

**Borough of Cresskill
Zoning Board of Adjustment
Minutes May 24, 2012**

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1200 Care One at Dunroven (cont.) 221 County Rd Block 71 Lot 13-14

Mr. Amicucci said that he had discussed the Police Dept. letter with Mr. Bennet to ensure that the parking spaces were safe and compliant in size.

Mr. Fowler, engineer for CareOne, reviewed the revised site plan dated May 2, 2012, submitted as exhibit A15.

The expansion was reconfigured so that the set-back from Ackerman is in compliance with the zoning.

The building length variance was reduced by 3.5'.

A parking space was added on the south side of the site- to a total of 86 spaces. Five white Pines were added along the northerly portion near Ackerman.

The CareOne sign was relocated- it was pulled back out of the County Easement- it currently has a setback of 8.5'.

The southerly driveway on Ackerman was modified from 22.7' wide to 24' wide.

Employee parking signs were added at 5 spaces at the rear of the building.

A video taping of the existing storm sewer system was performed whereby it was discovered that Mr. Azzolina was correct in that the system constructed 10 years ago did not include all the double piping and the large piping that was supposed to be there. New storm water storage has been added on the south side of the site consisting of four 30" pipes.

Ms Erem said the proposed addition shrank from 9551 sq.ft to 9350 sq.ft.

Ms Erem asked Mr. Fowler if the on site safety will improve as a result of the proposed improvement.

Mr. Fowler said that the safety will improve because there will be more parking space designed in accordance with industry standards, and with adequate circulation by turning the southerly driveway from one lane to two lanes. By relocating the northerly drive 130' to the south will benefit the residences by keeping the area quieter.

Ms. Erin asked if Mr. Fowler had reviewed Appendix A of Mr. Azzolina's letter.

Mr. Fowler said that they will comply with items 1 to 11, with the exception of item 6, that requires clarification.

Ms. Erin said that item 6 addresses building height, and Mr. Azzolina has agreed to review the ordinances.

Mr. Azzolina said that the height in the code is based on the elevations on the front of the building. As this building has frontage on 2 streets- there is some interpretation involved. The calculation on the plan is based on the County Rd front, but we are looking for confirmation as to what the height at the back would be.

Ms. Erin said that the height will be measured as per code requirement. They will comply with the height requirement.

Mr. Amicucci said that they have no confirmation as to the height at the back of the building.

Mr. Azzolina agreed. The height calculation is on the proposed front elevation of the building.

Mr. Fowler explained how their height calculation had been made. He explained how their calculation differed from Mr. Azzolina's calculation. Mr. Azzolina's calculation indicates that the building is over the 28' limit.

Mr. Fowler said the expansions are no higher in elevation than the existing building. Its all a matter of the grade.

Mr. Phillits, planner for CareOne was sworn in.

Mr. Phillits reviewed his credentials. He is a licensed professional planner in NJ and has practiced for 30 years. He has been accepted as an expert in 200 municipalities within NJ.

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Mr. Phillits testified that he was asked to consider the appropriateness of the application from a planning perspective . The property is located in a P (Professional) district where the proposed use is not one of the permitted uses. The applicant is seeking several bulk variances with this application. He has inspected the property at a number of occasions. He made a survey of the surrounding land uses and developments. He reviewed the boro's Master Plan documentation, including the most recent of 2010. He reviewed the various (previous) iterations of the Plan. He reviewed the Zoning ordinances and the Zoning map. He consulted with the other professionals on the team. He reviewed the prior approval that was granted by this board for this property. He reviewed the report by Mr. Azzolina.

Mr. Phillits described the property as it exists at present and the surrounding neighborhood on County Rd and Ackerman Place.

Mr. Phillits noted that skilled nursing units are not permitted in the P zone. The proposal is for a D2 use variance to allow for the expansion of the existing nursing facility. Proposed are 22 additional beds as well as other building and site improvements. There are two 832 sq.ft additions with 4 beds each on the north and south wings on the east side of the building.. There is a 4700 sq.ft expansion on the west side of the north wing. There is a 960 sq.ft screened room on the west side. There is a 1700 sq.ft lobby and rehabilitation room within the current court yard entrance to the facility.

Mr. Phillits reviewed the bulk variances requested. See Table of Variances on Page 1.

Mr. Phillits discussed the criteria necessary for granting a D variance. The positive criteria is the expansion involves a beneficial use- promoting the general welfare The MLUL statute was amended to address beneficial uses defined as universally considered of value to the community. The NJ courts have affirmatively held that Nursing Homes are a beneficial use.. Two cases were cited supporting this opinion.

The Supreme Court has set forth a test as to how a board should evaluate an inherently beneficial use- another case was cited. Boards should undertake a four part balancing test:

- 1) Identify the public interest at stake.
- 2) Identify any detrimental effects that would be created by the granting of the D 2 variance.
- 3) Consider if there are reasonable conditions that could be imposed to mitigate detrimental impacts
- 4) Weigh the positives, weigh the negatives, conduct a balancing test and determine whether the D variance should or should not be granted

Mr. Phillits noted that an inherently beneficial use is exempt from satisfying the enhanced quality of proof standard set forth in the Medici case.\

Mr. Phillits undertook the four part test:

- 1) Identify the public interest at stake. There is a recognized need for the expansion based on demographics- the aging of the population, the increased demand for short term rehabilitation beds. CareOne has a Certificate of Need for 100 beds. Between 2006 and 2010 the number of hospitals discharges from Holy Name, Englewood, Hackensack University Medical Center to skilled nursing facilities increased from 6800 to 8500. The state currently has a moratorium on new nursing home licenses. Cresskill has no other nursing facility.
- 2) Identify any detrimental effects. The Master Plan does acknowledge that the Nursing Home is a compatible use within this zone albeit non-conforming. The expansion will have minimal impact on adjacent uses. The additions are screened from neighboring properties. Mr. Phillits explained how each of the additions would have minimal impact on the neighboring properties.

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The proposed Building Coverage is below the requirement. The zone allows 2 stories and the proposal remains at one story. No additional employees are anticipated in connection with the expansion. The application increases the parking from 81 to 86 spaces. Most of the visitors come in the afternoon and evening hours, which does not coincide with the peak employee shift. The applicant meets the ordinance parking requirement for the use- one space for 3 beds.

3) Consider if there are reasonable conditions that could be imposed to mitigate detrimental impacts. To mitigate the loss of trees and vegetation additional landscape buffering is provided. The access drive only used for emergency, will have the parking and paving removed, so there will be green space fronting Ackerman.

4) Weigh the positives, weigh the negatives, conduct a balancing test and determine whether the D variance should or should not be granted. There is a significant public interest at stake. There is no significant detrimental impact. The applicant has enhanced the landscaping. On balance the positives outweigh the negatives based on the SICA Balancing test.

Ms. Erin said that the SICA case stated that Nursing Homes rate very high in the scale of public interest.

Mr. Phillits referred to two other cases in NJ that cite that Nursing Homes are inherently beneficial uses.

Mr. Phillits reviewed the C variances. The C-1 variance is the classic hardship variance. The C-2 variance is flexible. If the benefits out weigh the detriments associated with the granting of the variance. Negative criteria has to be satisfied with a C-2 variance. The variances here are all C-2 type. The building length is being driven by the expanded Nursing Home, designed in a single story 'H' floor plan which makes sense from an operational perspective. Also to comply with state standards. The ordinance permits 2 stories here, permits greater building coverage, all of which would have more of an intrusion on the residential neighborhood. The materials and architecture of the additions are consistent with that of the existing facility. There is now a break in the lengthy façade- the bump-out provides some visual relief.

With relief in regard to the non-conforming parking set back- it relates to only 2 or 3 spaces.

The issue of the deficient set backs to County Rd and Ackerman Pl. Ackerman Pl., we are actually bettering the condition by reducing the level of non-conformity with the set-back and buffer deficiency. The current set-back is 8.5', while it is being maintained, more spaces are being placed within that 8.5'. New landscaping is being introduced to mitigate. The additional parking must be looked at in relation to the over all site circulation, and that parking will be removed along Ackerman. Providing more parking to the front of the site is a good thing.

The 9' by 18' parking stalls in lieu of 10' by 18', is preferable because 9' is adequate and more space is available for green space.

All the remaining non-conforming conditions are either unchanged or being brought further into compliance.

There is better site access and internal circulation.

There is no substantial detriment to the public good or substantial impairment to the zone plan.

The bulk variances are all relatively minor. Some level of mitigation is being proposed

None of the adjacent land uses are adversely affected.

Mr. Amicucci asked in regard to the parking, do you have a parking problem ?

Ms. Erin said we have not indicated that.

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Mr. Amicucci said back in 2002, when this Nursing Home came in for a variance, the variance was for parking. They wanted to increase from 55 spaces to 88 spaces. They had 99 beds at the time- they only needed 33 spaces (as per ordinance)

Mr. Phillits said while the applicant chose to increase the parking supply to meet its needs, a variance was not required for parking.

Mr. Amicucci said the applicant said they wanted to increase the parking from 55 spaces to 88 spaces thereby alleviating the existing parking problem. So I gather back then, even though you had 20 parking spaces over the ordinance requirement, there were severe parking problems.

Mr. Phillits said the applicant's position is that with the increase in parking, and that there will be no increase in employees, the parking is sufficient. I do not believe that there is a parking problem. The times I have been to the site, both peak and off-peak, I have always found a space.

Mr. Van Horne asked Mr. Phillits if he was involved in the 2002 application.

Mr. Phillits said that he had reviewed the application.

Mr. Van Horne said you do note that the applicant acknowledged there was a parking problem in 2002.

Mr. Phillits said the applicant acknowledged that he needed to go beyond the 55 spaces.

Ms. Erin said that that doesn't mean there is a problem. Ten years ago they recognized they needed additional parking.

Mr. Van Horne said they acknowledged there was a problem in 2002 and there were 99 beds. With 122 beds, do you anticipate that there will be more people visiting the site.

Mr. Phillits said there will be 7 additional visitors spread over the course of the day that will not generate a significant amount of vehicular traffic during any hour. Most of the visitors come in the late afternoon or early evening, there will be no additional employees generated.

Ms. Erin said Mr. Azzolina suggested in his report, 'Title 39 Enforcement Power', that we agree too. Your Police dept wants to police that site for any violation. We have no problem with that. We offer that in response to Mr. Azzolina's comments.

Mr. Azzolina clarified Title 39 paragraph 7. That is the process whereby a private property owner executes a document granting the Cresskill Police Dept. the authority to come on their property and ticket non-moving violations such as people without handicap placards in handicap spaces, occupancy of fire lanes etc

Mr. Amicucci asked if they had given the Police Dept. permission to go on the property and issue tickets.

Ms. Erin said that they will make that a condition of approval.

Mr. Moldt said that you are interpreting the variances as a C-2, can you site any real hardships.

Mr. Phillits said that hardship was C-1.

Ms. Erin explained the legal criteria differentiating C-2 from C-1.

Mr. Phillits explained how this application was better categorized as C-2.

Mr. Amicucci asked if there was anyone in the audience who would like to ask a question or make a statement.

Mr. Ely was sworn in.

Mr. Ely testified that he was the property owner on the northern side. The planner had addressed the properties on County Rd, but he did not address my property. DunRoven has been a good neighbor. At a previous hearing, somebody testified that this will not have an effect on the neighboring houses. I have talked to my attorney and my real-estate agent. That property is going up for sale within the next 2 months, and I am told by my real-estate agent and my attorney that

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this will have an effect, and if I list it, I have to disclose the fact of all this variations and things going on. I am opposed to this thing, I did not plan this, it developed while I was talking to my professional people. DunRoven made an offer to purchase his property 10 years ago but he declined it. He does not want to use this meeting to coerce them to buy it. He is 82 years old, and lost his son last year. The property must be sold as no one in his family wants it.

Mr. Phillits explained that the proposed expansion of the Nursing Home facing Mr. Ely's property were within the Zoning set-backs. The bump-outs cannot be seen from Mr. Ely's property. The bump-out on the northerly wing is within the setbacks. There is existing buffering in terms of mature vegetation along the retaining wall will screen the property. In terms of land use impact there will be significant impact on your property- based on what's there now, what's proposed, and what the zoning allows.

Mr. Ely said that he respected Mr. Phillits opinion, but that opinion is opposed. Ten years ago he was not ready to sell but now he is.

Mr. Amicucci asked Mr. Ely if his real estate agent and his lawyer suggested that the Nursing Home would have an impact in selling his house.\

Mr. Ely said a negative impact.

Ms Erin said that for the record that although this is a quasi judicial body, although some type of hearsay is sometimes allowed, we are now getting into an area of solid hearsay where Mr. Ely is making statements that purport to demonstrate the truth underlying those statements which is classic hearsay. Mr. Chairman you seem to be taking up that cause. I would like to caution the board against that. I do have witnesses that are experts, and that have provided expert opinions for the board to consider. I would like to caution the board from considering statements that are clearly hearsay.

Mr. Amicucci said that the neighbors do have a right to get up and voice their opinion, and you have no right to stop him.

Ms. Erin denied stopping or trying to stop Mr. Ely.

Ms. Erin explained why she considered Mr. Ely's testimony 'classic hearsay'

Mr. Ely said that he would ask the board to use their own discretion as to whether there is an impact the value of his property.

Mr. Amicucci said that the board has heard expert opinion as to the affect on the values of homes.

Mr. Ely related that after attending a prior hearing of the application he saw an ambulance stuck in the grass of his back yard. The ambulance had gone into his driveway to turn around and had gotten stuck in the mud.

Mr. Amicucci said that the ambulance driver had made a mistake.

Mr. Ely said that for the record he is opposed to this application.

Ms. Westerfeld asked if there would be a sign designating the emergency driveway for 'Emergency Only'.

Mr. Vadala at 120 Park was sworn in.

Mr. Vadala testified that he disagrees with the parking. He goes there everyday. I walk around the corner. The north side on Ackerman there is one home, Anne and Frank Burettas home, where the police have been called a couple of times, because the ambulance has been on her street. I went by today and there was not one spot in the place. The cars line up on Ackerman because there is not enough space. They also park on the grass. This has been going on for years. They spill out onto the street. People will park on Park Ave. There is insufficient parking.

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At 2 pm today it was packed as it is every day.

Mr. Jerry Scelzi (19 Engleside) was sworn in.

Mr. Jerry Scelzi asked what will the 22 beds be used for ? What is the daily occupancy of the nursing home ?

Mr. Hodges (CareOne) said the average occupancy was 91%. The average stay was 30 days. The facility was often full. The majority of patients receive physical therapy. They employ 20 therapists.

Mr. Scelzi said that the area is constantly congested. How many handicap slots are there?

Mr. Hodges said there were 4 slots.

Mr. Scelzi questioned the need for the additional beds.

Ms Erin explained the Certificate of Need for 100 beds.

Ms Erin said that the state will approve the additional beds when the Board approves the site plan.

Mr. Ely described the problem of parking on Ackerman caused by insufficient parking at DunRoven.

Mr. Amicucci asked if the facility was full.

Mr. Hodges said it was full today. CareOne is the top discharge destination from Englewood Hospital.

Mr. Amicucci asked about other facilities.

Mr. Hodges said that Norwood was 95% full, but Tenafly was less desirable.

The hospitals are discharging patients sooner. Our industry provides after care for patients. There are still patients that stay for long periods of time. For long term care more people are going for Assisted Living.

Mr. Merzel asked for a review of the variances granted in 2002.

Mr. Phillits read the resolution of 2002.

Mr. Merzel asked if there was any discussion regarding the bed count.

Mr. Phillits said that the representation in the resolution was there would be nothing beyond the existing 99 beds.

Mr. Merzel asked if the resolution was conditional to not having more than 99 beds.

Mr. Phillits said that his understanding of the resolution was that the bed count was not an issue nor a condition.

Mr. Merzel asked when did CareOne purchase the property.

Mr. Hodges said in 1999.

Mr. Merzel asked what reason was there in the sentence that the bed count was not to exceed 99 beds.

Mr. Phillits said that he was not there at the time, he can only interpret it .

Mr. Amicucci said that he has testimony from a home owner in 2002. The home owner said that it was passed because they reassured the home owners that the beds would not be expanded for the business. He quoted the minutes from the Jan. 26, 2012 hearing:

“Mr. Barretta said he was a neighbor of the nursing home.

Mr. Barretta thanked the chairman for referencing the previous application in 2002. He wants to make 2 points:

1) He was here when that application was made. That was part of the conversation that we had amongst the neighbors, that there was no intent nor plans to expand. And now we are here again 7 years later.”

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Mr. Amicucci said that everybody was fairly happy, though they were still concerned about the parking.

Mr. Phillits said that does not preclude the applicant from making any future application. Each case stands or falls on the merits of the case. Does not preclude my client from coming 10 years hence for an expansion based on the conditions that now exist.

Ms Erin presented the argument that circumstances had changed since 2002 in medical care-hospital discharges, longevity, increase in population. In 2002 there was no intention to increase the bed count, and that was correct at the time. The board should consider the case law that is in place that serves as evidence that has been presented to the board. As for the parking, it is a public street, if there is illegal parking, it is a police issue. There was no evidence presented that all those cars are CareOne visitors. The decision of the board must be based on evidence, and that there is a regional need (for the nursing facility).

Mr. Merzel said things change and can change again in 5 years. Will we find ourselves then discussing a 2nd floor. 86 parking spaces will allow how many beds.

Mr. Phillits said we are guided by your zoning laws- which are designed to provide public health safety and welfare. Your ordinance has a standard that we meet. If you think the existing standard is not adequate you can change the standard. Then the scenario that you outlined would require a parking variance.

There was a heated discussion between Mr. Merzel, Mr. Phillits, Ms. Erin and Mr. Amicucci regarding the future implications should this application be granted.

Mr. Merzel asked are we allowed legally to grant variances with the condition that a 2nd floor would never be put up on top?

Mr. Merzel said that things change. In 2002 there was no anticipation for a need of increasing the bed count. Is there any way to consider this with some kind of assurances that it is not going to go beyond the 1st floor.

There was a discussion among the board members whether such stipulation in the resolution would prove effective.

Ms Erin said that her client has advised that he would accept a condition that we will not put a second floor on the facility.

Mr. Merzel asked can we grant these variances with the condition that the 2nd floor will not be allowed, and will that carry over to the next owner.

Mr. Van Horne said it runs with the land, but someone can seek modification.

Mr. Merzel said in 2002 there was a parking problem. The people in 2002 wanted to make sure that by granting the application the problem did not get any worse. Therefore the language went in stating that there would not be any additional beds.

Ms Erin said for illegal parking, tickets should be issued.

Mr Ely said in 5 years conditions may change. Don't make decisions today for what might happen in 5 years. He does not agree with the stipulation.

Ms Furio asked for clarification of the statement that there is no capacity because some of the rooms are private. That's why your percentage is not 100 when there are beds available.

Mr. Hodges explained the occupancy calculation.

Mr, Amicucci asked the borough engineer if he was satisfied that the applicant met the criteria.

Mr. Azzolina said that in his report dated may 2012, his primary issue was the existing and proposed Storm Water Management. The applicant has done everything that was requested, and

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is correcting all the deficiencies that were identified. They are now designing for the two ten and 100 year storm events . He is satisfied with the system.

Ms. Batistic said that in 2002 they proposed a storm water management system, which was never built. How will we make sure that this one will be built.

Mr. Van Horne said that there are a few things that the town will have to be more diligent about. There were supposed to be no more than 99 beds but there were 100 to101 beds by your admission. You were supposed to have 86 parking spaces but by your own admission you had 81 or 79. Very significantly in your storm water management system . There will be much better supervision and enforcement going forward.

Ms Erin said that the persons responsible had been replaced both in DunRoven and other locations.

Mr. Azzolina explained the process of performance guarantees and bonding that would ensure that the stormwater management system was implemented according to specification.

Mr. McLaughlin asked if they will allow police on the premises to ticket parking violations.

Ms Erin said that they would.

Mr. Kassis made the motion to approve the application for a one story addition to the existing structure.

Ms. Batistic seconded.

Mr. Merzel stated the conditions:

- 1) Allowing the police access to the property and allowing ticketing on the premises
- 2) Restriction that the existing building and the proposed additions will remain one story structures.

Mr. Amicucci said that he was against this application for a few reasons:

The parking will be a major problem- he does not agree with the ordinance of 1 parking space for 3 beds.

In 2002 they were very sincere about not expanding the beds. This will have a big impact on the neighbors.

Mr. Merzel gave his reasons for voting for the application. There is a benefit and need for the beds. He acknowledged the parking problem. He liked the policing. He likes the way the building looks, He does not want to see a 2 story structure. This blends into this environment.

The application was granted.

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Memorializations

1205 Zaikov 18 Buckingham Rd Block 206 Lot 14

The applicants, Coleen and Brad Zaikov, were granted the following variances to construct an in-ground pool.

Description	Required	Existing	Proposed	Variance Required
Impervious Coverage	Variable 30%		46.04%	16.04%

1206 Callas 194 County Rd Block 76 Lot 68

The applicant, Yvonne Callas DMD FAGD, was denied a change of use. The property is being used as a professional office. The applicant wanted to construct a 2nd floor to the property for office use.

Description	Required	Existing	Proposed	Variance Required
Front Yard Set Back	25 ft	23'		2'
Side Yard Abutting/Lot	15 feet	5'		10'

1207 Pecoraro 62 Carlton Terrace Block 188 Lot 6

The applicant, George Pecoraro, was granted a 4' variance to widen his driveway to within 6' of the property line where 10' is required.

1208 Citakian 638 Knickerbocker Rd Block 1.04 Lot 27

The applicants, Vrej and Donna Citakian were granted a 4' 6" variance for a driveway expansion to within 5' 6" of the property line where 10' is required.

Meeting adjourned at 10:21 pm