

**Zoning Board of Adjustment
Regular Meeting Minutes
January 24, 2024**

The Regular meeting of The Borough of Florham Park Board of Adjustment was called to order on Wednesday evening, January 24, 2024 at 6:30pm., in the Municipal Building, 111 Ridgedale Avenue, Florham Park, New Jersey.

Mr. Michael Cannilla, Chairman
Mr. Jeffrey Noss, Vice Chairman
Mr. John Novalis
Mr. Rick Zeien
Mr. Brian O'Connor
Mr. Michael Shivietz
Mr. Ed Facas

Members Absent:

Also Present:

Mr. Michael Mullen, Esq., Board Attorney
Mr. Michael Sgaramella, PE
Ms. Katherine Sarmad, PP
Mr. Joseph Fishinger, Traffic Consultant

Call to Order:

Mr. Cannilla, Chairman called the meeting to order at 6:30 p.m.

Statement of Adequate Notice:

Mr. Cannilla asked the Board Secretary if the statutory requirements of the Open Public Meetings Act had been met. Board Secretary Marlene Rawson responded that we are in compliance with the requirements.

1. **Approval of 2023 Annual Report**

Mr. Zeien made a motion to approve the 2021 Annual Report, second by Mr. O'Connor
Roll Call: On a roll call vote all members present and eligible voted to approve the Annual Report.

D – Use Variance, Preliminary and Final Major Site Plan:

- | | | |
|----|---|------------------------------------|
| 2. | <u>BPS Development</u>
Columbia Turnpike & Elm Street
Block 1602, Lots 4 & 5 | <u>Application #BOA23-6</u> |
|----|---|------------------------------------|

Applicant is seeking use variance approval and preliminary and final major site plan approval for an 85-unit two-story assisted living facility and memory care facility.

Carried from the January 17, 2024 meeting without further notice or publication.

Board Secretary Marlene Rawson stated for the record, Brian O'Connor listened to the transcript recording of the January 17, 2024 meeting and remains an eligible voter on this application.

Steven Azzolini represented the Applicant. He stated that his sound expert could not be here for the meeting; however, he determined that there is no sound issues with this project.

Mr. Federese remained sworn in. He performed additional traffic counts as requested. He looked at counts from last year and he explained how the program works. The highest traffic volume days overall occurred on five Saturdays and one weekday. Those Saturdays were April 22 (baseball opening day), September 16, October 7, 21, and 28 (fall recreation sports). There were also large spikes of traffic on July 4. He said that traffic engineers would not use the few highest days in their calculations. They look at the typical days to determine traffic volumes.

There is less traffic on Columbia Turnpike on a typical Saturday. During the peak times, there are 34 left turns in to Elm Street from Columbia Turnpike. There are 36 left turns out of Elm Street onto Columbia and 36 right turns on to Columbia. There is a better level of service due to the lighter traffic volumes.

The development projects seven left turns onto Columbia leaving the site, and eight right turns onto Columbia leaving the site on Saturday, per hour. These numbers have little impact. This is not a large traffic generator and does not overburden the area. The intersection would not be negatively affected.

Mike Cannilla commented that the traffic accident report was not a big number. The majority of accidents were from making a left turn from Columbia on to Elm Street.

Jeff Noss asked for information on the traffic coming from Ridgedale Avenue onto Elm Street. Mr. Federese gave the information for the peak times. Under the existing conditions, during the AM peak, there were 48 vehicles on Elm Street. Fourteen vehicles were headed toward Columbia Turnpike, and thirty-one vehicles were headed southbound on Elm towards Ridgedale Avenue. The project would add five additional left turns onto Elm Street and seven additional lefts out of Elm onto Columbia during the peak hour. This includes all vehicles that would enter the site, and only in that short section of Elm Street.

This information is based on a no-build situation. Any development on the site would affect the trips.

Brian O'Connor asked how many cars in a 24-hour period are on Columbia. Mr. Federese estimated close to 25,000 cars.

John Novalis added that compactor activity is high on Saturday wanted to be sure that it was included in the calculation. Mr. Federese confirmed that it did.

Mr. Federese said that the program he used is new technology and he is confident that it is accurate. There are certain conditions that are common at all intersections and traffic signals. The dates of heaviest traffic coincided with the dates of high activity in the area. There are good site lines and existing traffic conditions come into play.

Mr. Federese said eleven additional trips from this project would not overwhelm the area or have any impact. It would not be noticed. He continued that an additional 50-100 trips would impact the area.

When asked, he said that he would prefer a right turn on to Elm and then enter the site from there. That would be the ideal scenario.

Jeff Noss asked if this would cause degrading of the zone plan. There was discussion on other areas along Columbia that accidents occur.

Joe Fishinger stated that he could pull up intersection data. Jeff Noss asked who regulates the intersection. Mike Sgaramella replied that the County regulates the timing. The light is camera activated.

There was more discussion on the signage and the idea of westbound traffic being directed to use the jug handle.

Mike Cannilla asked if the deceleration lane all the way to Elm Street is the best-case scenario and if it addresses the Police Department concerns. Joe Fishinger replied that it is a safer condition. This means a

right in from Columbia and no left turn in from Columbia. Vehicles can go to the jug handle to turn around to make the right. That is also a shorter alternative for residents along Elm.

Joe Fishinger added that the highest number crashes statewide are along any type of roadway that allow left turns from a high-speed lane. He noted that the proposed build-out of the Alfieri property would prohibit lefts into Elm Street. He would not be surprised if a right turn into Elm Street would be permitted at some point in the future.

There was discussion on whether the applicant would agree to eliminate the deceleration lane entrance from Columbia if that happens. Steve Azzolini replied that they designed the deceleration lane access due to the objections over any Elm Street access. The deceleration lane is on County property and they requested it.

There was more conversation on the possibility of the deceleration lane to continue all the way to Elm Street and how that could get accomplished. It was stated that an ordinance change would be necessary. Mike Sgaramella added that the applicant could extend the easement dedication.

Joe Fishinger said he is in general agreement with the information, but asked for the traffic data that was provided.

The meeting was opened to the public.

Megan Wiggins. She asked if traffic was permitted to make a right onto Elm Street, would a new traffic study be needed. Mr. Federese replied that his facility numbers would not change. She also asked if that is considered the best design, did that take into account the residents and the recreation complexes that are along Elm Street. Mr. Federese replied yes. She asked if it would affect the safety of the area beyond the intersection. Mr. Federese thought that it was possible.

Mike Cannilla said it is more than hypothetical. There is a plan and there will be a median in the road that will change things at some point in the future.

Natasha Quirch. She asked if the numbers are an average or for the peak times. Mr. Federese responded that he took out the 6 Saturdays that had very high traffic counts. She had other questions on traffic.

Austin Zaug. He wanted to know how many additional cars would be added on Elm Street if a right turn was someday permitted. Mr. Federese state that he does not have that information.

Bill Daniels. He asked if Mike Sgaramella was aware that Elm Street serves as an emergency access road. Mike Sgaramella replied that he never heard of that. Joe Fishinger responded that in the future, another traffic signal is contemplated further east that would provide a way to travel west on Columbia Turnpike.

Bill Daniels said he want more traffic counts at the Park Street and Ridgedale Avenue intersection. It was stated that traffic at that intersection could be moving in several directions.

Steve Azzolini said that this is the plan and the proposal. The applicant agrees to modify our entrance if future road changes happen.

Scott Allman. He asked if they looked at safety before the plan. Did you use the old plan and just modify. Could the building be turned to face Columbia Turnpike.

Brian Cave. He asked what percentage of the traffic counts were physical counts. Mr. Federese said that no Saturday counts were actual. They were taken from different time periods. Saturday counts were from AI data. Brian Cave referred to back-ups near the Exxon station further down on Columbia Turnpike. He asked Mr. Federese if the Exxon Station is in a residential zone. Mr. Federese responded no.

Anna Cave. She questioned the traffic counts on October 28th. She said she has pictures of the back up on Elm Street. Mr. Federese replied that October 28th was one of the busy days and that was in his testimony. Ms. Cave asked if there was enough room to make a right turn into the facility if there was a right onto Elm Street because drivers go so fast. He added that drivers would have to slow down to make the right.

Al Brosius. He asked about the easement and the radius and if it was wide enough. Mike Sgaramella replied that the County governs the radius. He added that the intersection was widened during the road improvements.

Break: 8:00pm-8:15pm.

Paul Phillips, Planner for the applicant, was sworn in. He inspected the site, reviewed the Master Plan and the prior approval. He reviewed the Borough Zoning ordinance, zoning map and all reports.

He said that the property is two tax lots and is 3.795 acres. The adjacent uses consists of single-family homes, a recreational facility, and office buildings. The 85-unit proposal is for 56 units of assisted living and 29 units of memory care. There will be a 10% set aside for Medicaid eligible beds as required by law.

This is a D-1 use variance. There will also be bulk variances for front yard setback, building and lot coverage, signs and 8-foot fence.

The use is considered “inherently beneficial” which satisfies the positive criteria. It promotes the general welfare and the overall public welfare. The courts agreed that there is a need for this type of a facility for the elderly population. The MLUL defines inherently beneficial as universally of value to the community. He referred to some court cases that support this.

It is clearly beneficial and the Board agreed with this during the previous application. Mr. Phillips referred to the SICA test, which is a four-part balancing test. The Supreme Court of New Jersey ruled in the SICA vs. Wall Township case that the Board must determine the following:

1. Must identify the public interest
2. Identify the detrimental impacts that would be created
3. Determine whether Imposition of reasonable conditions will reduce the negative impacts
4. Weigh the positive and negative aspects of the projects to determine whether there are any substantial detriments to the public good.

Only if the detriment is substantial should the Board deny the variance.

Because it is an inherently beneficial use, the burden is much less regarding the enhanced quality of proof. That is known as the Medici Rule, and involves whether the site is particularly suited, and reconciling the granting of the variance with the fact that the underlying zone does not permit this.

The Courts agree that there is a need for this and it is high on the public interest scale. There is an increase in need for specialized care suffering from memory loss. There is a rapid growth of senior citizens in Florham Park and they want to stay local. There is a 10% set-aside for Medicaid that counts toward affordable housing.

There is no substantial detriment impact to the single-family zone where it is located. Mr. Phillips continued that in his experience, there is nothing that is intrinsically incompatible with this use and single-family homes, provided there are safeguards in place. The facility is residential in character and is not an intensive use. Due to the age of the residents, any detrimental impacts are limited. There is no marked increase in peak hour traffic, minimal visitors, the residents do not drive, and there is no activity in the evening.

The building height is two-story. Many of these facilities s have three stories. The building sits at a lower grade and is robustly screened. The setback is 65-105 feet from the nearest residences. The building design has a residential look and feel. The parking area is on Elm Street and away from the most of the residential homes. The lights are low grade, shielded, and there is no spillage from them. There is significant screening. Most activities are indoors.

There are always impacts when an undeveloped property is developed. However, these impacts do not rise to the level of a substantial detrimental impact as per the case law.

Paul Philips stated that in his professional opinion, there are no substantial impacts. The Applicant agreed to many reasonable conditions to mitigate any impact. They made many changes to the plan. They prohibited a right turn out of the facility to Elm Street. They relocated the freestanding sign to Columbia Turnpike. They relocated the trash enclosure and generator to the Columbia Turnpike side.

Paul Phillips continued that they also relocated the rooftop mechanicals and the kitchen exhaust away from residents and screened them. They lowered the light fixtures, limited the hours of trash pick-up, deliveries, and generator testing. They will use Columbia Turnpike access for deliveries. They retained a private EMS service for residents. They increased the south and west buffers, and installed an irrigation system. They increased the height of plantings.

Mr. Phillips said that this is not substantial detriment to the public and it should be granted. Assisted living facilities along with residential uses are common in New Jersey. This is a standard size facility (85 units and 100 beds). It is a typical size and appropriate. There are adequate setbacks and robust landscaping. The design is respectful. There is minimal traffic. There are many conditions in place to mitigate any impacts.

There are always impacts when there is undeveloped land. Paul Phillips does not see an impact that would compromise the rest of the zone. This is an isolated parcel in the R-25 zone. It fronts on Columbia Turnpike,

Mr. Phillips continued that he does not envision single-family homes being built on this property. There are no single-family homes along Columbia Turnpike between this location and Hanover Road. There is no compromise to the zone plan.

Mr. Phillips explained the C-variance rationale. The bulk regulations in place are intended for single-family residences in the underlying R-25 zone. Those regulations are not achievable for this use.

The proposed 24% building coverage and 52% lot coverage are reasonable thresholds for this use. There are two zones in Florham Park where assisted living is permitted. The C-3 zone permits the use as conditional, and allows 25% building coverage and 50% lot coverage. The PODS zone permits the use and allows 25% building coverage and 65% lot coverage. This project is within the range that the Borough deems appropriate for a similar type use.

The setback of 33ft-40 feet on Columbia is to allow more space from the residential properties in the rear. The signage is 30sf and is reasonable for the Columbia Turnpike location. Trash enclosure setback relief is a better alternative and will keep the enclosure further way from any residential property. An 8ft fence is typical for this type of facility and serves as security. This satisfies the following purposes:

- A Promotes the public welfare
- G. Provides for sufficient space and location for a variety of uses
- L. Encourages senior citizens housing construction

Paul Phillips restated that there are no substantial detriments and no impairment to zone plan.

Katherine Sarmad explained the duties of the balancing test that Mr. Phillips and if you agree with his reasons. She agreed that the Courts established that the use is inherently beneficial. She did not believe

that the internal 8-foot fence needs relief since there is another fence around the exterior of the property. She offered her guidance to the Board, if needed.

Jeff Noss referred to the Sika 1992 case. He thought the applicant did not indicate that there is a public need for this type of use in Florham Park, although he agrees it is intrinsically beneficial.

Paul Phillips responded that the Applicant did their own feasibility analysis. If they did not feel there was need, they would not be here with this application. Florham Park has older assisted living facilities. The market likes newness. In his experience, there is a clear need for these facilities.

Jeff Noss said that in the Sika case, the bulk requirements were met. He felt that it is a large facility on a small lot. There are a number of bulk variances in this case. That could be perceived as a negative. Paul Phillips said that he does not necessarily agree.

Paul Phillips responded that the Supreme Court ruled that they do not need to evaluate that. If the use is appropriate, then the underlying zoning is subsumed. It must be reasonable. They do not need to do a market analysis on need.

There was further discussion on a beneficial use and traffic issues. Paul Phillips disagrees that the project obtrusive. Jeff Noss thought that if there were less units or one-story, it might be less obtrusive.

Mike Shvietz asked how many single-family homes could be built on the parcel. Paul Phillips replied that he did not explore a layout of that scenario. Mike Shvietz asked if single-family residences could be accessed off Columbia Turnpike. Paul Phillips said that he did not see that as a good idea but there is no prohibition.

Ed Facas asked about inherently beneficial and who decided that. Paul Phillips replied that it is based on case law in New Jersey. Inherently beneficial does not mean that it has to be particularly suitable. Inherently beneficial satisfies the positive criteria.

Ed Facas asked why he thought that no single family homes would go there. Paul Phillips responded that it is not a proper location. Columbia Turnpike is an arterial road and the site will not be developed as single-family homes in his professional opinion. He could see an office building. A convenience store would have an impact on the area. Multi-family housing is possible for the next round of affordable housing.

Katherine Sarmad said that during the previous Artis application, they reduced the size because of those concerns. She asked if any consideration been made to reduce size of the project due to the scale of the variance.

Paul Phillips replied that the client would have to respond to that question. He noted that the coverage is high when it is limited to two stories so it spreads out horizontally. Most facilities such as this are three stories. Three stories would reduce the coverage but the applicant is trying to be sensitive to neighbors.

Katherine Sarmad said she hears the Board's questions. It is up to the Board to identify what the detriments are. The applicant must show how they can mitigate it. The applicant has agreed to many conditions but it is up to the Board as to whether they agree with it or not agree.

Mike Cannilla agreed that it probably would not be single-family homes on Columbia Turnpike. He also wants to hear if there was consideration to reduce the project. Some of the buffers seem to be small.

Jeff Noss added that this is a 24- hour facility. An office use is not 24 hours. Paul Phillips responded that residential use is also 24 hours. Jeff Noss stated he has a serious concern about residents that thought the zone would remain R-25. Paul Phillips replied that in the context of an inherently beneficial use change, this use is appropriate. The standards of proof change. It only has be determined if the impacts are substantial enough to turn it down.

Steve Azzolini gave examples of inherently beneficial uses that the Courts have decided. Paul Phillips said that this is essentially a residential setting. It is housing for senior citizens and it is compatible with single-family uses. It does not rise to the level of being a substantial detrimental impact.

Mike Cannilla thought that we all could agree that this property will be developed at some point. The question is what is the most appropriate use for a parcel like this. What use would act as a transitional property?

Paul Phillips said he did not think retail would go there, but an office use could be compatible. He also sees some type of multi-family use as realistic. There is another round of affordable housing coming in July 2025. If this site is available, it may come into play.

Katherine Sarmad stated that the new round is coming next year and it is uncertain what our obligation will be.

Paul Phillips briefly explained how the process works for affordable housing sites. He explained the role of an "intervener" is in the process. The question remains what will go here, if it is not this project.

The meeting was opened to the public.

Evans John. He asked if the project is Medicaid eligible. Mr. Phillips replied that 10% of the beds must be earmarked for Medicaid. That is a State law.

Alexa Lasso. Are you aware of the home in Florham Park that have Medicaid beds? Her company owns those homes and have many Medicaid beds. She noted that this is 24 hours, and what makes it safer than single-family homes. She asked if they are aware that builders have tried to buy this property.

Mr. Philips said that he is not aware. Mr. Phillips said that he did not compare to single-family homes. His role is to determine if the impacts it rise to the level of being substantially detrimental. His findings are that there are no substantial detriments.

Ms. Lasso asked if he was aware of the illegal turns on to Elm Street. She stated that 50% of the population do not care about the prohibition and will cut through this facility. They stated that there was already testimony on that.

Mr. Cannilla advised her that this testimony is not about traffic. You must ask questions of his testimony as a Planner. There will be a time for opinions. He added that State Law requires Medicaid beds.

Scott Allman. He asked about the variances and where else this project could have gone and the variances needed. Paul Phillips replied that is not material to this application. The applicant is entitled to submit an application for this property. Mr. Azzolini said that we do not have to show that there are other suitable sites.

Samantha DeMaio. She asked about the detriment to the public. She stated that a realtor told her that her property value and other adjacent properties would depreciate because of this. Mr. Phillips said that he is not a realtor. His job is to study the impact and effects of the impacts. She commented that the outside activities would affect their properties. She asked about the buffering.

Steve Azzolini stated that the landscape architect answered those questions. Mr. Azzolini said that she should not be commenting now, as he cannot cross-examine her at this time.

Ms. DeMaio asked if they could get the hours of trash pick-up, deliveries, and generator testing.

Mike Cannilla stated that he could ask for some more specific information on that.

Natasha Quirch. She asked if the variances could be separate from the approval. Mr. Cannilla stated that there is an option to bifurcate the application but the applicant did not choose to do that.

Alexa Lasso asked about the negative issues and what the biggest impact is. Is there anything negative that you would tell me if I hired you? What is the biggest impact? Paul Phillips replied that that now, there is nothing on this land. Whatever is built here, will have some impacts. That is the biggest impact. I assessed the impacts. Much has been done to mitigate that impact. The use is compatible. This use in this area is common and they are compatible. I agree that it has more impact than a single-family home use.

Bryan Cave. He stated that it is a two-story building but 71,000sf with a parking lot. He asked how many of those are in Blocks 1601 and 1602 in the R-25 zone. Paul Phillips replied that there are none. Brian Cave asked if this project is in a C3 zone. Mr. Phillips replied that it is not.

It was determined that the six-foot fence in the front yard is a variance. Mr. Phillips stated that it is only a small portion and the benefits outweigh the detriments in that it will offer more privacy between properties.

Brian Cave asked why there are so many variances. Paul Phillips replied that the underlying standards are for an R-25 zone. They are not realistic or achievable for this use. He restated all the variances and the reasons. Brian Cave asked why the property is not appropriate for single-family homes. He said there was a single family home until 30 years ago. He added that it is not a vacant lot and that home is being torn. Paul Phillips noted that the bulk of the property is vacant.

Samantha DeMaio. She asked why we are referring to a previously approved facility. She said those homes were built after that approval. Mike Cannilla said the previous application was approved and valid before your home was built. You built your home anyway and the facility could have been built at any time. He continued that the Board is focusing on this application.

Steve Azzolini said that the previous application was approved in March 2019, and Ms. DeMaio bought her home in October 2019. It was her obligation to research any offsite conditions. That is a provision in a real estate contract. Steve Azzolini added that we are only referring to it as a comparison and how we improved on previously approved conditions. This Board determined at that time the use was inherently beneficial.

Alexa Lasso. She asked if the applicant would buy the property if the single-family lot were not included. Paul Phillips replied that he could not answer that. He only focused on this application.

Scott Allman questioned the vacant land where there is a house on one of the lots. Phillips restated that it the bulk of the land is vacant.

There were no other questions from the public. Mr. Cannilla asked for a motion to carry the application.

Mr. Zeien made a motion to carry the application to February 21, 2024 meeting without further notice, second by Mr. O'Connor.

Roll Call: On a roll, call vote all members present and eligible voted to carry the application.

On a motion duly made and seconded the meeting was adjourned at 10:30pm