



RECORDED 08/04/2023 11:33:08 AM  
 B/P:1647/Pgs 336 - 338; (3 pgs)  
 INST# 20202  
 TOWN OF EAST GREENWICH, RI  
 111 Peirce Street  
 PO Box 111  
 East Greenwich, RI 02818  
 Phone (401) 886-8645  
[www.eastgreenwichri.com](http://www.eastgreenwichri.com)



**Town of East Greenwich**  
 Planning Board

Decision: August 02, 2023  
 Approved: August 02, 2023  
 Recorded:

**Comprehensive Permit – Master Plan Denial  
 “Division Road Neighborhood”**

WHEREAS: Representatives of the applicant, Division Road Neighborhood, LLC c/o Ned Capozzi, Modern Industries, Inc., proposes development of a parcel owned by Modern Industries, Inc, located at Assessor’s Map 67, Plat 13, Lots 35 and 53. The subject property is a vacant wooded parcel having just over 80 acres. It is located in an F-2 (single family residential and farm zone) zoning district; and

WHEREAS: The proposal calls for the new construction of 410 residential units in a variety of housing types and styles ranging from multi-story apartment buildings to small single-family cottages. The development will be serviced by public water and sewer. All of the roadways are proposed to be owned and maintained by a private condominium association; and

WHEREAS: The applicant will provide 25 percent of the proposed dwelling units as deed-restricted “affordable” units, thus qualifying the project for a Comprehensive Permit review per Rhode Island General Laws Section 45-53 and Chapter 63 of the Town of East Greenwich Code; and

WHEREAS: The Planning Board received reports and testimony from Town Departments, the Technical Review Committee, representatives of the applicant, and other interested parties regarding the proposed land development, including expert testimony from traffic experts and comprehensive planning experts both in favor of and against the proposed developments at public informational meetings held on June 15, 2022, April 19, 2023, May 03, 2023, May 17, 2023, June 21, 2023 and July 19, 2023; and

Having considered the requirements of Rhode Island General Laws of 1956, as amended, §45-23-30 and §45-23-41, and the Low and Moderate Income Housing Act, R.I. General Laws §45-53, and weighing the urgent need for affordable housing against the other factors set forth in such laws, and based on:

- Review and consideration of the Technical Review Committee’s report and recommendations of the staff, and
- Review and consideration of the Exhibits made part of the record, and
- Personal knowledge of the area in question, and
- Testimony, including the expert testimony both in favor and against, as presented to the Board during the public informational meetings, now

THEREFORE: The Planning Board hereby DENIES the Comprehensive Permit - Master Plan for "Division Road Neighborhood" for the following reasons:

**(A)** The Planning Board finds that the proposal is not in conformance with the comprehensive plan. The board finds that the applicant did not follow the procedural steps required to change the current zoning district (F-2) to the suggested zoning district (MUPD) as presented in the Comprehensive Plan (page 69). The applicant decided to utilize the procedures of a Comprehensive Permit. While such procedural defect is not in-of-itself fatal, it does lead to the substantive finding that the proposed development does not represent mixed-use development. The proposed development does not offer any commercial uses nor create a village center as suggested in the Comprehensive Plan (page 69). The applicant has indicated that it pursued this direction based on advice from the former Planning Director of the Town, and also from feedback at Technical Review Committee (TRC) meetings. However, neither the former Planning Director nor the TRC had the authority to make such unofficial changes in the Comprehensive Plan. Also, the former Planning Director and TRC did not have the benefit of any public hearings or input before making such suggestions.

Had the applicant followed the proper procedure and applied for the zoning amendment, such public hearings would have revealed this deficiency. As it was, the Comprehensive Permit public informational meetings did bring these shortcomings to light. The proposed development's deviance from the Comprehensive Plan by not including a village center and commercial use is significant for two reasons. First, without these elements, instead of expanding and recreating the traditional New England development pattern of village nodes, the proposed all-residential development just expands the continuing problem of suburban sprawl. Secondly, such new suburban sprawl leads to significantly increased traffic and the concerns for the environment and the health and safety of the residents as discussed in Section C below.

The Board further accepts and finds credible the findings of planning expert Douglas McLean, AICP, especially with regard to the inconsistency of the proposed development with the Comprehensive Plan, and adopts the findings in his report dated April 20, 2013.

**(B)** The Planning Board finds that the Town has met or has plans to meet the goal of ten percent (10%) of the year-round units and also finds that the Town has achieved or has made significant progress towards meeting the goals required by this section. The Board finds that the Town has made significant gains in the number of deed-restricted "affordable" units. The Board recognizes a total of 114 deed restricted units that are presently approved and are under construction but not yet registered with Rhode Island Housing. The units that are approved and under construction are; 53 remaining units located at Brookside Terrance, South County Trail, and 65 units at Frenchtown Road Apartments, Frenchtown Road.

The Board realizes that any approved development with more than 10% (even 11%) affordable units will move the Town closer to its 10% goal. This one, with 25% affordable units, will increase the number and percentage of affordable units. However, the typical East Greenwich development is only 10 to 25 units total. The huge size of this development in comparison, with 307 market rate units, will cause the denominator of the 1/10 (10%) requirement to increase so substantially that it will take longer for the Town to reach 10%, assuming typical development patterns continue. Therefore, the Board finds that this development, if approved, would not provide more than minimal help to the Town in reaching its 10% goal over the long term.

(C) The Planning Board finds that the concerns for the environment and the health and safety of current and future residents have not been adequately addressed. Extensive expert testimony was provided by David Clinton of VHB. While acknowledging significant numerical and percentage increase in traffic on the roadways in the immediate vicinity, he concluded that such increase would not be harmful to the public safety.

Peer review of Mr. Clinton's report(s) was conducted by the Town's consulting traffic engineer, Anna Novo of Caputo and Wick. While part of her conclusion was in agreement with Mr. Clinton, she did acknowledge that it has been almost 20 years since a new comprehensive study of this western section of the Town has been undertaken, and thus even her own conclusions that a wider area traffic study was not necessary were based on multiple assumptions related to development that had or had not taken place over the past 20 years, especially with regard to the area of the Division Road and South County Trail (a/k/a Route 2) intersection and some of the key intersections between such locale and the proposed development.

Expert traffic testimony was also presented by John Shevlin of Pare Corporation. Among other concerns, he specifically recommended that "although this intersection [Division Road and South County Trail] is a good distance away from the project site, over 2 miles, there are not a lot of destinations between the project site and the intersection. It is our belief that traffic should be evaluated for Existing, Future No-Build and Future Build conditions." (Shevlin letter – April 19, 2023)

Based on the conflicting expert testimony presented to the Board, as well as the extensive lay testimony by residents which the Board acknowledges is not probative evidence but which does provide insight in to the historical traffic conditions in this area, and the Board members' personal knowledge of the area in question, the Board finds Mr. Shevlin's testimony more credible than that of Mr. Clinton, and the Board finds that Ms. Novo's testimony when taken in its overall context, does not contradict Mr. Shevlin's expert testimony.

Therefore, based on all of the foregoing, the applicant has not adequately addressed the future traffic impacts to the surrounding roadway system.

Member Wood made a motion to approve the draft decision, as amended at the meeting, to DENY the Division Road Neighborhood project Comprehensive Permit. Member Shartenberg seconded the motion. The following Board members voted in the affirmative to issue the final decision to DENY: Members deGroot, Lupovitz, Wood and Shartenberg. Member Renninger voted in the negative. Therefore, Division Road Neighborhood project Comprehensive Permit is DENIED on a 4-1 vote.

By Order of the Planning Board:

  
\_\_\_\_\_  
Benjamin Lupovitz, Chair

8-3-23