, which carried unanimously.

Gregory J. LaConte
Planning Board Recording Secretary