

Minutes of the Aberdeen Township Zoning Board of Adjustment Public Meeting of Wednesday, February 24, 2016

Present are Mr. Bucco, Mr. Byock, Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Forgione

Also present are Marc Leckstein, Esq., Leckstein & Leckstein, Anthony Abbonizio, CME Associates, and Martin Truscott, T&M Associates

Absent is Mark Apostolou.

Mr. Byock moves to approve the minutes of the January 13, 2016 Reorganization and Public Meetings, seconded by Mrs. Friedman, and on voice vote all eligible members approve.

New Business, **V15-115/Corlito, Applicant and Property Owner: Donna Corlito, DbA Donna Doolittle's Pet Sitting, 76 Cypress Lane, Block 68, Lot 4, Use Variance** to maintain a pet sitting operation out of her home, where such business is not a permitted use in the R 75/PC single family residential zone. **Note that this application will be carried to the March 23, 2016 Public Meeting for insufficient noticing by the *Asbury Park Press*.**

New Business, **V 15-116/Randazzo and Ciprianno, Applicant and Property Owner: Nichole Randazzo and Isabella Ciprianno, 14 Avalon Lane, Block 14, Lot 11, Variance** request to install a 20 ft. x 44 ft. steel wall in ground pool, in second front yard (Line Road), 39 ft. from property line, where accessory structures are not permitted in the front yard; maintain existing 6 ft. chain link fence in second front yard (Line Road) where fences are not permitted in front yards in the R 75/PC zone.

Mr. Leckstein has advised the applicants that their notice does not include the fact the pool is not permitted in the zone. He thinks it is ok for them to go forward, although something like this could be challenged. He has cautioned them against the missing information, and they have requested to go forward at their own risk.

The applicants, Nichola Randazzo and Isabella Ciprianno Randazzo are sworn in by Mr. Leckstein.

Mr. Leckstein swears in the Board's professionals.

Mr. Leckstein marks as Exhibit A-1 a survey of the property Seneca Survey Company, Inc., Robert W. Smith, Jr., Professional Land Surveyor, dated May 12, 2015; marked as Exhibit A-2 is a grading plan prepared by R.C. Burdick, PE, dated October 5, 2015; marked as Exhibit A-3 is a series of five photographs taken by Nichola Randazzo, and depict the house as it exists today.

Ms. Ciprianno-Randazzo says they want the pool because Nichola has a lot of health issues, including diabetes, so it is good exercise for her. They have big families, so they and their families can enjoy the pool during the summer. They need the fence because they have a Labrador dog, rather big, so they need the fence around the perimeter. There is a fence there already, and they have been repairing that fence. It was there when they bought the home, but there is no approval for that fence, so they want to legitimize the fence. Mr. Leckstein states the Ordinance prohibits fences in front yards in this zone, which is why this is a use variance.

Answering Mr. Falco about relocating the fence to a more compliant area, Ms. Randazzo says they are not looking to having it in any specific area. Mr. Leckstein says the problem is they have a second front yard, facing Line Road, and pools are prohibited in a front yard area.

Mr. Bucco asks if this house has two front yards, and why. Mr. Leckstein says Line Road is considered a road. Mr. Bucco says other than the second front yard, everything else seems in order; Mr. Leckstein says the fence in the front yard is another issue.

Answering Mr. Byock whether the pool is far enough away from the sewer easement on the property, Mrs. Rescorl states they are not into the easement area according to the plan, which they have 7-1/2 ft. on their side of the property line, but if the wood walk goes into the easement, they would need approval from the Public Works Department. The fence, however, is in the easement. Mr. Leckstein advises the applicants if there is ever an issue with the easement and the Township needs to access it, the applicants would have to take down their fence and replace it at their expense. They agree to this as a condition of the approval.

There is no one from the public here for this application.

Mr. Falco moves to approve the application, seconded by Mrs. Friedman.

Yes: Mr. Bucco, Mr. Byock, Mr. Falco, Mrs. Friedman, Mr. Phillips, Mr. Phelps, Mr. Forgione

No: None

Abstain: None

Continued Business, **SP14-503 (Rev [6])/241 Cliffwood Properties, Applicant and Property Owner: 241 Cliffwood Properties, 255 Cliffwood Avenue, Block 183, Lot 11.01**, Applicant seeks revised **Site Plan** approval with **Variiances**, to construct six (6) multifamily buildings containing a total of 56 dwelling units, of which 10 will be COAH units, and 46 will be market ratable unit on the above captioned property, located in both the R100 single family residential and Neighborhood Commercial (NC) zones. The existing home, business and accessory structures will be demolished. In addition to the townhomes and COAH rentals, the applicant proposes parking facilities, landscaping, site lighting, stormwater management facilities, recreation area and utilities. Use Variance approval was granted by the Zoning Board in November, 2014, subject to site plan approval. Variances required for setback to railroad right of way 100 ft. required, 50.5 ft. proposed along the western property line, Density 8 units permitted in APT/TH zone per acre, 4.48 units proposed, Minimum Tract size 5 acres required, 4.46 acres existing and provided, Setback from Street ROW 50 ft. required, 43.2 ft. proposed, Setback from property lines 25 ft. required, 14.5 ft. proposed; Building Spacing Window Wall to Window Wall 60 ft. required, 44.2 ft. proposed,, Building Spacing to Parking Area 15 ft. required, 10 ft. proposed, Freestanding Sign Setback in the R 100 zone is 50 ft., NC zone is 15 ft. and 5.7 ft. proposed, and Directional Signage to be determined **This application is carried from the January 13, 2016 Public Meeting for additional testimony and information to be supplied.**

Salvatore Alfieri, Esq., attorney for the applicants, states they were last here in October, 2015, and presented engineering testimony and started the planning testimony, heard comments from the Board's professionals and Board members, and since that time they have submitted a revised plan, which reduces the original 66 units to 56 units, ten of which are affordable housing units, which was a requirement of the original 66 units use various phase, and to increase the recreation area to meet the Ordinance standards.

Mr. Alfieri says since the engineering changes were relatively minor, he will start with the applicant's planner, who can summarize what the changes are, prove his planning testimony, and that would conclude the presentation.

Mr. Leckstein marks as Exhibit A-39 Stonefield Engineering site plan dated 11/18/14, revised 12/29/15; marked as Exhibit A-40 is a partial site plan titled "Glassworks" dated 6/6/15, revised 7/20/15; marked as Exhibit A-41 is a Stonefield Engineering cover letter prepared by Charles Olivo and Noel Barnett, dated 12/30/15; marked as Exhibit A-42 is a T&M review letter dated July 20, 2015, revised January 11, 2016.

Mr. Alfieri says they addressed thru Mr. Leber's testimony all the engineering comments other than perhaps the recreation. Mr. Abbonizio says he believes four meetings ago the applicant's engineer testified he would comply with CME's last letter; Mr. Alfieri agrees. For the record, Mr. Abbonizio says they are willing to comply with the July 21, 2015 letter; Mr. Alfieri agrees.

Answering Mr. Falco they are down to 56 units, what was the last number; Mr. Phelps says 60. Mr. Alfieri says it went from 66 to 60 to 57 to 56.

John McDonough, still under oath, refers to Exhibit A-43, Stonefield Engineering site plan prepared 1/12/15, which is a replica of the plan submitted to the Board, but it is essentially a composite of a number of the plans. It shows the form of the development, the buildings in tan, the roadway in the darker grey, and the green is the perimeter landscaping, and the open space on the top. This is marked as Exhibit A-43, dated January 12, 2016, a composite of the site plan, the landscape plan, and perhaps other elements of the plan put forth, but it gives the basic form of the development.

Mr. McDonough states he was last here in October, 2015, and talked about the relief the applicant was seeking. We are dealing with one tax block, Block 183, Lot 1.01, fronting on Cliffwood Avenue, near the railroad tracks. It is a developed piece of property that is in an unproductive state, with an old restaurant and other older buildings on the property, an under utilized piece of property, completely counter to what the zone would want here. It is certainly an area of the town targeted for active land use, and particular consideration of what is planned in addition to the other side of the street, at the Glassworks side.

The testimony with respect to the use aspect of this application was granted back in 2013 or 2014, when the use aspect for multifamily was granted by this Board. When he testified in October, the application evolved into two bulk variances in what is a split zone piece of property. The Neighborhood Commercial (NC) is the front half of the property, closest to Cliffwood Avenue, and the R100 zone in the back portion of the property, referring to the heavy dash line on the exhibit rendering. From a planning standpoint we know that split zone properties are undesirable, often having a disconnect in terms of the overall integrity of the development, and how it is planned out. What is nice about this application is the developer applicant is planning to provide for a nice,

cohesive, integrated development, and the overall form of the plan has not changed. You are looking at a single access point off of Cliffwood Avenue, similar to what was testified to by Mr. Olivo, and has not changed as part of the resubmission. The form is basically the same; they still have a nice courtyard type of arrangement, buildings flanking the interior, four buildings on the exterior. The overall density or unit count has gone down to 56 units, in response to interaction with the Board and public, and the open space element, subject of significant discussion last meeting, has gone up and is fully compliant with the requirements for a townhouse development. The recreation area will be 11,318 sq. ft., and based on the Ordinance requirement, not a variance per se because they are not dealing with the APT/TH zone but for comparison purposes, at 1 per 200, would be a requirement of 11,200 sq. ft., so the recreation area has responded and upped the recreation area.

The COAH count the affordable component, still holds. As part of the use variance application, ten affordable units were to be provided as part of the development. We know the obligation for affordable housing in municipalities has only increased based on last year's March decision by the Supreme Court, and this applicant is holding its affordable housing obligation even though the overall density has gone down, which means the percentage of affordable has gone up on the project. There will be no decrease in the overall affordable component.

In terms of the overall development, the last time Mr. McDonough was here he testified about two bulk variances, going thru them at length and putting on the record the advancement of purposes A, B, G, I, and M, under Municipal Land Use Law, and concluded that the form of the development and relief the applicant is seeking with respect to a side yard setback, combined in the R100 district, and the overall building coverage in the R 100 district, would not cause substantial detriment to the public good, or substantial impairment to the zone plan and the Ordinance.

Now they have one variance left, they have eliminated the side yard setback, they have eliminated the side yard setback only in the R 100 portion of the development. The NC portion is completely compliant with the Ordinance from a bulk standpoint. The only relief is for the building coverage; they are now at 0.9% above what the Ordinance requires, certainly within the realm from a planning standpoint of being di minimus. The overall application would comply with both the requirements of the NC and the R 100 zoning districts if looked at in aggregate.

In short, the relief he testified for carries forth; it is a better plan from a zoning standpoint, substantially in compliance with the requirements of the zone, and a planning process is supposed to be interaction between the Board and the applicant, and from a planning standpoint we have an applicant who has been responsive to the comments of the Board, and he believes this application now meets the criteria for one di minimus bulk variance that can be granted without substantial impairment to the zone plan and Ordinance and without detriment to the public good.

In summary, Mr. McDonough says this is a good application, and based on the statutory tests, approval is now warranted.

Mr. Alfieri, referring to Exhibit A-42, the T&M report, updated January 11, 2016, most of the comments have been addressed. Running through those that have not, Page 5, Items C and D, the applicant has to comply with whatever DEP regulations regarding wetlands, etc., and the applicant will comply.

Mr. Alfieri, referring to Item E, the COAH affordable component, they have to comply with the bedroom mix, income levels, etc., whatever is required by Ordinance, and the applicant will comply.

Referring to Item F, the applicant will include on the plan how the project complies with recycling. They had testimony from their engineer where the refuse and recycling would be maintained and how it would be maintained.

Item G, the tree removal, was addressed thru testimony of the engineer. It is a continuing comment because they have to have their plan approved by the Advisory Board and address their comments.

Item H regarding buffers has been addressed, Item I regarding site circulation has been addressed; Item J is a deferral to the Board engineer regarding satisfying storm water generation using nonstructural strategies. Item L the building setback for Building No. 5 has been increased to allow for additional screening. Item M signature on the site plan is a formality. Item N is the parking count, and they do comply with the parking under RSIS.

The planner has gone thru the floor area calculations, and indicates those are addressed, and building widths have been addressed.

Mr. Alfieri believes they have addressed every comment of the Board's planner, engineer and Board members themselves.

Mr. Leckstein, questioning Mr. McDonough about his testimony there is only one bulk variance, Mr McDonough says it is related to the building coverage in the R 100 zone, 20.9% vs. 20% permitted.

Answering Mr. Leckstein, Mr. Truscott says there are two bulk variances and sign variances as well. Mr. Truscott is showing a minimum side yard setback variance and a building coverage variance. Mr. McDonough does not agree, and refers to Exhibit A-43, a replicate of Exhibit A-42, and may just be a discrepancy between the table in Mr. Truscott's report and the table now provided by the applicant. The maximum building coverage on A-43 is showing at 20.9% where 20% is required; an older plan showed a larger percentage. The minimum side yard setback is now compliant; in the R 100 district 72 ft. is required and 78.5 ft. is provided, and within the NC district, 20 ft. is required, and 31 ft. is provided. Mr. Truscott treats this as one number since they are in a split zone, using the NC numbers, and he did not have two different combined side yard setbacks. Mr. Alfieri says they split it. Mr. McDonough says based on a zone to zone comparison, the applicant complies. They are willing to provide back up as to how they got to their calculations.

Mr. Leckstein says we have to go by Mr. Truscott's letter, not two different sets of numbers. Mr. Truscott says it is the difference between 72 ft. and 78 ft. for the combined setback in the R 100 zone. Basically it is 25% of lot frontage, which Mr. McDonough says is a total of 308.3 linear feet. Mr. Alfieri says if you round up it is 78. Mr. McDonough says if Mr. Truscott is correct with 78 ft. the applicant still complies because they are providing 78.5 ft. Mr. Truscott says if you have a split zone, which Mr. McDonough agrees.

Mr. McDonough, at Mr. Alfieri's request, refers to his exhibit, saying the heavy line is struck as a horizontal line on the Exhibit A-43, which is parallel to Cliffwood Avenue, roughly splitting the property in half. The side yard setback would relate to the northerly property line along Lot 12.01 and Lot 11.02. The side yard setback to the eastern portion of the property is 14.5. The portion to the western side is 16.5, which adds up to 31 ft. where the requirement is 20 ft. in the NC zone.

The requirements for the R 100 zone are, Mr. Alfieri says assuming 78 is required for the purpose of this discussion, Mr. McDonough says the building in the lower right hand corner, the southeast corner of the property, is offset from the property line to the east of 28 ft. On the west side of the property the offset is 50.5 ft. That adds up to 78.5 linear feet. The plans are showing the requirement as 72 ft., but if they accept Mr. Truscott's table, 78 ft. is the requirement. They still comply.

Mr. Truscott is in agreement with the 78.5, so there is no variance.

Mr. Alfieri responds to Mrs. Friedman there are two standards, the individual setback and the combined setback, and the applicant meets the individual standard, and there was a question whether they met the combined.

Mr. Leckstein asks the Board and its professionals all are in agreement there is only one bulk variance for building coverage, and everyone agrees, the variance is for .9.

Mr. McDonough, referring to Exhibit A-37, his report, says the sign requires a setback variance. Everything else about the sign complies with the NC zone, including the overall height, width, area, and the overall mass of the sign. It is just the location, and the setback for the sign is 5.7 ft. from the right of way of Cliffwood Avenue, and the requirement in the NC zone is 15 ft. They are looking for relief of less than 10 ft. for signage. The justification is that the location fits nicely within the boulevard effect the applicant is proposing at the entry to the development. There will be a green landscaped area, and the sign will fit nicely within that physical context, and the location is not going to cause any obstruction in terms of lines of sight or visibility into or out of the site that would impede stopping distance or any unsafe movements into or out of the site. It will provide for a nice balance. The benefits of the location on the balancing test providing for clear and safe identification of the site would clearly outweigh any detriment with the sign being close to the road. It is not going to be overly obtrusive, but will look to the public realm or the casual passerby that it is where it belongs. That is the planning justification.

Mr. Alfieri says the other question, whether or not it is a zone standard to be 100 ft., which Mr. Leckstein says it is applicable in another zone, Mr. Alfieri says they will justify why they do not conform to that zone standard, but it is not a variance. Mr. Leckstein says technically it is not a variance for this zone, because it is not a requirement of this zone, however, the use is not, so the Board is within its right to utilize that information whether this use should be put in this zone where it is not allowed, based upon those standards.

Answering Mr. Alfieri what the relief is they are seeking and why, which he says they submitted Exhibit A-40, the Glassworks site plan, as part of their proofs; Mr. McDonough says that submission goes to the heart of the justification from a comparative standpoint in that they are dealing with an area as a whole, and on the other side of Cliffwood they know they have a more massive development. This application is

going to provide a nice balance from the overall mass and scale of this project with what is happening on the other side. They noticed with the Glassworks development that the buffering provided on the subject property of 50 ft. is actually more generous than what they see on the opposite side of the tracks, with the Glassworks development, including a recreation area that will go right to the railroad track, and buildings and parking also going right up against the tracks. This is evident in Exhibit A-40. What is on the easel now is a replica of A-40, and he shows the railroad tracks on the right hand side of the page, and you can see buildings and parking, a recreation area right up against the railroad tracks, certainly not respecting a 50 ft. setback, so the planning rationale is this is going to blend in harmony, compatibility with the development pattern seen on both sides of the railroad tracks. Good planning tries to replicate a pattern. This massive development is going to have an influence on the area, and in that regard they see no substantial impairment of the character of the neighborhood or overall zoning district, with relief of 50 ft. whereas 100 ft. would be required if they were in the APT zone.

Mr. Leckstein replies the requirements of the redevelopment zone are not the same requirements in other zones. The Ordinance is what it is for this type of use. It is not in that zone. Mr. McDonough replies that under redevelopment laws, redevelopment areas get special treatment. That said, the fact it has been determined it is appropriate to put structures, activities and recreation areas literally adjacent to the same railroad tracks that the subject tract is adjacent to, renders to him a planning conclusion that that relief could be granted without substantial detriment to the public good and certainly without substantial impairment to the overall integrity of the area and zone. Mrs. Friedman states she does not know the intricacies of the Glassworks but she knows the density here is verified what would be appropriate in an apartment/townhouse zone. From her perspective we are not comparing the same proofs. This is an overpopulated area looking at the APT/TH zone, there will be a lot more kids, families, etc. in that area with that setback to the railroad tracks. Mr. Alfieri responds that this density is significantly less than the density already approved for this project, and that building by the railroad tracks is located in the same location as when the Board approved the use variance. There is case law that says many of the bulk variances assumed to the use variance that was granted. They could not develop anything near what was approved at 66 units if they honored the 100 ft. setback that is not required in the zone.

Mr. Leckstein, addressing Mr. Alfieri, says there was hesitation about granting the use variance. Mr. Alfieri stood up and said... *let us show you we can make it fit*. The Board said it would give the applicant an opportunity to show us they can make it fit, and throughout the application we have consistently seen you making it fit by creating a situation in that application, such as Building No. 5, the only reason you can't make the building setback is you insist on having Building No. 5 there. If you eliminate that building you do not have a problem. You could then increase the recreation area right up to the train tracks. If you increase the size, you can get rid of another variance. You can't make it fit unless you do all this; the Board was not sitting here with the site plan at the time of the use variance; you said you could make 66 units fit.

Mr. Alfieri responds they have spent many days on this application and have exhausted their efforts to convince the Board this is the right plan. If the Board disagrees, that is fine, you can vote yes or no. There is a forum to deal with the no. They are not eliminating Building No. 5. Mr. Leckstein said they had a concept plan, they did not know all variances when the Board voted for the use variance; they had a comparison. It was reviewed by the Board planner and engineer but was only a concept. They did not

have all the variances, did not have a comparison. It is not fair to say the Board had the plan when they agreed to it, and should have said at the time it wasn't good enough. The Board did not have knowledge what the Ordinances said at the time. Mr. Alfieri says this is the plan the applicant is asking the Board to vote on.

Mr. McDonough says there is a question of density, which brings us back to looking at positive and negative criteria. We talked about the project as a whole, we have provided nice balance, nice roadways. If he were testifying against a density variance, he would look at the Grudds case, which doesn't look at comparable zones, saying you established 12 units per acre here and 8 units per acre elsewhere, as the determining factor. The question is whether the site can accommodate density, and they have provided that as part of the parking, circulation and all of the utilities that can meet the capacity of the site. If the Grubs test were to apply here, it would be met because the site can accommodate the density.

Mrs. Friedman disagrees, not knowing the case, but says the site cannot accommodate the density proposed, it is not meeting the requirements, the safety dealing with families and kids. She does not see where this plan fits within the site, and the location by the train is very concerning to her, the turning, all make her disagree with Mr. McDonough's comments.

Mr. McDonough, going back to the Grudds case, says can the site accommodate the density; they have given the functional reasons why, they have given the physical and visual reasons why, they are not asking for any parking relief, they are not asking for any relief in regard to the residential site improvements standards, they are not asking for any relief to the townhouse requirements in terms of the overall size of the units, width has been gone thru. The applicant is providing a project that substantially complies with the requirement of the APT/TH zone. To the extent the applicant has deficient buffer, you look at the reasons why you have a buffer ordinance; to maintain separation, adequate light, air and open space, so 50 ft. works here with no substantial detriment or impact on the residents of being within 50 ft. of a railroad track. There is clear evidence across the street, where you will have residents living in even closer proximity to the railroad tracks. He does not see the rationale saying it is ok over there but not ok over here, and not because it is a redevelopment zone you can say one is ok and not the other. You have to look at the negative criteria, you have to provide fair and equal treatment, and he thinks a 50 ft. buffer here is more than appropriate for what the applicant needs and what the zone requires.

Mr. Leckstein says safety plays a role too, and Mr. McDonough says the plan is not unsafe. They have maintained a nice buffer system, a nice divide from the railroad tracks, it is going to be a protected area, whether there is 100 ft. or 50 ft. , the protection and barriers are there to protect the homeowners and residents from the train tracks.

Mr. Leckstein says the Township Council does not play a role in this application; we are not the Planning Board and Council decided what they want at the Glassworks, which we are not privy to what was decided at the Glassworks; Mr. McDonough counters that that he can't ignore from a planning standpoint what is going on in the physical world, whether it comes thru one form of zoning or another. It is physically there, the same structures are right there on the other side of the tracks, even closer than the subject development. This is his opinion. Mr. Leckstein says they could allow a use across the way that is not allowed here, that it is not appropriate in this zone if they haven't decided

to put it in this zone. Obviously the Council has not said it should go in this zone but it can go in the other zone. Mr. McDonough says his planning conclusion holds that this site is not being overly developed, overly intense, it substantially conforms to all the requirements of the zone, the justification for the buffer variance would be the justification for any other buffer variance that's granted in the community, there is adequate screening, adequate separation, a 50 ft. buffer is more than generous to meet the planning intent on this site. It is relief that is commonly granted and he sees it as not being a substantial detriment.

Mr. Truscott tells Mr. McDonough it does not comply with the APT/TH zone, there are several deviations beside the setback from the railroad. There is the setback from the street right of way, and the initial plans complied at 50 ft. , and there is the setback from the railroad and setback from property lines is 14.5 ft when it should be 25 ft., the building spacing, window wall to window wall should be 60 ft. and it is now at 44.2 ft., and the building spaces for the parking area; in that zone it calls for a minimum of 15 ft. and you propose 10 ft.

Mr. McDonough replies the building spacing at 44.2 ft. vs. the 60 ft. violates no building or fire code standards he is aware of, and that is relief commonly seen granted for townhouse development. Zoning is not meant to be inflexible and rigid, that's why relief is allowed in the statute, whereby the benefit of the application as a whole and all the benefits he talked about are not only for the use aspect but hand in hand with the bulk as well, outweigh the detriment. It is a balancing. The applicant is looking for relief allowed under the statute, that's why that relief is put in there, the setbacks from the street, the property lines, and the railroad constitute a substantial detriment whereby those benefits of the application would be outweighed. He does not see it, from a planning standpoint, he does not see the planning basis for further reducing the unit count on what is a very nice balance, well functioning, and well designed townhouse property.

Mr. Leckstein asks why can't the applicant eliminate the extra building, other than the fact the applicant doesn't want to. He asks if there is some physical factor that says they have to have these buildings. Mr. McDonough says from a practical standpoint if provides for a nice balance for the project, he does not see the planning benefit of knocking out Building No. 5, which does provide an even better mass for the screening of the development than landscape plantings in the area, so that building also becomes a buffer from the surrounding development; it becomes a barrier...Mr. Leckstein interrupts and Mr. McDonough says Counselor asked the question and he is answering. The planning benefit is they are providing a wall, a physical mass that provides a separation from the adjacent railroad tracks. They have a piece of property that has a specific outbound, he thinks the applicant has done a good job at fitting the building masses and a nice green belt around the property, and he sees no planning benefit in eliminating Building No. 5 but to hit a number that is just a number. An application does not have to be perfect and hit every aspect of the Zoning Ordinance to be a good plan. If it were, you would not need a Zoning Board. The relief the applicant is seeking, in his mind, is not substantial; it is relief, but not substantial.

Answering Mr. Phelps, Mr. McDonough says the Grudds case where the use has been vetted out already, can the site accommodate the proposed density. Mr. McDonough cannot remember the zone the case was referring to but believes the use per se was not an issue.

Mrs. Freidman says she counts eight variations and takes exception to Mr. McDonough calling an apartment building where people are going to live a wall or a barrier is a bad characterization. Mr. McDonough says planners do it all the time. If he is saying a barrier is needed to the train tracks to prevent an accident, then it is not safe, and the applicant must be concerned after safety issues. Mr. Alfieri says the argument of safety fails if it is distinguished to be ok on the other side of the tracks but not safe on this side of the tracks. If it is safe on the other side, why isn't it safe on this side. What is the difference on this side? Mr. Leckstein replies he should ask the Township Council. This Board is not privy to the information that approved the application on the other side. Mrs. Friedman says they are saying Glassworks is identical to this; Mr. Alfieri says they did not say that, but there are living units that are as close on the other side, that is the point. Mr. Leckstein says this Board knows nothing about Glassworks except for the map the applicant is showing the Board. We don't know what considerations went into that, we don't know any conditions, we have no idea about Glassworks. Mr. Bucco says Glassworks came before this Board seven or eight years ago, but not for this plan. Mr. Leckstein says whatever they did then is irrelevant. Mrs. Rescorl says before it became a redevelopment zone it was a manufacturing zone and Somerset Anchor had tenants in the warehouses, and one of the tenants came before this Board. It had nothing to do with the redevelopment of that site or anything that has been approved by the Planning Board for the Glassworks.

Answering Mr. Byock's question whether the whole community is fenced in, and the only entrance to get in and out would be driveway on Cliffwood Avenue. He wants to be sure no one can get in from the rear of the site. Mr. Alfieri says they did agree to fence the rear.

Answering Mr. Byock about the number of guest parking spaces, Mr. McDonough says they comply with the RSIS and does not have the number. Mr. Byock wants to be sure if someone has a party there they know where they are parking and not parking on Cliffwood Avenue. Mr. Trustcott says the way RSIS works includes guest spaces per unit. If they had 2.3 spaces, .5 of that would be for guest parking. They meet the requirement.

The Board takes a break while Mr. McDonough researches the referenced case. Upon resumption and new roll call, all Board members are present that were present prior to the break..

Mr. McDonough says Grudds is generally accepted as the planning standard or test case for density. The court talked about similar case that applied to commercial land uses with excessive floor area, which would be a d4 variance. That was the Randolph case. Grudds become the operative case that dealt with residential density, where Mrs. Grudds wanted to subdivide her property into more single family units than allowed by the zoning district. He cannot remember if it got approved and then denied, it went back and forth to the courts, but from a planning standpoint the court say, and he is quoting from Cox 35-3.2, *...associated density variances tested against a more relaxed standard than a d1 use variance requires applicants to demonstrate the site will accommodate problems associated with the proposed use with greater density than permitted in the zoning district...*The focus of the Board should be the problems associated with additional units or the deficient buffer. He doesn't want to be argumentative, but he thinks the site can accommodate the density. What would be the problems: traffic, and we have gone over it; that it complies with RSIS, how it would function safely and efficiently, complies with the parking requirements, and the zone; perimeter buffering: buffering on all sides would

be adequate, would be generous and provide for a nice screen between this property and adjacent land uses, and would be a better buffer than we see on the other side of the railroad tracks. The size of the units are not overly intent, there is no overcrowding, all of the aisle widths and dimensions are the size to accommodate the development. The only bulk relief related to the mass of the project in consideration of what could go here, is 0.9% coverage on the back piece over what is allowed. The safety concern about having buildings 100 ft. away from the railroad line, if this project were built in compliance with the zoning requirements, the setback requirement in the R 100 zoning district is 10 ft. from the property line. Single family homes could be 10 ft. from that property line. These homes will be set back 50 ft. with a substantial buffering system.

Mr. McDonough sees no planning benefit moving the building another 50 ft. when the zoning scheme contemplates residential homes even closer to the railroad tracks.

Mr. McDonough says if the Grudds standard applied here, the applicant has demonstrated that the site can accommodate any problems that would be associated with additional density.

William Paparteys is sworn in by Mr. Leckstein and states he lives at 16 Dogwood Court, Cliffwood, NJ 07721. He states he backs up to this property, and his concern is the traffic that would be coming thru his development, and a school system two blocks away. He came here some time ago concerning the fence. Did they ever agree to an 8 ft. fence all around the property, the rear and both sides; Mr. McDonough says they did agree to the 8 ft. fence.

Mr. Paparteys states they were never clear why would this reach the point of 66 units in a residential area with a small deli and single family home surrounded by residential homes. Why was a variance given; he now understands after listening to the attorney, they have to make it fit. In the space there would be a limited number of single family homes. Sixty six units was a lot to give under the premise they had to make it work. Going down 10 you ask the question how much are you giving back. You came a long way to get there, but in his eyes you are giving very little back. To him it still looks like too many units. That being said, his concern is the homes that would be there with the children, the driveways, the exits with one lane coming on to Cliffwood Avenue, a busy street with railroad tracks, people trying to make a left, school buses coming by stopping on the street, those are the neighborhood concerns. His concern is 66 units down to 56 units is not successful, and that is the feeling of many people in his community. Other people in the community are not here because we went thru a lot of cancellations, and once a notice is sent, people drift. He happened to be in Town Hall and checked on the status. It is the community's feeling 56 is too many.

Mr. McDonough responds to Mr. Paparteys there is an opinion of overcrowding of the development, he wants to remind the Board this is a commercial zoning district, adjacent to a residential neighborhood that could have bars and restaurants. If you taking the building masses, the buildings you see, and group them all together, you could have a large scale building mass in the front of the property, and a large scale building mass of single family homes in the back of the property. The tan color seen on the exhibit could be realized under a zone conforming plan in terms of the overall development. You can get commercial development in the front of the property. This is an application that is a balancing of land with the neighborhood. He does not know there was any condition of the use variance that said the applicant had to comply with an application that was spot on with the zoning scheme. The words kicked back and forth were *"it had to work and it*

has to fit.” From a planning standpoint for all the reasons he has given it works, it fits with what’s there, and with what could be under the zoning scheme. Mr. Paparteys disagrees.

Mr. Truscott says the applicant agreed to an 8 ft. fence and the site plan is showing a 6 ft. fence. Mr. Alfieri says at the April 30 meeting members of the public testified they would like an 8 ft. fence rather than a 6 ft. fence, and the applicant said he would consider it. At a later meeting they agreed to address the neighbors’ concerns, and it will be an 8 ft. fence.

Mr. Truscott says, in terms of helping the Board make a decision, part of the reason this application has been dragging, is the applicant bifurcating the application, the Board allowed the use but did not set specific standards in terms of what standards the applicant would use for multifamily units. He had a number of units and the resolution called for a site plan. We have discussed the APT/TH standards extensively as a way of comparing. It is a benchmark, not required, and there are no variances from that variation. There is case law, maybe not published as a precedence, but there is consideration by the courts once you grant a use for something totally different than what the zone calls for, the standards of the other use should be followed. If you were to allow a gas station on a single family lot, the bulk requirements for a gas station would have to follow the requirements for a single family zone. He feels the Board would be right to consider some other standards in terms of what is proper and what is allowed in the zone. The problem is the Board granted the use but did not tell them to follow “X” standards. If the Board were inclined to support the application, they should look at. The applicants have made a lot of effort to revise the site plan in many different ways in terms of the building width, the floor area, landscaping added, the recreation area has been addressed, parking meets the RSIS, they have increased the setback to the railroad. It is still deficient in terms of the APT/TH zone, but there have been a lot of changes to address the Board’s concerns. The applicant reduced the number of units from 66 to 56 as of tonight. The application has ten affordable units, which is a benefit to the Township and addresses an obligation the Township has. The application presented tonight meets the parking standards and landscape buffering has been addressed.

Mr. Truscott says if the Board does not feel this is a proper site plan, that it doesn’t fit, and the Board has voiced that concern, regarding density under the APT/TH standards allows 8 units per gross acre; the applicant is proposing 12.5 units per acre, a 50% increase of what is allowed in the zone, which is a substantial difference. The setback from the railroad has had safety concerns expressed. The reasons for setback are vibration, noise, aesthetics, impacting residents of adjacent properties. That could be a negative in terms of this development

Mr. Leckstein a reason for a buffer of this type is for safety as well, more than just noise and aesthetics; Mr. Truscott agrees.

Mr. Truscott says the Board can be guided by allowing the variations from the APT.TH zone; the density, total tract area, setbacks from the street and the railroad, the building spacing, which may be where the Board gets its feeling it is too tight or too much. It is not a proper site plan in terms of what is being proposed. The Board can be guided by those different standards required in other zones and other projects.

Mr. Truscott says there was also consideration about the recreation area; what type of recreation is it for the types of residents that will be there. Is it active enough or just a passive area. How do they address the needs for future residents.

The Board will have to make a decision based on testimony from the planner and engineer in terms of the variances and how the site plan meets the requirements it addresses and whether it works for the site.

Mr. Phelps confirms with the applicant's attorney, Mr. Alfieri, that the original application for the use variance was approved for up to 66 units.

Answering Mr. Phelps question about how they came up with that number, Charles Olivo, previously sworn, the applicant's engineer, who says some time ago when they laid out the site plan's number of buildings, trying to keep general standards of unit sizes, unit counts circulation throughout the property, and spacing between the buildings and property lines. They relied on their experience as part of engineering other apartments, townhomes and residential properties. They came up with a conceptual site plan that was presented to the Board at the time of the initial hearing for use variance.

Mr. Phillips questions Mr. Truscott's comment when we granted the use variance we should have set standards of what we wanted here; Mr. Truscott replies it would have helped in terms of what the Board wants here, such as allowing single family, you might say similar to the zone next door or part of any residential zone. That way those standards would come with the package. Here is a totally different use, so what standards do you want to apply. The only one you turn to is what is in the Ordinance as a bench mark to use as reference. Mr. Truscott confirms to Mr. Phillips the only bench mark is the APT./TH zone.

Mr. Bucco, addressing Mr. Olivo, says months ago they had an exhibit that showed the individual houses surrounding the proposed development, and asks if there are any individual living units that back up or come close to the railroad track, and what is their setback. Mr. Olivo responds there are homes that abut the railroad tracks; if you go off the page in a southerly direction there is a line of homes. Pointing to one particular that Mr. Bucco asks if it is lived in, Mr. Alfieri says it was occupied when the application started but does not know the current status. The applicant does not have that exhibit with them. Mr. Truscott says the homes on Dogwood Court may not comply with the hundred foot buffer. Mr. Bucco asks if there have been any incidents with safety in proximity to the railroad tracks, is there any danger with the trains that move pretty fast. Mrs. Friedman replies she does not recall any incidences where trains have derailed and affected the single family homes, but these are multiple units. There was an incident maybe a year ago where a train derailed well over 100 ft. There is a reason for the setback requirements. Mr. Alfieri responds that if the Governing body that drafts the Ordinances felt that 100 ft. was necessary to separate structures from a railroad track, they would not limit the 100 ft. to just the townhouse areas but rather apply it to all residential zones. They have not done it to the residential zone the applicant is in. If you want to look at safety, is it safe to have a single family home within 10 ft. of a railroad but not have a townhouse unless it is 100 ft. Mrs. Friedman replies it is the amount of people in a single family house vs. the number of people in multifamily homes. Mr. Alfieri says there is one building; Mr. Leckstein says the one building and a recreational area that goes right to the property line.

Mr. McDonough says just south of the proposed development is Dogwood Court, where there are 14 single family homes, which would have a larger residential population right against the railroad, compared to 14 townhomes, which would have less residents. Mrs. Rescorl informs the Board the referenced single family homes have a rear yard setback as approved by the Planning Board of at least 25 ft., and the Board required an 8ft. fence be installed along the property line that shares the railroad tracks. There is area beyond the fence to the tracks that is unusable to the property owners. Mr. McDonough says looking at an aerial there is no buffer provided; there are the homes, a green backyard. If the homes are set back in accordance with the Ordinance, there is a 20 or 25 ft. rear yard setback with open lawn backyards, pools and the like. He uses the term they are right against the railroad tracks, but the property line actually is against the tracks. He says there are more single family homes closer to the railroad tracks immediately south of the proposed development with a larger resident population than being proposed by the applicant. Mr. Alfieri says the rear yard setback for single family homes is 25 ft. , which Mr. McDonough says is exactly what the attached development is doing.

Mr. Paparteys, previously sworn, says he has a 12 ft. patio that is 10 ft. off of his fence, the 8 ft. fence that runs across his back. Behind his fence is probably another 10 to 12 ft., goes down an embankment and maybe 5 to 6 ft. to the tracks. So there is maybe 40 ft. There are only six or seven houses in that area that are affected by the train, all similar to his rear property. They are all the same distance to the tracks.

Mr. McDonough says the nearest setback to the nearest point of proposed Building No. 5 to the actual railroad tracks is 74 ft. and expands to 85 ft. at the furthest point. This is to the edge of the railroad tracks, so this is effective separation.

Answering Mr. Falco, Mr. Truscott clarifies talking about a setback to the property line, not the rail tracks.

Mr. Byock makes a motion to deny the application, seconded by Mrs. Friedman.

Yes (to deny): Mr. Falco, Mr. Byock, Mrs. Friedman, Mr. Phillips, Mr. Phelps

No: Mr. Bucco

Abstain: None

New Business, **SD15-301/Ellen Homes, Inc., Applicant and Property Owner: Ellen Homes, Inc., 287 Cliffwood Avenue, Block 183, Lot 7, Minor Subdivision, Use Variance and Variances** to subdivide existing Lot 7 into two single family residential lots. The preexisting nonconforming dwelling on proposed Lot.7.01 is to remain, however, this dwelling is a two story attached dwelling, with a common wall, and the second dwelling is located on Lot 9. Proposed Lot 7.01 requires variances for Lot Frontage 100 ft. required, 57.99 ft. existing and provided, Lot Width 100 ft. required, 72.32 ft. existing and provided, Front Yard Setback 35 ft. required, 3.2 ft. existing and provided, Side Yard Setback 10 ft. required, 0 ft. existing and provided. Variances required for proposed Lot 7.01 are Lot Frontage and Lot Width, 100 ft. required, 75 ft. provided for each, located in the R 100 single family residential zone. **Note this application is carried from the January 13, 2016 Public Meeting.**

Because Mr. Falco and Mrs. Friedman have to leave the meeting, Mr. Alfieri asks if the Board will ever have a full seven members. Mr. Alfieri asks that the application be carried to March 9 with no further notice. Mr. Byock moves to carry the application to the March 9 meeting with no further notice, seconded by Mr. Phillips, and on voice vote all members agree.

Memorialization of Resolution **V 15-114/Fernandez, Applicant and Property Owner: Jose and Maria Fernandez, 143 Deerfield Lane, Block 18, Lot 36, Variance** request to install a 14 ft. x 24 ft. inground pool. Variances required for Side Yard Setback 10 ft. required, 5 ft. proposed; Distance to house, 5 ft. proposed, 10 ft. minimum required; Distance to top of bank 29 ft. where 100 ft. minimum required, on property located in the R 75/PC single family residential zone. Pool is to be located 2-1/2 ft. into the sanitary sewer easement, with approval of Public Works Department. **Note that this application was carried from the December 9, 2015 public meeting for insufficient noticing).**

Mr. Bucco moves to memorialize, seconded by Mr. Byock.

Yes: Mr. Bucco, Mr. Byock, Mr. Phillips, Mr. Phelps

No: None

Abstain: None

Meeting adjourned.

