

MANCHESTER TOWNSHIP ZONING BOARD OF ADJUSTMENT

REGULAR MEETING

Thursday, June 23, 2011

**Manchester Township Municipal Building
1 Colonial Drive, Manchester, NJ**

MINUTES OF MEETING

1. The meeting of the Manchester Township Zoning Board of Adjustment was called to order at 7:00 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: None

Also Present: C. Reid, Attorney
R. Mullin, Engineer
5. Administrative Session:
Approval of Minutes: The Minutes for the May 16, 2011 meeting were **APPROVED** on motion by W. Cook and seconded by T. Umlauf. All in favor.

Payment of Bills:
RFP #86708 for T & M Associates in the amount of \$4862.00 for Case 1162
RFP #86710 for T & M Associates in the amount of \$357.50 for Case 1053
RFP #88616 for T & M Associates in the amount of \$35.75 for Case 0926
RFP #88617 for T & M Associates in the amount of \$572.00 for Case 0913
RFP #88619 for T & M Associates in the amount of \$250.25 for Case 0925-0892
RFP #88620 for T & M Associates in the amount of \$35.75 for Case 0612
RFP #88621 for T & M Associates in the amount of \$1859.00 for Case 1048-0917
RFP #88622 for T & M Associates in the amount of \$1990.50 for General Board Matters

Bills were **APPROVED** on motion by W. Cook and seconded by K. Vaccaro.

ROLL CALL VOTE: W. Cook, yes; K. Vaccaro, yes; T. Umlauf, yes; P. Salvia, yes; J. Hankins, yes; M. Dwyer, yes; L. Fazio, yes.

Correspondence: The Secretary stated she received a letter from Ms. Babinski-Fairweather with regards to Case 0612 asking that it be carried indefinitely to a date to be determined in the future and they will provide new notice. A waiver of time was given.

Professional Reports: Mr. Mullin has nothing at this time.
Mr. Reid has nothing at this time.

Memorialization of a resolution of a variance approval to allow the construction of a 6' high vinyl fence in the front yard area along Commonwealth Blvd. The fence will be set back a minimum of 8' from the property line along Commonwealth Blvd. Block 1.219 Lot 5, 1112 Larchmont Street. Applicant: Pete Peterson. Approved at the May 16, 2011 meeting. Case 1161

This resolution was **APPROVED** on motion by W. Cook and seconded by K. Vaccaro.

ROLL CALL VOTE: W. Cook, yes; K. Vaccaro, yes; T. Umlauf, yes; J. Hankins, yes; M. Dwyer, yes; H. Glen, yes; L. Fazio, yes.

A copy of the approved resolution is attached.

Memorialization of a resolution of a variance approval to allow the construction of a 27' x 24', 1-1/2 story addition to an existing 850-square foot dwelling having a 35' front yard setback from Torry Avenue where 50' is required. Block 58 Lot 718.01, 3385 Ridgeway Road. Applicant: Lance Lawson. Approved at the May 16, 2011 meeting. Case 1160

This resolution was **APPROVED** on motion by W. Cook and seconded by K. Vaccaro.

ROLL CALL VOTE: W. Cook, yes; K. Vaccaro, yes; T. Umlauf, yes; J. Hankins, yes; M. Dwyer, yes; H. Glen, yes; L. Fazio, yes.

A copy of the approved resolution is attached.

Case 0612	A T & T Mobility 15 East Midland Avenue Paramus, NJ 07652	Block 99.161 Lot 6 Grant & Scranton Avenue WTRC-40 Zone
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This application is for a Use Variance to erect a 170-foot tall monopole cell tower in a zone where the use is not permitted. The applicant is also requesting preliminary & final site plan approval for the proposed structure & appurtenant equipment.

This application was **CARRIED indefinitely to a date to be determined in the future** on motion by W. Cook and seconded by T. Umlauf.

ROLL CALL VOTE: W. Cook, yes; T. Umlauf, yes; P. Salvia, yes; K. Vaccaro, yes; J. Hankins, yes; M. Dwyer, yes; L. Fazio, yes.

Case 1048	Presbyterian Homes & Services Inc. 13 Roszel Road, Ste C-120 Princeton, NJ 08543	Block 82.09 Lot 14 Block 83 Lot 7.05 202 Hilltop Road WTRC-AF Zone
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This application is for modifications to the originally approved plan including a variance approval to allow a 10' high fence where a maximum height allowed is 6 feet. Mr. Jason Bundick, attorney for the applicant was present. The applicant currently owns the age-restricted affordable housing apartment building. Back in May 2006 this Board granted preliminary & final site plan approval for the construction of the building with 83 1-bedroom units and one 2-bedroom unit. The Board then granted a one-year extension back in 2009. Recently, because of some issues raised by JCP&L with regard to the placement of some of the electrical components, the applicant had to slightly modify the plan, which brings them here tonight. Ultimately, some of the electrical components are enclosed by a fence that exceeds the maximum height permitted and they are requesting approval of that variance and modifications. Mrs. Heather Hill-Falkoff from the applicant was sworn in by Mr. Reid. She explained the project. It has completed construction and is about 70% occupied. The modifications they made to the site plan were a result of requirements of JCP&L. They had originally intended and had permits in place to bring power from poles on Route 70, but JCP&L while they were under construction made a determination that they wanted them to pull power from a transformer that was closer to the site located on the adjacent Whiting Health Care Center. As a result of that request, they had to relocate the transformer as required by JCP&L, so it was relocated to an area right next to the building. When they first designed the project, JCP&L did not have a requirement that electrical meters had to be located on the exterior of the building, so their original design had them contained inside the building. As the project was under construction, they notified them that they had to locate the meters on the exterior, so they located them in the same area as the transformer. What they propose on their plan is that they have a fence to enclose that area to not only screen it from the residents but for the safety of the residents and the public. They also had a slight modification of their sidewalk as a result of placement of some HVAC equipment and they widened the sidewalk in a portion to help bring the trash containers out of the building. They chose to have a vinyl fence, it is 10 feet high, the actual height of the fence is 8 feet high, but from the grade up it is a total of 10 feet. They chose that height of fence in order to fully screen the equipment and electrical meters. The switch gear that is adjacent to the transformer is about 7-1/2 feet high, so they were trying to screen all of the equipment. Mr. Cook asked how this is going to be secured? There is a gate on the fence that has a lock on it and JCP&L has certain requirements regarding the gate. The bottom of the fence will be shielded where the space is. A skirt will be on there so you will not be able to see in.

Mr. Sean Savage of Birdsall Engineering was sworn in by Mr. Reid. He gave his credentials and was accepted by the Board. He discussed a mounted copy of the plan sheet 3 of 12. There is a small personal size gate on the south side of the enclosure and there is a double wide gate on the northern side of the enclosure. There are also bollards proposed along the fence where there is parking adjacent to it. The bollards along the northern side are removable so that JCP&L can enter that gated area to do maintenance or repair, etc. The second area of concern was over on the southern side of the eastern wing where they had some HVAC units and they also relocated the sidewalk to approximately 20 feet off of the building. In moving the sidewalk it necessitated a revision to the handicap ramp, there was some landscaping that had to be relocated, they kept the same count and species that were previously proposed just moved them around. They were also required to move some bollards, the same count just relocated to make sense with the new layout. The fence was already discussed. The fence is 8 feet with about 19 inches from the bottom of the fence to the grade and that will be shielded with a matching skirt.

Mrs. Fazio opened this portion of the meeting to the public. There being no public participation at this time, this portion of the meeting was closed.

This application was **APPROVED** on motion by W. Cook and seconded by J. Hankins.

ROLL CALL VOTE: W. Cook, yes; J. Hankins, yes; T. Umlauf, yes; P. Salvia, yes; K. Vaccaro, yes; M. Dwyer, yes; L. Fazio, yes.

Case 1162

Manchester Rehab Realty, LLC
 485 River Road
 Lakewood, NJ 08701

Block 21 Lots 1 & 2
 3086 Ridgeway Road
 R-40 Zone

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. He asked the Board to permit them to bifurcate the application at this time. The Board agreed to that request. This project is for a skilled nursing facility, two separate buildings with 260 beds. They will have access only from to the main road, no other access. It is along a JCP&L easement. The project will probably result in a ratable of \$25 million to the municipality and 300 jobs, most of which are skilled jobs, not all of them, but most. It is done on this piece of property because of its suitability and its location. They believe this particular use is an inherently beneficial use. It is 260 beds needed, not only in Manchester but in the surrounding community. It has no negative impact on the surrounding properties. CAFRA is involved so you can only have a 30% coverage, so they are going to have a great deal of open space, which you would not have if other types of development were present. Mr. Joseph Kiernan, representative for the applicant was sworn in by Mr. Reid. Mr. York asked him to describe what is proposed on this site. They are proposing 2 skilled nursing facilities a total of 260 beds. One building is 120 beds the other 140 beds. They are skilled nursing licensed facilities. They provide short term sub-acute rehabilitation to patients who are being discharged from hospitals and other medical settings as well as long term care and specialized care for their residents. Licenses are required from the State of New Jersey. They are required to have a Certificate of Need by the State, which they have as well as actually being able to have the number of beds that they are putting into place. They are also required to be surveyed and licensed as a skilled nursing facility and surveyed by the department of public senior services to operate. Mr. York asked, the Certificate of Need is issued by the State of the New Jersey indicating that there is a need and they met the need or will meet the need and therefore they have allowed you to proceed as far as the State is concerned? That is correct. The company in which he represents has 13 other skilled nursing properties in New Jersey, they also own and operate 1 assisted living and 1 adult day medical care facility. It will cost approximately \$25 million to build and will provide approximately 300 jobs. Of those 300 a majority of them will be nurses and nurse's assistants. The choice of this location was based on a demographic study as well as the State of New Jersey and the issuance of the Certificate of Need. Mrs. Fazio asked about the Certificate of Need. She also commented about other facilities in the area and the percentage of occupancy and not one of them was full capacity. One in Whiting is actually getting ready to downsize, so how is there a need? He stated the competitors that would be in the area are Manchester Manor, Whiting Health Care & AristaCare. As of today, AristaCare is actually at 95%. There are different management styles, they feel the services they offer and how they offer them would be a draw for their referral sources and a draw for patients. Mrs. Fazio stated that Manchester Manor is only at 29%, so how is there a need? He said based on the demographic information and the referral sources they have spoken to and the other buildings that they operate in the area they have identified the area as having a need and would be a benefit to the community. Mrs. Fazio stated there are no facilities in the area running at full capacity. Mr. York asked Mr. Kiernan to explain his company's operation and why he feels they are fulfilling a need that others are not. He stated that as an organization typically the average occupancy in the state of NJ it ranges somewhere from 88-90%, the national average for nursing home occupancy is 84%, they average well over 90% and have historical averages of 95% and above. That is a result of the quality of care they provide as well as the specialized & state of the art programming. The sub acute programs offer much more to hospitals, physicians and other health care providers that are looking to refer their patients to them for short term rehabilitation prior to returning to their prior living arrangements. Also, their long term care services and the reputation of their company far exceeds those of their competitors which does allow them to maintain a higher occupancy. They are a for profit company. They build facilities with the thought of them being occupied. At their other facilities they have an occupancy rate as of today of 92.5%. Mrs. Fazio asked where their other facilities are located. They

are in Bergen, Union, Essex, Hunterdon, Mercer, Ocean, Monmouth, and Atlantic counties. She asked where in Ocean County? Atlantic Coast Health Care in Lakewood. Mr. Salvia asked about the long term care section, what type of care do those people need? He understands assisted living, advanced care and then nursing home type of care. The residents range in the type of needs they have, some are complete and total care that have no family that is able to care for them, they may need someone to dress them, bathe them feed them to sustain their life. Some residents are simply residing with them, they are mobile, but they need assistance with activities of daily living. Mr. Cook asked what range of rehabilitative services they provide. They provide everything from simple rehabilitation after surgery, some generalized reconditioning to a lot of patients come in with cardiac, they have a specialized cardiac program that are taking care of heart failure patients, orthopedic patients that come in after knee, hip replacements, fractures, etc. stroke patients, they have a stroke program as well. Basically anything you can be admitted to a hospital for and you may need to recover from after prior to returning home. Mr. Cook asked if it is strictly hospital, is there any dependency rehabilitation? Mr. Kiernan stated no, no alcohol or drug rehabilitation whatsoever; it is not a drug or alcohol rehabilitation center. They provide complex medical & physical rehabilitation for people that are recovering after an injury or surgery or some type of medical disability. They are licensed as a skilled nursing facility. This is not an assisted living center. This is not a place where people reside without skilled nursing at all times. Mr. York asked if the majority of their patients requiring high level skilled nursing care or are they just off on their own? The majority of all their patients require skilled nursing care. It was asked what the median age for the resident. It ranges from the low end of 65-70, but the average age is about 90-94. Mr. Cook asked about licensing, whether they are required to have any additional? Some of their facilities are JAYCO certified, which is optional. It was asked about short term rehabilitation, what is the average stay? If you have an orthopedic patient usually stays 5-7 days, a cardiac may be with them 2 weeks, a stroke patient may be with them 30-60-90 days. It is strictly inpatient only. Their primary referral sources will come from Community Medical Center and Deborah Heart & Lung. They get patients from direct referrals from physicians. Mr. Umlauf asked if there is an age minimum. They are not permitted to admit anyone under the age of 18 and cannot admit any woman that may be pregnant. A majority of their patients in Lakewood come from Kimball Medical Center, the Medical Center of Ocean as well as Community Medical Center. Mr. Cook noticed on the drawing that the Commons area lists what the units would be, but the Villages does not. That building will be primarily for long term care. Mr. Mullin asked if it is primarily what is secondary? He misspoke it will be 100% long term care. Mr. Reid asked about the Certificate of Need and the criteria that the State looks at before issuing it. He asked for a little more detail as to what the State considers in order to issue that. Mr. Kiernan stated that it's not his area of expertise, but based on his knowledge, it is based on population and demand in the area or within the State that they feel the additional beds in operation would not over saturate the market, but would be in demand and would be able to provide services to those who required their level of care. Mrs. Fazio asked how wide of an area did they look at? He was not sure, but he would imagine they look at the entire State. Mr. Mullin asked if the Certificate of Need was something he could provide a copy of to the Board? Yes, he could do that. Mr. Reid wanted to clarify, that it is not necessarily when they say population & demand, it is not necessarily the surrounding area it is the population & demand in the entire State, not specific to this area. That is correct. Mr. Cook asked if they have looked at any other sites in the area. He stated they are constantly asked to look at properties, look at opportunities to acquire other facilities and they probably turn down 99% of the deals that come across their desk. They are not what they are looking for. In the area, he's not sure what they have looked at, but the demographics and the location was beneficial. He was not part of the process of selecting the site. He was not part in identifying the sites. Mr. Reid would like someone to provide testimony as to what other sites were considered, and as to whether or not they were sites that would not require a use variance, is there someone who would be able to provide testimony regarding what other sites may have been considered. Yes, there should be. Mr. York stated for the record, they are not saying there aren't other sites in Manchester where it is a permitted use and it could be built, what they are saying is this property fits the need of this applicant and it is an inherently beneficial use. They are not saying that there are not other properties within the municipality that could be suited for this, that is not their application, this property features and feeds the needs of this applicant, given the market,

they are site specific, why this site because of location of where it sits in relation to Community Medical, Deborah Heart & Lung. Mrs. Fazio still does not understand the need for this site when Manchester Manor is right down the road and not at full capacity. Mr. York explained the difference between the types of care provided, the staff, the facility, how it is run, etc. would cause shortages in capacity. Mr. York asked, while the Certificate of Need is issued to the entire State, your company when you have 15 facilities, do your patients come throughout the State or do they come from the area in which the facility is located? They come from the area in which the facility is located. So while the State may give a Certificate of Need based on "the state of NJ" you & your company are building in Manchester because you believe, based on your studies that there is a need, not just within Manchester but the surrounding area. That is correct. The total investment to build a facility like this is approximately \$25 million. They would not spend \$25 million if they were not convinced there was a need.

Mrs. Fazio opened this portion of the meeting for QUESTIONS of Mr. Kiernan only. The following people were recognized:

Richard Lareau - 5 Shorin Way
Doreen Herbert - 2 Shorin Way
Joanne Hensley - 4 Shorin Way

There being no further questions at this time, this portion of the meeting was closed. Mr. Mullin asked if there will be any ambulances. Yes, typically ambulances will drop off patients when they are admitted, often times patients need to be sent out to the hospital on an emergency basis, and so ambulances will be picking them up. This is a 24 hour operation. You may have ambulances in there all hours of the night? Typically not, but yes it is a possibility. Where is the facility located in Toms River? It is Hampton Ridge on Stevens Road. Regarding typical day operation truck traffic in and out what kind of noise would be generated by the operation? They reduce that as much as possible, any kind of truck traffic would be during normal business hours; they don't do anything very early in the morning or late at night. They have deliveries from 9-5 or 8-5 for any kind of deliveries and they have a separate loading dock area for that. Mr. Mullin stated looking at the architectural plans there is a lot going on on the first & second floors of the 2 buildings, but there appears to be quite a bit going on in the basement, he would like a little more information about what will be going on down there. Mr. Kiernan stated that it will be utilized for maintenance, storage, deliveries as well as the kitchen. No operations and no patients would be down there. There will be offices down there. There is a hallway connecting the 2 basements for convenience purposes, for sharing of staff, for delivery purposes, to run more efficiently. Mr. Umlauf asked about housekeeping, bed sheets, linens, etc. That will all be done in-house.

Mr. Reid stated that the Board is leaning toward having the Township Planner review the application and then provide a report as well as his opinion on the application and the use variance and the testimony that was given. The reason he is saying this is because they are going to go through the rest of the experts regarding the use variance, you will have the opportunity to question the experts, but the Board is not going to have a public comment portion tonight until all the testimony is given meaning the Township Planner's testimony which will not be tonight.

Ms. Tiffany CuvIELLO, Professional Planner was sworn in by Mr. Reid. She gave her credentials and was accepted by the Board. The property is located on County Route 571, it is just south of Renaissance Drive. It is between Renaissance Drive & Route 70. The intersection of Route 70 & Ridgeway Road (Rte. 571) includes the Quick Chek, Rite Aid, shopping center & office building. Renaissance Drive leads into the residential development. The property is 14.53 acres and includes on it the JCP&L right of way easement. She had a colored rendering of the overall site plan marked as **A-1**. To the east of the site is the end of the cul-de-sac for Shorin Way. On the property are existing 2 large buildings previously used for a flea market/antique dealerships. They are dilapidated buildings that are run down. The existing structure is about 20 feet from Shorin Way; their closest point will be 84 feet to Shorin Way property line. They are removing the dilapidated buildings and putting up a new facility farther away with landscaping along the residential property line. In the R-40 zone, nursing homes are not a permitted use; it only permits single family residential. They are permitted in the highway development zone and the highway development 10 zone they are a conditional

use. They believe the use they are proposing is an inherently beneficial use. An inherently beneficial use is defined in the MLUL as use which is universally considered a value to the community because it fundamentally serves the public good and promotes the general welfare, such a use includes but is not limited to hospitals, schools, child care centers, group homes or wind and solar facilities. In case law the court has determined that a nursing home is so similar to a hospital that it would be considered the same use. She gave case law to justify that, *Maccurio v. Delvecchio* also *Meridian Hospitals v Pt. Pleasant* (page 209 in 2011 Cox book). The Township Land Use Ordinance actually addresses it as well. Looking at 245.62 conditional uses, there is a standard for hospitals and nursing homes; they are one in the same. She believes nursing homes fall under the same category as hospitals, because the type of service provided is not distinguishable from that of a hospital that they are so closely related and a nursing home should be considered an inherently beneficial use. When you have an inherently beneficial use you presumptively meet the positive criteria and therefore site suitability test is not necessary. Ms. CuvIELLO discussed what positive and negative criteria are. She also discussed the SICA balancing test (*Sica v Bd of Adjustment Twp of Wall* – page 188). Based on court cases and based on the ordinance requirements and based upon the definition in the MLUL that a nursing home is an inherently beneficial use. There is a need for this type of facility, a certificate of need is granted by the State department of health & senior services and that determines there is a need for the number of nursing beds in the State. The 2010 census data the median age for Manchester was 65. Over 50% of the population is 65 and older. In Ocean County, the median age was 43. 21% of the county population was 65 and older. The median age in the State is 39. 13-1/2% of the population is 65 and older. That fits the demographic that would be using the facility. That adds to the compelling need for the use in the community and in the area. Any impacts that are associated with this application are somewhat mitigated by the fact of the location of the property and design of the property. The Township Ordinance permits nursing homes in the highway development zone, this property is basically right on the edge of a highway development district right off of Route 70, on a county road. The JCP&L easement restricts how this property can be used for other types of development. The impact to the residential is minimal. The existing building is 20 feet from Shorin Way; they are proposing to put the building back 84 feet from Shoring Way. Within that area, they are going to meet the residential buffer requirements of 30 feet, the setback is 50 feet and they exceed both of those in that area. They are also supplementing the landscaping at the end of Shorin Way, so there is an enhanced buffer to the residential area. They are setback substantially from the county roadway. There is substantial landscaping and masonry features along the frontage. There will be a change to the area, the dilapidated buildings will be gone, there will not be single family residential, but you are going to have a residential style development, a nursing home, while it is similar to a hospital also provides residential care to certain members of the population. You have a combination of both uses that mix very well in this location and proximity to the highway development zone and the existing residential neighborhood, she feels that the variance can be granted because the positive outweigh the negative, that there is no substantial detriment to the public good and that there is no substantial impairment to the zoning ordinance or zone plan. Mr. York asked if she considered this type of use a commercial use or more akin to, in terms of intensity and development and noise to a residential use? She feels a nursing home is more akin to a residential use in terms of services that are being provided, from a general prospective for a nursing home, you don't have people coming to visit in and out all day long, you don't have retail traffic going in and out of the site. You have the workers that come, the workers that leave and several visitors throughout the day. The activity near Shorin Way is limited. The buildings act as a buffer for the rest of the site from the residential area. During the site plan process if the municipality wants additional landscaping along a certain area, so there is no visual impact that could be done. Mr. Salvia asked about the outdoor activities? Ms. CuvIELLO stated there are outside sitting areas and walking paths. It's not recreational activities or parties. They do have bbq's for the families, but they are centrally located between the buildings. There was discussion & explanation of inherently beneficial use and what the Board needs to consider when making their decision on the use variance. There was discussion with regard to nursing homes, hospitals, skilled nursing facilities, assisted living, etc. It was put on the record that this is not an assisted living facility. Ms. CuvIELLO discussed the difference between a skilled nursing facility and a nursing facility. A skilled nursing facility and nursing facility are the same thing, the difference or the

reason for the word skilled in front of it is because they provide that acute care for the rehabilitation associated with the stroke patient, cardiac patient and the orthopedic patient. Their rehab is why they are calling themselves skilled. It is still a nursing facility under the definition of the state requirements; they are essentially one in the same. Mr. Reid asked Mr. Kiernan if the applicant is proposing a facility that is considered a nursing home? Yes, a nursing home and skilled nursing home are one in the same, it is just language. Their licensure is licensed as a skilled nursing facility. The word nursing home is a generic term. Custodial care can be defined as an independent living community or assisted living that is not what they do based on this application. Mr. Reid said that Mr. Thomas can hopefully help clarify the difference as well.

Mrs. Fazio opened this portion of the meeting for QUESTIONS of Ms. CuvIELLO only. The following people were recognized:

William Foor - 3101 Wilbur Avenue

Richard Lareau - 5 Shorin Way

Doreen Herbert - 2 Shorin Way

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

This application was **CARRIED to the July 28, 2011 meeting** on motion by W. Cook and seconded by K. Vaccaro. All in favor. A waiver of time was given.

Adjournment: The meeting was adjourned at 9:35 p.m. on motion by W. Cook and seconded by K. Vaccaro. All in favor.

Respectfully submitted,

Darlene E. Garcia
Secretary

Dated: August 20, 2011