Chairman Nargiso brought the Regular Meeting for May 20, 2010 to order followed by a Pledge to the Flag. Chairman Nargiso noted that this meeting meets the requirements of the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

ROLL CALL:

Present: Donnelly, McNear, Sulski, Dwyer, Davenport, Finelli, Brown, Frerichs, Fox, Nargiso

Absent: Heywang (excused)

CASES TO BE HEARD:

10-171V Bon-Dor, LLC

 Block 26 Lot 10.02

Board Members Chris Finelli and Councilman Fox will be stepping down from this application

Douglas Doyle, Esq. appearing on behalf of the applicant

Mr. Doyle stated that he is here representing the applicant who is appearing before the board for a bifurcated D Use Variance associated with the development of 8 town homes in a zone which can more than accommodate the use and the proposed density.

Because it is a bifurcated application the application does not have the kind of details that you would normally expect to see in a site plan application. A number of years ago an application similar to this was presented for 10 units this application is different.

Mr. Barbarula stated he reviewed the application a 20% reduction in number under the case law is more than sufficient to be a different application.

Exhibit A1 – Steep slope analysis

William Darmstatter – Professional Civil Engineer

Darmstatter, Inc.

Accepted as an expert witness by motion

Review of Paul Darmofalski report dated April 5, 2010

Mr. Darmstatter testified to the following:

* Existing conditions
* Proposed development
* Description of landscaping
* Turning radius for emergency vehicles
* Improvements to Whitteck Street

Mr. Darmofalski stated this is a concept plan and the engineering review was based on a concept plan, there will be some changes to this plan if this gets approved and moves forward. The applicant has requested the turn radius for the large fire truck, there will be some movements of the units to accommodate that. The other major issue with the drainage is there is concern with recharging storm water behind a retaining wall, the water should be detained and not recharged, would not recommend a recharge with that many retaining walls.

SLOPE STUDY Total Ares Area to be Permitted Percent of

 Disturbed Disturbance Disturbance

Slopes 0 – 14.9% 8,935 SF 8,925 SF 100% 99.3%

Slopes 15-19.9% 2,050 SF 2,050SF 50% 100%

Slopes 20-24.9% 4,330 SF 4,330 SF 30% 100%

Slopes 25-29.9% 2,470 SF 2,470 SF 15% 100%

Slopes 30% + 18,506 SF 4,675 SF 0 % 25.26%

Zoning Schedule

 Required Proposed

Min. Lot Area 20,000 SF 36,291 SF

Min. Lot Frontage 100 253.79

Min. Lot width 100 196 + at setback

Min. Lot Depth 200 93.21 existing

Min. Front Yard 50 20

Min. Side Yard 25 10

Min. Rear Yard 50 40

Max Building Coverage 20% 13.23%

Max Impervious Coverage - 40.5%

Max Floor area ratio 30% (see Architects plans)

Max. Building Height 5 STY/60 (see Architects plans)

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Patricia Manard – 36 Kiel Avenue

Questions regarding retaining walls and landscaping

Patricia King 42 Kiel Avenue

Questions regarding density report and FAR ratio

Public portion closed by motion

Burt Landau – Registered Architect

Oath Given

Accepted as an expert witness by motion

Mr. Landau testified to the following:

* Description of prepared concept plan
* Architectural drawings
* Description of units

Public portion opened by motion

Patricia King – 42 Kiel Avenue

Questions regarding the possible reduction of buildings and retaining walls

Public portion closed by motion

Michael Kauker – Professional Planner

Accepted as an expert witness by motion

Mr. Kauker testified to the following:

REQUIREMENTS LI/CBD PROPOSED

Min. Lot Area (sq. ft) None 36,000 sq. ft

Min. Lot Frontage None 250 feet

Min. Lot Width None 200 feet

Min. Lot Depth None 190 feet

Min. Front Yard (ft) 25 feet 20 feet

Min. Side Yard 0 feet or 10 feet 10 feet

Min. Rear Yard 10 feet or 25 feet 40 feet

Max. Bldg. Coverage 80% 13.23%

Max. Bldg. Height 3 stories/35 feet 3 / 38.6 feet

Min. Floor Area Multi Story 3,000 Greater than 3,000

* Reviewed the site
* Review the Zoning Ordinance and Master Plan
* Development plans
* Project review
* Relationship to Master Plan and Zoning Ordinance
* Zoning Ordinance
* Description of D1 use variance
* Permitted Uses
* Conditional uses
* Accessory Uses
* Detail testimony regarding Positive and Negative Criteria
* Slope Disturbance
* Building Entrances
* Deck and Patios
* Wall Height in Front Yard
* No substantial detriment to the public good
* No substantial impairment to the intent and purpose of the zone plane and zoning ordinance

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Theresa Cavanagh – 16 Myrtle Avenue

Questions regarding the use variance

Patricia King – 42 Kiel Avenue

Questions regarding traffic impact

Public portion closed by motion

Public portion opened for comments

Patricia King – 42 Kiel Avenue

Unhappy with proposed application regarding density, traffic impact and negative impact on the surrounding area

Public portion closed by motion

Mr. Doyle presented his summation

Mr. Barbarula stated the board has before it a use variance, NJ Municipal Law says that a use variance you have to decide special reasons, which are the positive criteria along with the negative criteria, the intent and purposes of the ordinances, land use and master plan. The board has to decide the issues of why the ordinance has the language regarding the residential. A bifurcated case of this nature, the first thing is the use variance, is it appropriate to have residential use on this site for town house development a maximum of 8 units, that is the use variance, that does not mean that 8 units will be able to be built. That is the first vote.

The second vote is the interpretation of the floor area ratio and you have to determine between two different views, Donna Homqvist and Michael Kauker. It is appropriate to do the use first. You need a motion to either approve the use variance for a maximum of 8 residential town house units or approve the use variance.

Motion to deny the application

Motion: Brown

Second: Donnelly

Mr. Brown stated the board is required to find an enhanced quality of proof in the positive criteria, that this site is particularly suited for that purpose. Further stated that he does not think the site is suited for anything, it has allot of steep slopes on it, this site is not suited for 8 town house units. As far as granting it without substantial detriment to the public good, that’s considering the effect if we granted this for the surrounding properties. This application is going to require a 17 foot high wall in order to make this thing happen, it is proposed that there is a 3 foot setback between the property lines of the residences that exist and the wall. These are the issues; Butler does not need another 16 or 20 people that is not a good thing to do for this town. They have not been able to prove that specific piece of property is suited for this residential use.

Mr. Donnelly

Deny (Yes) – This property has so many issues and restrictions and not appropriate

Mr. McNear

Deny (Yes) – the proposed use is less intrusive and would fit better into the area, concern is with the amount of units that will be placed inside of that piece of property, a 3rd of the property cannot be used. Would like to see less units but because of the connection of the vote on the use to the amount of units the vote is to deny

Mr. Sulski

Approved (No) – the applicants experts have convincing explanations that this particular neighbor, this would be the better use, if this is denied the applicant will come back with something that he can put there and the neighbors may be more unhappy with that then what they would have here

Mr. Dwyer

Deny (Yes) – Deep concerns about the walls and the environmental issues, too many units

Mr. Davenport

Approved (No) – This would be a better use than some of the other uses that are allowed on this piece of property

Mr. Brown

Deny (Yes) – the applicant has not been able to prove that this site is suited for the use requested

Chairman Nargiso

Approve (No) – knows what else could be built there and if he lived in that neighborhood, and that is the way I vote with my own heart, I would not want to see any of those other uses, other than something similar to this. As far as the 8 units that we are not locked into that that comes at the next stage let’s see if they could may it work and that is the reason for the no vote.

4 Yes votes

3 No votes

Mr. Barbarula stated the application for 8 units have been denied

SD10-42 Johan Kafil

1465 Route 23

Block 54 Lot 1.01 & 2.05

Dave Dixon, Esq. appearing on behalf of the applicant

Mr. Dixon stated this applicant and this property has been before this board for approximately ½ dozen applications throughout the years. This is the first opportunity that this developer has to control the entire property; this is the development plan for the re-subdivision of this property, the entire property which would be followed by major site plan approval for the entire tract.

David Beesley – Professional Engineer (Burton Engineering)

Accepted as an expert witness by motion

Mr. Beesley testified to the following:

Exhibit A1 – Subdivision Plan

* Description of plan submitted
* Description of property
* Water easement
* HC1 Zone
* Access
* Proposal – two major development parcels for retail
* Third lot for maintenance of the gas station and would make the lot conforming
* Wetland property
* Review of Paul Darmofalski report
* Location of lot lines

Mr. Dixon stated that the applicant will be coming before the board for site plan approval for multi use retail for the second lot, the gas station would be redeveloped to change the development to better utilize the open space for that lot. The problematic lot is associated with proposed lot 1.05 because of that wetland lands which takes out half that lot but the concept plans that are being put together could be used for retail or banking.

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Public portion closed by motion

Motion to approve application as submitted

Motion: Brown

Second: Donnelly

Condition of potential bonding of demolition

Relocation of Water

Location of easement

Approval of Butler Water and Surveyor

Voted Aye: Donnelly, McNear, Sulski, Dwyer, Davenport, Brown, Frerichs, Fox, Nargiso

Voted Nay: None

APPROVAL OF VOUCHERS

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, McNear, Sulski, Dwyer, Davenport, Brown, Frerichs, Fox, Nargiso

Voted Nay: None

APPROVAL OF MINUTES OF APRIL 15, 2010

Motion: Brown

Second: Dwyer

Voted Aye: Donnelly, McNear, Sulski, Dwyer, Davenport, Brown, Frerichs, Fox, Nargiso

Voted Nay: None

BOARD DISCUSSION:

Board Secretary stated that she will be retiring but returning part time. This will occur the end of July and be out the month of August and returning part time in September. There will be no one to cover the August workshop and regular meeting

Motion to cancel the August, 2010 workshop and regular meeting

Motion: Brown

Second: Dwyer

Voted Aye: Donnelly, McNear, Sulski, Dwyer, Davenport, Brown, Frerichs, Fox, Nargiso

Voted Nay: None

Motion to adjourn:

Motion: Brown

Second: Dwyer

All Ayes Respectfully Submitted:

 Karen Becker

 Recording Secretary

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Chairman – Planning Board

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Secretary – Planning Board

ADOPTED:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_