

FREEHOLD BOROUGH PLANNING BOARD

MINUTES OF OCTOBER 28, 2020

MONTHLY MEETING

The monthly meeting of the Freehold Borough Planning Board was held on Wednesday, October 28th at 7:00 p.m. remotely in accordance with the New Jersey State Emergency Declaration.

Chairman Barricelli stated that this meeting was provided in accordance with the Open Public Meeting Act, by providing a copy of the agenda to the official newspaper and posting same on the official bulletin board of the Municipal Building.

ROLL CALL

PRESENT	Mr. William Barricelli
PRESENT	Mr. Paul Ceppi
PRESENT	Mr. Michael McCabe
PRESENT	Mr. Michael Wildermuth
PRESENT	Mr. Garry Jackson
PRESENT	Ms. Shealyn M.S. Crombie
PRESENT	Ms. Caridad Argote-Freyre
PRESENT	Councilwoman Margaret Rogers
ABSENT	Ms. Brianne Kozlowski

Mr. Barricelli read Item No. 3 on the Agenda as follows:

Approval of Minutes from Planning Board Meeting September 23, 2020

Mr. Wildermuth made a motion to approve the minutes, Councilwoman Rogers seconded.

Yes	7	Barricelli, Ceppi, Wildermuth, Jackson, Councilwoman Rogers, Crombie and Argote-Freyre
No	0	
Abstain	1	McCabe
Absent	1	Kozlowski

Mr. Barricelli read Item No. 4 on the Agenda as follows:

Memorialize Resolution for Applicant Ronko Developers Application PB-BV-2020-004, Bulk Variance Relief, Bond Street, Block 58, Lot 26.

Councilwoman Rogers made a motion to approve the resolution, Ms. Crombie seconded.

Yes	7	Barricelli, Ceppi, Wildermuth, Jackson, Councilwoman Rogers, Crombie and Argote-Freyre
No	0	
Abstain	1	McCabe
Absent	1	Kozlowski

Added prior to the meeting by Ronald D. Cucchiaro, Esq. – Planning Board Attorney

Memorialize Resolution Establishing Standard Protocols for Remote Public Meetings Held during a Governor-Declared Emergency

Department of Community Affairs recently adopted protocol of conduct of remote meetings, it governs the conduct of live meetings; the open public meetings act amended recently, legislature of the Governor explicitly stated, that remote meetings were permissible; what it did do was open up the ability for the director of the Division of Local Government to adopt protocol, governing the conduct of these meetings; that has now been done adopted as emergency regulations and became effective immediately; they have been submitted for permanent adoption and they have been published in the New Jersey Register with the emergency regulations and went into effect immediately and are in effect essentially tonight; what the emergency regulations require is the adoption of resolution of protocol and the Boards weren't really given flexibility; the protocol came out of the regulations; not only did it not call for protocol for remote meetings but further has regulations with regard how to conduct live meetings during the Corona Virus and Governor declared emergency's; for instance, when a Board ran out of room, in the meeting room, based upon social distancing, a cap on the number of permitted people; so in order to proceed tonight, we need to adopt the resolution that I sent out, that adopts the protocols; this is not something I made up, they came right out of the regulations; if we can do before Councilwoman Rogers steps down we can jurisdiction to hear the application tonight;

Mr. Barricelli – any Board members have questions;

Mr. Wildermuth – once we pass, is this the protocol by which this meeting will run;

Mr. Cucchiaro – yes

Mr. Wildermuth - #11, says we need to announce the muting function at the beginning of the meeting – just want to get that across;

Mr. Barricelli – item 1, we have a business administrator, not a city manager; can you more fully explain #2;

Mr. Cucchiaro – I can amend #1; #2, we are governed essentially by these executive orders as they come out and sometimes have formulas as to how many people can be in a room; most recent is 25% capacity or 25 people, whichever is less; that is saying if you get a meeting, with a lot of public interest and we exceed the room capacity people are not permitted to be in the room, that rule will now kick in.

Mr. Barricelli – so we would not know until the meeting; from a practical point of view what do you do; you come to the meeting and your over capacity;

Mr. Cucchiaro – it is an awkward way to conduct business, you won't know and if you show up, it could be that you can't hold the meeting; there are some applications that you will absolutely know if there is public interest and you will hold the meeting remotely or seek to hold in a larger space, high school gymnasium; or there are instances where you get surprised and it will be frustrating because you'll have to cancel; that is verbatim, this is not something I put together, verbatim and required we adopt.

Mr. Barricelli – motion to adopt the meeting protocol;

Mr. McCabe made a motion to approve the resolution, Ms. Argote-Freyre seconded.

Yes	8	Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Councilwoman Rogers, Crombie and Argot-Freyre
No	0	
Abstain	0	
Absent	1	Kozlowski

Mr. Cucchiaro – before we start, Dominica please read paragraph #11 into the record, so it is part of the minutes also;

Ms. Napolitano – reads paragraph 11 and 12 from the resolution;

11. The public comment protocol and muting function shall be announced at the beginning of the remote meeting.
12. The Board Chair may direct that a member of the public that becomes disruptive may be muted and warned that continued disruption may result in their being prevented from speaking or removal from the remote public meeting. Disruptive conduct includes sustained inappropriate behaviors such as, but not necessarily limited to, shouting, interruptions, use of profanity and refusing to comply with the directions of the Board Chair.

Mr. Cucchiaro – you may proceed;

Mr. Barricelli – Councilwoman Rogers is stepping down;

Mr. Cucchiaro – you do not need to disconnect, you may listen, it will be reflected in the minutes that you are not an eligible member of the body because of a Use Variance application but you may watch as a member of the public;

Councilwoman Rogers – thank you

Mr. Barricelli – reviewed how the meeting will flow;

Mr. Barricelli read Item No. 6 on the Agenda as follows:

Application Number: PB-UV-2020-005
 Applicant: Broadway Family Health Care / 13 Broadway Realty LLC
 Location: 13 Broadway - Block 42 Lots 10 - Zone: B-1
 Request: Use Variance & Preliminary and Final Site Plan

Vincent E. Halleran Jr., Esq –representing applicant, 13 Broadway Realty LLC / Broadway Family Health Care;

Mr. Cucchiaro – I have reviewed public notice, Board has jurisdiction;

Mr. Halleran – I will produce 2 witness, principals, Daniel Vayesberg and Mark Vayesberg (son and father); Jim Higgins, Planner; Rob Sive, Engineer; and Greg Clark, Architect – former tenant of the building as well;

Mr. Halleran – rather than try to describe the use, cutting edge, I call Mark Vaysberg;

Mr. Cucchiaro – swear in Mark Vaysberg;

Mark Vaysberg – I am one of the owners of 13 Broadway; live in Old Bridge for 23 years with my wife; our company has locations in Middlesex and Monmouth counties, we have a good presence in Freehold Borough; we have seven (7) buildings in total; we are familiar with Freehold Borough and have good relationship; also we have a management and maintenance company which allows us to run a better business; we are not strangers to medical field; I have engineering degree in design medical devices; my son has worked in medical field also; my son can describe the business in more detail, he will oversee and administrate;

Mr. Cucchiaro – swear in Daniel Vaysberg;

Daniel Vaysberg – I will run operations of building;

Mr. Halleran – we have called this a Residential Health Care Facility, please describe;

Daniel Vaysberg – thank you for hearing us; Rutgers graduation bachelors in Public Health; professional experience worked at Jewish Renaissance Medical Center, federally qualified health center as operations analyst; worked with electronic health system and providers to keep positive work flow; secondary role as grant writer, allow to apply for 3 federal health resources grants; our plan is to create a luxury residential health care facility, excellent addition to Borough; providing 3 meals daily, laundry, housekeeping services, medication supervision and luxury home life; highly trained professional staff ensuring residents are under constant 24/7 supervision with access to wide range of health services and leisurely activities; physical health is priority, we want to make the environment conducive to healthy mental and emotional expression; making a safe and healthy place for the residents to enjoy; facility will be monitored by the NJ Dept. of Community Affairs, annual inspections ensuring physical safety and social well-being; all residents subject to intensive screening to ensure safe environment, criteria for admission will include criminal background check, eviction history check and coordinated assessment check to see emotional and mental compatibility of the resident with our facility;

February 3, 2020 Freehold Borough officially became certified Veteran friendly municipality; my partner and I hold same admiration for Veterans contribution; our facility will be Veteran friendly; we will follow the community vision and revitalization plan and not place an unnecessary burden on the local health care infrastructure; need for this type of service in the area is accurately depicted in the community health needs assessment performed by Centra State in 2016; report found health for seniors and care givers are put on the back burner as they struggle with appointments and transportation; if seniors can't stay at home, health is not as important; this struggle can put an unnecessary burden on local health care system; our facility can provide a home service for residents; we are excited to make a positive difference in the Borough, supporting Veterans and Seniors, creating a one of a kind facility and giving back to the community; we hope the Board can see our vision;

Mr. Barricelli – Board questions;

Mr. Jackson – did you say supervision 24/7; your application reads 4 employees only, 2 at a time, how long are the shifts;

Daniel Vaysberg – 12 hour shifts;

Ms. Argote-Freyre – population seeking is Veterans and senior citizens, correct; also the plans show a/d/a compliant you would also seek handicap;

Daniel Vaysberg – correct, but we don't want to exclude anyone but yes we have a focus on Veterans and seniors for now but no limited to; the first floor would be handicap accessible; we will have ambulatory access but most will move by their own accord;

Mr. Halleran – required by building code, the engineer and architect can discuss further;

Mr. Cucchiaro – it is aspirational to serve Veterans and senior citizens, if you receive several applications, is preference given to specifics or rolling or a regulatory preference for senior citizens and Veterans or just aspirational;

Daniel Vaysberg – we would help the most needed, but yes would like to cater to Veterans and senior citizens;

Mr. Wildermuth – residents in the facility, will they still drive have the ability and keep car on the premises or not able to operate a motor vehicle;

Daniel Vaysberg – it is up to the resident; we don't have restrictions; but also depends on how many spots we have available;

Mr. Jackson – will any staff be live in;

Daniel Vaysberg – one person will be a live-in, others taking shifts;

Mr. Jackson – someone will always be awake and available;

Daniel Vaysberg – correct;

Ms. Crombie – describe what makes an applicant a good fit; and is it short term, long term;

Daniel Vaysberg – preferably long term; depends on the need we see in the area;

Mr. Barricelli – one person living on site, 24/7 where will they stay;

Daniel Vaysberg – additional room for the staff on third floor – attic area being made into a separate bedroom a common area and separate bathroom;

Mr. Barricelli – will doctors visit the facility to treat or have a visit or do the residents leave for appointments; if doctor goes to facility where will they treat residents/patients;

Mark Vaysberg – no intensive visits, they would be offsite at a doctor office; maybe blood pressure minor checks, in their private bedrooms; anything other than that the residents go to the doctor;

Ms. Argote-Freyre – staff working, what are qualifications;

Daniel Vaysberg – licensed nursing in home license, will send exact qualifications; the staff member staying there 24/7 is a licensed administrator by Dept. of Community Affairs;

Mr. Ceppi – regarding the live in staff person – 6 employees, 2, twelve hour shifts, is the live in part of that number or in addition to;

Daniel Vaysberg – live in is part of the number;

Mr. Ceppi – periodic visits to the doctor office, will you provide transportation to and from their physicians;

Daniel Vaysberg – local transportation or we personally provide transportation;

Mr. Barricelli – it was difficult hearing your father, Mark Vaysberg - is this the first health care facility or do you have experience in owning and operating a health care facility or similar facility;

Daniel Vaysberg – I was operations analyst a Jewish Renaissance Medical Center, federally qualified health center in Perth Amboy, NJ; experience in operations; first owned;

Mr. Wentzien – clarification is needed, parking calculations based on Borough ratio, for standard nursing home facilities, takes into account bedrooms and employees that come and go only; we have heard 2 additional items; 1 – now person living on the site; 2 – if no restriction on residents having a vehicle, that can be a moveable number beyond standard number of cares; we need clarification;

What is anticipated by the applicant, true parking need; separate number from the formula used; true average number of spaces needed to serve the facility, given unique circumstance proposed;

Daniel Vaysberg – defer to engineer;

Mr. Baricelli – open to public of Mark or Daniel Vaysberg – owner/applicants

Paul Saker – 633 Ocean View Road, Brielle, NJ - owner of 9 Broadway;

What type of patients will be living there, people with drug problems or mental health; and how many patients staying there;

Daniel Vaysberg – this will not be a substance abuse facility, typically cater to seniors and veterans after careful screening process to ensure a calm / safe environment; there will be up to 8 to 10 residents;

Jean Holtz – 107 Broad Street; residential health care facility required to have a certificate of need application; have you applied to DCA for a license; how will you go about seeking residents; will you accept medicare / medicade or set your rates;

Daniel Vaysberg – they do not, they are overseen by Dept. of Community Affairs - DCA; have not applied, waiting to see if the application is approved before proceeding; we have been in contact with DCA; through referral programs and an organization called a place for mom.org, they do a great job around the community, spoke with a representative, very positive; we are not accepting medicare or medicade and have not set the rates;

Mr. Barricelli – motion to close public comment

Mr. Wildermuth made motion to close public comment; Mr. Jackson seconded;

Yes 8 Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Crombie and Argot-Freyre

No 0

Abstain 0

Absent 1 Kozlowski

Ms. Argote-Freyre – if you plan is to have more luxury housing, if you're not accepting medicare or medicade then it would be more costly than that;

Mr. Vaysberg – I would agree;

Mr. Halleran – next witness – Robert Sive, professional engineer Geller Sive & Co; graduate New Jersey Institute of Technology, licensed engineer State of NJ, over 25 years' experience in engineering; testified before this board as several others throughout New Jersey;

Mr. Sive – back ground of application and going through the engineer report; .37 acres, 2 ½ story structure, previously used as an office building; other improvements, driveway entrance along southerly property line and paved parking area in rear yard area; entrance driveway is shared 12 foot wide with adjacent lot 11 and circulates counter clockwise fashion, starting on tax lot 10, through 11 with exit back to Broadway on southerly side;

Color Ariel exhibit, dated 10.28.2020 submitted – A-1, properties in outlined in red, green arrows show circulation patter; enter one-way driveway, south easterly and exit back out onto Broadway;

Mr. Cucchiaro – they ingress is on subject property but travers the property to the adjoining property and exit through adjoining property;

Mr. Sive – correct; there is an easement agreement to share the driveway in this manner;

Mr. Cucchiaro – was other lot part of this application;

Mr. Halleran – no but I did notice both lots;

Mr. Sive – as part of agreement there is ability for lot 11 to use the angled parking on the southerly side of the property and (5) five parking stalls along rear or westerly line along subject property; that is the description of existing site;

Proposed improvements – utilize existing building for health care facility as described by the applicant; minimal site improvements, installation of handicap ramp along rear of building; provide formal stripped parking layout with ADA parking stall; proposed to replace and repair pavement needed; mill and replace 2in overlay entire parking lot; any fencing in disrepair will be done;

Review report from Abbington dated 10.12.2020

Mr. Cucchiaro – before we do, looking at the application, they are seeking a Use Variance and Final Site Plan, but looking at the Engineering Report and the parking spaces involved, it is a minor site plan, is that correct, Bill;

Mr. Wentzien – correct, if required less than 10 it is a minor site plan;

Mr. Cucchiaro – you are seeking a use variance and minor site plan and encompassing both lots, not just the lot the building is on; there is case law that says if there is an access drive, that traverses another lot, the lot is necessarily part of the application; remind you of that as you proceed;

Rob Sive – page 4 of engineering report – proposing 13 parking stalls, 5 along rear parking line, designated for T&K Contracting, lot next door; leaving 8 parking stalls for proposed facility, 2 for employees as shifts are staggered, 6 for residents, 8 bedrooms, but majority will be seniors and veterans and not necessarily driving; adequate parking for facility;

Mr. Wentzien – suggest, 2 for employees, if the live in has a car it will leave you 5 for residents;

Rob Sive – live in is one of the 2, working; so it should be 6 spaces for residents;
There are angled parking stalls on southerly property line, utilized by T&K, not this site;

Mr. Cucchiaro – Mr Vaysberg testified he would be visiting the site during the week, is that possibly an additional space not available for residents; also assisted living facilities improvement standards have specific parking requirement; does RSIS have anything regarding a residential facility like this;

Mr. Sive – that is possible; I will check RSIS, do not recall specific standards;

Mr. Wentzien – the angled spaces are not part of 13, the angled spaces by agreement are for T&K correct;

Mr. Cucchiaro – in this type of use, is it typical that resident's families would visit, if so where would they park;

Mr. Sive – geared to those not able to live on their own, most likely won't have cars, the 5 or 6 spots is for visitors as well;

Mr. Cucchiaro – do you have knowledge of similar facilities and parking there;

Mr. Sive – I do not;

Mr. Wentzien – the 5 or 6 spots is for the 8 bedrooms and visitors, correct;

Mr. Sive – correct;

Mr. Sive – any fencing or disrepair fencing will be replaced in kind;

Page – 5 signage – no signage currently, if approved we will seek approval;

Page – 6 trash/refuse enclosure and storage, intent of applicant to continue type of refuse storage collection that was previously utilized at site; curb side through trash cans; will update site plan to include location and storage facility of cans; anticipate screened in at north westerly building where proposed stairs are located;

Mr. Wentzien – at rear of building where driveway opens up;

Mr. Sive – in grassed area to the right, east of proposed stairs; loading and deliveries, once operational there are no deliveries anticipated; grocery shopping done for facility with SUV type vehicle, no other specific need of deliveries or loading;

Condition of existing pavement, proposing to repair any areas of pavement in disrepair and mill and replace top 2 inch surface of pavement to bring up to code;

Page 7 – existing tree that is causing lift in sidewalk, we agree to contact Bill Brash, Borough tree expert to get his recommendation of sidewalk repair and what to do with the tree;

Mr. Wentzien – I recommend sidewalk repair, neat clean and safe; also you will need to contact NJDOT, this is a State road;

Mr. Sive – we covered the parking at the bottom of 7;

Mr. Wentzien – just looking for one way signage that delineates the one way flow;

Mr. Sive – we can add; Page 8 - Parking – we agree to bumper stops;

Mr. Wentzien – to make the board aware, this is acceptable; curbing in this situation will not offer anything with flow or drainage; so the bumper stops area acceptable; if you look ahead at page 11, talks about design waivers, the board will need to grant;

Mr. Sive Page 9 – drainage, we'll handle the stormwater flow; sanitary sewer;

Mr. Wentzien – there is zero increase in additional areas impermeable;

Mr. Sive – utilize existing sanitary sewer that serves existing building; it has more than enough capacity to serve the proposed use; water line, existing is enough for proposed use; landscaping, we will update, check tree on Broadway with tree expert and four trees in rear all proposed to remain; applicant will enhance landscape, ground cover;

Page 10 – lighting, there is existing lighting but we will put together a plan for approval to provide adequate updated lighting;

Mr. Wentzien – provide full lighting plan, this is residential facility and cover access ramp;

Mr. Cucchiaro – Mr. Chair, they are not coming back to the board if they get an approval tonight, aside from saying adequate, can you give detail, intensity, spillage;

Mr. Sive – on submitted site plan there are 2 lights, need updating with something similar in location with current technology, LED lights and house shields, directing light and maintain spillage; also maybe a building mounted light and 1 or 2 pole mounted lights at low height in same location on site plan; Page 10 – will provide details; Page 11 – site plan check list, add trees and other items addressed in letter; 2 waivers are existing conditions, parking pavement, less than 8 feet to side yard, curbing and sideguard;

Mr. Wentzien – requirement for parking set back of 8 feet, and against lot 9, zero; also 3 outside agencies you will need to comply;

Mr. Sive, that is the report any questions from the Board;

Mr. Barricelli – thank you for agreeing to most suggestions by Borough Engineer; sidewalk, I make the request you replace the entire front sidewalk, could you agree to that;

Mr. Sive – I'm sure applicant will agree;

Mr. McCabe – 7 bathrooms in total, is the building equipped to handle;

Mr. Sive – the architect can answer; but from engineering, both water and sanitary flow based on use and building count;

Mr. Ceppi – what is current or prior use;

Mr. Sive – office building, previously by architect, it is now vacant;

Mr. Cucchiaro – I looked up RSIS, parking requirement for assisted living is .5 per bedroom; you may comply, just look at; also is it one resident per bedroom or multiple;

Mr. Sive – there are 8 bedrooms, 2 bedrooms could handle 2 people should the applicant get a husband and wife looking to stay there;

Ms. Argote-Freyre – is there a walkway for people to walk to the front coming from the rear

Mr. Sive – the main entrance is in the rear; front entrance would be for the residents coming and going leisurely; no walkway proposed;

Mr. Jackson – page 8, #8 address emergency vehicle circulation; and do you know how wide the drive way is;

Mr. Sive – circulate in the same fashion exists today, enter site on driveway of tax lot 10 and circulate through the site and exit back to Broadway from tax lot 11; that is how it currently operates; 12 wide at narrowest point;

Mr. Jackson – maybe the fire official could look at and determine if wide enough;

Mr. Wildermuth – connection with tax lot 11, there is a wide open paved area, behind lot 10, strip where it passes over to 11; why not do something in plans to clean up area; delineating the lot for 10 and curbing or more clearly marking access to adjacent lot;

Mr. Sive – we didn't curb because it would affect the stormwater flow; we could strip or use pavement arrows to better define;

Mr. Wildermuth – there is a light pole there, maybe landscape, it seems to be a big area to leave open;

Mr. Wentzien – the wide of isle is about 24/25, I wouldn't narrow any further, it is at width you need; any grass area along left side of lot 10, abutting lot 11, not at angled parking, you can add landscaping where the grass is growing wild, top end of angled parking spaces

Mr. Sive – we can incorporate as part of the landscape plan;

Mr. Barricelli – open for public questions of Mr. Sive – Engineer;

Jean Holtz – 107 Broad Street; page 12; preconstruction meeting and inspection; if approved and prior to issuance of construction permits, etc, why did the applicant think it was appropriate to begin construction and renovation without pulling permits;

Mr. Sive – I don't think any site improvements were done; they may be renovating the building and pulled permits;

Ms. Holtz – no permits pulled;

Mark Vaysberg – we got a permit from the Borough to demo and enhance the basement of the building; Matthew Young has is aware and has inspected;

Anthony Cammallere 11 Broadway – do we have a copy of the site plan for parking, I have not seen how my trucks will pull out of that parking area; I have 5 spots behind;

Mr. Sive – here is the site plan with the five parking stalls at the rear property line and circulation will continue as it does today;

Mr. Cammallere – my spots are far left and over, 6 spots;

Mr. Sive – I believe you have 5 spots;

Mr. Cucchiaro – this will change the parking calculation;

Mr. Halleran – I have the agreement; it reads five (5) spaces; I located after submitting the application;

Mr. Cammallere – thank you

Mr. Barricelli – any other questions, seeing none – motion to close

Mr. Wildermuth made a motion to close public questions; Mr. McCabe seconded;

Yes 8 Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Crombie and Argot-Freyre

No 0

Abstain 0

Absent 1 Kozlowski

Mr. Cucchiaro – Mr. Chairman, there will need to be a cross access easement for the two properties; is there any expectation or possibility of cars from adjoining property that will enter the subject property or is it a flow that you enter through lot 10 and exit lot 11; and is there a maintenance agreement and who's responsibility it is to maintain;

Mr. Halleran – I do not know but Greg Clark, my next witness, may have knowledge and Mr. Cammallere may have knowledge; the existing agreement on record for 20 years, talks about but not great detail;

Mr. Cucchiaro – it will be subject to review and approval between Bill and myself if existing agreement is adequate for proposed; if the application is approved;

Mr. Cucchiaro – swears in Gregory Clark, Bach & Clark, architects located in Long Valley New Jersey; BA from Pratt Institute, before this board and many others in state of New Jersey;

We are former tenants of first level of current structure for approximately 10 years; very familiar with the building; drawing A-1 dated 7.20.2020, first level plan, proceed from parking lot, with proposed handicap ramp to rear entry of building and stairs; at back door, bathroom and two bedrooms and continue to third bedroom, dining room and reception area and living area; first level, 3 bedrooms, 2 bathrooms;

Second level – drawing A-2, by code we need to means of egress, there are 2 existing set stairs, rear set access bedrooms 4 through 8, five bedrooms on second level and 3 bathrooms; also access to an attic area, code requires 2 stairs, 1 exists and we will add a stair; previous question about accommodations of staff, they will be in attic space; large area yet to be defined, proposed bathroom at front; 3,758 square feet of useable area for the building;

Service, provision of food and care for residents, basement area; original basement had 6'3 head height, Mr. Vaysberg decided regardless of use of property, it would be good idea to lower floor and underpin existing foundation to bring floor down to useable head height; that is the construction observed on site; this basement will be kitchen area, laundry area and another bathroom area used by staff in preparation of meals and laundry services and miscellaneous storage and a mechanical area for air handling;

Exterior of building – exhibit A-3 dated 7.16.2020, submitted for Historic Preservation, how do we mark this in, is it possible, protocol;

Mr. Cucchiaro – protocol adopted by the State requires any exhibits an applicant has be submitted 48 hours prior to the meeting;

Mr. Clark – strike this, I will describe based on plans;

Elevations of the handicap ramp, wood structure using treated wood clad with composite deck material and propose PVC rail system using white PVC, accentuate the trim and remand of the structure; on the third level, a dormer will need to be constructed to accommodate the rear stair; A-2 proposed attic level plan, now there is a simple gable roof, protruding out, in cruciform fashion; we propose an exterior dormer, a structure built into the roof that would accommodate the necessary head height; only 2 exterior changes;

Atheistically, replace damaged siding, paint entire building, replace windows with historically energy efficient windows; water service observed, 4 inch sewer lateral, 1 ¾ inch water line and can accommodate restrooms based on anticipated uses; if a larger water line is needed, we will go to building department and take necessary steps;

Monday, October 26, 2020 HPC (Historical Preservation Commission) meeting; series of recommendations, one of which is paint entire building, we will do; they do not have jurisdiction over color but it will be presented historically accurate color; windows will be replaced in kind; HPC recommended we repair windows if possible but they are beyond repair, not feasible; to maintain an updated uniform historical appearance we need to replace entire range of windows; also there are 2 different periods of windows, original from 1920s and rear addition with newer windows; other recommendation was powder coated aluminum rails rear handicap ramp and stairs; we would prefer to use PVC, feel the that aluminum is not that far ahead of PVC in appearance; think it will be a deminimis situation and have 2 perceptions of what this will look like; we don't see the need to go to aluminum; I ask the Board to consider allowing the use of PVC, it will be white look like aluminum, our suggestion and request; HPC also requested lattice work underneath opening of ramp, paint white or green to match foundation or trim;

Mr. Barricelli – questions from the Board

Mr. Ceppi – live in staff would be in the staff room, in the attic – 3rd floor, not identified as bedroom, living in open common space 24/7 as well as an employee with one other staff member, the kitchen is in the basement, with 2 stairs for egress, is there a need to sprinkler the facility for fire safety and things of that nature;

Mr. Clark – there code be, I will need to do code analysis, with number of bedrooms and persons; code states if we have more than 4 units we have to sprinkler if residential facility; I will check and if it does we will comply, building code compliance matter;

With respect to staff area, I did not put partitions up, it has not been determined where exactly they will stay; the live in will definitely have their own private room, bed and direct access to restroom; looking at A-1, we show an unmanned dumb waiter from the kitchen to the main level; this is near the stair;

Mr. Ceppi – how will the food distribution work for the residents, in their rooms or dining room;

Mr. Clark – in the dining room;

Daniel Vaysberg – we will adhere to all current infections disease and COVID-19 protocol;
If that includes in bedroom or dining room, we will comply, we'll comply with the health department;

Mr. Barricelli – testified by Daniel Vaysberg, 2 rooms could accommodate a couple, can you list the rooms;

Mr. Clark – A-2, proposed 2nd level, bedroom #4, 134 square feet with attached bathroom and walk-in closet and bedroom 6 or one on first floor; the Borough ordinance for rooms requires minimum 120 square feet for 2 occupants; but we need to adhere to code so it would be bedroom #4 and #6;

Mr. Cucchiaro – it was testified that the anticipation of the 2 bedrooms to accommodate multiple residents would be for couples, is that restriction or hope, could it be 2 unrelated people share a room, 2 couples or 4 singles; I defer to the Vaysbergs;

Also overall usage, highly regulated by the state, regarding your design of site, was it influenced by certain requirements that exist for these type of uses;

Mr. Clark – yes, accessibility, handicap spot within certain footage of structure, handicap ramp to main level, only certain rooms need to be accessible by code, which will be first level; other than that, no specific requirements with exception of egress which we are providing 2 means of egress from all floors;

Ms. Argote-Freyre – the 2 larger bedrooms have their own private bathrooms;

Mr. Clark – correct;

Ms. Crombie – clarity on bathrooms and bedroom accessibility; if this is health center for people that need a health center as resident, there are only 5 bathrooms, 8 bedrooms, does that mean they take their toiletries to and from the bathroom; how does this work, how does this provide a great experience;

Mr. Clark – shared bathrooms are shared that is the intent, private bathroom will probably have an elevated fee to occupy; the facility is not quite as intense as nursing home with respect to care, provides more freedom and designed to accommodate client as a more ambulatory need; don't anticipate needing to accommodate wheel chairs, more self-sufficient residents;

Ms. Crombie – the ramp, railings on outside you propose white PVC, not white aluminum; I have white PVC outside and must clean them twice a year, is there a chance to make them black;

Mr. Clark – all trim is white but if Board deems desirable then we would accommodate; from professional design color, white would blend better with existing trim and colors; all efforts will be made to keep maintained, sure to involve power washing;

Mr. Barricelli – open to the public;

Jean Holtz – why is an elevator not required in this facility;

Mr. Clark – we are specifying the tenant types that would be able to accommodate; first level will be handicap accessible level; we have not gotten to code yet, if required we will accommodate, most likely by lift;

Jean Holtz – DCA has certain construction requirements for health care facilities, so all you have presented is in compliance;

Mr. Clark – yes, and if we need to fine tune things we will; do not anticipate major changes;

Jean Holtz – bathrooms all ADA complaint

Mr. Clark – not all; attic is not; all that need to be will comply;

Mr. Ceppi – ADA follow up / if only private baths have ADA, what about others that may need it; why not all ADA compliant;

Mr. Clark – all not ADA compliant because initial intent is to have the main level ADA accessible; if we need to enlarge then we will make compliant; we can adjust;

Mr. Barricelli – any other questions from the public; seeing none; motion to close

Mr. Wildermuth made motion to close public questions; Mr. Ceppi seconded;

Yes	8	Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Crombie and Argot-Freyre
No	0	
Abstain	0	
Absent	1	Kozlowski

Mr. Halleran Jr. – my next witness James W. Higgins

Ron Cucchiaro – swears in James W. Higgins, license planner for over 40 years, State of New Jersey, testified before this board many times and several hundred other boards throughout the state;

Mr. Higgins – use pretty well described; characterize this use as between assisted living and nursing home, closer to assisted living; low intensity use; activity on the site, most will occur in the building; if residents have a car it will be used on limited basis; primarily if they need to be in this type of facility, it is unlikely they will regularly use a car;

Site is 15,954 square foot site, 2.5 story building, parking in rear as earlier described; bordered on south by contractors office, lot 11, sharing access to and from site; immediate north of site, two family and single family structure; single family at rear and across Route 79 there is a park and ELKs Lodge, just north;

Zone B-1 commercial, variety of uses permitted; primarily professional offices, physicians, attorneys, dentist, chiropractors, architects, engineers, also banks funeral homes, photography studios, music, dance, art and higher education are permitted; description of uses goes on to state that uses such as barber shops, beauty parlors and other uses that generate traffic and parking and uses primarily engaged in sale of merchandise are specifically prohibited; it's geared to low intensity uses;

Clearly this use, as proposed is not permitted in the zone, D1 variance is necessary; D1 variance, proofs show general welfare advanced due to particular suitability of the site or use itself is inherently beneficial use; generally accepted to advance general welfare; those types are hospitals, nursing homes, assisted living facilities;

When I look at this use, it's inherently beneficial; residential use for people require specific amount of care and attention; somewhere between a nursing home and assisted living in terms of nature of residents that will occupy the building;

Ron Cucchiaro - Mr. Chairman, before he continues, I did take a look and it is inherently beneficial and a matter of law, this is comparable to the use inherently of an assisted living facility; I do agree with Mr. Higgins that the Board can consider this as inherently beneficial use; the significance is the applicant would presumptively satisfy the positive criteria and essentially be a negative criteria case;

With regard to inherently beneficial, the courts have basically designated there be a four part system of proof which go primarily go toward the negative criteria; big difference with proofs inherently beneficial verse other variances, when the use variance isn't inherently beneficial you have to show the benefits substantial outweigh the detriments; when looking at inherently beneficial use the courts have said the use should be approved unless the detriments substantial out way the benefits; four part test to look at nature of use, potential detriments, what can be done to mitigate the detriments and balancing at end;

Use itself, defiantly is a substantial benefit, licensed by state and geared toward certain element of population that doesn't fit into an assisted living or nursing home and in between; because it is licensed, it gives credence to the fact it is inherently beneficial; I think there is significant benefit to the use itself; first step, establish magnitude of benefit;

Second step – potential negative impact; aesthetics, testimony from architect and engineer, substantial improvements to the building, making more appealing than now; the site will have improvements also; no substantial noise associated with this use, most activity is inside the building; little traffic associate, staff change or medical professional visit or resident use of car; parking is adequate, if this was assisted living, 4 spaces would be adequate and there are 8 spaces for this use; applicant can control if residents have cars; safety, no substantial negative impact, access to site is adequate, drainage will be adequately handled; I don't see any substantial negative impact with regard to safety;

Zoning ordinance – I don't see substantial impact; a site at north end of B-1 zone, commercial uses to south, adjacent to the site, and north you have a two family house, which is the last lot in the B-1 and is non-conforming; this provide a great transition from more intense commercial uses to south and residential to north; building itself, if this use was abandoned it would be adequate for many of the uses permitted in the zoning; so I don't see a substantial negative impact to the zoning plan;

Balancing, there is a substantial benefit to this use and I don't think there are any substantial negative impacts;

Particular suitability, look at site located in ideal situation for use; transitional use of more intense commercial and less intensive residential; layout of site and shared access driveway and parking are ideal for this very low intense use; if this was a physician's office, dentist or dance studio it would be more intense and less suited for the use than this use because of low intensity; building has been describe as ideally suited, can be modified to adequately serve the use proposed; the State Depart of Licensing of site will recognize there is a need for the use in the area and recognize the site and building are adequate for the use; there is a particular suitability for the site; as discussed earlier, the negative impacts, there aren't any negative impacts for this use, if anything some of the impacts will be beneficial to the surrounding properties, low intensity of the use is very well suited for the use; I don't think there is a negative impact, I do think general welfare advance due to particular suitability of the site and the variance can be granted in that regard also;

Mr. Wentzien – request 2 minute break; 9:16pm –
Ron Cucchiaro – technical difficulty - resume 9:36pm

Board questions

Mr. Ceppi – you are aware of recently adopted plans in the Borough; how does this proposed project fall within those plans;

Mr. Higgins – not sure what plans your talking about;

Mr. Ceppi – redevelopment plan, planning document, supported and approved by Council, this Board, Economic development committee, stake holders and curious how this project may or may not fit with desired plan;

Mr. Cucchiaro – the Planning Board adopted amendments to the land use master plan and recommended some areas be declared as areas in need of redevelopment; those are the changes in master plan;

Mr. Higgins – if this is in an area of need of redevelopment this project would be consistent with the intent to upgrade the area and redevelopment the area by improving the site and improving the building and bring more into historical character of this part of the Borough;

Mr. Cucchiaro – Mr. Higgins, go back to the inherently beneficial standard, whether the area is in need of redevelopment or not, changes to recommendations as inherently beneficial, the law considers it to be particular suitable for this site;

Mr. Higgins – correct;

Ms. Argote-Freyre – you stated facility has been licensed by the state, is that accurate or are they in the process of getting license;

Mr. Higgins – will be licensed by the state, if I said is, I miss spoke; Will be a licensed facility and should be a condition of approval;

Mr. Barricelli – questions from the public; seeing none, motion to close public portion of questions;

Mr. Wildermuth made a motion to close public portion; Mr. McCabe seconded;

Yes	8	Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Crombie and Argot-Freyre
No	0	
Abstain	0	
Absent	1	Kozlowski

Mr. Barricelli – before board deliberations, we open for public comments regarding this application;

Ron Cucchiaro – swear in Jean Holtz –

I am extremely disappointed in the answer from the planner to Mr. Ceppi; as someone who has been involved in Freehold's planning and redevelopment and economic advancement for many years, I can't believe you don't know we have a center core rehabilitation plan, that was based on a community driven visioning plan; very succinctly how we as a community feel about redevelopment and new businesses in our down town and neighborhoods; I appreciate the applicant will rehabilitate the property, I don't think it is consistent with our plan; a use variance is and should be difficult to obtain, providing unique opportunities consistent with our vision and rehab plan; that is why we have zoning; I do not believe this application fits the area; not structurally ideal for people physically challenged; limited personal and public spaces; the applicant purchased the property knowing a the residential health care facility is not a permitted use; it can be adapted to a conforming use and has been in the past; I have concerns of the unanswered questions, basic things they did not think about as noted in Bill Wentziens' report; we don't know the residents, will they be ambulatory, high traffic roadway, not a residential zone, it is a commercial zone; I fear the request is profit verses best use; average rates for residential health care in this type of facility are about \$2,000.00 per month, usually paid by Medicare or Medicaid, about \$240,000.00 per year versus \$25.00 per square foot for office space; we want business in the downtown, appreciate the applicants good intentions but this is their first ownership in the health care business, lack experience and qualifications for successful operation; I don't think the use variance should be granted for unproven project without experience; not an appropriate location for this facility and urge you to deny the application;

Ron Cucchiaro – swear in Anthony Cammallere –

I owner of T& K Contractors in Borough for 21 years; my concern is that my trucks are 14 footers, safety, pulling in and out and what will it do to the town with cars pulling in and out, my vehicles pulling in and out; what will this do to me pulling into my side spots and mainly safety;

Mr. Barricelli – any other members of public; seeing none, motion to close public comments

Mr. Wildermuth made a motion to close public comments; Mr. McCabe seconded;

Yes	8	Barricelli, Ceppi, McCabe, Wildermuth, Jackson, Crombie and Argot-Freyre
No	0	

Abstain 0
Absent 1 Kozlowski

Mr. Barricelli – the Board will now begin deliberations;

Mr. Cucchiaro – before the Board starts I would like to frame the issues;

1. I agree with the applicants planner, this is an inherently beneficial use; this is not personal, there is case law on this – J Barre Associates and others; while in typical use variance context we would except testimony that a site is particularly suitable, not the case for inherently beneficial use, the law in New Jersey is if it is inherently beneficial any site, regardless of zoning is suitable; does not have to be unique, doesn't have to be distinguishable; the use generates the fact that it should go anywhere because of beneficial nature; the Board should not look if site is particularly suitable or not; as matter of law it is; issues about negative criteria, they are on the table; looking at the impact of master plan, impact on ordinances, is there substantial detriment, safety; inherently beneficial, the use if you find is some significant negative impact, inherently beneficial use requires the Board try to balance and see they can mitigate those negative impacts to find your way to an approval; process is much different for inherently beneficial use than non-inherently beneficial use; I would also say, if the Board feels they need additional information, you may ask the applicant to come back, give more about master plan, internal circulation, or how the site works you are entitled to that information; the applicant has testified to the type of resident they prefer to have, it is not a guarantee; aspiration in goal but can't make a decision on that; also doesn't matter if they purchased the property, you either satisfy the criteria or you don't; that is their risk, not the Boards; I would strongly counsel the Board not to take into account the type of person living there, physical characteristics or identity of residents who might be there, it has constitutional implications and not issue for the Board to base decision upon; that is the basic context we are within, you have questions I can answer;

Mr. Wildermuth – I'm inclined to be in favor for the following reasons;

1. project is inherently beneficial for general welfare
2. seems to be low intensity, I don't see dramatic increase of usage of property from office it was to proposed;
3. agree with planner, he phrased as transitional usage, B-1 zone, but abuts and R-4 and R-5, two family home next door; having residential facility like this, is a transitional type set up, the applicant has been forth coming and amicable to working with the Board; lighting and landscaping; also note that this property is outside the Freehold Center Core Redevelopment boundary; the comments made early regarding the plan doesn't apply to this property; also comment made about HPC, the PVC versus powdered aluminum railings, the ramp is in the rear of property, I would not be opposed to PVC instead of powdered aluminum;

Last item, tree on property, it is suggested by Bill Wentzien that Bill Brash, tree expert and DOT look at, if tree is healthy and is only pulling up sidewalk, I hope we would look at sidewalk shaving, bridging, meandering instead of what I see a lot of in our town; healthy tree, pulling sidewalk and we cut it down; I would be really opposed to that; because of those reasons I am going to support this application;

Garry Jackson – I have concerns, my own experience with residential health care facilities in Freehold, 1 issue, staffing levels, in testimony it was stated at least one person will be on duty and awake at all times, separate from the live in, if the Board was to be in favor of the application that should be a requirement; a number of times go to some of these facilities for fire calls or someone dialed 911 at 3:00am and you arrive and there is no staff on duty; there is a negative impact sometimes on the services in town; should be conditions put into an approval to minimize that happening;

Ron Cucchiaro – Mr. Chair, that can absolutely be a condition, if positive outcome tonight;

Mr. Ceppi – concerns, although outside the Freehold Center Core, there is still continuity to be had in a small town; we won't put entire town under redevelopment plan but intent to have consistency across the Borough; I share some of Garry's concerns about full time 24/7 staff person, how it works into the residency, it is not disclosed; some public comments of the inherent use and what appears to be an inexperienced operator at facility that doesn't have approvals yet and other items missing regarding planning and moving forward; full supportive of companies looking to invest in facility, I know not the purpose of this conversation, but I anticipate the owner will invest in the property regardless for their own benefit; I do have concerns;

Mr. McCabe – I have the same concerns as Paul and Garry regarding the 24 hour live in; I think I am voting no on this because of those concerns;

Ms. Crombie – I am torn, I see the positives, inherently beneficial having the residential place; but I am not feeling settled with the negative criteria; the intent and purpose, I feel lack of clarity, I'm going back and forth;

Ms. Argote-Freyre – I agree with Shealyn; it does seem it will be an improvement; improvements are a positive but I have concerns how it will all be developed and run; still grey areas, I would like more information; it is not licensed yet; I don't think I can support today;

Ms. Crombie – I also agree with Mr. Wildermuth regarding the tree;

Mr. Cucchiaro – Mr. Chair, before Board continues, Mr. Halleran do you want to ask the application to be carried and supplement your testimony for a future hearing; obviously open to cross examination from public and provide testimony; hearing some of the comments at the end, to you want to proceed to a vote or prefer to come back and address what appears to be some open issues;

Mr. Barricelli – I agree with a lot of the comments of my colleagues and think there are good points, the fact the owners are willing to work with us; I think there are some major concerns and think we can through our suggestions, not tonight, can make this a better application;

Mr. Halleran – I am ok with that; but it has been referenced about not being licensed yet, there is no deal if it doesn't get licensed. The condition will be to get licensed so if no licensed it won't happen; you also talk about the inexperience of the applicant, you didn't listen carefully; the applicant is very experienced in this field; Jean Holtz saying no but who are you, your such an expert, you don't even know this is not in the redevelopment area; I have no problem coming back;

Mr. Cucchiaro – we can address more properly at next hearing; every application we approve is subject to pending outside agency approvals, County Planning Board, Freehold Soil, DOT, DCA, DEP and others;

The Board has a pretty open schedule, how much time do you need to come back; the next meeting date is November 10, 2020 (Tuesday) the 11th is Veterans Day;

Mr. Halleran – confers with his clients; not sure what more information they are seeking; we won't have our licensing;

Mr. Cucchiaro – no you certainly will not have licensing; but other issues you can work with the Boards professionals to address and other things you can address; you can provide more information on what the process is and what is involved; organize and present and discuss with Bill and I, if anything that is particularly important; are you available on that day;

Mr. Cucchiaro – Mr. Chair we will carry the application;

Mr. Barricelli – yes

Mr. Cucchiaro – Mr. Halleran any exhibits submit at least 48 hours in advance and we can make part of the record as well;

The application for Broadway Family Health Care, Application PB-UV-2020-005 will be carried to the Boards next meeting Tuesday, November 10, 2020 at 7:00pm; all documents will be on file in the municipal building also available 10 days prior;

Will the next meeting be live or remote;

Councilwoman Rogers rejoined the meeting;

Mr. Barricelli – I requested we discuss going back live, reached out to other Planning Boards, only one had in person; not sure if layout is sufficient, Dominica can you advise;

Dominica Napolitano – I looked at setup and each person would be able to sit 6 feet apart, Ron and Bill could be separated but near each other if needed to converse; the room holds 100 but we would only be able to hold 25; not sure if people would come or if dialing in is easier, it may be possible to do in person;

Councilwoman Rogers – I agree, we have had our meetings in person, I do understand Planning Board is larger but the setup is available;

Mr. Ceppi – there are 20 people on the call now, if 5 more people we are done; one comment in resolution earlier, if foresee potential problem, if contested I imagine word could spread, I envision there may be more people that want to discuss, we might be beyond capacity; to have to cancel because we are beyond capacity seems to be disingenuous;

Ms. Crombie – I agree with Paul, and Brianne will be back that is one more person;

Mr. Wildermuth – can we meet in person and some remotely;

Councilwoman Rogers – we found it created a new set of issues; I would say no;

Mr. Cucchiaro – we have tried in other towns and same difficulties;

Mr. Barricelli – it sounds like the Board thinks we should do remote for the foreseeable future;

Mr. Cucchiaro - The application for Broadway Family Health Care, Application PB-UV-2020-005 will be carried to the Boards next meeting Tuesday, November 10, 2020 at 7:00pm which will be a remote meeting all documents will be on the towns website for review; additional document submitted 48 hours in advance; no further notice to property owners;

Mr. Barricelli – Councilwoman Rogers anything from Council

Ms. Rogers – Moving forward with the acquisition of the Court Street School and Mechanic Street, the location of new Borough Hall; thank you;

Mr. Barricelli – Ron anything else;

Mr. Cucchiaro – no Mr. Chairman

Mr. Barricelli – motion to adjourn;

Mr. Wildermuth made a motion to adjourn; seconded by Mr. McCabe;

All in favor; Aye (all) – Nay (none)

Mr. Barricelli – thank you all for coming tonight.

Meeting adjourned at 10:20 PM.

Respectfully submitted,

Dominica R. Napolitano