

**TOWNSHIP OF MIDDLETOWN PLANNING BOARD**

**IN THE MATTER OF APPLICATION #2014-216  
APPLICATION OF VILLAGE 35, LP**

**RESOLUTION GRANTING  
GENERAL DEVELOPMENT PLAN APPROVAL**

Middletown Township  
Monmouth County, New Jersey  
Date of Hearing: April 15, 2015  
Date of Action: April 15, 2015  
Date of Resolution: July 1, 2015

**WHEREAS**, Village 35, LP, (hereinafter the "applicant") is the contract purchaser of a portion (the "Commercial Tract") of property designated as Block 825, Lots 53-57, 59-69, 72-79 and 81 on the Tax Map of Middletown Township, consisting of slightly more than 118 acres located in the Planned Development (PD) Zone (collectively, the "Property"); and

**WHEREAS**, Toll Brothers ("Toll Bros.") is the contract purchaser of the other portion of the subject property (the "Residential Tract"); and

**WHEREAS**, the owner of the Property, Mountain Hill, LLC, has authorized the applicant to make this application; and

**WHEREAS**, an application has been made to the Planning Board by the applicant for general development plan ("GDP") approval to develop the Residential Tract with up to 350 residential units, of which 70 are to be affordable (collectively, the "Residential Component"), and, the Commercial Tract with up to

400,000 square feet of commercial space (the "Commercial Component"); and

**WHEREAS**, the Planning Board is considering only the GDP application at this time, and will consider at a later date subsequent applications for subdivision and site plan approvals for the respective development of each of the Commercial Component and Residential Component, by the appropriate applicants (each a "Future Development Application" and, collectively, the "Future Development Applications"); and

**WHEREAS**, the applicant submitted the Mountain Hill General Development Plan, prepared by Langan Engineering consisting of ten (10) sheets, dated October 31, 2014 and revised through April 1, 2015 (the "GDP Plan"); and

**WHEREAS**, public notice was given in accordance with the requirements of the Municipal Land Use Law for the public hearing held on April 15, 2015, and all interested parties were given an opportunity to be heard; and

**WHEREAS**, there had been a prior public hearing on and approval of this application on March 4, 2015, but subsequent to that hearing, potential notice issues were discovered; and

**WHEREAS**, this decision is based entirely on the hearing held on April 15, 2015; and

**WHEREAS**, the applicant was represented by Marc D. Policastro, Esq., and testimony was presented by Gerard Fitamant, P.E., Karl Pehnke, P.P./Traffic Engineer, Paul Phillips, P.P., John Orrico, an officer of the applicant and Matt Marcovitch, a Toll Bros. representative; and

**WHEREAS**, members of the public appeared on this application to question witnesses and to testify, and the Board and staff reviewed the materials submitted and have carefully considered all of the evidence and all of the applicant's testimony and the testimony of the public.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Board of the Township of Middletown does hereby find the following facts:

1. The applicant is the contract purchaser of the Commercial Tract. Toll Bros. is the contract purchaser of the Residential Tract. The Property, which is designated as Block 825, Lots 53-57, 59-69, 72-79, and 81, is slightly more than 118 acres with frontage along the northbound side of Highway 35, with additional frontage on Kings Highway East and on Kaness Lane. The Property is located in the PD Planned Development zoning district.
2. The GDP proposal is to develop the Property with up to 350 residential units, of which 70 are to be

affordable, and up to 400,000 square feet of commercial space, in separate and multiple phases. The applicant submitted architectural renderings of both the Residential and Commercial Components and the respective buildings in each. Any future land use approvals (including subdivision and/or site plan approval, as appropriate) for either the Commercial Component or Residential Component (collectively, "Future Approvals") shall require that the architectural plans be in substantial conformance with the renderings submitted to the Planning Board during this application. Mr. Orrico from National Realty, the developer of the commercial component testified at pages 167 - 168 of the transcript:

MR. ORRICO: What we're looking at here is, if the concern is are we doing a Super Walmart, no, we're not doing Super Walmart. Yes, I do have Super Walmarts in my portfolio, in our portfolio. That's not what this site should be. Will there be boxes that may be 45,000 square feet? Yes, but there's only going to be one, maybe two. Cause the site isn't really designed for that. This is a, this is 80 feet deep, this is only a hundred feet deep. So my only opportunity is here. And we're talking to two different cinemas for movie and dining to go in here. And it won't be this big at the end of the day because those theaters are only 35, 40,000 square feet.

The Planning Board interprets this representation to mean that no stores shall have a floor area in excess of 45,000 square feet and this approval is subject to that representation. "The record is the best evidence of what the board considered and decided." *Sherman v. Harvey Cedars Board of Adjustment*, 242 N.J. Super. 420, 430 (App. Div. 1990). And see Fieramosca v. Barnegat, 335 N.J. Super. 526, 534 (Law Div. 2000).

3. The project meets the criteria for General Development Plan approval under N.J.S.A. 40:55D-45.1. The proposed development is larger than 100 acres as required for a General Development Plan, pursuant to N.J.S.A. 40:55D-45.3.
4. The proposed development satisfies the statutory criteria for a general development approval, N.J.S.A. 44:55D-45.1 thru -45.8 ("General Development Plan Statute").
5. The Land Use Plan shows the general proposed layout of the development. The applicant proposes separate lots for the Residential Component and Commercial Component with a private roadway running from Kings Highway East to Kanes Lane between the properties (the "Connector Road"). At this stage, the lot layout is meant for

informational purposes. Additional details will be required at the time of Future Development Applications.

6. As to the Circulation Plan:

a. The proposed development will have a significant impact on the circulation and traffic patterns in the area. The plans show re-alignment of existing jug-handles and access points from Highway 35. All highway improvements are subject to review and approval by NJDOT and the Planning Board. The Planning Board reserves the right to require completion of the proposed improvements to the Route 35 intersections as a condition of Future Approvals. The Planning Board reserves the right to require these improvements as a condition of any Future Approval for either the Residential component or the Commercial component. In connection with Future Approvals, easements may be necessary for the adjacent property owners whose access to the highway will be modified and easements or rights-of-way may be required by the NJDOT.

b. The applicant shall provide a traffic impact study prior to any Future Approvals to analyze existing

and future traffic volumes and levels of service at major intersections along Highway 35 and the surrounding area that will be impacted by this project. Attention should also be given to traffic volumes through Twin Brooks Road and Woodland Drive, as this neighborhood has great potential to be used as a cut-through alternative to Highway 35.

c. Kanes Lane - The 2004 Master Plan identifies the intersection of Woodland Drive, Route 35, and Kanes Lane as an area that should feature improved access and jug-handle reconfiguration as part of development on the subject property. The applicant has proposed realigning a portion of Kanes Lane and some alterations to the jug-handle at Woodland Drive. The NJDOT has jurisdiction over access to Highway 35. The Planning Board reserves the right to require improvements to Kanes Lane at Route 35 as a condition of a Future Development Approval. The applicant shall make a request to the U.S. Navy to permit Kanes Lane to connect to Normandy Road.

d. Kings Highway East:

i. The 2004 Master Plan designates Kings Highway East as one of a number of scenic roads in the

Township. The Master Plan states that scenic corridors contribute to the quality of life for Township residents and function as important landmarks. It states: "Creative design techniques, context-sensitive structure locations, the retention of an agrarian atmosphere, and identification and delineation of important viewsheds are all essential components of scenic corridor preservation."

- ii. At the time of the Board's consideration of the Future Development Applications the applicant shall demonstrate design techniques that preserve the scenic nature of the Kings Highway East corridor in accordance with the Master Plan.
- iii. The applicant has proposed a realignment of a portion of Kings Highway East. At the time of the Board's consideration of the Future Development Applications, the appropriate applicant should (a) discuss how this realignment may impact the scenic and historic value of this corridor, and (b) provide



additional details regarding this proposed realignment.

- iv. The Planning Board reserves the right to limit or eliminate direct access from Kings Highway East to the Residential Tract as a condition of a Future Approval.
- e. Proposed Connector Road--The applicant has proposed a Connector Road through the subject property between Kings Highway East and Kanes Lane. This will be a private roadway, to be maintained by the Homeowner's Association of the Residential Component, with unrestricted public access. In addition, the 2014 Re-Examination states that this road should be developed using complete streets and traffic calming principals to ensure accessibility and safe circulation of pedestrians and cyclists as well as automobiles. When the Connector Road becomes the subject of a site plan in a Future Development Application, the appropriate applicant shall demonstrate design standards for the connector road in accordance with the recommendations of the Master Plan prior to any Future Approvals. The Planning Board reserves the right to require the

construction of the Connector Road as a condition of any Future Approval. Adequate provisions for access and maintenance of the Connector Road shall be required as a condition of Future Approvals.

- f. Prior to any Future Approvals, additional details will be required regarding internal pedestrian circulation and connections between the proposed portions of the development. In particular, connections between the residential units and existing and future transit stops at Highway 35 are essential.
- g. The internal road network and proposed parking for the Residential Component shall comply with RSIS. Conformance with this requirement should be confirmed during the appropriate applicant's Future Development Application for site plan approval for the Residential Component.
- h. At the time of the Board's consideration of the site plan as part of the Future Development Application for the Commercial Component, additional information will be required for parking calculations, driveways sizes and orientation, and access aisles.

- i. At the time of the Board's consideration of the site plan as part of Future Development Applications, the appropriate applicant shall provide turning templates for emergency vehicles and delivery trucks to demonstrate safe and effective circulation throughout the site.
  - j. At the time of the Board's consideration of the site plan as part of the Future Development Applications, the Planning Board reserves the right to require a review of a revised internal driveway alignment, as well as revised locations for ingress and egress.
7. As to the Open Space Plan:
- a. Per the zone requirements at 16-939.A.5, the PD Zone requires a 30% open space set aside. The total area of the tract is 118.292 acres; thus the required set aside is 35.488 acres. The applicant has proposed an open space set aside of 36.136 acres.
  - b. Section 16-939.A.5 references the definition of open space contained at 16-203. This definition reads, in part: "Where open space is a requirement of a zone, not more than 50% shall consist of wetlands, open bodies of water, watercourses, sloped areas of 25% or greater, detention or retention basins,

swales, and other drainage structures." Large areas of wetlands and an area of steep slopes are located in the southeasterly portion of the site near Kanesh Lane. In addition, the entirety of the proposed storm water management infrastructure is included in the open space area. The applicant has represented that the overall project will comply with these requirements. However, in order to ensure compliance with the zoning ordinance, at the time of the Board's consideration of the site plan as part of the Future Development Applications, the appropriate applicant shall provide additional details to confirm that no more than 50% of the proposed open space area consists of the constrained features listed in the definition.

- c. The Planning Board reserves the right to determine prior to any subsequent Future Approval if areas within DOT jurisdiction shall be counted towards the open space calculations.
- d. At the time of the Board's consideration of the site plan as part of the Future Development Application for the Residential Component, the appropriate

applicant shall discuss any recreational amenities that are proposed for the open space areas.

- e. The Planning Board reserves the right to condition Future Approvals to insure the preservation of the proposed farm lot as open space.

8. As to the Local Service and Utility Plan:

- a. The applicant has provided the locations of proposed underground utility lines and connections throughout the Property. At the time of the Board's consideration of site plan as part of the Future Development Applications, additional details shall be provided.
- b. The applicant has indicated that both the Commercial Component and Residential Component will contract with a private refuse hauler to provide the necessary service. Review of truck turning templates and dumpster locations, as well as any additional details that may be necessary, will be conducted at the time of the Board's consideration of the site plan which is part of Future Development Applications.
- c. As a condition of the Future Approvals, the appropriate applicant will be responsible for

securing approvals for the appropriate Component of the Project from all appropriate utilities. TOMSA has indicated that a capacity study had been performed and that there are some concerns that need to be addressed. Future applicants shall work with TOMSA to address these concerns and secure its approval as a condition of site plan approvals.

9. As to the Storm Water Management Plan:

- a. The applicant indicates that a mixture of infiltration and detention basins are to be proposed to manage the onsite storm water. Each portion of the development will be responsible for its own storm water management.
- b. At the time of the Board's consideration of the respective Commercial and Residential site plan applications, the appropriate applicant shall provide a full storm water management report for its respective property, i.e., for the Commercial Component or Residential Component, as the case may be, all for the Board's review and consideration. Any additional information that is required at that time shall be provided for review by the Board Engineer.

10. As to the Environmental Inventory:

- a. At the time of the Board's consideration of Future Development Applications, the appropriate applicant shall provide an inventory of critical areas on its respective portion of the Property as defined by the Township ordinance at 16-624. That applicant shall make every effort to minimize any potential disturbance of critical areas including wetlands and steep slopes.
- b. The applicant has indicated that portions of the tract have been used for agriculture in the past, but there is no mention of potential soil contamination from pesticides. At the time of the Board's consideration of the contemplated Commercial and Residential site plan applications, the appropriate applicant shall provide testimony as to whether onsite soils for the applicable portion of the Property were tested for potential contaminants.
- c. The applicant has provided an Environmental Impact Report for the project. However, additional information may be necessary at the time of the Board's consideration of Future Development Applications.

11. As to Community Facility Plan:

The applicant has provided a community facility plan showing amenities for the Residential Component. A clubhouse, tennis court, and two "tot-lots" are proposed. At the time of the Board's consideration of the site plan application as part of a Future Development Application as to the Residential Component, the appropriate applicant must provide the necessary additional construction details for these amenities.

12. As to the Housing Plan:

- a. The Property is included in the Township's 2008 Housing Plan. That plan identified the significant opportunity for the provision of affordable housing on this site. The plan projected the development of 400 units, of which 80 (or 20%) would be affordable rental units.
- b. The applicant has proposed 350 dwelling units in a mix of 280 market rate townhouses and 70 affordable flats. The 70 affordable units represent 20% of the development, which conforms to the PD zoning ordinance and is the same proportion described in the Housing Plan.



c. At the time of the Board's consideration of the site plan for a Future Development Application for the Residential Component, the appropriate applicant shall provide additional information about the design and bedroom mix of the units.

13. As to the Fiscal Impact Report:

The applicant has provided a fiscal impact report as required by the Township ordinance. The report finds that the GDP proposal will represent a significant tax ratable for the Township. If necessary, the appropriate applicant shall discuss the findings of this report, at the time of the Board's consideration of the site plan as part of Future Development Applications.

14. As to the Timing Schedule:

a. The applicant has provided a Phasing Plan for the project. If necessary, the appropriate applicant shall provide additional testimony regarding the phasing of its portion of the project and the potential for concurrent development of the Residential and Commercial Components, at the time of the Board's consideration of the site plan for Future Development Applications.

b. Additional details with respect to project phasing may be required at the time of the Board's consideration of the site plans for Future Development Applications.

15. The applicant requests a period of protection of 20 years to allow sufficient time to complete this development in an economic downturn. Based upon the number of dwelling units and commercial space proposed, as well as the infrastructure improvements necessary for the development, the Board finds that this 20-year period of protection is appropriate and hereby confirms that the General Development Plan approval granted in this resolution is valid for twenty (20) years from the date that the Board adopts a resolution memorializing a final approval for the first component to be developed (whether the Residential Component or Commercial Component) in accordance with N.J.S.A. 40:55D-45.1.b.

16. The terms and conditions of this approval are intended to adequately protect the interest of the public and of the residents, occupants and owners of the proposed development, and the total completion of the development.

**BE IT FURTHER RESOLVED** that the Planning Board of the Township of Middletown does hereby grant Village 35, LP General Development Plan approval for the development of a maximum of 350 residential units and a maximum of 400,000 square feet of commercial space on the subject property based upon the evidence and findings contained herein subject to the conditions listed on Exhibit A attached hereto and made a part hereof.

**ON MOTION BY** Michael Ostrander and seconded by  
Carl Rathjen the application for General Development  
Plan is approved based upon the following vote:

AYES: Carroll, Davis, Deus, Ostrander, Rathjen, Wilton

NAYES:

ABSTAIN:

ABSENT: Settembrino

  
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Debra Yuro  
Planning Board Secretary

I, Debra Yuro, Secretary to the Township of Middletown  
Planning Board do hereby certify that the foregoing is a true  
copy of a Resolution adopted by the Planning Board on this 1st  
day of July 2015.

  
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Debra Yuro  
Planning Board Secretary

EXHIBIT A

The following conditions of approval for Application #2014-216 for Village 35, LP shall be satisfied by the applicant:

1. To the extent not already complied with or modified by the testimony provided in connection with this application, the applicant shall comply with the Planning Board Engineer's letter dated February 24, 2015 related to General Development Plan approval.
2. To the extent not already complied with or modified by the testimony provided in connection with this application, the applicant shall comply with the Township Planner's letter dated February 26, 2015 related to General Development Plan approval.
3. The terms and conditions of this General Development Plan approval are valid for a period of twenty (20) years from the date that the Board adopts a resolution memorializing a final approval for the first component to be developed (whether the Residential Component or Commercial Component) in accordance with N.J.S.A. 40:55D-45.1.b.
4. The Planning Board reserves the right to condition Future Approvals as set forth above.

5. The Planning Board reserves the right to require a developer's agreement as a condition of Future Approvals.
6. Approval, or letter of no jurisdiction, from all required outside agencies including the Monmouth County Planning Board, Freehold Soil Conservation District, NJDOT, NJDEP and TOMSA shall be required to be obtained as a condition of any Future Approval.
7. The requirements of the General Development Plan Statute are hereby incorporated by reference as if set forth at length herein.
8. **This approval is conditioned upon the conditions and requirements set forth in the resolution.**