

**MONTVILLE TOWNSHIP
ZONING BOARD OF ADJUSTMENT
MINUTES OF MAY 3, 2023
7:30pm
In Person**

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

STATEMENT OF COMPLIANCE

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
Jake Kovalcik – AE
Ray Giordano- Present
Margaret Miller-Sanders - Present

Ron Cain - Present
James Marinello - Present
Victor Canning (Alt #1) - AE
VACANCY (Alt #2)

PLEDGE OF ALLEGIANCE

Swearing in of Professionals

Paul Winters, PE
John Szabo, PP

Also present: Michael Carroll, Esq.

OPEN PUBLIC COMMENT

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

The Board Chairman stated that we would be going out of order this evening starting with the extension request and then Board Business before Old Business.

RESOLUTIONS

ZC/ZSOIL13-22– Stager – 17 Glenview Rd – B: 31, L: 13.01 – soil movement and variances for side setback and slopes – Approved – Eligible: Moore, Pierce, Giordano, Miller-Sanders, Cain, Giordano, Kovalcik

Motion to adopt made by: Moore; Second by: Cain; Roll call: Yes - Moore, Miller-Sanders, Cain, Giordano

MINUTES

Minutes of 4/20/23 Eligible: Moore, Pierce, Miller-Sanders, Cain, Kovalcik, Giordano, Marinello

Motion to adopt made by: Moore; Second by: Cain; Roll call: Yes – Moore, Miller-Sanders, Cain, Marinello

INVOICES

Burgis – Trust for: \$720.00 (Aburamani), \$440.00 (Bain), \$760.00 (Dauch), \$920.00 (Diversified 55+), \$200.00 (Muller), \$40.00 (Patel), \$360.00 (Peerless), \$560.00 (Senatore)

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Carroll – Trust for: \$880.00 (Diversified 55+)

Motion to adopt made by: Moore; Second by: Miller-Sanders; Roll call: Unanimous

OTHER BUSINESS

ZEXT05-23 Guzman, Stephanie – 9 Millers Ln – B: 72, L:3 – request for extension of approvals to – approvals expired 8/4/22 – requesting extension to 8/4/23

Motion to grant the extension to 8/4/2023 made by: Moore; Second by: Miller-Sanders; Roll call: Unanimous.

NOTE: Ms. Pierce enters

OLD BUSINESS

ZSPPP/FDC/ZSOIL02-22 – Diversified Properties (55+) – 259 Main Rd (245 Rt. 202; 263 Rt. 202; Daldunn (Rear); River Rd; 6 Daldunn; 4 Daldunn; 12 River Rd) – B: 59, L: 13, 15, 17, 18, 19, 20, 22 - preliminary and final site plan approval, as well as ‘d’(1), ‘d’(6), and ‘c’ variance relief 266-unit age-restricted residential community consisting of both apartments and townhouses- Carried with notice from 10/20/22, 11/17/22, 2/1/23, 3/1/23 & 4/20/23 - Eligible: Mooreⁱ, Pierceⁱⁱ, Miller-Sanders, Cain, Giordano, Kovalcikⁱⁱⁱ, Marinello^{iv} ACT BY: 5/31/2023

Present on behalf of the applicant: Nick Minoia, applicant; Steven Schepis, Esq; Mark Parker, Healthcare and Senior Housing consultant; John McDonough, PP

Mr. Schepis – Introduced Ms. Caldwell’s updated planning report as an exhibit.

Exhibit A-38 – Ms. Jessica Caldwell’s updated Planning report as it relates to the affordable housing.

Mark Parker, Healthcare and Senior Housing Consultant – sworn

Exhibit A-39 – The Benefits of Living at Brookside a Senior Community

Mr. Parker – Age restricted housing allows for community members to age in place. Reviewed the 3 levels of senior housing for the board. Reviewed the positives of living in a 55 and older community. Socialization, security; high end features; maintenance; support of neighbors.

Mr. Marinello – Why would it be beneficial to have this project at this location other than a location where it would be permitted in town? Mr. Parker – I cannot testify to that. Mr. Marinello – Can you give specific numbers as to how many Montville residents will move to a state that does not tax retirement? Mr. Parker – No.

Nicolas Minoia, Applicant – previously sworn

Reviewed charts/data from Mr. Otteau’s report dated 10/18/22 which was previously submitted. Reviewed population by age percentages for the State of New Jersey. The rate of renters over the age of 60 has increased more than 40%. There is a large increase of residents over the age of 55 in Montville. Strong demand for rental properties for people over the age of 55. We want the property to be close to major roadways. Easy to find. The market demand is here. Easy access to shopping and medical facilities. Water and sewer, not septic and well. Reviewed amenities proposed for the project.

Mr. Minoia – Reviewed the Vacant Land Inventory done by Burgis Associates. All 4 property owners supported our proposal. That is how we identified this site. Other properties did not have curb appeal and appropriate access. We met with the Planning Board and the Subcommittee on several occasions during the Re-examination of the Masterplan process; an ordinance was drawn up but never adopted by the Township Committee.

Mr. Marinello – Avalon Bay said there was no market for 55 and older during their testimony before this Board. Mr. Minoia – They do not build age restricted housing. Mr. Marinello – Will the amenities as testified change if the ownership changes? Mr. Minoia – Deed restrictions are deed restrictions. Mr. Marinello – Maintenance of the

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gatehouse, maintenance of facilities changes over time and ownership. Mr. Minoia – There will be a property manager and maintenance staff that live on site. There will be full-time staff. Mr. Marinello – Will this amenity package run with the land? Mr. Minoia – Agreed to a condition of approval as it relates to the amenities and level of services as testified. Mr. Marinello – I have great difficulty in understanding how the Zoning Office would police such a condition. Mr. Carroll – A Developer's Agreement can address these issues.

Mr. Moore asked about the master plan discussions as it related to this property. Mr. Szabo explained the suggested overlay zone to allow for senior house and how the underlying ordinances were not adopted by the Township Committee.

John McDonough, PP – sworn

Conducted a standard planning analysis for this project. Beautiful spacious site. The applicant wants to do a high-quality project. A use variance runs with the land.

Exhibit A-40 – planner exhibit. 38 pages

Mr. McDonough - The developable portion of the site is in the middle and undevelopable around the edge of the property. Residential neighborhood. Reviewed other uses in the area for the Board. Access from Main Road not River Road, only emergency access from River Road. Reviewed aerial photos of the area. Reviewed key policy statements in the 2019 Reexamination of the Master Plan. The 2019 Land Use Plan provided for senior housing for residents to age in place. This site was specifically pointed out in the Land Use Plan. The Housing Element and Fair Share Plan adopted in 2019 points out density requirements, we are proposing a lesser density than what is outlined in the policy.

Mr. McDonough – Reviewed rental demand projections as outlined in Mr. Otteau's report. Project will not have a negative impact on the traffic on the road network in the area per Mr. Deane's report. Per Mr. Walker's EIS there will be no environmental impact on the area. No impact on the school system. Stormwater management proposed. Providing a variety of housing types. Reviewed wetlands and conservations easements along the outskirts of the property. Quality amenities. Reviewed proposed supplemental screen plantings. Adding an additional 38 trees 10-12' range on planting near the adjacent residential properties abutting the site. Lot 14 and lot 16. Agree to work with Mr. Burgis' office to have a post construction visit to see if additional plantings would be necessary. Planning for an aging community is good responsible planning.

5 minute break

Mr. McDonough – R-27A zone. Reviewed permitted and conditional uses permitted in the zone. D1 Use relief requested for multiple buildings on one lot, height and stories. Site suitable for the proposed use. Residential neighborhood. The site can accommodate the proposed use. Uplands in the middle and restricted areas around the outer section of the site. Providing for new housing stock. Responsive to market demand. Providing an element of affordable housing. Appropriate population density. Working around the existing tree canopies as it relates to height. Relocation of the historic Doremus House. Inherently beneficial use. Mr. Schepis read the definition of inherently beneficial use from the Municipal Land Use Law. Mr. McDonough – The courts have deemed independent living units to be inherently beneficial uses. The affordable units will promote the public good. No substantial negative impact. Putting a residential use in a residential zone scheme is better than putting a non-residential use in a residential zone scheme. A non-age restricted proposal would be more impactful than an age restricted development. Proposal furthers the goals of the Master Plan.

Mr. McDonough – Proposed project meets building and impervious coverage as ordinance permits. D(6) height relief for 3 buildings being more than 10 and 10% than permitted. Keeping the parking under the building raises the building. The added height will not block scenic views. C relief requested. Excessive number of stories. Setback between townhouse buildings 30' proposed 34.5'-34.7' required. Accessory building height 14' permitted, where 22.4' clubhouse; 14.7' maintenance building; 24.9' Peter Doremus House are proposed. Accessory building side setbacks 6.9' proposed 10' required for maintenance building setback from Route 287. Drive aisles width. Front entrance drive aisle. Parking setback to property line as it relates to cul-de-sac bulb and emergency access. Location of the pool and tennis court in a side yard, where not permitted in a side yard. Tennis court light height 18' proposed 10' permitted. Tennis court light intensity at lot line common to Route 287. Retaining wall height of up to 18' where 6' permitted. Deficient setbacks of pillars. Number of monument signs, where none are permitted in the

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zone. Sign area and height variances requested. Directional sign height variance requested along with sign area. Slope disturbance variances requested. Riparian buffer relief requested. Reviewed requested design exceptions requested.

Mr. Szabo – Do you have a comparison as to what a conventional subdivision would be vs the proposed development? Mr. McDonough – I do not know if there is a formal plan but based on internal discussions and pure math we would end up with approximately 20 single family lots. Mr. Szabo – As opposed to 266 units. Mr. Szabo – explained the Vacant Land Assessment process which is done by regulation to show all potential sites and then you add density to that. Then there is negotiations with Fair Share in order to find out what the Affordable Housing requirements would be. We were not required to include that site in the Housing Plan. It should not be implied that this is a developable site. Trying to add context to the Board. Mr. McDonough – Independent living units as part of an assisted living facility has been found as inherently beneficial uses. From a Planning standpoint I believe the board can make a nexus based on that point.

Mr. Szabo - Can you submit court decisions that indicate that age restricted housing not related to a development with assisted living provisions are inherently beneficial uses? Mr. Schepis – We will submit. Mr. Szabo – If we took away the 55 and older aspect wouldn't it be no different than a multifamily non-age restricted unit. If you took away the senior age, wouldn't it be the same as any other multifamily development? Mr. McDonough – It would be alike to it but does not make it less beneficial. Mr. Szabo asked about the increased burden on the municipality's emergency services. Mr. McDonough – I have not seen any studies related to ambulatory care in 55 and older active adult communities as it relates to emergency services.

Mr. Szabo – Governing Bodies zone, Board of Adjustment's do not. The Township Committee physically removed the site from the proposed zoning. The Board has to hear all of the testimony and make an informed decision as to whether or not the application should be approved based on statutory regulations. The status of the site within the master plan is not the issue. Why is this not a rezoning request before the Governing Body as opposed to a Use request before the Zoning Board. It is unknown as to why the Governing Body did not approve the ordinance change as it relates to this property. Mr. McDonough – Indicated that this Board has the ability to grant a use variance on this property based on the evidence and testimony provided. This board has heard much more evidence and testimony than the Governing Body has.

Mr. McDonough read from the Monarch court decision. Since the Township Committee did not rezone this property, it did not give the Board a basis to deny this use.

Mr. Marinello – What height level and density would be too much? On Page 35 of your exhibit, you said it was an approval letter but it was a conditional approval letter correct? Mr. McDonough – Correct, thank you for the clarification. Mr. Marinello – School capacity is not a reason to deny an application. Are we allowed to weigh in that there would be no impact on the schools? We have been talking a lot about 2019, need testimony as to post pandemic. Mr. Marinello – Do you know of any other buildings in Montville at this height? Why not a walkable center or a retail use instead of dense housing? Ms. Pierce – Can it be made smaller to reduce the number of variances.

Open to public for questions for the 3 witnesses.

John Necissi – previously sworn

Can you come back with more recent data since the pandemic?

Tom Radcliff – sworn

As it relates to the EIS, were the animals and migration patterns taken into consideration?

Neil Boyle – previously sworn

What court case promotes the general welfare based on the fact it is an age restricted development? Question on building and impervious coverage.

Pam Soni - sworn

How will this development affect the infrastructure of the emergency services?

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Deborah Bozza – sworn

Will grandchildren be allowed to use the amenities?

Julie Ballentine – previously sworn

Have you considered the effect of traffic on River Road.

Holly Cox – previously sworn

How much of the natural landscape will be preserved?

The application was carried with notice preserved to 6/7/23 with an extension of time to act to 6/30/23

NEW BUSINESS

None

CORRESPONDENCE

None.

CLOSED SESSION

None

ADJOURNMENT

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

Respectfully submitted,

Jane Mowles, Secretary.

Certified true copy of minutes adopted at Zoning Board meeting of June 7, 2023 hearing

ⁱ Certified to 3/1/23

ⁱⁱ Certified to 10/20/22 hearing

ⁱⁱⁱ Certified to end of 1/1/23 & 3/1/23 hearing

^{iv} Certified to 10/20/22 hearing