



TOWN OF GREENBURGH
Conservation Advisory Council
Greenburgh Town Hall
Lee F. Jackson Room

Minutes of Meeting Thursday, January 23, 2020

ROLL CALL:

CAC Members Present: T. Tori, M. Sigal, S. Hernstadt, M. Beal, D. Maiello, E. Hart

Town of Greenburgh: Councilman Ken Jones, Commissioner Garrett Duquesne

Applicants: For Metropolis CCF: David Cooper, Esq. Zarin and Steinmetz; Steve Marker, Brightview; Diego Villareale PE, John Meyer Consulting

For Maplewood ALF: Mark Fina PE and Pat Ripa PE, Langan Engineering; Steve Wrabel Esq. and Morgan Stanley Esq., McCullough, Goldberger and Stout

Others:

APPROVAL OF MINUTES:

January 9, 2020 minutes approved.

CORRESPONDENCE:

No new correspondence.

PROJECT REVIEW

TB 19-19 Commissioner Garrett Duquesne overview of proposed zoning code changes

Comm. Duquesne explained to the CAC the proposed zoning code changes that have been put forth recently.

One proposed change is to include a 4000' minimum separation distance between Assisted Living Facilities (ALF) (from property line to property line). The ALF was not a permitted use prior to 2010. Currently it is a permitted use as a special permit in single family residential zones. The 2016 Comprehensive Plan suggested the inclusion of a minimum separation distance between ALFs as a "limiting criteria". In determining the separation distance, Comm. Duquesne looked at applying various radii on the Town map and felt that the 4000' radius created an impact on development.

The CAC asked, if the 4000' separation distance is added to the code, can an applicant request a variance for less distance. The answer was "yes".

The CAC asked if the Town knows what percent of residents in Greenburgh's senior living developments are from or have an association with Greenburgh. The Town does not know.

CAC RECOMMENDATION:

1. The CAC is supportive of the 4000' separation requirement. Comm. Duquesne indicated that Maplewood would not be subject to the 4000' requirement as the application was submitted before a zoning code change. The CAC questions whether this is correct under the law since the Applicant does not have a vested right by merely making an application to the Town.
2. The CAC has concerns that the ALF floating zone represents a permanent change to the Town's zoning practice which is not consistent with the Comprehensive Plan and which is not a beneficial zoning technique for the Town in residential areas. Therefore, the CAC does not recommend the Town Board approve this change to the Zoning Code. It should be noted that the CAC believes a committee should be formed to investigate the quantum of actual need for new senior housing to accommodate Greenburgh's seniors and to recommend the best way to set up the special permit criteria, including whether to focus siting the use in non-residential areas.

The CAC authorized the Chair and Vice-Chair to finalize the draft recommendation and send the recommendation to the Town Board.

TB 19-08 Brightview Metropolis Senior Living proposed zoning code changes to Continuing Care Facility (CCF), relaxed criteria for these facilities, and the establishment of "floating zones" for CCFs

Comm. Duquesne explained to the CAC that the second proposed zoning code change is the establishment of a CCF use and the addition of criteria for CCFs and floating zones for these senior living developments. A CCF combines independent living, assisted living, and memory care.

A Floating Zone is specific to a use and a site. It requires Town Board approval, then is mapped, and then is referred to the Planning Board for review.

The Applicant proposed, and the Planning Board likes, the idea of a Floating Zone for the Metropolis project as it is asserted that the Floating Zone gives more discretion, total discretion, to the Town including siting criteria. The Town Board would look at site specific conditions such as adjacent uses, character, etc. According to the Planning Board and the Applicant, if the Town Board says 'no' to a proposed floating zone, the Applicant can't request a variance (i.e. appeal to the Zoning Board) or have any legal basis to object in court since, according to the assertion, the Town Board has 'total discretion'. If the Town Board says 'yes' to the siting of a proposed floating zone, there is a Town Board public hearing and then Planning Board review and approval.

The CAC asked what was the rationale for a 6 acre vs. 10 acre minimum. It was explained that a CCF is a single building so it is more compact. The CAC expressed concern about having taller buildings and more density in a smaller area. The CAC indicated that a rationale has not been demonstrated for why the Town should make these changes to the zoning code (i.e. relaxed criteria for CCFs and/or floating zones).

The CAC asked if the Town adopts a CCF and the relaxed criteria changes, can the Town Board impose higher criteria. Per Comm. Duquesne, the Town Board would just reject the proposal as not appropriate for the site. The CAC asked, if Floating Zones are adopted, where does it say that if an Applicant meets the statutory requirements, the Town Board may still reject it. Comm. Duquesne indicated that is the assertion of the Applicant's counsel.

The representatives for the Metropolis Senior Living Development (Brightview) explained the project to the CAC. The development would be located on a 6 acre maintenance area portion of the Metropolis Golf Course. The golf course driveway would be moved north (*this is how the driveway relocation was described by the Applicant but the CAC believes the shift is west not north*). Brightview will have its own entrance separate from the golf course. Brightview's buildings are site specific to this site and step into the hillside. There is full access around the building. The dumpsters are located inside the building. There would be landscaping and fencing around the property line. The service area is lower than the adjacent neighbors. All stormwater will be collected, treated and detained with underground infiltration systems, stormwater detention basin, and stormwater planters. The site engineer acknowledged that per NY State law they would not increase the rate of runoff but there will be an increase in total volume. The CAC asked Comm. Duquesne to provide clarification to the CAC on what New York state law requires with respect to mitigating stormwater runoff. They have not done percolation/infiltration testing yet. As part of the development, they will improve the conveyance of stormwater in the swale along Dobbs Ferry Road. There will not be runoff to the residences to the east (they are uphill of this site).

The CAC asked if an 'as of right' plan had been done. The answer was no. The CAC expressed concern that the development looks very dense. The Applicant explained that the size right now allows for no change to the golf course – if Brightview was more spread out, it would eat into the golf course area. The CAC questioned the environmental impact on this size of development vs. an as of right residential development. The Applicant acknowledged there will be a plan for removal of hazardous materials – soil management, local regulations, DEC regulations, etc. A residential use requires the highest standard of cleanup.

With respect to the zoning portion of the application, the CAC asked if a floating zone is required to build this facility. The answer was 'no' but a change to the Zoning Code will be required as there are no CCF uses included in the Zoning Code. The Applicant felt that a floating zone was the most appropriate approach because it asserts it leaves most discretion to the Town Board to decide if a site is appropriate. The CAC asked if 6 acres is the minimum lot size, can the Town Board make it less? The response was Yes. Also, according to the Applicant's counsel, the discretion is such that if an applicant comes in with a 6 acre parcel and meets all the criteria, the Town Board can still say its not appropriate for the site based on whatever reasons they feel are relevant. The CAC asked Applicant's counsel what law supported the assertion. Counsel was unable to provide this information at the meeting. David Cooper, the Applicant's counsel, agreed to send Comm. Duquesne case law that supports this narrative.

SEQRA is site specific review for any type of development (special permit, as of right, etc.).

Brightview agreed to check on the local resident population count at their existing Greenburgh developments.

The CAC noted that the Comprehensive Plan allows senior housing via special permit. Per Mr. Cooper, under NY state law, the Comprehensive Plan is policy and guidance for future action but slavish continuity with the plan is not required.

The CAC feels that the goal of the Comprehensive Plan is senior housing via special permit. There are 4 policies which all say senior housing via special permit. The CAC asked if the Comprehensive Plan has a right to say it must be via special permit. Mr. Cooper never answered the question and just said that the Comprehensive Plan is not law.

CAC RECOMMENDATION:

1. The CAC has concerns about the use of CCF floating zones as a zoning practice. The CAC does not recommend the Town Board approve the creation of a floating zone for CCFs.
2. The CAC has concerns about the size and density of development proposed with the creation of the proposed CCF zone. Compared to continuing care retirement community senior living developments, the requirement for minimum lot area has been decreased and the allowed development potential has been increased in terms of height and to the extent that almost the entire property can be impervious surfaces (as displayed in the Metropolis site plan). Therefore, the CAC does not recommend the Town Board approve relaxed criteria for CCFs to the Zoning Code.
3. The CAC recommends that the Town Board separate out the review of a proposed development of the Metropolis site from the floating zone and requires the applicant to submit a site specific EIS. The CAC suggests that CCFs can be added to the Zoning Code as an allowed use and that that the applicant seek any needed variances via the typical route (i.e. appeal to zoning board).

The CAC authorized the Chair and Vice-Chair to finalize the draft recommendation once Applicant's counsel send the case law to Comm. Duquesne, and unless the New York case law changes the CAC's agreed upon analysis, send the recommendation to the Town Board.

TB 19-21 Columbia Wegman Hartsdale Assisted Living – 202 W. Hartsdale Avenue

The representatives for the Maplewood development described the project to the CAC. In the R-20 district, an assisted living facility (ALF) is permitted via special permit. This development would include assisted living and memory care. The developers are trying to stay within the already cleared/disturbed areas of the site. There is rock and steep slopes on the site. The existing driveway entrance would not change. The internal driveway would include 2 dead end hammerheads for Fire Dept. turnarounds. The developer has adjusted the site plan to reduce the

tree removal from 351 trees to 300 trees. A tree assessment will be done. The proposal included the planting of 150+ trees. The site engineering indicated that the site has no existing stormwater management. The CAC noted that 300 trees provide some 'stormwater management'. The proposed development includes a bio-retention system with dry stormwater basins. The impervious area will increase by 0.7 acres. There will be a 2.5 acre conservation area with no future development.

The CAC noted that the new Tree Law will apply to tree replacement and the applicant will have to perform environmental calculations, etc using iTree or the National Tree Benefit Calculator. The site engineer showed several sections through the site. The CAC asked if one could be provided which shows a section through the south homes.

The engineer described that the east neighbors are lower than the site, the west neighbors will see the top of the roof. There will probably be blasting. North of the site is lower than the building.

The CAC asked what is the buildable area after the deduction for steep slopes, etc.? The engineer indicated he would calculate and send to Garrett. There will be 2.6 acres of impervious. The engineer indicated that the 4C flood study is not applicable to this site – the development will not impact downstream more than it does now.

300' is the maximum building length (not width) allowed per the special permit. The applicant is proposing 423'. The applicant is analyzing what the building would look like with the 300' restriction. It would be taller to get the number of beds and would be more of a visual impact.

The CAC indicated the traffic study should include the peak time of 3 pm for school traffic. DOT is also looking at the traffic. The applicant indicated that shift changes will be scheduled to avoid rush hour. There are 3 shift changes. The Town has retained an independent traffic consultant to review the area. The CAC indicated that Hillcrest traffic should be included in the studies.

CAC RECOMMENDATION:

1. Traffic is a major concern with this project. The CAC recommends the Town Board require an EIS with an emphasis on analyzing and addressing traffic concerns.

The CAC authorized the Chair and Vice-Chair to finalize the draft recommendation and send the recommendation to the Town Board.

WETLANDS AND WATER COURSES PERMIT REFERRALS:

No new referrals.

ON-GOING ITEMS - updates when available

- Tree Law – Status of Roll-out: no new discussion.
- Elmwood County Club – no new discussion.
- 4 Corners proposal – no new discussion.

- Excess Food for Needy Law – no new discussion.
- Development process and procedures – local land use advisory committees - no new discussion.
- SWAB (Saw Mill River Watershed Advisory Board) – no new discussion.
- Web page – no new discussion.
- CCF Floating Zone (Metropolis) Review and Recommendation – see above.
- Hartsdale Assisted Living (Maplewood) – see above.
- ALF Zone Review and Recommendation – see above.

NEW BUSINESS

- Planning for 2020

ESTABLISH DATE OF NEXT MEETING:

Thursday, February 13, 2020.