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VOORHEES TOWNSHIP PLANNING BOARD MINUTES AUGUST 26, 2020\_

Chairman, Mr. Schwenke called the meeting to order and stated that the meeting was being held in compliance with the “Open Public Meetings Act” and had been duly noticed and published as required by law.

ROLL CALL

Present: Mr. Schwenke, Mr. Ravitz, Mr. Rashatwar, Mr. DiNatale, Mr. Nicini, Mr. Kleiman,

 Mr. Kleinman, Mr. Brocco, Mr. Schallenhammer

Absent: Mr. Stein, Mr. Brzozowski

Also present were Mr. Stuart Platt, Board Solicitor and Mr. Rakesh Darji, Board Engineer

MEMORIALIZATION OF RESOLUTIONS

APPROVAL OF MINUTES

Mr. Rashatwar makes a motion to approve the minutes of the July 8, 2020 meeting. Motion seconded by Mr. Schallenhammer. Motion carries by the assenting voice vote of all present board members with the exception of Mr. Nicini, Mr. Kleiman, Mr. Kleinman who abstained.

OLD BUSINESS

AFFINITY HEALTHCARE GROUP VOORHEES, LLC

CHANGE OF USE

200 WEST SOMERDALE ROAD

BLOCK 44; LOTS 5

PC #20-003

Appearing before the Board is Mr. Samuel Reale, attorney, Mr. David Shropshire, traffic engineer,

Dr. Gregory Hobelmann, Mr. Ronald Martin, applicant, Mr. Timothy Stevens.

Mr. Stuart Platt states the applicant is seeking a Change of Use for medical practice providing outpatient behavioral health opioid treatment services. The property address is 200 West Somerdale Road, Block 44; Lot 5, PC # 20-003. He also states the applicant is also seeking a waiver of site plan.

Mr. Platt Informs the Board he has listened to the transcription of the previous meeting and that the applicant will be preceding this evening with the rest of their case. He states that the Township is following the guidelines set for by the Division of Local Government Services regarding Zoom platform meetings. Mr. Platt states the applicant will have all their witnesses testify and provide all of their evidence and after the Board has had the opportunity to question all of the applicant’s witnesses and has had discussions with the Board professionals the public will then have the opportunity to comment.

Mr. Platt states that by agreement the applicant is required to bring all of it’s witnesses back to the extent there are additional hearing nights so the public will have a chance to make comments and ask questions to those witnesses. Mr. Platt informs the public they will have a chance to be heard and the Board will not make a decision on the application until the public has had the chance to do so. Public portion is a critical part of the land use process.

With respect to this application Mr. Platt states his advice and instructions moving forward are that the applicant is seeking two- fold approval. The applicant who has the burden of proof is seeking Change of Use approval under section 156.018 of the Township Code from a medical office to what they list in their application as a medical practice providing outpatient behavioral health opioid treatment services and has also been referred to as Affinity Healthcare practice. Mr. Platt states that under our Code an applicant has the burden of proof to provide the Board with evidence through testimony or written evidence that the use that the property was previously granted which was medical offices and counseling services and that the new use is in fact a permitted use in the zone. He states one of the requirements of the Ordinance is the Planning Board who is conducting this hearing is for the applicant to be responsible to clearly state all aspects of the proposed use of the property. He states that the Board does not know currently if the proposed use is a permitted use and the reason the Board does know and to be fair to the applicant the Zoning Officer was not given all of the information. The Planning Board can only approve applications for permitted uses. Mr. Platt states the Board does not know enough about the operations of the clinic to determine if it is a permitted use and that will be one of their obligations at the end of this hearing to determine if it a permitted use in the Office 1 Zone.

Mr. Platt states that according to Ordinance 152.051 it states specifically that the purpose and intent of the O1 Zone is to provide for office uses on small lots which shall create a transition zone between residential and more intensive commercial and industrial uses. And in this zone permitted uses are offices of a recognized profession including but not limited to medicine, social services, finance, accounting, insurance, real estate, law, engineering, architecture, planning, but not to include other license occupations such as barbering, general contracting or public movers.

Mr. Platt states the other aspect of the application is the request for a waiver of site plan approval which is also referenced under Code 152.051 (D), the Planning Board may waive the requirement for a full site plan review submission if the construction or alteration or change of occupancy or use does not affect existing circulation, drainage, relationship of buildings to each other, landscaping, buffering, lighting or other considerations of site plan review which includes parking. He informs the Board that in the same section of the Code under Change of Use and Waiver of Site Plan it states that in order for the reviewing board to determine if the existing site conditions can support the new use the applicant must submit along with the change of use application at a minimum a copy of the most recently approved site plan. He states the most recently approved site plan for this property is from 1984 and there is an issue with the change in the number of parking spaces which has increased without prior approval.

Regarding the presentation that has been made thus far. Mr. Platt states that the members of the Planning Board are volunteers and residents of the Township and has always been fair to all applicants and that their decision are based on the land use issues. He states that the applicant had decided when their Zoning Permit was denied ,due to the Zoning Officer being unable to obtain the full nature of the use, to go before the Planning Board rather than seek an interpretation or to go before the Zoning Board to appeal the Zoning Officer’s decision to deny their permit.

Mr. Platt states for the record that charges have been made by the applicant’s attorney that the Board has been acting in a discriminatory fashion. He states the Board acts only on evidence that has been presented and only on land use issues. He states that he has letter dated back to December 10, 2019 from the applicant’s attorney, Mr. Samuel Reale addressed to Jaclyn Bradley the Zoning Officer which states “ While this correspondence and it’s attachments should not be considered a waiver of any state or federal claim against the Township of Voorhees. Enclosed please find another copy of the previously completed and filed Voorhees Township Zoning Permit application.” Another letter that was submitted on February 6, 2020 again by Mr. Reale which states addressed to the Planning Board Secretary Wendy Flite, “Without waiving any federal or state claim for violation by the Township of the ADA, the RA of 1973 or any other federal or state constitutional statutory right enclosed you will find 19 copies of the application etc..” Mr. Platt then states for the record the most recent email dated August 12, 2020 from Mr. Reale to the Township Solicitor, Mr. Howard Long, which states “ What has proven most startling is the Townships position that the providing of outpatient behavioral health treatment is not a medical practice. First this is at odds with the previously noted position related to the current permit. Second it is a position that the Township cannot sustain in the face of clear federal and state regulatory authority. When the Township’s position is discussed with experts in the field they are dumbfounded. As one nationally recognized expert commented he had never thought of this issue considering it so clear cut. Of course none of this was an issue until the state asked Affinity to have the Zoning permit amended to include language identifying the practice as an OTP. Curiously the state has withdrawn this requirement and currently only requires the zoning permit be in Affinity’s name. Unfortunately beginning on or around November 12, 2019 the introduction of the word opioid into the equation has resulted in conduct from the Township discriminatory under the ADA, the RA of 1973 and the ACA. There is no question that a municipality cannot exercise an otherwise valid land use provision to discriminate against those who suffer from any form of addiction who are by definition disabled. Neither can municipalities discriminate against providers of treatment services. Given the histrionic evidence by Board members during the July 22nd meeting it appears a rational discussion cannot be had. Further the actions of the Township as well as those elected and appointed officials including it’s Planning and Zoning Board Solicitors evidence is a clear intent to engage in blatant discrimination the evidence is clear. What was most startling about this denial was the admission that the Township was actively discriminating against an Opioid treatment program. He states these claims are unacceptable and offensive to him and the Board. He states the applicant will have to testify regarding the land use issues only.

Mr. Schwenke states he appreciates the information provided by Mr. Platt. He states the Board will review the facts of the case only.

The applicant’s witnesses were sworn in by Mr. Platt. Mr. Ronald Martin is the applicant and managing member of Affinity. Dr. Greg Hobelmann is an expert in the treatment of opioid addiction.

Mr. Reale states that the applicant has already provided testimony regarding the site plan.

Mr. Platt states Exhibit 9 was removed due to proprietary information.

Mr. Reale refers to exhibit 18 which is a letter from the Mayor of Voorhees from 2018 where he addresses the opioid crisis. He also refers to Exhibit 23 which is a list of calls for service for overdosing in the Township.

Mr. Reale in response to Mr. Platt states a certificate of need is no longer needed. Mr. Reale states Affinity is licensed by the state as a medical office but requires a license as an OTP Opioid Treatment Practice.

Mr. Ravitz asks that Exhibit 23 be redacted of personal information. Mr. Reale agrees.

Dr. Hobelmann provides his credentials. He states he is a medical doctor out of Maryland and Chief Medical Officer at the Ashley Addiction Treatment Center in Maryland. He testifies he has no affiliation with Affinity Healthcare. He then provides information regarding levels of treatment for those suffering from addiction. Dr. Hobelmann testifies he was asked by Mr. Martin to educate the Board on addiction treatments and no compensation was discussed. Dr. Hobelmann testifies he is providing information regarding addition and treatments not specifics of Affinity Healthcare’s program.

Mr. Martin states Affinity is a basic outpatient opioid treatment center only dispensing two medications one being Methadone. Mr. Reale states Dr. Hobelmann will provide information on the medical nature of outpatient treatment centers. Dr. Hobelmann states this practice is a medical practice and medical treatment must be provided by a licensed doctor or nurse practitioner. He testifies in order to dispense Methadone the facility would need to be licensed by the state as an OTP. He states the typical treatment is 7 days a week until it lessens. Dr. Hobelmann states the opioid crisis has expanded to all parts of the country and all types of people.

Mr. Platt asks Dr. Hobelmann the following questions:

1. Are you licensed to practice medicine in the state of New Jersey? No
2. Are you familiar with the licensing procedures for opioid treatment centers in the State of New Jersey? No
3. Have you reviewed any of the regulations or operations of opioid treatment centers in the State of New Jersey? No
4. Are you familiar or have any knowledge of the exact operations for the proposed center at this site? No
5. Have you reviewed the Zoning Permits that were previously issued for prior medical office uses at 200 West Somerdale Road, Voorhees New Jersey? Very briefly he reviewed them
6. Have you reviewed or are you familiar with the denials of the Zoning Permits from the Zoning Officer which ultimately led to this application going before the Board and being heard this evening? No
7. Have you reviewed Section 156.018 titled approval procedures for a change of use of the Voorhees Township Code? No
8. Have you reviewed or are you familiar with the O1 Office 1 Zone in Voorhees Township New Jersey? No
9. Are you familiar with the legislative intent of the Township Governing Body with respect to that ordinance? No
10. Are you a licensed engineer or planner in the State of New Jersey? No

Mr. Reale objects to this line of questioning. Mr. Schwenke states his objection is overruled.

Mr. Martin testifies he is the program sponsor and a managing member of Affinity Healthcare Group.

He testifies Affinity Healthcare Group was first established in 2011 in Virginia and has 5 locations throughout Virginia area. He states Affinity has always exceeded standards on the behavioral health care spectrum. Mr. Martin testifies that over 1000 patients a day over 4 to 5 facilities. He states the Chesapeake Virginia location is licensed as an Opioid Treatment Center. He states Affinity has been licensed through Health and Human Services and SAMHSA. He testifies that Affinity was licensed by federal agencies such as DEA, SAMSHA and other agencies through the Commonwealth of Virginia in order to dispense Methadone. Mr. Martin testifies that Affinity is proposing to operate an outpatient opioid treatment facility at 200 West Somerdale Road in Voorhees New Jersey. He testifies that Affinity must obtain licenses from the New Jersey State of Licensing and the State Methadone Authority. He states Affinity currently has an application pending with the state but is on hold until they receive a Zoning Permit in the name of Affinity Healthcare Services.

Mr. Martin testifies regarding the operations at the proposed location. He states that this location could see approximately 200 to 250 patients and that is not a daily number it varies. He states there is a percentage of patients that are seen monthly or weekly and some seen on a daily basis. There is further discussion on the actual number of patients to be seen daily. Mr. Martin testifies you could have an approximate number of patients enrolled but he cannot say how may would come every day. He states in prior experience with a comparable facility he would anticipate the daily load of 185-200 patients per day. He then testifies hours of operation would be 5:00 AM to 9:30 AM which is when patients come to the office to receive their medication. He states nurses are onsite at 4:45 AM. He sates patients typically would arrive close to 5:00 AM. He states they did not have any lines outside the building. He testifies hours on Sunday would be 6:00 AM to 10:00 AM. He testifies there will evening telehealth hours. He testifies the State may require them to have evening office hours for meetings and not on the weekends. He testifies from 9:30AM-1:00PM are hours for staff and counselors, after 1:00PM the office is closed.

Mr. Brocco states his concerns that this is not an appointment based practice and what if there a patients still waiting for medication after 9:30 would they not be serviced. Mr. Martin states if the patient misses the time they would have to be seen the next day. He testifies that there is not an actual appointment time but on a daily basis it is a window of time. Mr. Martin testifies regarding the treatment in the office. He states the patient checks in with the receptionist, then will be moved to the nurses intake office if the doctor or counselor does not need to see them they would move onto the treatment nurse who will dispense medication. Mr. Martin testifies he cannot give an exact amount of time the patient will be in the office due to the uniqueness of each patients but typically 5 to 10 minutes. Mr. Martin testifies the current facility would not exceed a maximum of 275 patients. Mr. Martin states he cannot give an exact number of patients that could be receiving counseling after 9:30AM. Mr. Martin testifies Affinity has not sought out to have evening hours with the state.

In response to Mr. Nicini’s concerns regarding lining up outside Mr. Martin states the patient is to leave immediately following their appointments. Mr. Martin states the use serves the community of Voorhees and it’s neighboring communities. He also states they do not have police or security guards they found it no effective. He states counselors and staff take care of keeping the patience moving along.

Mr. Platt requests a copy of the application that has been made to the state.

Mr. Martin testifies they are required by the state to come into a reciprocal agreement with another facility and are currently in the process.

There is discussion regarding upcoming meetings. The meetings are scheduled for September 23rd and October 14th. No further notice will be given.

Mr. Reale agrees to extend the action date to the end of October.

Seeing no further comments the Chairman adjourns the meeting

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Wendy Flite, Planning Board Secretary

Minutes prepared by Wendy Flite. The minutes are intended to reflect the basic comments and action. Verbatim transcripts of all electronic recordings can be available upon proper request and payment.