City of Estell Manor Planning & Zoning

Meeting Minutes

December 20, 2023

The regular meeting of the Estell Manor Planning & Zoning Board was held at the City Hall, 148 Cumberland Avenue, Estell Manor, New Jersey. The Chairman advised the meeting is in compliance with the Open Public Meeting Act of the State of New Jersey. The meeting was called to order at 7 p.m.

**FLAG SALUTE AND MOMENT OF SILENCE**

**ROLL CALL:**

Present: Jeanne Olsen, Dennis Miller, Samantha Ambrose, Joseph Condo was present but did not participate in the meeting due to a conflict, Carolyn Wigglesworth, Elizabeth Owen and Chairman Stephen Teasenfitz.

Absent: Aaron Buchanan, Christine Masker, Karen Mesler, Monty Holt.

Also in attendance were Wayne Caregnato, Zoning Official, Chase Farabella, Code Enforcement Officer and Richard Carlucci, Board Solicitor.

David Scheidegg was not present.

**APPROVAL OF THE SEPTEMBER 27, 2023 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Miller seconded by Ms. Wigglesworth, and approved.

**APPLICATION**

1. 170 ROUTE 50, LLC – BLOCK 43.05 LOT 20 – CASE 3-2023

Keith Davis, Esquire, represented the applicant. Mayor Owen stepped down during discussion and voting on this application due to the use variance that was previously approved by the board.

Solicitor Carlucci stated that following the presentation by Mr. Davis two votes will be taken. The first vote will include all the board members with the exception of the mayor sine a D variance was originally approved. The second vote will be the members that voted on the original application. The second vote will be treated the same as a memorializing resolution where only one vote is actually needed to memorialize a resolution. Mr. Miller and Ms. Wigglesworth are the only board members that can participate on the second vote. He is trying to cover all basis since we are shorthanded. Only five board members voted on the original application and only 2 are here tonight and one is no longer a board member. He is trying to avoid board members having to listen to the recorded proceeding from November 2022.

Mr. Teasenfitz stated the board engineer has submitted a letter, dated December 18, 2023 stating that from an engineering and planning prospective he has no issues with the requested modification to Resolution 7-2022, provided all other conditions of approval remain in full force and effect. He also indicates he has no objection to granting the requested extension of time.

Mr. Davis stated the applicant previously received approval for a use variance and site plan to allow a residential substance abuse facility. The use variance will not be changed since the facility was approved for 44 beds and will remain 44 beds. They are only here due to government bureaucracy. The applicant has identified an operator to operate the proposed facility. Licensure is required from the NJ Department of Health in Trenton. The Department of Health has requested a resolution be adopted to confirm the use in question is a sub-acute residential detoxification and short-term residential substance abuse treatment facility since this is the terminology used in their licensure regulations. He has explained to them that he deals in land use and he feels residential substance abuse treatment facilities are much broader than the terminology they want to use and reached out to Mr. Carlucci. Mr. Carlucci wrote a letter as the board solicitor, dated August 31, 2023, confirming that the use variance approval obtained by 170 Route 50, LLC allows for a sub-acute residential detoxification and short-term residential substance abuse treatment facility. However, the correspondence did not satisfy them and they have requested a resolution be adopted.

Mr. Davis stated the second request is that the applicant previously stipulated there would be no visitors coming to the proposed facility and the parking would be utilized only by the staff. The residents would not have vehicles. According to the Department of Health this restriction violates the Federal Americans with Disabilities Act and violates their own state regulations for the licensure of these types of facilities. They are saying this provision is unlawful and they are requesting a resolution specifying there is no such prohibition. After speaking to the board secretary, it was uncertain as to whether or not there would be a quorum for the meeting tonight, therefore he told the owner not to come from New Hampshire. It is their opinion there will not be visitors coming to the site. Because they have a new operator and because of the delays involved in dealing with the Department of Health they are asking for an additional one-year extension to allow more time to get thru the licensure process.

Tiffany Morrisey, Licensed Planner, was sworn. Mrs. Morrisey was previously qualified as an expert. She concurs with the summary by Mr. Davis. She agrees the original application involved a use variance that was approved by the board and this approval remains valid. She believes that clarifying the terminology involving visitation would not substantially disrupt the use variance that was granted. She feels the positive and negative criteria would remain the same. She finds the one-year extension is appropriate due to the delays such as having the wording right in the resolution and gives the ability to finalize the approvals.

Mr. Teasenfitz asked if the one-year extension is really needed or if everything could be done sooner. Mr. Davis stated that everything could be done sooner but they would have to come back to the board again if they run out of time. Their goal is to get it all done within 2 years.

Ms. Wigglesworth asked if the number of visitors is limited or if the board could set days and times for visitors. She feels visitation should be limited due to the number of parking spaces on site and to avoid the safety hazard of having to park on Route 50.

Solicitor Carlucci stated the language is that patients are allowed visiting time at reasonable hours in accordance with the client treatment plan. Mr. Davis stated that each plan varies based upon the resident. There will not be any critically ill patients. The purpose is to rehabilitate and treat people that suffer from addiction so they can mainstream back into society. Mr. Davis asked that it not be stipulated to just 9 spaces since there could be reduced shifts on some occasions that would open up additional parking spaces for visitor.

Solicitor Carlucci stated that he does not want the applicant to have to come back to the board again because of miswording on the resolution. He suggested adding visitation is allowed pursuant to New Jersey Administrative Code and Mr. Davis agreed. Mrs. Morrisey stated her notes state there will be 16 staff per shift. Mr. Davis believes that treatment plans are done by the staff. He suggested adding that visitors must register in advance to ensure there is adequate parking.

The motion to open the meeting to the public was made by Mrs. Olsen, seconded by Ms. Wigglesworth, and approved.

Kathy Giercyk, 163 Kentucky Avenue, was sworn. She asked if the patients are allowed to leave the facility or to go outside for a walk. Mr. Davis stated the patients are most likely allowed to go outside but not allowed to leave the property unless they formally check out and someone comes to get them. If they do leave the property they would be in violation of the procedures and they can be removed from the program.

Nelson Dilg, 160 Fifth Avenue, commented that after the application was approved the property was listed for sale. He asked if a new operator meant a new owner. Mr. Davis stated there is a new operator who will purchase the facility and operate the same as approved. The new operator will adhere to all the requirements contained in the approved resolution. The sale is lawful since the approvals run with the property and not the applicant. Mr. Davis suggested adjourning the hearing so the new operator could be present. Mr. Dilg was sworn in at this time. He discussed the number of parking spaces and urged the board to have the engineer determine if the parking is adequate. He feels since there are 44 beds there would be more visitors than there are parking spaces. It bothers him that the property was listed for 3 million dollars more than the applicant paid to purchase the property and that the applicant immediately listed the property after receiving approvals.

Joseph Condo, 83 Maple Avenue, was sworn. Mr. Condo stated the subject property abuts his property. He is not opposed to the application. He feels the applicant has not shown any willingness in being a good neighbor. The only contact he has had with the applicant is a letter in the mail for a meeting being held the Wednesday before Thanksgiving followed by why don’t you show up the Wednesday before Christmas. He stated that no matter who owns the property the question is whether or not to allow visitors. His concern is that no one knows what happens when you start bringing people to a facility surrounded by woods. He is the owner of 90 acres adjoining this property. If he finds any type of trash on his property he will exert the same rights as the applicant seems to think he is entitled to. He does not expect any one to trespass on his property or violate the property maintenance code in any way without being held accountable. The new owner must respect the neighbors rights the same as they want their rights respected. He closed by saying he does not oppose the application in any way. He has no concerns about the use of the facility or the idea that they will allow visitors.

A motion to close the public portion was made by Mrs. Olsen, seconded by Mr. Miller, and approved.

Mrs. Olsen agrees with Mr. Condo that being a good neighbor is important as this is an unusual facility in our neighborhood. People are used to peace and quite and their privacy. She hopes the good neighbor policy will stand.

Mr. Davis stated that he will take all the comments from this meeting and relay them to his client. He further stated the board engineer wrote a report and states the applicant’s attorney makes a compelling argument in his letter of October 20, 2023 that visitation will be a rare occurrence and total prohibition of visitors violates the Federal Americans with Disabilities Act he further states that from an engineer and planning prospective he has no issue with the requested modifications to resolution 7-2022 provided all other conditions of approval remain in full force and effect. Mr. Davis stated this is not an application for a use variance since the use variance has already been granted. He stated there were two options, coming before the board or going to court where he is positive, they would have prevailed.

Chairman Teasenfitz suggested handling each request separately.

Solicitor Carlucci stated the first issue to be voted upon is the changing of the terminology in Resolution 7-2022. The language will be changed from residential substance abuse treatment facility to sub-acute residential detoxification and short-term residential substance abuse treatment facility.

Mrs. Ambrose asked what sub-acute means in medical terminology. Solicitor Carlucci replied that in his opinion acute facility would mean people with immediate issues that might die from an overdose which would be acute care. Sub-acute would be a lesser stage of care that would not involve critical care. Mr. Davis stated that it is not intensive like an emergency room where there is life saving treatment being provided. It is a combination of counseling and medicine being administered to assist with addiction. It is between chronic and acute care. Mrs. Morrisey concurs. Mrs. Olsen read aloud a difference between sub-acute care and acute care from **Google**. Mr. Miller described an experience with sub-acute care with a family member. He would say acute would be if you are hospitalized. Sub-acute would be where you go to get constant care when released from a hospital.

A motion to change the language was made by Mr. Miller and seconded by Mrs. Olsen. In favor: Ambrose, Miller, Olsen, Wigglesworth, Teasenfitz.

The next vote is limited to those present at the November 22, 2022 meeting. A motion to change the language was made by Mr. Miller and seconded by Ms. Wigglesworth. In favor: Miller, Wigglesworth.

Solicitor Carlucci stated Resolution 7-2022 does not allow any visitors at the facility. In compliance with the New Jersey Administrative Code Regulation, we are now going to allow visitors as long as the visitors are consistent with resident’s treatment plan. The change will be that visitors are allowed at reasonable hours in accordance with the client treatment plan and if critically ill will be allowed visits from his or her family or legally authorized representative at any time unless medically contradicted and documented by physicians’ clients medical record. Mr. Davis suggested to excise the restriction on the prohibition on visitor parking so that it is permitted in a manner that is consistent with the state and federal law and will not disrupt the parking requirements on site.

Mr. Caregnato expressed concerns about the parking. He stated there must be parking spaces dedicated on site for 16 employees without assuming that maybe employees will not be at work one day and therefore their space can be used for visitors. Only 9 spaces can be dedicated for visitors.

Mr. Davis suggested to specify no more than 8 parking spaces to be regulated by the operator so that no more than 8 vehicles are coming to the site at the same time.

A motion was made by Mrs. Olsen and seconded by Ms. Wigglesworth to remove the language preventing visitation and amend it to allow visitation per the medical plan with the understanding that the operator must utilize the limitation of no more than 8 vehicles. In favor: Ambrose, Olsen, Miller, Wigglesworth, Teasenfitz.

The same motion as above was made by Mr. Miller and seconded by Ms. Wigglesworth. In favor: Miller, Wigglesworth.

A motion was made by Mr. Miller and seconded by Mrs. Olsen to permit an additional one-year extension of approval to allow the variance to be valid until December 2025. In favor: Ambrose, Miller, Olsen, Wigglesworth, Teasenfitz.

The same motion as above was made by Mr. Miller and seconded by Ms. Wigglesworth. In favor: Miller, Wigglesworth.

**PUBLIC PORTION**

A motion to open the meeting to the public was made by Ms. Wigglesworth, seconded by Mr. Miller, and approved.

A motion to close the public portion was made by Mrs. Olsen, seconded by Ms. Wigglesworth, and approved.

**REPORT BY WAYNE CAREGNATO – ZONING OFFICIAL**

The zoning report was sent to the board members. Mr. Caregnato asked if there were any questions. A motion to accept the zoning officers report was made by Ms. Wigglesworth, seconded by Mr. Miller, and approved.

**MEETING DATES 2024**

A motion to accept the meeting dates as modified was made by Mrs. Olsen, seconded by Mr. Miller, and approved.

January 24, February 28, March 27, April 24, May 22, June 26, July 24, August 28, September 25, October 23, November 20, December 18.

**CLOSED SESSION**

 A motion to enter into Executive Session to discuss pending litigation was made by Mr. Miller, seconded by Ms. Wigglesworth, and approved.

**ADJOURNMENT**

The meeting was adjourned at 8:19 p.m.

Submitted by,

Shelley Lea

Planning/Zoning Board Secretary