

## **BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES**

**November 30, 2022**

PLEASE TAKE NOTE:

ON WEDNESDAY, NOVEMBER 30, 2022, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A SPECIAL MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

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FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Nick Papapietro	present
Mr. David Zuidema	present	Mr. Mark Braunius	present
Mr. John Meeks	present	Mr. Mark Divak	present
Mr. Richard Formicola		Mr. William Placier, Alt #1	present
		Mr. David Barlow, Alt #2	present

Attendance by Board Professionals: R. Landel, Esq., Attorney, R. Wostbrock, Engineer, and D. Novak, Borough Planner

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### **PUBLIC HEARINGS:**

**Nouvelle LLC – 714 Godwin Avenue – BL 55 LT 8** – Mr. Divak certified that he listened to the previous recordings and is eligible to vote. For the benefit of the Board and the public, Atty. Landel reviewed voting eligibility and the application thus far, as well as the use variance being sought with regard it's inherently beneficial determination. Atty. Capizzi on behalf of the applicant.

**David Troast, Planner** – accepted as expert and sworn in. The property in question is in the R1 zone and is an oversized lot of 36,466 SF where 12,500 SF is required. The proposed building will be 4-units that will be designated as affordable for disabled veterans and their families. The only exception to the building is the number of stories, and the site exceptions include: no garages proposed, the curb cut width, and the driveway aisle width. The neighborhood is the last one before it turns into the B2 zone, the property is adjacent to a commercial use. This is a use variance due to the multi-family dwelling in a single-family zone and has been identified as inherently beneficial through case law as it is proposed to be affordable housing for disabled veterans. In addition, these units will be for very low income which is 30% or below the median income and is not governed by UHAC rules as previously stated by Atty. Capizzi. Mr. Troast reviewed the bulk variances and discussed the proposed project in relation to the Master Plan. The site is located adjacent to a business zone, in walking distance to public transportation, medical facilities, and restaurants which is ideal for this type of use which will act as a buffer between the single-family zone and the commercial zone. The proposed development is significantly under the bulk standards, has been placed on the site in an aesthetically pleasing way, has been properly buffered, adds significant landscaping and screening, and contains an open space area. The need for the variance for number of stories is directly related to the topography of the land and has been mitigated by buffering. The parking aisle width variance is caused by the RSIS standards which are based on single-family homes and the curb cut is required to help ease a safety issue. There are some parking spaces that need variance relief, but they have been buffered by landscaping. Drainage conforms to industry standards and NJDEP Stormwater regulations. This application is not seeking any permits whatsoever under the wetland's rules. With regard to the Sica balancing test: this application is an inherently beneficial use by providing special housing in an affordable way and the deed restriction will be in place for 30 years; negative criteria have been previously spoken about and have been mitigated so there is no substantial impact to the Master Plan or the zoning ordinance; this project will take care of a minimum of 4 units of unmet affordable housing need in the Borough. Per Mr. Troast, in his professional opinion, the development proposal is in the interest of the public good, the benefits outweigh the negatives, the C variances are due to hardship, and the positive criteria has been met through case law.

Mr. Andersen confirmed that the affordability of this project is restricted to very low. Mr. Papapietro questioned how much of the lot is buildable given the wetlands in the back, which is outside of Mr. Troast's expertise. Mr. Braunius also questioned the lot size, Atty. Capizzi directed the Board's attention to the information contained in the bulk table. Atty. Landel confirmed the light spillage at the property line; per Atty. Capizzi 1-foot candle is allowed under the ordinance and they are proposing 0.5-foot candles. Mr. Divak also questioned what the buildable area of the lot is in relation to the wetlands.

Meeting opened to the public for questions of Mr. Troast.

**Jessica Strader – 720 Godwin Avenue** – Sworn in; asked what the dollar amount is for the 30% below the median income is that was described, what guarantees there will be disabled vets placed in the units, and what constitutes the buildable space for the Midland Park portion of the property. Mr. Andersen and Mr. Wostbrock explained what the ordinance says regarding lot sizes to clarify the idea about buildable area. Ms. Strader further questioned what the square footage is of the Midland Park portion of the lot versus the Wyckoff portion, how the headlights of cars in the parking lot is not imposing on her property, and if the half of a foot candle measurement for the property line was based on a parking lot only and not any reflective surfaces.

Meeting closed to the public.

**David Novak, Borough Planner** – accepted as expert and sworn in. Based on previous testimony, Mr. Novak suggested adding a fence at the western property line along the parking lot, which the applicant would be agreeable to. Mr. Novak provided background information on affordable housing and set asides, the Borough's affordable housing obligation and how it is addressed. Mr. Novak also touched on inherently beneficial uses, site suitability with regard to inherently beneficial uses, and the Sica balancing test.

Mr. Wostbrock asked for clarification on the property having lots in both Midland Park and Wyckoff and if there is a mechanism to tie them together legally. Per Atty. Capizzi, the legal definition describes the property as one lot, but if that is not the case, they would prepare a consolidation deed; the intention is for it to be considered one parcel. Mr. Wostbrock suggested a conservation easement to prevent any development of the wetland area, the applicant prefers not to as any future amendment to the site plan would require Board approval anyway; Mr. Braunius and Mr. Andersen see no need for it, Mr. Papapietro and Mr. Zuidema think it should be considered. Atty. Capizzi asserts that the wetlands issue is regional, and there is nothing in his application that the wetlands area needs to be protected from. Any future changes of the site would need amended site plan approval. Mr. Papapietro revisited the idea of a fence between the neighboring property to the west and the parking lot; the applicant agrees to a 2' berm with 6' arborvitae, 6' on center to run the length of the parking lot in lieu of the suggested fence. Atty. Capizzi also offers that the applicant is indeed agreeable to a conservation easement along the wetland limit.

Meeting opened to the public for comments on this application.

**Jessica Strader** – still under oath; Ms. Strader offered to read written statements from neighbors not present, Mr. Landel advised that would not be permitted as the Board cannot hear hearsay. **Phil Florey – 110 Godwin Avenue** – Sworn in; feels this application amounts to changing the zoning and will set a precedent, the building is obtrusive and unsightly, this building is not a home, the landscaping will not protect the neighbors from the site, the wetlands are drying up, the parking will be insufficient, it is dangerous to pull in and out of driveways on that portion of Godwin Avenue, and ask the Board to reconsider this. **Michael Olson – 97 Midland Avenue** – Sworn in; questions the single stairway and there being no other means of egress, how a veteran is going to go up the stairs, how the Fire Department is going to get to the back windows and thinks the building will be hideous. **Anthony Romano – 140 Elmwood Place, Wyckoff** – Sworn in; agrees that he wants to help the veterans and support affordable housing but feels this is a business transaction that will change the fabric of the community, the building does not belong on this site, there is a huge water issue, and this will make it worse, and asks the Board not to approve this application. **Jennifer Duka – 15 Brook Road, Wyckoff** – Sworn in; main concern is what this will do to the protected wetlands, the applicant is going to push more water to the wetlands, only did one soil test, has not considered the brook. Ms. Duka supports affordable housing for disabled veterans but feels this will be

detrimental to the public good and urges the Board not to allow this to happen. **Jessica Strader** – still under oath; feels the property should remain a single-family use to preserve quality of life. Ms. Strader feels that only a 1 or 2-family home should be able to be built on the property and would be willing to sign a conservatorship of the wetlands. Other multi-family dwellings in town have curbside pick-up of refuse, allowing delivery trucks to turn around in the property is ridiculous, the curb cut and parking lot are excessive and dangerous. Ms. Strader also does not believe it will actually be for disabled veterans or that there is any guarantee with regard to that or what happens if they sell; asks the Board to please vote no. **Judith Kaslow – 93 Midland Avenue** – Sworn in; is concerned about the animals and the wetlands, and the enormous amount of water that is hurting the neighboring properties. Feels this will add more water to the wetlands and asks the Board to vote against this building. **Kristen Olson – 97 Midland Avenue** – Sworn in; **Exhibit O1** – Photo taken by Michael Olson in the backyard of his property at 97 Midland Avenue, looking toward the garage of 101 Midland Avenue on 12/16/19, shows the amount of water. **Exhibit O1** does not show the property this application is for. **Mary Schaper – 101 Midland Avenue** – Sworn in; describes the excessive amount of water and flooding her and her neighbors experience, feels that voting for this application would be a big mistake and hopes the Board decides against it. **Nicholas Jeffer – 101 Midland Avenue** – Sworn in; concerned about the safety if this unit is built, is not convinced regarding the Fire Department accessing the site in an emergency. Mr. Jeffer's biggest concern is the wetlands, the flooding is a problem that is getting worse and does not have confidence in the proposed drainage plan.

Meeting closed to the public.

Atty. Capizzi summarized the application, is of the opinion that the applicant and its team have provided reliable explanation for all the questions mentioned. The drainage system that was designed for this site is going to result in an improvement on this condition as currently the site has no on-site detention. A single-family home could generate as much or more impervious or building coverage as this project does. The building and parking area are reasonably designed, the side-facing orientation is a benefit to the aesthetics, and significant buffers are provided. With regard to the safety of traffic on Godwin Avenue, the proposed site allows for a head-out movement onto Godwin Avenue which is safer, and the need for a private carting company is something that was previously negotiated with the Borough. For these and the previously testified reasons, Atty. Capizzi asks that the Board approve this application.

At Mr. Andersen's request, the C variances are reviewed. Minimum number of garages – 4 required, 0 proposed; maximum number of stories – 2.5 stories permitted, 3.5 proposed; maximum curb cut width – 20' permitted, 48' proposed; maximum driveway width – 20' permitted, 24' proposed; parking in the front yard not permitted – 2 to 3 of the stalls are within the front yard.

The previously agreed upon conditions are also reviewed. Conservation easement to protect the wetlands along the wetland limit, 2' berm with 6' arborvitae that are 6' on center along the western parking lot, developer's agreement and operations and maintenance manual to be in place, 30 year deed restriction subject to review and approval by the Borough attorney, any approval is also conditioned on any other approvals required by Wyckoff, the County, or the DEP, the attic and basement to only be used for storage and utilities and to remain uninhabitable, meeting the comments from the Fire Department as previously discussed, landscaping required to be maintained as part of the developer's agreement as well, an ADA accessible route to the picnic table area to be provided, deed of consolidation or restriction against subdivision of the lot, and light spillage to be limited to the 0.5 foot candles as shown in the plans.

Mr. Andersen discussed the D variance and the inherently beneficial use and the C variances needed, which are all justified due to the nature of the topography and the wetlands. Although this is the R1 zone, it is adjacent to a commercial building and the other adjacent property is a non-conforming use since it is a 2-family. The biggest concern is drainage, but both the applicant's expert and the Board expert both testified that this will not exacerbate the drainage issues in the area. The Board is not concerned about setting a precedent as each case is judged on its individual merits. Mr. Divak feels that the applicant is most certainly going to have issues with water at the site.

Mr. Capizzi stated that there is no reason to contest the legitimacy of the approved wetland limit or the credibility of the professionals. The plan has not had to go through much re-design through the hearing

process and is a good plan that is not ostentatious. Atty. Landel reiterated that the wetlands limit has been approved by the DEP and both the applicant's engineer and the Board's engineer have agreed there will be less runoff going to the wetlands than there was before. Per Mr. Capizzi, the drainage plan meets the Borough's standards.

Motion to deny the application made by Mr. Divak; Mr. Divak feels this will be a detriment to the community, the water problem will be worse, and it doesn't fit the site. Seconded by Mr. Papapietro; Mr. Papapietro, Mr. Divak, and Mr. Placier all voted yes; Mr. Meeks, Mr. Braunius, Mr. Andersen, and Mr. Zuidema all voted no. Motion failed.

Motion to approve the application with the conditions previously listed made by Mr. Braunius; seconded by Mr. Meeks. Mr. Meeks, Mr. Braunius, Mr. Andersen, and Mr. Zuidema all voted yes; Mr. Papapietro, Mr. Divak, and Mr. Placier all voted no. Motion failed. Per Atty. Landel, this constitutes a denial of the application.

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Meeting Adjourned – 9:55 PM  
Jessica Harmon