

**MONTVILLE TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Special Meeting
MINUTES OF FEBRUARY 16, 2023
7:30pm
IN PERSON**

NOTE: No New Business to be conducted past 10:00 P.M.

As required by the Open Public Meetings Act, adequate notice of this meeting has been provided which notice specified the time and place of the meeting to the extent known at that time. The notice was posted on the bulletin board at the Municipal Building, sent to the Daily Record, and the Citizen, posted on the Township's website calendar, and placed on file at the Township Clerk's office. This meeting has been properly noticed to the public in accordance with the Open Public Meetings Act.

ROLL CALL:

Richard Moore - Present
Annabel Pierce - Present
Deane Driscoll - AU
Ray Giordano - Present
Margaret Miller-Sanders - Present

Ron Cain – Present
James Marinello - Present
Jake Kovalcik (Alt #1) - AE
Victor Canning (Alt #2) - AE

PLEDGE OF ALLEGIANCE

Swearing in of Professionals

Jamie Giurintano, PE
Tom Behrens, PP

Also present: Kelly Carey, Esq.

OPEN PUBLIC COMMENT

The Chairman opens the session to public comment for items not listed on the agenda related to land use matters.

OTHER BUSINESS

None

OLD BUSINESS

None

NEW BUSINESS

ZSPP/FDC0/ZSOIL05-20– Monarch Communities – 205-207 Changebridge Road– B: 131.02, L: 6 & 7 – pre/final site plan/c&d variances and soil movement – Notice Acceptable – REMAND

Present on behalf of the applicant: Andy DelVecchio, Esq.; Brad Bohler, PE; Eric Anderson, Architect

Ms. Carey – In August 2021 the Board denied this application for Use variance and Site Plan. Monarch appealed that decision, and the court overturned the board's decision and approved the application, and the Judge remanded the application back to the board for conditions that need to be addressed only. The Board cannot deny the application this evening. The Board is here to consider conditions that relate to the plans from the last hearing. No conditions were added at that time since it was a denial.

Mr. DelVecchio – Provided public notice even though it was not required by the court. R-20A zone. 8.077 acre site. 165 total units - 81 independent living units; 58 assisted living units and 26 memory care units. 25 of the 165 units to be affordable units. Using colored site plan sheet C-301 revised 6/29/2021, Mr. DelVecchio reviewed the surrounding properties. Noise study will be done after construction as it relates to the generator and dumpster. Will comply with State noise code. Building height reduction was done at the last hearing, now a compliant height. Footprint was also reduced. Holiday periods, excess parking, will enter into an arrangement for off site and off-street parking of any excess cars at those times and shuttle people to the facility at the extent that it is needed. Can request same from the Bus Company and Town Hall. Request for Title 39 enforcement, we agreed to do that. We agreed to maintain the landscaping as proposed and installed into the future. The memory care wing, ends of building, will be enclosed by a fence at 6' in height even though we thought 8' would be more appropriate. Agreed to age limitation of 55 for people who will live in the community. Agree to provide private ambulance services.

Mr. Behrens – Referred to Burgis memorandum 2/15/23, comments from the memorandum are *italicized* herein.

Landscaping: In order to reduce the visual impact of the project upon the neighboring residential uses, enhanced landscaping and buffering shall be required on the site, subject to the Board Planner's review and approval of a Final Landscaping Plan. The Board Planner shall be available to meet with the applicant's consultants, if necessary, to discuss improvements to the landscaping/buffering plan.

Mr. Behrens - Will your professionals sit down with the Board professionals to make changes to the landscaping. Mr. DelVecchio indicated that he would agree to meet with the professionals on reasonable landscaping changes, but does not agree to everything and anything. We think the landscaping is heavily populated. Mr. Behrens – Would you be willing to soften the front of the building with Landscaping. Mr. DelVecchio agreed to moving things around and adding a few trees here and there.

Emergency Services: In order to lessen the impacts of the project on the Township's emergency services, the applicant shall be required to provide to the Board a proposed contract for private ambulance service to the facility. The private ambulance company shall be the first and primary responder to the facility. The applicant may also utilize another private ambulance service or Morris County Emergency Medical Services. The Montville First Aid Squad shall only be obligated to respond to the facility for emergency and life-threatening events, and only when the above services are unavailable. Under no circumstances shall the Montville First Aid Squad provide service to the facility for non-emergency and non-life-threatening transports. At the discretion of the Mayor and Township Committee, and upon the adoption of an Ordinance, the Township may bill the applicant for emergency calls responded to by the Montville First Aid Squad.

Mr. DelVecchio agreed to the Emergency Services condition.

Evacuation: The applicant shall be required to provide to the Board a plan for evacuation of residents, staff and guests in the event of flooding, a fire, or a power outage that lasts beyond the capacity of the on-site generator.

Mr. DelVecchio indicated that the Building Department will require an evacuation plan. Mr. Marinello indicated that the Board will be looking for a condition of an evacuation plan. Mr. Marinello – We did not have an understanding of the assisted units and memory care units if there is a flood or fire and there is no power for the residents for more than a couple of hours. Mr. DelVecchio – The evacuation plan required for these facilities will take into account short and long term power outages.

Noise Abatement: The outdoor emergency generator and trash compactor shall require sound attenuation and shall comply with all State and local regulations pertaining to decibel levels and emission of noise. Testing of the emergency generator shall be limited to daytime hours, Monday through Friday only.

Mr. DelVecchio agree to the Noise Abatement condition.

Parking: The applicant shall be required to provide to the Board a parking management plan for the overflow of parking during peak times and/or visitor events.

Mr. DelVecchio agreed to the parking condition. Mr. Behrens – The parking arrangement on site may need to be revised.

Electric Vehicle Charging: The applicant shall be required to provide electric vehicle charging on-site in accordance with §230-161.1, “Electric Vehicle Supply/Service Equipment,” of the Township Code. Specifically, per §230-161.1.C.(1)(a), 18 of the 117 parking spaces proposed on-site (equating to 15%) shall be prepared as Make-Ready parking spaces, one-third of which (i.e., 6 spaces) shall be installed with EVSE equipment at the outset. The remaining 12 spaces shall be required to follow the schedule for conversion from Make-Ready to EVSE as set forth at §230-161.1.C.(1)(b) and (c). All Make-Ready and EVSE parking spaces on the site shall be required to meet the requirements for ADA accessibility set forth at §230-161.1.C.(1)(d), as well as the standards set forth at §230-161.1.E.

Mr. Behrens – Will the applicant agree to the State Mandate of EV parking. Mr. DelVecchio indicated that the applicant is exempt based on the time of decision rule but will provide 2 Charging stations and 2 make ready spaces on site. Mr. Behrens asked that the EV spaces be added to the site plan. Ms. Carey – Are you asking for EV spots to count as 2 parking spaces? Mr. DelVecchio – No, we are not looking to reduce the amount of parking on site.

Unit Occupancy: All of the proposed units in the facility shall be limited to single occupants, with the exception of the 3 four-bedroom Congregate Apartment Housing units (each of which shall be occupied by 4 unrelated individuals) and the 4 two-bedroom Assisted Living Companion Suite units (each of which shall be occupied by 2 unrelated individuals).

Mr. DelVecchio – We had indicated for the purposes of the Affordable Housing units that 1 bed would be 1 occupant and in the multi bed affordable units, they would all be unrelated individuals. As it relates to the market units, we cannot require 1 person per unit in a 2 bedroom unit. Mr. Behrens – How many 2-bedroom units are there and how many units could potentially have more than 1 occupant? Mr. DelVecchio – We have 26 two (2) bedroom units between assisted living and congregate care. The rest are 1 bedroom with the exception of the multiple bed units for the affordables. In terms of 1 bedroom units, with the exception of husband and wife we can live with that conditions. As it relates to the 2 bedroom units, some single occupants will take 2 bedroom units but we cannot condition that singles have to have 2 bedroom units. Mr. Behrens – There is no limitation to the amount of people occupying the units? Mr. DelVecchio – We do not imply relations requirements (sisters, brothers, spouses). Mr. Marinello – Is there a maximum number of possible additional residents? Mr. DelVecchio suggested that they circle back at the end for this issue.

Affordable Housing: Compliance with the following conditions pertaining to the affordable component of the development shall be required:

a. The applicant shall deed-restrict 9 Assisted Living bedrooms (inclusive of 1 single-occupancy studio and 4 double-occupancy companion suites) for Medicaid waiver recipients and shall deed-restrict 16 Congregate Apartment bedrooms (inclusive of 3 four-bedroom units and 4 one-bedroom units). The deed restriction shall apply for a minimum of thirty (30) years.

b. Where more than one bedroom is within an affordable unit, each bedroom must be allocated to unrelated individuals.

c. The affordable bedrooms within the development shall be divided equally between low- and moderate-income units. Because there will be an odd number of affordable bedrooms in the development, the extra unit shall be a low-income unit. At least 13% of the affordable bedrooms shall be very-low-income units, however such units shall be counted as part of the required number of low-income units within the development.

d. The affordable units shall comply with the Uniform Housing Affordability Controls (UHAC) and Chapter 73, “Affordable Housing,” of the Township Code.

e. The below documentation shall be submitted to the Township’s Municipal Housing Liaison prior to the issuance of any Certificate of Occupancy for the facility: i. A draft operating manual that includes a description of the program procedures and administration in accordance with UHAC and Chapter 73. Upon review and approval, this manual will be adopted by the Township Committee. ii. An affirmative marketing plan in accordance with UHAC and Chapter 73 for affordable units that are not restricted to recipients of Medicaid waivers. iii. Designation of an experienced administrative agent, including a statement of their qualifications, in accordance with UHAC and Chapter 73.

Mr. DelVecchio – Will agree to condition 8 and the sub parts at this time (UHAC Requirements), but will discuss the residency requirements later.

Bike Lanes: The Township’s 2014 Circulation Plan Element of the Master Plan specifically identifies the entire length of Changebridge Road for bicycle lanes. Although designated bicycle lanes do not exist along Changebridge Road and the piecemeal installation of same would not serve the public interest, the applicant shall be responsible for providing its pro rata share of such improvements if and when the installation of bicycle lanes along Changebridge Road by the County and/or Township ever commences.

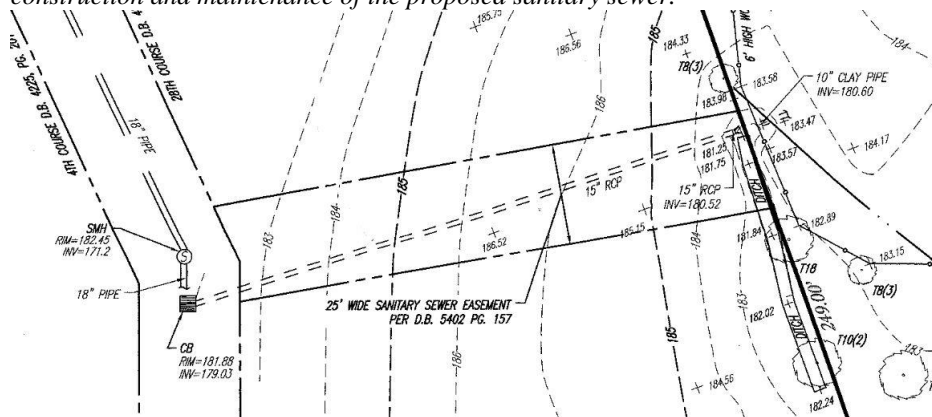
Mr. DelVecchio – Changebridge Road is a County Road and the County explicitly denied the Bike Lanes in front of our property at the last application. Mr. DelVecchio – I do not see how it would be situated since Changebridge is a County Road and the County denied the bike lane. Mr. Behrens – It is in the Township’s Plan, has any other applicant had to provide a pro rata share? Mr Marinello – It has been imposed on them and it can be allowed if provided by law.

Mr. Giurintano – Reviewed his report dated 2/14/23 - comments from the memorandum are *italicized* herein.

The survey depicts an existing sanitary sewer easement across Block 131.01 Lot 5.05. This easement was created via an agreement between Montville Township and The Meadows at Montville Condominium Association, Inc. as recorded by the Morris County Clerk in Deed Book 5402 Pages 157-162. This agreement expressly annunciates that the easement is for a sanitary sewer which would be owned and operated by Montville Township as there are no other parties included in the agreement. The applicant should identify if the sewer will be either publicly or privately owned. As the plans on file do not depict an easement over the proposed on-site sewer main and we did not identify any notes regarding ownership, it is presumed the sewer will be privately owned and operated. If this is the case, the easement agreement with The Meadows at Montville Condominium Association will need to be amended to include the applicant.

Mr. Giurintano - Will the sanitary sewers be publicly or privately owned? Mr. DelVecchio – It will be private on our site and will probably have a connection that will be private on the Meadows based on the Townships requirements based on Township Committee approval. Ms. Carey – It will have to be addressed and if the parties cannot come to a decision it will have to be litigated. This Board cannot tell anyone what to do on their private property. Mr. Giurintano - I agree with Mr. Omland’s comments for the easement to be private, not public.

The survey depicts an existing 15” reinforced concrete pipe crossing the sanitary sewer easement. Based upon the alignment, this pipe will be in conflict (horizontally) with a majority of the sanitary sewer proposed through the Township’s easement (see image below). Further, this pipe will convey stormwater from the subject site as well as from off site contributory areas. The easement agreement as recorded is for the construction of a sanitary sewer only, no other utilities. The applicant should be prepared to discuss the ownership of said storm sewer, status of any agreements for the installation and maintenance of same as well as how this storm sewer will impact the construction and maintenance of the proposed sanitary sewer.



Mr. Giurintano - Who owns and maintains this 15” pipe? Mr. DelVecchio – The pipe exists on the Meadows property, not the applicants property, it is not being added, changed or moved. Sometime after the Meadows project

was approved, a berm was built on the Meadows property line that creates ponding, we believe it happened post construction. We do not know when the berm was built but it is owned by the Meadows and we will not burden that pipe any more than it currently is burdened today. The pipe remains and there will be less of a burden once we install our drainage improvements. Mr. Giurintano – The Board may want to consider is if a maintenance agreement be needed since the applicant will be using the pipe. Failure of the pipe will affect this project. Mr. DelVecchio – If there is a failure of the pipe it will get fixed, and we can figure out whose responsibility it is to fix in the future. This is an issue that would be done between the Township and the neighboring property. Mr. Marinello – If the pipe fails and the property goes bankrupt or otherwise refuses to make the repair, how are we sure the pipe gets fixed? Mr. Giurintano – That storm sewer is in an easement for sanitary sewer and will require some sort of removal of a portion of that storm sewer. Mr. DelVecchio – There will be a sanitary agreement. The pipe will not need to be touched during construction. I will talk to my client about taking responsibility for maintenance of that pipe that will be mostly in the easement. Mr. DelVecchio – Our survey has the pipe completely in the easement area. My client will agree to maintain that pipe. Mr. Marinello - If they do not allow you to maintain the pipe then a mitigation plan can be done with the Township Engineer at that time. Mr. DelVecchio agreed to maintain the pipe if permitted.

The project proposes to fill existing wetland areas as well as disturb an additional wetland area for the construction of a stormwater outfall. Presumably, the project will require a Freshwater Wetlands General Permit #11. In past experience, this permit requires a stormwater review by the NJDEP. The applicant should provide an update on the status of the permit review/approval. If this permit is was not deemed technically complete prior to March 1, 2021, it may be subject to the current stormwater management rules which require Green Infrastructure design be incorporated in the stormwater management system.

Mr. DelVecchio – We have obtained several GP’s for this project, but one will need to amend the #11 permit or it may have been expired. Mr. Giurintano – Green infrastructure standards will probably be required by the DEP. Mr. DelVecchio – We will deal with DEP on that issue. Ms. Carey – To be clear that one of the general requirements is if an outside agency requires a major change the Board has the right to review it again.

As the status of the stormwater review by the NJDEP is unknown at this time our office has not prepared a review of the stormwater management report nor the stormwater operation and maintenance manual. Upon determination of the review status, our office will prepare a review of same.

As indicated above, it appears the applicant has not updated the plans per the Omland Associates review memorandum dated April 5, 2021. We have attached a copy of same to our memo for reference.

Mr. Giurintano – Can you comply with Mr. Omland’s report of April 3, 2021. Mr. DelVecchio – I believe we had met all of Mr. Omland’s comments at the final hearing.

Mr. Moore – What is the height of the building? Mr. DelVecchio – It is a compliant height of 35’. Mr. Marinello – Do you have a description of how the private ambulance agreement works? When a private ambulance service is used, when the Township Volunteer ambulance squad it used, private transport service etc? Mr. DelVecchio – The provider agrees to be on call for the site. Typical calls from these facilities are transport calls to various medical providers. We cannot stop residents or staff from calling 911 during an emergency, staffed is trained but we can coordinate with your ambulance service to discuss protocols. The township ambulance squad will be privy to how our ambulance services works and have input into the training of the Monarch staff. Mr. Marinello – I understand that this will not be 100% served by a private ambulance service. Mr. Marinello – Have you had any discussions with the Meadows on the easement? Mr. DelVecchio – We have not.

Mr. Behrens – To what extent does the applicant have the right for offsite parking? What if it is not a permitted use? Mr. Marinello – The applicant will have to meet permitted use requirements. Ms. Carey – It will depend on the site that they have chosen and what it has been approved for previously. There may be a site plan modification required for that site.

Ms. Carey – Additional conditions will be Revise plans to comply with the conditions and any remaining technical comments of the Board’s professionals; Payment of taxes and escrow fees; Posting of applicable inspection fees and maintenance bond; Providing as built plans before C of O.; Obtaining all state, county and local permits and approvals from all applicable agencies; The Board reserves the right to require an amended or revised application in the event that federal, state, county or local permits or approvals require any significant revision in the plans;

Resolution to be recorded with the County; Affordable housing, O&M Manual to be filed; shall be subject to the review and satisfaction of the Board's Engineer, Planner and Attorney.

2 Minute break

Mr. DelVecchio – Propose a maximum of occupancy of 205 on site plus the affordable units which would be a total of 221 occupants on site.

Open to public –

Ann Weissman – 3 Cain Ct – sworn

President of the Meadows Condo Association. Concerns with the flooding issue. Will Monarch help pay for the association to get legal and engineering consultation. Mr. DelVecchio – We will have discussions with the Meadows offline but do not agree to a condition. Ms. Weissman – Asking that Monarch lays out an emergency action plan for flooding that they will share with the Township and the Meadows. Mr. DelVecchio – This is not agreeable as a condition but we will be happy to discuss your issues outside of regulatory requirements. Ms. Weissman – Our parking is up against their property line, how does Monarch make sure their residents, workers, visitors do not park on our property? Mr. DelVecchio – We are fully compliant as to parking. The entire improvement will be bermed and several layers of trees will be constructed, and I believe it is wet in that area so it will not be a desirable place to park.

Tony Dacheille – 4 Franklin Ct – sworn

Why are we entertaining this project? Ms. Carey – The Board heard the application and denied the application, the applicant appealed and the court approved the application. We are only allowed to put in conditions this evening.

Carol Seftel – 5 Franklin Ct – sworn

Concerned with increased truck traffic, construction pollution, chemicals in the ground water. Mr. Marinello -There are Construction Ordinances that control the processes during construction.

Ira Engle – 12 Constitution Ct – sworn

Asked about transparency of how the appealed worked. Asked about the Sica Balancing Test.

Ms. Carey – Gave an explanation to Mr. Engle. The criteria were discussed throughout the hearings. We had a very lengthy resolution. Mr. Engle – Can I get a copy of the resolution? Ms. Cary – Yes from the board Secretary.

Mr. Engle – Concerned with the ambulance service. Needs to be memorialized in an agreement including staffing and education of the existing Township ambulance squad. Mr. Engle – Would like the maximum occupancy be filed with the Township and the Fire Agency for emergency situations.

Num Hsiao – 10 Independence Ct – sworn

Impact on the electrical grid? We are not allowed to use generators in the Meadows. Mr. Giurintano – Typically the applicant will have to apply to the utility owner and the applicant may have to add transformers on site. It is a public utility issue, not something the Board can deal with.

Closed to public

Mr. Marinello- are there any conditions in the Bowman or Burgis reports that the members of the Board have issues with or are there any conditions that have not been discussed this evening? Hearing none.

A motion was made: In compliance with the order of the court in docket # MRS - L- 1986-21 dated, December 23, 2022 the Board of Adjustment has considered the application of Monarch Communities, as remanded to it by the Court, and moves that the following conditions be imposed on the project, comply with Bohler's C-301 site plan dated 6/29/21; the Board professional reports discussed above; as well as revise plans to comply with the conditions and any remaining technical comments of the Board's professionals; payment of taxes and escrow fees; posting of applicable inspection fees and maintenance bond; providing as built plans before C of O.; Obtaining all state, county and local permits and approvals from all applicable agencies; the Board reserves the right to require an amended or revised application in the event that federal, state, county or local permits or approvals require any significant revision in the plans; compliance with these conditions shall be subject to the review and satisfaction of the Board's Engineer, Planner and Attorney; O&M Manual and Resolution to be filed with the County; input of Montville

Township ambulance squad to the training of the private ambulance service and the facility staff; Title 39; work with professionals on landscape plan; emergency evacuation plan; age restricted to 55 and older; resident occupancy maximum of 221; 2 EV parking stations and 2 make ready spaces; UHAC requirements for Affordable Housing; amended sewer easement; work with town to make sewer private sewer; storm sewer and 15" pipe to be worked with the Meadows; obtain and update any DEP permits, if green infrastructure required they will update the stormwater management plans; if bike lane required by law applicant will provide pro rata share in the future if required by law. This decision is made without prejudice and the Board reserves its right to appeal the final determination in this litigation motion made by: Moore; Second by: Miller-Sanders; Roll call: Yes - Moore, Pierce, Giordano, Miller-Sanders, Cain, Marinello

MINUTES

None

INVOICES

None

RESOLUTIONS

None

CORRESPONDENCE

None

ADJOURNMENT

There was a motion to adjourn was made by: Moore; Second by: Miller Sanders; Roll call: Unanimous.

Respectfully submitted,

Jane Mowles, Secretary.

Certified true copy of minutes adopted at Zoning Board meeting of March 1, 2023.