

**OCEANPORT PLANNING BOARD
MINUTES
January 26, 2016**

Chairman Widdis called the meeting to order at 7:30 p.m. and gave the Statement of Compliance with the Open Public Meetings Act: "Adequate notice of this meeting has been provided by notice to the Asbury Park Press and The Link News on January 15, 2016, publication on January 21, 2016 and by the posting of same on the municipal bulletin board and Borough Web Site."

Chairman Widdis led the flag salute.

MEMBERS PRESENT: Mr. Wible, Mr. Foster, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Mr. Sullivan, Mr. Fichter, Mr. Proto, Mr. Whitson, Mr. Widdis

MEMBERS ABSENT: Mr. Savarese

OFFICIALS PRESENT: Jeanne Smith, Board Secretary, Rick DeNoia, Esq., Board Attorney, Board Engineer/Planner William White

BOARD BUSINESS:

1. Minutes of the meeting of November 10, 2015 were approved on a motion from Mr. Whitson and a second from Mr. Foster and approved by the eligible Board members.
2. Proposed Zoning Ordinance Amendment – The governing body is requesting a zoning change. Chairman Widdis requested the discussion be carried to the next meeting on February 9, 2016.

OLD BUSINESS:

1. PB2014-01.02 AcuteCare Management Services LLC
1075 Stephenson Avenue
Block 110.01, Lot 1
PUBLIC HEARING ON LIMITED JURISDICTIONAL ISSUE OF USE COMPLIANCE with AMENDMENT #2 to the Fort Monmouth Reuse and Redevelopment Plan

Mr. DeNoia recounted the events of a July meeting where the applicant agreed that they would comply with COAH requirements. Elizabeth McManus, COAH planner, conducted a review of the AcuteCare plan to determine the impact of the plan on the Borough's COAH requirements. Ms. McManus opined that there might be some deviation from the reuse plan. Mr. White also reviewed documents and stated there could be a factual deviation regarding the second amendment and what was proposed. Ultimately, the Board granted the applicant's plan. However, the memorialized resolution was not completed. A hearing is to be held to determine if there is a deviation from the reuse plan and if there is a deviation, what if any role does the Board have with regard to that deviation. The result will be a decision as to whether or not to provide the resolution.

Chairman Widdis advised that Board Member Fichter would abstain from hearing and deciding the issue. Chairman Widdis also advised that Board Member Sullivan would recuse himself from the hearing.

Mr. White, Board Engineer/Planner and Elizabeth McManus, COAH Planner, were sworn.

Mr. McOmber, Attorney on behalf of the Applicant, stated AcuteCare sought and received approval for its application from FMERA in April 2015. FMERA concluded that AcuteCare's uses in the application were permitted and consistent with the reuse and redevelopment plan. FMERA also concluded a variance or amendment was not required. State law states FMERA has exclusive jurisdiction to interpret the official zoning map and to determine whether a use is consistent with its reuse plan. Mr. McOmber referenced Mr. Steadman's letter which confirmed that FMERA makes the determination as

to whether a variance or amendment is needed, and FMERA determined there was no requirement for a reuse variance or amendment. Mr. McOmber requested that the Board direct Mr. DeNoia to prepare a memorialization resolution to be adopted by the Board.

Mr. White testified that there was land use law and reuse plan and amendment to the reuse plan for this site. The reuse plan called for razing the existing structure, building 85 mixed use residential and building a 60,000 square foot health care clinic and 20,000 square foot professional office. The subsequent amendment allowed for the reuse of the hospital and taking the 85 units to an adjacent site. He stated the plan is not specific, but basically a framework. These uses are permitted in the zone. However, there's a plan amendment that is very specific where the Applicant is following Amendment 2 by reusing the hospital and 85 units were supposed to be moved off site. Mr. White stated there are basically five criteria to determine consistency with the second amendment. One is that it is not a material departure from the land uses and locations stated in the reuse plan. Secondly, FMERA needs to determine if the material change in the development yield affordable housing obligations of the host municipality. There was previous discussion to ensure that the applicant agreed to provide his fair share of the affordable housing.

Chairman Widdis asked if there were questions from the Board for Mr. White. Mr. Foster asked if the original 85 units that were supposed to be off site were going to be on the same campus or if it was additional. Mr. White replied that the units would be in the same general vicinity. Mr. Wible asked Mr. White to reconcile the difference in opinions of two planners. Mr. White responded that the Board had limited authority regarding bulk variances and that uses are always going to be approved by FMERA. Mr. White believes there should be a plan amendment, but that it's more of a legal opinion.

Mr. Czermak, CEO of AcuteCare Management Services was sworn.

Elizabeth McManus briefly discussed the 2008 and 2012 reuse plans. She testified she spoke with a FMERA representative regarding the mandatory conceptual review (MCR) which deemed this amendment consistent with the reuse plan. She was advised that it was deemed consistent because it was not a material change from the 2012 amendment. Secondly, she was asked to become involved in this application was because of affordable housing and ensuring the applicant would provide the 20 percent of the units of affordable housing in the reuse plan. She stated Mr. McOmber previously wrote to the Board that the applicant will work with the Borough to ensure that the Borough would get credit for the affordable housing units. Mr. Foster asked if there was a deed restriction for the 20 percent. Ms. McManus stated there must be a deed restriction. Mr. DeNoia explained the process of preparing and approving a resolution, and that the COAH component would be included. Mr. Czermak asked what FMERA's definition of a material change. Ms. McManus stated there was not a defined term and that FMERA is not required to provide a list of reasons supporting their determination of the MCR. Mr. Wible asked a question regarding age restricted or age preferred categories and if it would be a benefit to the Borough in terms of its COAH obligation. Ms. McManus responded that age restricted housing is generally limited to 25 percent of the municipality's COAH obligation. Age preferred means they qualify as family units, which may satisfy 100 percent of the obligation. Therefore, age preferred may be advantageous to the Borough.

Chairman Widdis opened the meeting for the public to question the witnesses. As there were no questions from the public, Chairman Widdis closed that portion of the meeting. Chairman Widdis opened the meeting for the public to question Mr. McOmber.

Roseann Letson, 37 Morris Place, asked Mr. McOmber whether the application submitted to and approved by FMERA was different than what AcuteCare is today. Mr. McOmber responded that there has been no deviation in the application. Ms. Letson asked if the applicant was committed to complying with the Borough's building regulations, COAH obligation, et cetera. Mr. McOmber confirmed that the applicant would comply with the building codes, ADA compliance and COAH obligations. Ms. Letson asked what business is being conducted at AcuteCare. Mr. Czmerak explained existing uses in Phase

1. Program for All Inclusive Care for the Elderly (PACE) was developed by the government in the 1980's. Senior citizens are brought to the facility for 2 meals, activities, physical and occupational therapy, a full medical clinic and social workers. AcuteCare also provides home care and arranges for doctor's appointments and transportation to the appointments. A separate program is outpatient care for the mentally ill, with a co-diagnosis of drug abuse, who were discharged from an institution and transition to the community. The individuals are brought to the facility in the morning and leave in the afternoon. Classwork and social workers are available. Part 2 involves adding a secured, screened-in outside deck. The third aspect of Phase 1 is an institutional pharmacy, which provides pharmaceuticals to physicians, assisted living organizations, nursing homes and hospitals. There are also plans for an infusion center for individuals needing neurological treatment, cancer treatments, et cetera.

The plan for Phase 2 has always been some type of residential or health care component or assisted living or nursing home. The general plan would have the residential component with access to the PACE program. Phase 2 includes 80 apartments with an age preferred designation. Some of the units will be like a studio, others will be one bedroom units.

Ms. Letson asked why AcuteCare requested a variance to reduce the amount of parking. Mr. McOmber replied that the variance was granted.

Marion Wilhalme, 96 Comanche Drive, requested clarification regarding information she received that AcuteCare would have 300 clients. Mr. Czermak responded that 300 does not mean 300 residents. The number would vary every day because not every individual would need services every day.

Andrea Abbott, 1294 Eatontown Blvd., asked a question about the residential component and if these individuals would be patients. Mr. Czermak replied that the individuals are called participants in PACE. She also asked if PACE typically has residential units next to a PACE. Mr. Czermak stated there are many PACE programs and he is unaware if there are other PACE facilities with residential units next door. Ms. Abbott asked if there was any certainty that the building will always house a PACE program. Mr. McOmber stated there is already an approved use, and if the Applicant wanted to change the use, they would have to come back before the Board. Ms. Abbott had a question regarding who would occupy the apartments. Mr. Czermak stated the apartments are age preferred or senior targeted, who may or may not participate in PACE. Ms. Abbott asked what would happen to the residents who needed medical attention when PACE was closed for the day. Mr. Czermak replied that the day care program closes in the afternoon, but the program never closes. There are contracts with ambulances, hospitals and emergency rooms so there is no impact on the emergency services of the Borough. Ms. Abbott had questions about how many people are going to live in the units and about parking. Mr. Czermak replied that he has limited control regarding who residents could allow living in their apartment. However, the size of the apartments may limit the number of occupants.

Stephanie Osgoodby, 60 Comanche Drive, asked if there would be a property manager on site. Mr. Czermak replied affirmatively. She also asked if AcuteCare would have a property management company. Mr. Czermak replied that it would be performed in-house. AcuteCare will criminal background checks and credit checks to ensure that tenants are responsible and respectful.

David Stenhacs, 14 Centennial Place, asked if AcuteCare was aware of COAH obligations for the requirements regarding eligibility regarding the configuration of the apartments, such as the size and the beds. Mr. Czermak replied that they are working with Ms. McManus to ensure complying with COAH obligation. Mr. Stenhacs asked if the Borough had applied for COAH credit for this complex. Councilwoman Cooper replied that the Borough has not applied for credit. She stated if the application is approved, it will be addressed in the Borough's next affordable housing plan. Mr. Stenhacs also asked what would happen if there are material modifications are needed to meet COAH requirements. Mr. Czermak stated that he is obligated by FMERA for a 20 percent set aside for COAH. Mr. Stenhacs' also asked if the COAH obligation was for the entire 720 units or specifically to each project. Ms. McManus replied that FMERA requires 20 percent of all units developed to be affordable housing

unless economically unfeasible as determined by FMERA. If the 20 percent is not provided, the applicant will need to return to the Board for an amendment because they failed to comply with one of the conditions. Mr. Stenhacs asked if FMERA determines that it is not economically feasible for AcuteCare to provide 20 percent and FMERA reduces their obligation, would that obligation be transferred to another project. Ms. McManus replied that the COAH obligation applies to each individual project and she did not believe that if there are no affordable units created in any particular project, that they are imposed on another project.

Len Altomare, 43 Avon Avenue, asked if the project was designated senior preferred and the units weren't being occupied could the designation change. Mr. Czermak replied that he has made the commitment to the governing body that the project it would be senior preferred in order to assist the Borough in meeting its COAH obligation.

Andrea Abbott, 1294 Eatontown Blvd., requested a clarification regarding COAH percentages. Ms. McManus explained that 20 percent is reserved for affordable housing. The 25 percent senior limitation is imposed through the affordable housing regulations and are applicable to every municipality. Meaning not more than 25 percent of the obligation may be satisfied with senior units.

As there were no additional questions from the public, Chairman Widdis closed that portion of the meeting.

Mr. Kleiberg asked a question regarding previous testimony regarding access between Phase 1 and Phase 2. Mr. DeNoia mentioned that there was testimony that Phase 1 and Phase 2 would be secure from each other. Mr. Kleiberg also asked about veteran housing. Mr. Czermak stated he fully supported veteran preference as well as a senior preferred. Board Member Foster asked if the veteran housing is going to be tiered or if there is a scale. Mr. Czermak replied that AcuteCare is not required to have a tier. AcuteCare is in the process of doing a joint program with PACE and the VA. AcuteCare will state a veteran's preference in their criteria of how it chooses its tenants.

Board Member Proto asked about the material change definition. Originally, FMERA said either keep the structure and build units on an adjacent lot or raze the structure and build the units on that lot. Mr. Czermak stated he had no input on FMERA's amendment. Mr. White advised that the original use was to raze the building and mixed residential was going to be put there. The FMERA generate the amendments. If interest is expressed in a parcel, they put it out for bid, but they also make an amendment so the plan is consistent with what they expect the property will be used for. Board Member Proto asked if AcuteCare is interested in acquiring any other parcels. Mr. Czermak advised he put a bid in for a parcel, but was not the winning bid.

Mr. Wible read a statement regarding AcuteCare's application. Mr. Wible believes there are two options. One, to accept FMERA's interpretation with regard to the Applicant's use of the property and to prepare the preliminary and final site approval and parking variance. Second would be to accept the compliance of use from the Board's professionals. And due to the inconsistencies of the opinion, the Board's position would be that the application is void and the Board does not have the jurisdiction to grant any variances. The pending approval would not be memorialized. The Board would ask the Applicant to amend the use of their property or work with FMERA to amend the reuse plan and resubmit their application. Mr. Wible outlined his view of the various opinions in the community. Mr. Wible asked how the use changed from a medical clinic and offices to today what is the PACE program, a mental health clinic and residential apartments. He also asked whether AcuteCare intends additional changes to the use in the future and what would those be and whether this is just the second in a long line of unexpected changes. He asked whether AcuteCare would pursue a claim due to delay if the Board approves the application.

Mr. Czermak responded by stating the public was not fully informed regarding the plans and that was a reason for suspicion. He expressed hoped more of the public would come to the side of supporting the

project. He stated that there is no further development anticipated. There will be a residential component, PACE, a pharmacy and mental health outpatient services. Unfortunately, two of those programs, the pharmacy and the mental health services, are not under his control. If he has to rent those portions out, then he will provide information to the residents through social media. This process has been very costly in legal fees and lost opportunity. Mr. Czermak stated he did not want to proceed with a claim due to delay if the issue is resolved quickly.

Mr. DeNoia read a motion consistent with the direction of allowing him to provide the affirmative resolution memorializing the prior approval.

Mr. Whitson made a motion to approve the application, which was seconded by Mr. Kleiberg and received the following roll call:

AYES:	Mr. Whitson, Mr. Wible, Mr. Foster, Councilwoman Cooper, Mr. Kleiberg, Mr. Kahle, Mr. Proto, Chairman Widdis
NAYES:	None
ABSTAIN:	Mr. Fichter, Mr. Sullivan
ABSENT:	Mr. Savarese

Ms. Smith stated the motion carried.

Mr. McOmber thanked Mr. DeNoia and the Board for their approval. He also requested if there was any way to accelerate the construction of the patio. The Borough Clerk advised the normal procedure will be followed including a 45 day period of appeal after publication.

PETITIONS FROM THE PUBLIC: Chairman Widdis opened the meeting to Petitions from the Public. As no one else from the public wished to be heard, Chairman Widdis closed that portion of the meeting.

ADJOURNMENT: As there was no further business, the meeting was adjourned at 9:44 p.m. on a motion by Mr. Whitson which was seconded by Mr. Kleiberg and approved by the Board.

Respectfully submitted,

JEANNE SMITH
Secretary