

MANCHESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, August 25, 2011

**Ridgeway Elementary School
2861 Ridgeway Road, Manchester, NJ**

MINUTES OF MEETING

1. The meeting of the Manchester Township Zoning Board of Adjustment was called to order at 7:27 p.m. by Chairwoman Linda Fazio.
2. This meeting had been duly advertised, filed and posted in accordance with the Open Public Meetings Act.
3. A Pledge of Allegiance and Salute to the Flag.
4. Roll Call:
Members Present: T. Umlauf, P. Salvia, W. Cook, L. Fazio, K. Vaccaro, J. Hankins, M. Dwyer, H. Glen

Members Absent: T. Umlauf

Also Present: C. Reid, Attorney
R. Mullin, Engineer
T. Thomas, Planner

The Administrative Session will be held at the end of the meeting.

Mr. Reid made an announcement that there are members of the Board who feel they have a conflict of interest with the following application. He has discussed it with them and feels it is in the best interest for them to step down. The members who stepped down are Mr. Salvia, Mr. Cook, Mrs. Vaccaro & Mr. Glen. Mr. Reid also explained to the public the procedure & how the meeting will be run.

Case 1162	Manchester Rehab Realty, LLC 485 River Road Lakewood, NJ 08701	Block 21 Lots 1 & 2 3086 Ridgeway Road R-40 Zone
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This application is for a use variance and preliminary & final site plan approval to construct a skilled nursing facility where the proposed use is not permitted. Mr. Harvey York, attorney for the applicant was present. The Chairwoman asked Mr. Thomas to present his report. Mr. York stated so the record is clear they were here on 6/23/11 for the initial hearing. They presented 2 witnesses. They concluded their case & presentation at that time. The Board asked for an adjournment for 1 month so they could get input from Mr. Thomas. Since that time, the applicant, after hearing some of the comments at the previous meeting has done several things. First, the number of beds will be reduced to 180 beds. No building will be closer than 100 feet to the rear property line. Also, the Board asked if they could obtain a letter from the State with regard to a Certificate of Need. They have received a letter at the reduced number of beds. Mr. York read the letter into the record (copy is in the file marked A-2 dated 8/24/11). This does not affect the special reasons variance because it is a decrease in the application.

Mr. Lisa John of the Law Firm Genova, Burns & Giantomasi on behalf of the Manchester Neighbors and Rose Trafton. She stated that with the changes that are being made in the numbers, that goes to the heart of the operations and asked that the operations person be called back in order to re-testify & so she could ask them questions.

Mr. York stated for the record he would not be bringing him back. The changes do not affect the operations of the facility and does not affect the special reasons variance. It may affect the site plan approval, but when they first started the application the Board requested the site plan issues be dealt with at a later time, they were only hearing testimony with regard to the special reasons variance. They are providing an inherently beneficial use. With regard to the negative impact which testimony has already been given, if anything it would be less assuming there were any negative impact. Their planner is present and he would have no problem recalling the planner.

Ms. John stated she has her own witnesses to testify with regard to operations & how it might change.

Mr. Reid explained that tonight the Board is hearing testimony on the use variance and their operations person isn't even here this evening. He also stated that all testimony ceases at 10:30 p.m.

Ms. John wants to make her objection noted. Mr. Richard Lareau asked if he was allowed to object & make comment. Mr. Reid explained at this time it is not open to the public. He can make his comments at that point.

Mr. York asked that the attorney for the objectors provide a list of the names and addresses of all the objectors she represents. Once they are represented by counsel they lose their opportunity to speak. Mr. Reid explained to the public that if they are represented by Ms. John they cannot get up & ask questions or make comment, they must go through her. Ms. John provided a list of names & addresses. The Board will be checking each time someone comes up.

At this time the Board called Mr. Thomas A. Thomas. He was sworn in by Colleen Vaughn. He is the Township Planner and has been since 1990. Mr. Thomas discussed his report dated July 25, 2011 (copy in file). The project is located on Route 571 in the R-40 zone. That zone has been in existence since the mid-1960's. That whole stretch of Route 571 was rural so that's how it got zoned R-40. With the development of the Renaissance development, it changed the character of the neighborhood. Mr. Thomas gave a brief background of the Municipal Land Use Law for the public so they understand what the issues are. The site is surrounded to the west by residential development but to the east by commercial development. So, it's in between commercial & residential. The Anderson & Campbell Funeral Home and Rite Aid are on the north side of the highway and PNC Bank & Quick Chek are on the south side at Route 70. The Land Use Law has already determined that nursing homes, hospitals & several other facilities are deemed to be inherently beneficial. Under the statute they already meet the positive criteria. The applicant must demonstrate that this particular use would not involve or raise any detrimental issues or problems. He had asked from the beginning for a Certificate of Need, even though testimony was given that there was a Certificate of Need, the Board received a letter tonight from the Health Department that they have not granted the Certificate of Need at this point. The applicant will still have to submit an application for that. The Board can make that a condition of approval. The site is located adjacent to a county road, so as far as traffic is concerned, it is not a significant problem as far as the Township is concerned. That's the county's jurisdiction. Mr. Thomas & Mr. Mullin have both indicated that a planted buffer and/or decorative screening be required along the northern edge of the property, and that could be a condition of approval as well. Mr. Thomas addressed the buffers, the noise from the trash compactor & rooftop HVAC units, deliveries, trash pick-up. All those issues would be addressed during the site plan portion of the application and have been noted in Mr. Thomas' letter & Mr. Mullin's letter. Mrs. Fazio asked if there were any questions for Mr. Thomas.

Mr. York stated he had a procedural issue; Mr. Thomas did not give his professional qualifications. Mr. Thomas gave his professional background and was accepted by the

Board as an expert. Mr. York asked Mr. Thomas in his opinion, the reduction in beds to 180, does that have a significant impact. Mr. Thomas stated that if there's any impact at all it would be a positive impact, so in terms of the use application itself, no. Also, with the reduction in size, it should provide additional property for buffers, etc. So it certainly is not a negative in terms of the application.

Ms. John asked that he made his conclusion based on the operations of the proposed facility that this operation is more akin to what's labeled in the zoning code. Is it not more akin to a continuing care facility for the elderly as opposed to what's labeled in the zoning code as hospitals & nursing homes? Mr. Thomas stated yes, for purposes of zoning in this ordinance. The Township's ordinance goes back to the 1960's. There are no special regulations for just nursing homes. The closest thing in our ordinance would be continuing care & the only purpose for that is not in the operational end of it, but for the regulatory end in terms of land use, impacts, setbacks, not in the operation. A continuing care facility is operated much differently than a nursing home. They also require different licenses. (for all questions & answers of Ms. John & Mr. Thomas see transcript in file)

Mrs. Fazio opened this portion of the meeting to the public for QUESTIONS ONLY of Mr. Thomas. The following people were recognized and asked questions: (for full questions/answers of Mr. Thomas see transcript in file)

Richard Lareau – 5 Shorin Way
 John E. Herbert – 2 Shorin Way
 Kenneth Henick – 12 Anthony Circle
 Roslyn Wellner – 23 Florence Drive
 Gwen Lareau – 5 Shorin Way
 Larry Yaskulka – 44 Drayton Road
 Janet Hahne – 31 Orleans Drive
 Jeannette Kearns – 3297 Ridgeway Road
 Susan Clancy – 36 Milton Drive
 George Kurkowski – 29 Devereux Drive
 John Boyle – 5 Valencia Drive
 Dennis Junguzza – 7 Candleway Court
 Michael Finnegan – 46 Provence Drive
 Fred Giordano – 6 Neville Court

There being no further questions for Mr. Thomas at this time, this portion of the meeting was closed.

Mrs. Fazio turned this portion of the meeting over to Ms. John. She stated that she has a couple of witness with her tonight, but before doing that she would like to address the letter that was read into the record earlier from the Department of Health & Senior Services, just because the applicant owns 180 beds, they have not received approval to transfer them to this site. Mr. York addressed the issues.

Ms. John called her first witness, Miss Gail Rader. Miss Rader was sworn in by Colleen Vaughn. She gave her credentials to the Board. Mr. York questioned her credentials and objected that she be qualified as an expert. Mr. Reid questioned Miss Rader on her qualifications as well. Mr. Reid asked Mr. York & Ms. John to come up to the dais (discussion was held off the record). Mrs. Fazio accepted Miss Rader's credentials. Ms. John questioned Miss Rader with regard to the other nursing homes in the area. There are 5 nursing homes in Manchester and there are 21 within a 15 mile radius of the proposed facility. The Board took a brief recess at 9:30 p.m. to get Mr. York a microphone. She discussed the average occupancy rates for nursing homes in New Jersey. She was giving information with regard to the Deficit Reduction Act. Mr. York objected because the testimony she is providing has nothing to do with what she was qualified as an expert in, operations. Miss Rader stated the trends are moving away from institutional care of a nursing facility to home health care & assisted living or other home based services. Ms. John asked about the applicant's other nursing facilities in Ocean County. Miss Rader stated she was aware of 3. She discussed the star rating that is used for the facilities & what they mean. Ms. John asked if she knew what the star rating of

the applicant's other facilities. Mr. York objected. Miss Rader stated the overall star rating for Crystal Lake is 2 stars, Hamilton Ridge is 1 star & Atlantic Coast Rehab is 3 stars out of 5. Ms. John changed her line of questioning to operations of a nursing home with regard to truck deliveries, food deliveries, milk deliveries, ice cream deliveries, fresh fruit & vegetable deliveries and what types of vehicles are typically used. Ms. John asked what other types of deliveries would there be in general? Pharmacy, medical supplies, laboratory vans, x-rays, garbage pickup, recycle, cardboard. Ambulances would also be coming for emergencies & non-emergencies. Questioning turned to the types of patients and the type of care they would need. Miss Rader stated that from an operations perspective, you would need to know the type of services that would be provided in order to determine staffing, deliveries, garbage pickup, etc. Ms. John has no more questions for Miss Rader.

Mrs. Fazio asked the Board if they have any questions for her. Mrs. Fazio asked if she manages facilities. Yes. She asked what the star ratings were of the facilities she managed. Assisted living facilities are not given those types of ratings. Mrs. Fazio asked if she was happy with the state requirements of N.J.A.C. Chapter 8.39, nursing home licensure regulations. Yes, they are as they exist today. So, if this was approved they would have to comply with that? Yes, they would. The Board had no more questions of this witness. Mrs. Fazio turned the meeting over to Mr. York for his questions of Miss Rader. He asked her about her license she holds. She has a license in terms of the Director of Nursing position. She has never run a nursing home. He questioned her about ambulances entering the site with lights & sirens. The lights usually stay on but the sirens do not. He asked her about the number of beds in the 3 nursing homes she testified about. Hamilton Ridge has 175, Crystal Lake has 225 and Atlantic Coast Rehab has 160 beds. He asked her if she is familiar with the facilities. No not recently. Mr. York stated so she could not tell the Board whether any or all of those facilities would operate in the same fashion as the proposed facility. No she could not. Mr. York asked if she knew what region this is in. It is Region III. He asked what area Region III covers. It covers Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean & Salem Counties. He asked why she only picked homes in Ocean County if the region covers other counties. Because she felt it was specific to this area. Mr. York asked with regard to the letter & the Certificate of Need from the State, does she know of any instance where the State has refused to allow an applicant to transfer beds to another site. No she does not know of any other instance. He asked given the tone of the letter, is it a ministerial act for the Feigenbaums to be able to transfer beds from Galloway to here? Miss Rader responded, she thinks that given the tone of the letter, he would probably be given authorization to transfer them. He asked when she was speaking about truck deliveries earlier, how many beds was that based on? It was based on 180 beds. She stated that her testimony was prepared based on 260 beds, but the best you could compare it to was a 180 bed facility. Mr. York asked her about the previous facilities she managed. Ms. John had a few more questions of Miss Rader. (for full question/answer of Miss Rader see transcript in file)

Mrs. Fazio stated at this time the Board will be adjourning the meeting, but this witness will be up first for any questions from the public, that will be the first order of business at the September 22, 2011 meeting.

Ms. John stated that Miss Rader will not be available on the 22nd; she could come back on a different date. Mr. York stated he is prepared for the 22nd.

This application will be **CARRIED** to September 22, 2011 same location unless otherwise notified on motion by T. Umlauf and seconded by J. Hankins. All in favor.

Adjournment: The meeting was adjourned at 10:41 p.m. on motion by T. Umlauf and seconded by J. Hankins. All in favor.

Respectfully submitted,

Darlene E. Garcia
Secretary