Chairman Nargiso called the regular meeting of the Butler Planning Board to order for April 18, 2019. Chairman noted that this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

**ROLL CALL:**

Present: Donnelly, Roche, Veneziano, Brown, Finelli, Grygus, Vath, Nargiso

Absent: Alviene (excused), Fox (excused), Hauck (excused)

**CORRESPONDENCE** – None Presented

**CASES TO BE HEARD:**

**SP18-75 BUTLER PLAZA PARTNERSHIP**

 **1510 & 1516 ROUTE 23**

 **BLOCK 201 LOTS 1 & 2.01**

Mr. Peter McArthur, Esq. representing the applicant

Public portion was opened by motion for comments

Bob Norman – 31 Cascade Way comments included Parking is inadequate, not employee parking and site plan should be redesigned

Mr. Yacovelli – 139 Decker Road

Mr. Yacovelli his comments included parking, signage, fencing, canopy height with lighting, dumpsters, soil contaminations and privacy issues

Public portion closed by motion

Mr. McArthur stated this property has been in discussion for the past 8 years, this is what was designed, and the client appreciates the board’s time and thoughtful consideration of the proposed matter.

Mr. McArthur gave a brief description of the past 6 meetings for the boards review.

Mr. Brown distributed the following by Motion

**BUTLER PLAZA, 1510 & 1516 ROUTE 23, BUTLER, NJ**

**Waivers**

1. A waiver is granted from item 42 of the Land Use Ordinance 143-49B. Based upon the submitted drawings with the application, this item is in substantial compliance.

2. A waiver is granted for Land Use Ordinance 143-87 F, specifically allowing less than the requirement for trees but not less than 20%. This waiver is not granting “No Trees”.

Conditions

1. That item 58 of the Land Use Ordinance 143-49B be completed to the satisfaction of the Board Engineer.

2. With reference to item 64 of the Land Use Ordinance 143-49B, an as-built landscaping plan shall be included with the required as-built drawings. To be completed to the satisfaction of the Board Engineer.

3. Item 83 of the Land Use Ordinance 143-49B to be completed to the satisfaction of the Board Engineer.

4. An opaque fence shall be installed along the R-3 and HC zone boundary of the application property. The fence height shall be no less than eight (8) feet and no higher than 10 feet. The height of the fence shall be exclusive of the grade level. The fence shall be as “maintenance free” as practical.

5. Two (2) exceptions to Condition #4 shall be the opening for the Decker Road driveway, and associated Site-Triangle, and the required ADA sidewalk access to the site. At the opening for the ADA access, the fence shall overlap the opening as much as practical so as to create the effect of a solid partition to limit vision and noise between the two property zones.

6. Signs stating “No Trucks Allowed”, or equivalent wording, shall be installed on both sides of the Decker Road driveway. Suggested sign size is 30 inches by 30 inches. With the wording to cover approximately 75% of the sign face. The signs and their location to be approved by the Board Engineer.

7. Install a “Trucks, No Right Turn”, or equivalent wording, sign at the site perimeter drive STOP sign to the south of the Decker Road driveway. The sign and location to be approved by the Board Engineer.

8. Install a “Trucks, No Left Turn”, or equivalent wording, sign at the perimeter drive north of the Decker Road driveway. The sign and location to be approved by the Board Engineer.

9. A vertical STOP sign shall be installed on the Decker Road driveway for traffic entering Decker Road.

10. A vertical STOP sign shall be installed at each of the three site exits onto Route 23 North.

11. The “Do Not Enter” sign proposed for Route 23 traffic at the Northern most exit on to Route 23 shall be oriented to be legible from Route 23 before vehicles are committed to the incorrect turn.

12. Light shields shall be added to site luminaries as may be required by the Board Engineer for up to one (1) year post construction.

13. A “No Idling while loading, unloading or standing”, or equivalent wording, sign shall be located at each of the designated site “Loading Areas / Zones”. The signs and location to be approved by the Board Engineer.

14. The Panera Bread Drive-Through Canopy clearance shall not be less than eight (8) feet.

15. The Panera Bread proposed outside seating shall be limited to a maximum of 30 seats.

16. No other outdoor seating is granted for the application site.

17. All audible communication devices shall have the volume level adjusted so as not to be audible beyond the site perimeter.

18. The Wawa building height shall not exceed 33 feet.

19. The Wawa fueling area canopy height shall not exceed 26 feet at its highest point.

20. The Wawa fueling area canopy area size shall not exceed 130 feet by 60 feet.

21. Each of the site trash enclosures shall include a separate container(s) for trash and a separate container(s) for recyclables.

22. Each of the trash enclosures gates shall be securely closed when not in use.

23. Total site parking spaces shall not be less than 170 spaces.

24. Bollards shall be installed in conjunction with vehicle parking abutting the CVS Pharmacy building.

25. Bollards on the site are to be spaced no greater than five (5) feet apart.

26. All parking shall be shared across the site. An agreement shall be in place stating that there will be no restricted parking, excepting the required Handicap Parking, on the site. The agreement shall meet the approval of the Board Attorney.

27. On-site fire hydrant(s) shall be located with the approval of both the appropriate Butler Fire Department official and the Board Engineer.

28. Site landscaping shall be maintained so as to preserve all vehicle site triangles.

29. NJSA Title 39 shall be enforceable on the property of this application.

30. The proposed wall signs for the Anthony Franco business shall not exceed 4 feet in height by 22 feet in length. And the signs shall not extend beyond the top of the attachment wall. If the Southerly awnings are to remain, the lettering shall be removed, not covered over.

31. The applicant agreed to contact the appropriate officials of the State of New Jersey and the County of Morris, requesting a solution to the problem of stacked traffic obstructing the intersection of Kiel Avenue and Decker Road. The applicant will provide information to the Officials in support of this request. Confirmation regarding the completion of this condition will be provided to the Board.

32. At the Route 23 North exits for, both CVS/Wawa and Panera, the Exit radius should be as large as practical to allow for a less abrupt vehicle entry onto Route 23. To be completed to the satisfaction of the Board Engineer.

33. Any initial landscape plantings that die within one year of post construction shall be replaced with like kind during the next appropriate planting season.

34. Appropriate shielding / screening shall be installed on all sides of the buildings’ mechanical rooftop equipment so as to minimize the off-site noise disturbance of said equipment. To be completed to the satisfaction of the Board Engineer.

35. The Decker Road driveway and access was granted during the driveway approval process. That approval did not allow truck access. The approved access shall stay in effect during site construction and post construction, including the restriction of trucks.

36. Post construction: any material, equipment, containers, delivery containers, pallets, trailers, shipping containers or like kind shall be stored in enclosed areas only.

37. All other sections of the Borough of Butler Ordinance Chapter 143 shall remain in effect.

38. All formally required items identified in the April 16, 2019 letter to the Board from Darmofalski Engineering Associates shall be completed to the satisfaction of the Board Engineer.

Motion was second by Mr. Donnelly

Chairman Nargiso stated he would like to include a condition no trash/recycling removal prior to 6 AM which would be #39

Mr. Barbarula stated he had a couple of changes

#40 – no outside storage

#36 – be eliminated this site cannot have a trailer, pallets or anything that is listed there because the site has to operate as a continued entity and there should be no storage, there is not area on the site to do that

The testimony has been that this site shall act as one site and variances that were requested, whereas if it was one lot and one site, so there should be a condition that the deeds be merged

* Builder’s agreement will be incorporate and the requirements that are listed here and the requirements of the April 16th letter of Darmofalski Engineering
* Parking agreement should also be approved by the town attorney as well as the board attorney
* No temporary CO’s until the entire site improvements are in
* Mr. Barbarula stated any motion also would have to have that the conditional use variances with deviations and approving the preliminary and final site plan
* Mr. Darmofalski stated another condition that the board may consider regarding soil contamination and if it has been properly remediated and proof of such.
* Trash containers have a locking device

Mr. Donnelly rescinded his second

Mr. Brown rescinded his motion

Mr. Brown reinstated his motion with 45 conditions

Motion: Brown

Second: Donnelly

Board Discussion

Mr. Brown stated he could not recall a motion or a more complex application before this board in the last 25 years. You may ask why there are so many conditions; the answer is to assist people who will be left the task assuring that the site will operate in the matter consistent with the board’s approval and understanding. It would not be prudent from someone to locate the plans and review the plans to identify whether and action is allowed or not, so not to assume All the salient conditions were identified

Voted Ayes: Donnelly, (not happy with Anthony Franco parking, they will lose allot of lunch time construction workers), Brown, Finelli, Grygus, Vath, Nargiso

Voted Nay: Roche

**SP18-74 211 Main Street, LLC**

 **211 Main Street**

 **Block 113 Lot 4**

James LaSala, Esq. representing the applicant

Mr. LaSala gave an overview of previous application

Robert Cigol – Owner – Oath given

Mr. Cigol testified to the following

* Currently running his survey business in the building
* Located in the right hand portion of the building
* Adding an addition over the garage for additional storage, and an employee area
* Future plans are to convert the building into 3 residential units which will be two bedroom apartments per unit
* 1400 to 1500 square feet per unit
* Ingress to each apartment – each apartment will have it separate unit entrance
* Each unit will be independent of the other
* All windows will be replaced in the entire building to emergency exit type windows

Mr. Golden gave the board description of Exhibit A1

Joseph Golden, PP, PE, CFM

Accepted as an expert witness by motion

Mr. Golden stated the applicant proposes adding storage to an existing land surveying office located in the LI/CBD Zone. The LI/CBD bulk requirements provide flexibility with no minimum requirements for lot area, lot frontage, lot width or lot depth. According to the Master Plan, the intent of the LI/CBD zone is to encourage a full mix of commercial/limited industrial or higher density residential land uses to enable the area so designated to redevelop in flexible but controlled fashion.

The property was previously known Kochka insurance Building where James Kochka maintained an insurance business with 2 apartments on the second floor. In October 2002 211 Main Street LLC purchased the property with the intent to operate a professional land surveying business; said business continues today as DMC Associates, Inc. Land Surveyors

In February 2003, DMC received a variance to completely renovate the building into the current land surveyor’s office, eliminating two second floor apartments and an unsightly billboard that once tarnished the site. In October of 2006 DMC received a variance to add the three bay garage that makes up the total composition of the site today. Since 2003 DMC has maintained a successful business in the heart of the LI/CBD district. The building remains as an attractive structure as you travel northerly through the center of the town thereby advancing the goals stated in the 2004 master plan.

Mr. Golden further testified to the following:

* Objective, Existing Development Pattern
* Need for Additional Storage/Parking Variance
* Conversion to a Multifamily Building
* Identify the adverse consequences of granting the variance
* Appropriate conditions to mitigate the adverse consequences
* Balance the public interest in granting the variance versus the adverse impacts, as lessened by the conditions, and determine whether on valance there would be substantial detriment to the public good by granting the variance

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Public portion closed by motion

Mr. Barbarula stated what is before the board is not a site plan it is just for a use variance, the use variance is for 3 apartments as shown of the drawings. Negative and positive criteria has to be considered when weighing a use variance, is recommended if the board looks favorably this use would be approved and they would have to come in every year, the board has the authority under the land use act to grant an extension but the recommendation is to keep it within the 3 year extension of site plans meaning that any approval if gets granted today would expire on 4/18/22 and any request to extend it would have to filed no later than 1/18/22 by a written request and what the applicable application fee would be at that time for a use variance.

Motion to approve as presented by board attorney

Motion: Donnelly

Second: Finelli

Voted Aye: Donnelly, Roche, Finelli, Grygus, Vath, Nargiso

Voted Nay: Brown

Mr. Barbarula stated before the next application, he had indicated that applicant during construction had an issue with a contractor and his office was hired therefore Bagola Peterkin will be sitting in representing the board

Board member Chris Finelli also will be stepping down from this application because he stepped down from the original application which was Bon Dorr, LLC

SP18-75 NDC Associates

 7 Whiteck Avenue

 Block 10.02 Lot 26

Mr. David Dixon – Feeney and Dixon representing the applicant NDC Associates

Mr. Dixon stated this application is for a building that is currently under construction, this was a use variance that was granted approximately 9 years ago. This property has been thru numerous development plans both from townhouses with garages to flats to multi store development, resulting in the approval that was granted that allowed the applicant to install the current building which a multifamily two story structure containing 10 units, 6 units of one bedroom apartments and 4 and 2 bedroom apartments on two floors. The conditions that the board imposed with regard to the grant of the use variance and the allowance of 10 units had mostly to do with the need for what the board believed to be additional parking would have been required for this building, therefore the site was designed to include substantially more parking spaces than what was required under the ordinance. The second condition that was set forth in the resolution was an elimination or at least an attempt to eliminate the extreme retaining walls that were required on the residential side of the building which the board felt was a little to imposing. Substantial retaining walls were put in on the far end of the property in order to accommodate the parking area and by shifting the building slightly to the north eliminate the retaining walls that would have been located on the residential side of the property down Whitect Street.

What is proposed is to take the existing building, make no changes to the site, no changes to the outside of the building at all, no changes to the stairways, no changes to the walkways and wish to install 3 additional one bedroom apartments in the basement of the building in the same footprint that presently exists. The original plans that were presented by Mr. Cutillo show that the basement area was an open area that was the size of the entire footprint and was going to be used for storage and mechanicals and also landlord storage and facility for maintenance. The proposal is to install approximately 2,168 square feet of apartments in the basement of the building, the total footprint is approximately 32,000 square feet, and there will be remaining area for storage and mechanicals.

Oath Given

William J Darmstatter – Professional Engineer and Land Surveyor

Accepted as an expert witness by motion

Mr. Darmstatter testified to the following:

* Prepared the current site plan
* Site plan NDC Associates LLC, original plans were May 10, 2011 and have been revised to 9/12/18
* Prepared original plans back in 2011
* No changes from the original approved plans and the proposed plans
* No changes to the site plan
* Number of parking spaces installed on site – existing 30 spaces, in accordance with the ordinance
* In addition 10 extra spaces
* Description of parking analysis

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Mr. Tonnon, 42 Kiel Avenue

Questions regarding the increase in apartments

John Panico – Kiel Ave

Questions regarding retaining walls on the residential side of the property

Patricia King – 42 Kiel Avenue

Since there is a lack of professionals present at this hearing, and does not want this to be a waste of her time

Public portion closed by motion

Motion to carry this application of the May 16, 2019 meeting

Motion: Brown

Second: Donnelly

All Ayes

Application carried to May 16 2019 without further notice being required.

**APPROVAL OF VOUCHERS**

Motion to approve vouchers as presented

Motion: Donnelly

Second: Vath

Voted Aye: Donnelly, Roche, Brown, Finelli, Grygus, Vath, Nargiso

Voted Nay: None

**APPROVAL OF MINUTES** – March 14, & 21, 2019

Motion: Donnelly

Second: Brown

Voted Aye: Donnelly, Roche, Brown, Finelli, Grygus, Vath, Nargiso

Voted Nay: None

Chairman Nargiso stated there will be a workshop in May which will be May 9, 2019 at the Zoning Officer request.

Motion to Adjourn:

Motion: Brown

Second: Donnelly

All Ayes

Meeting adjourned: 10:15 PM

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 Chairman – Planning Board

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

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