



ZONING BOARD OF ADJUSTMENT
Thursday, September 19, 2019
APPROVED MINUTES

You couldn't pick a better place.

OPENING: The meeting was called to order by Chairman Jonathan Rardin at 7:30 PM.

PLEDGE OF ALLEGIANCE: Led by Chairman Jonathan Rardin.

OPMA STATEMENT: Read by Chairman Jonathan Rardin in compliance with the Sunshine Law.

ROLL CALL

- **Members in attendance:** Jonathan Rardin; Daniel DiRenzo, Jr.; Wyatt Sklar; Marshall Spevak; Jeff Potter; Nacovin Norman; and Greg Bruno.
- **Professionals in attendance:** Lorissa Luciani, PP, AICP, Director; Natalie Shafiroff, PP, AICP, Supervisor; Jeremy Noll, PE, Zoning Board Engineer; and Cosmas Diamantis, Esq., Zoning Board Solicitor.

ADMINISTRATIVE ITEMS

Adoption Meeting Minutes from September 5, 2019. Mr. Sklar made a motion, which was seconded by Mr. DiRenzo, to adopt the Meeting Minutes from September 5, 2019. Affirmative votes by Rardin, DiRenzo, Sklar, and Bruno. Minutes are approved.

AGENDA ITEMS:

19-Z-0026

S&P Cherry Hill, LLC

Block(s) 470.01 Lot(s) 14, 15, 16 & 18 1900 Route 70 East, Springdale – Rear, and 1803 & 1807 Springdale Road
Zone: Limited Office (O1) Cherry Hill, NJ 08034

Relief Requested: A bifurcated use (d1) variance to permit a 13,111+/- SF CVS Pharmacy, which is classified as retail, in the Limited Office (O1) Zone, where such use is specifically prohibited per §411.D in the O1 Zone.

Applicant's Representatives: Jeffrey Baron, Esq. – Applicant's Attorney; Ahmad Tamous, PE, Engineer; Nathan Mosley, PTOE, PE, Traffic Engineer; Creigh Rahenkamp, PP, AICP; Greg DiBona; John Cogan.

Exhibits Submitted: A-1: Aerial of Site and Surrounding Properties dated June 7, 2019; A-2: Proposed Site Plan; A-3: Architecture Elevations Plan; A-4: ALTA Survey of Property (withdrawn).

Mr. Baron introduced the application and noted that they are currently seeking a use (d) variance to permit a retail pharmacy (CVS) on properties currently zoned Limited Office (O1). He noted that they applicant has chosen to bifurcate the application and apply for preliminary and final major site plan approval should they receive an approval for the use (d) variance. He noted that the current use of the site is a mixture of retail and office. He noted that the existing buildings would be demolished and a new building and parking lot would be constructed.

Mr. Tamous presented Exhibit A-1, Aerial photograph of site and surrounding properties and noted that the site would consolidate 4 existing parcels all zone O1 and consolidate them into one parcel. He noted that to the north and east of the site were existing office uses, to the west was a gas station and to the south was a bank. Mr. Tamous stated that access to the site would be from one access point off of Route 70 where there are currently two and that three existing access points would be consolidated into one access point on Springdale Road, both of which are an improvement over the existing

conditions. Exhibit A-2 was introduced showing the proposed site plan. He again noted the lot consolidations, and the construction of a 13,000 square foot CVS and parking lot that is compliant with all of the Township Zoning Ordinance. Mr. Tamous stated that there would be an overall increase in open space and landscaping. The number of parking spaces totaled 53 where 45 parking spaces are required and while a lighting plan was not yet prepared they planned to light the site with wall pack lights on the building and light poles in the parking lot that would also be compliant with the Township zoning ordinance. Mr. Tamous indicated that there would be a drive through pharmacy and by pass lane located along the side of the building (east elevation), a loading area would be provided along the rear of the building (north elevation) and the majority of the parking would be located in front of the building (south and west elevation). The parking behind the building would generally be reserved for employees.

Mr. Mosley testified to the traffic impacts of the proposed use, noting again that the two curb cuts currently located on Route 70 would be reduced to one right in/right out only access point and that three existing curb cuts on Springdale Road would be reduced to one left in, right in/right out only access point. Mr. Mosley noted that all of the frontage associated with the lot is under NJ DOT jurisdiction. He discussed the pre-approval meeting held with NJDOT and indicated that NJDOT found the proposal to consolidate the access points favorable and one still allow the left turn in from Springdale Road since it was an existing condition. Mr. Mosley also noted that the left turn in on Springdale Road was safe because there is very little northbound traffic when the Route 70 light is active and there is a dedicated left turn lane for turns onto Route 70 so there is also no northbound traffic when the left turn lane light is active. Mr. Mosley discussed the traffic counts that were conducted June during peak traffic hours on weekdays and on Saturdays. He added that trip generation for retail pharmacies like CVS are approximately 50 trips in the AM peak hours and 120 trips during the PM peak hours and on Saturday peak. He added that many of these trips are actually pass-by trips as well, not specific trips to CVS, rather customers stopping on their way to another destination. Mr. Mosley stated that this is an increase of about ½% to the existing traffic counts in the AM and just over 1% during the PM peak on Route 70 and just under 1% during AM peak and just over 1% during the PM peak on Springdale Road. He stated that the impact was similar on the weekend. He compared this impact to a general retail use and to a general office use that is permitted in the O1 zone and noted that there was no comparable difference. He stated that there would be minimal stacking even during peak hours out onto Route 70 with a maximum of one car cuing to turn onto Route 70. He also noted that there would be little to no cuing out of the Springdale Road access point because there is very little northbound traffic there, especially if the Route 70 light is active.

Mr. Cogan provided testimony regarding the operations of CVS on the site. He stated that the store would have the standard hours of 8am to 10pm. The peak number of employees would be 10-12, with fewer in the morning and the evening. Deliveries are typically made once per week by tractor trailer, with smaller deliveries made by outside vendors periodically throughout the week. CVS deliveries usually take about 30 to 45 minutes to unload and smaller vendors usually take about 15 to 20 minutes. Deliveries are only made during open hours. Mr. Cogan noted that should it occur that there is more than one vendor at a time on the site, the loading zone can accommodate a full tractor trailer and a small vendor truck could cue behind it and not block anything. He stated that truck traffic would enter from Route 70 use the drive through bypass lane to access the rear of the property, pull into the loading zone in the rear of the building and then leave by turning right onto Springdale Road. Mr. Cogan noted that maintenance of the site is contracted out and supervised by the store manager and regional manager. He noted that the closest pharmacy is located about 1 mile from this site at the intersection of Route 70 and Covered Bridge Road, but it is a small, locally owned store that is only a pharmacy, not providing the array of products found in a CVS. Mr. Cogan said that noise during deliveries are negligible as the trucks are not refrigerated and they do not idle. There are a variety of security measures used by the store though Mr. Cogan did not discuss them in detail. He reiterated that employees would park in the spaces furthest from the front of the store. Mr. Cogan also stated that while they were providing more parking than required, the parking amount is actually reduced from past CVS design requirements in order to be able to provide for less impervious surface. He stated that the parking lot lights would turn off in compliance with the Township Ordinance. Lastly, Mr. Cogan noted that they do provide carts for customers, but they are small carts that are not really meant to go outside, though they periodically sweep the parking lot just in case someone has taken one outside.

Mr. Tamous presented the architectural elevations for the site noting that CVS had made a departure from their standard design and were proposing a prototype design to meet the Township's request that it have a more colonial design to the building that was more similar to the design of buildings on surrounding properties. He noted that they had reduced the amount of signage on the building and added more windows. The building would also be brick and vinyl as opposed to

the all brick buildings they typically design. Mr. Tamous also noted that the trash enclosures would be attached to the building.

Mr. Rahenkamp provided testimony to try to link all of the information presented thus far and put it in context for the use (d) variance request. He stated that he agreed with any planning testimony that had been put on the record by Mr. Tamous and Mr. Mosley. He stated that there the benefits for granting the use variance included the consolidation of a number of small non-conforming lots into one lot that conforms with the requirements of the zone as well as a reducing the number and variety of the uses on those lots. He noted that the improvements on the lot are a classic site improvement argument as the new building and landscaping on the lot will replace four older buildings that are non-conforming and lead to an improved aesthetic at a major intersection in Cherry Hill. It will reduce the amount of lot coverage from 75% to 62% and improve stormwater management on the site. Mr. Rahenkamp also noted that while they are requesting a use variance for a retail use, the current use on the site has been retail and has been for over 50 years. He noted that the reduction in the number of driveways would improve circulation and safety at this intersection. He noted that constructing a retail pharmacy here enriches the network within the community so local residents and drivers already on the road do not need to travel as far or drive out of their way to reach a similar use, so it helps to reduce overall vehicle miles travelled. Mr. Rahenkamp noted the number of medical offices located in the area and the recent increase in such uses that increases the need for uses such as a pharmacy. He also noted the willingness of the applicant to adapt the building design to be more in context with the surrounding architecture, creating a site that integrates well into the community. Mr. Rahenkamp then testified to the potential detriment of the proposed use, noting that there are no adjacent residential uses that would be impacted by such a use, no violation of the performance standards of the Township Zoning Ordinance that may cause a nuisance to the surrounding properties, and the proposed user has provided for a diligent maintenance plan to ensure that the site remains clean and safe for its users and surrounding properties. Mr. Rahenkamp testified that it meets a number of the public purposes of zoning as provided for in the MLUL including 40:55D-2.i. to promote a desirable visual environment by improving the conditions on the site; 40:55D-2.h. to encourage the location and design of transportation routes which will promote the free flow of traffic which is accomplished by reducing the number of curb cuts on Route 70 and Springdale Road creating less confusion for drivers and reducing the number of turning movements; and 40:55D-2.m. to encourage the coordination of the various public and private procedures shaping land development. . . and to the more efficient use of land which is accomplished with this application by consolidating a number of non-conforming lots and proposing a use that is suitable to this location despite the existing zoning. It meets the positive criteria required for a use (d) variance because the site is particularly suited to the use, the aesthetics of the site will be significantly improved which can be considered as part of the positive criteria based on the *Burbridge v. Mine Hill* decision (1990), and the proposed improvements correct a number of existing bulk (c) variances currently existing on all four properties. Mr. Rahenkamp testified in regard to the negative criteria for use (d) variances, that there is no detriment to the surrounding properties as it is in conformance with the bulk requirements of the ordinance and is aligned with existing uses surrounding the property. He also noted that the site will become more visually similar to surrounding sites which furthers the goals of the master plan.

Mr. Baron stated that the applicant will comply with all of the comments in the letters issued by the Township professionals and will be prepared to work with the Township during site plan review.

Ms. Luciani noted that the site as proposed is more in compliance than the first iteration that was presented and currently no bulk (c) variances were required. She asked the applicant to speak to a survey issue that was raised by an adjacent property owner and Mr. DiBona noted that they had discussed the issue with the neighbor and the confusion with the surveys had been corrected and that the one presented to the Zoning Board was correct.

Public Comment:

Christopher Norman, Esq. of Platt & Riso, representing Ari Goldberg of 1908 Marlton Pike East, LLC, owner of the adjacent property at 1908 Route 70 East, presented testimony in opposition to the application. He stated that the Township's new Master Plan made a strong statement about the O1 zone when it noted that no changes were recommended to the zone, which must mean that retail is still strongly discouraged in the O1 zone. He stated that retail was only approved through a use variance in 1975. He noted that no testimony was put on record in regard to the enhanced criteria. He stated that his client was approached to share a curb cut and then the applicant withdrew the request.

Mr. Goldberg testified that he has been operating his law firm in the adjacent property for 10 to 11 years and that he only has 8 parking spaces. He noted that this is a high traffic area and it is difficult to make a right turn onto Route 70. He stated that his parking lot has been used by customers of many of the adjacent uses, especially the Executive Mews. He stated that he believes that a CVS will add significantly to the traffic at this intersection and that the testimony of the applicant is nonsense. He believes that this development will be a detriment to his property value, that it is unsafe due to the many traffic accidents at this intersection and that there is no need for another CVS in Cherry Hill.

Mr. Al Litwornia, PE, PP testified on behalf of 1908 Marlton Pike LLC, that the master plan spoke specifically in regard to not allowing drive through uses in this area. He also noted that the proposed curb cut is not a safe distance from the curb cut for access to 1908 Route 70 E. He also stated that a general office use which is permitted in the O1 zone would create much fewer trips than the proposed CVS. Mr. Litwornia also testified that the truck traffic going adjacent to his clients property would create a noise violation due to the proximity of the bypass lane to the structure on 1908 Route 70 E.

Mr. Michael Kauker, PP also testified on behalf of 1908 Marlton Pike LLC, that the proposed use does not reconcile with the 2018 Master Plan adopted by the Planning Board and does not meet the use (d) variance proofs as required.

Mr. Norman asked Mr. Mosley if there was any discussion with NJDOT to modify the curb cuts that were proposed. Mr. Mosley responded that they discussed a number of options and that it was up to the applicant to decide what they wanted to submit a permit for, but what was being shown to the board was acceptable to NJDOT for an access permit. Mr. Mosley stated that he did not believe that it significantly improved safety to move the curb cut any further back from the intersection of Route 70 and Springdale. Mr. Baron also added that while Mr. Litwornia was correct in noting that a general office might have a less intense parking requirement, that there are many permitted uses in the O1 zone that would have a more intense parking requirement than the CVS.

Mr. Norman asked Mr. Rahenkamp to provide testimony to the enhanced criteria required under the Medici decision. Mr. Rahenkamp restated his earlier testimony that the site improves the overall aesthetic of both the property and the intersection as well as improving what is often seen as the gateway intersection into Cherry Hill by providing for an enhanced visual environment with lighting, landscaping, and signage. Mr. Rahenkamp noted the 50 year history of retail uses on that corner that once included a pharmacy. Mr. Rahenkamp noted that there is no untoward impact to surrounding uses as a permitted use could potentially cause the same problems that the objector is identifying, such as cars parking on the neighboring lot. Mr. Baron added to this testimony by stating that there are many O1 areas in the Township where other office uses could go. He noted that the objector's professionals did not provide any testimony as to how many other properties in the O1 zone have uses on them that require variances or in the alternative, how many offices are located in zones where such a use is not permitted. He added that it is likely that the site has remained retail for as long as it has because there is little interest in converting the lot to an office use. Mr. Rahenkamp noted that intersections are generally better suited for retail uses, the proposal gets rid of bulk non-conformities, consolidation allows for better gateway design, and it is a use that is complementary to surrounding uses. The uses all along this section of Route 70 are interspersed with office and retail and that there is plenty of opportunity for O1 uses across the Township so granting a use variance for this site does not diminish the opportunity for permitted uses in the O1 zone from having appropriate places to go. Mr. Rahenkamp noted that the fencing and landscaping should mitigate the impact of CVS users parking on any adjacent lots and that the new signage that would be located at the access points to the site should make it very clear where customers to CVS should enter the site. Mr. Baron asked if closing the neighbor's curb cut would mitigate the impact and Mr. Rahenkamp stated that he believed it would. Mr. Baron noted that the applicant would be happy to provide their neighbor with access to their property if he truly believed that it is a site safety issue. Mr. Rahenkamp also testified that he believes that the restriction against drive through uses in the Master Plan was really intended to be against high intensity drive through uses such as fast food restaurants, not low intensity ones such as pharmacies or banks.

Mr. Baron cross examine Mr. Litwornia asking if the NJDOT was the entity that had final say over the issuance of permits for proposed curb cuts on their roadways to which Mr. Litwornia replied that they do. He asked Mr. Litwornia if the Township asks for traffic counts for adjacent properties to which Mr. Litwornia stated that they could. Mr. Baron asked Mr. Litwornia if an easement through the CVS parking lot would mitigate any potential safety impacts to which Mr. Litwornia stated it would. Finally, Mr. Baron asked if Mr. Litwornia had prepared his own traffic report to which Mr. Litwornia responded that he had not.

Public Comment was closed.

Mr. Rardin stated that he was in favor of the application and he felt that the applicant had met their burden of proof for a use variance. He noted the site history included a 50 years of retail use so continuing that use does not really impair the intent of the master plan or the zone. He noted that there are some permitted uses that could have a less intense traffic impact, but a number of uses that could be more intense. He stated that he found the testimony regarding the minimal increase in traffic credible as most people tend to go to places like CVS on their way to someplace else, not as a final destination. He noted that the new Master Plan didn't recommend adding retail as a permitted use in the O1 zone but made no comment about prohibiting variances. He believes that the use will improve the aesthetic of this gateway to Cherry Hill and will be an improvement over what is there now. He stated that he saw no issue with the curb cuts as they are already there now and they will be reducing the total number and that we cannot prevent access to the highway as DOT is the ultimate decision maker. Overall this proposal is an enhancement to the area and provides a needed service to this part of the community.

Mr. DiRenzo agreed with the Chairman and felt that the applicant had mitigated all of the potential negative impacts.

Mr. Sklar noted that he was in agreement with the Chairman and was in favor of the application for the reasons already put on the record.

Mr. Spevack said that he was initially unsure of the use, but based on the site history and the accommodations being made by the applicant that he was also in favor.

Mr. Potter stated that he believed that the testimony that this use will enhance the existing network was important for him and that there was only a small percentage increase in the regard to traffic. He believes it is a great improvement for this gateway area and liked that the applicant proposed architecture that fit the context of the area.

Mr. Bruno stated that he was happy to see the investment into our community and while he was not crazy about the left turn in off of Springdale Road, he understands that that is NJDOT jurisdiction.

Mr. Norman stated that he was in favor and hoped that the improvement to the area may actually help improve tenancy rates in the adjacent office parks.

Motion: Following a review of the application and conditions of approval by Solicitor Diamantis, a motion was made by Mr. Sklar and seconded by Mr. Spevak, with affirmative votes for approval by Rardin, DiRenzo, Sklar, Spevak, Potter, Norman, and Bruno for the approval of the bifurcated Use d(1) variance. Motion carries 7-0.

RESOLUTIONS:

19-Z-0023

Block(s) 284.02 Lot(s) 7 & 8
Zone: Highway Business (B2)

I.K. Properties, LLC

2433 Church Road
Cherry Hill, NJ 08002

Relief Requested: An Interpretation per N.J.S.A. 40:55D-70(b) from the Zoning Board of Adjustment to determine if the subject property is being used as a "Medical/Dental Office or Clinic (outpatient facility)," which requires a minimum number of parking spaces based upon (two (2) for each doctor, plus one (1) for each two hundred (200) square feet of gross floor area," OR if the property is being used as an "Office, General/Professional," which requires a minimum number of parking spaces based on "one (1) for every two hundred fifty (250) square feet of GLA." The applicant is seeking a favorable interpretation to classify the use as "Office, General/Professional," which is contrary to the finding of the Cherry Hill Township Department of Community Development, where a change in occupancy Zoning Permit had been denied, as it was determined by the Zoning Officer that the use should be classified as a "Medical/Dental Office or Clinic (outpatient facility)." Should the Zoning Board grant an unfavorable interpretation, a bulk (C) variance shall be required and is requested to permit 16 parking spaces, where 40 are required?

Motion to Ratify: Following the review of the resolution, Mr. DiRenzo made a motion which was seconded by Mr. Sklar, to memorialize the resolution for I.K. Properties. Affirmative votes by Rardin, DiRenzo, Sklar, and Bruno. The resolution is memorialized.

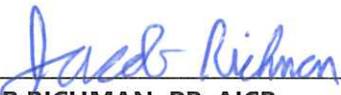
Meeting Adjourned: at 10:30 PM.

ADOPTED: 9/19/19



JONATHAN RARDIN, CHAIRMAN

ATTEST:



JACOB RICHMAN, PP, AICP
ALT. ZONING BOARD SECRETARY