

## PRINCETON PLANNING BOARD

### MINUTES OF THE REGULAR MEETING

Thursday, September 18, 2014

PRINCETON MUNICIPAL BUILDING – Main Meeting Room  
Princeton, NJ

**PRESENT:** Julie Capozzoli, Jenny Crumiller, Wanda Gunning, Bernie Miller, Mildred Trotman, Marvin Reed

**ABSENT:** Cecilia Birge, Timothy Quinn, Gail Ullman, David Cohen

**ALSO PRESENT:** Karen Cayci, Esq.; Board Attorney; Lee Solow, Planning Director; Ilene Cutroneo, Board Secretary; Jack West, Land Use Engineer; Christine Lewandoski, Deputy Zoning Officer/Historic Preservation Officer

Chairperson Gunning opened the meeting at 7:35 pm, acknowledging the opening statement as required by the Open Public Meetings Act, stating that notice of this meeting was adopted on December 6, 2013 and published on December 10, 2013.

**ANNOUNCEMENTS:** Mrs. Gunning advised that the Landscape Subcommittee would be meeting on September 30 at 10 am in meeting room B.

#### MINUTES

- a) Regular Meeting – February 20, 2014. Motion was made by Mrs. Trotman, seconded by Ms. Crumiller and carried with a voice vote of six ayes among those members eligible to vote to accept the minutes. No one opposed. No one abstained.
- b) Regular Meeting – March 20, 2014. Motion was made by Ms. Crumiller, seconded by Mrs. Trotman and carried with a voice vote of five ayes among those members eligible to vote to accept the minutes. No one opposed. No one abstained.
- c) Regular Meeting – May 1, 2014. Motion was made by Ms. Crumiller, seconded by Ms. Capozzoli and carried with a voice vote of five ayes among those members eligible to vote. No one opposed. No one abstained.
- d) Special Meeting – July 31, 2014. Prior to the vote, the date on the minutes was corrected. Motion was made by Ms. Crumiller to accept the minutes as amended, seconded by Mrs. Trotman and carried with a voice vote of four ayes among those members eligible to vote. No one opposed. No one abstained.

#### DISCUSSION

- a) Ordinance Referral – Prohibition of Hydraulic Fracturing. Mr. Solow advised the Board that this ordinance will amend the existing ordinances to prohibit drilling for natural gas beyond the reconnaissance phase. Based upon sections in the Land Use and Conservation Elements of the Master Plan, Mr. Solow advised that this ordinance does support these statements. Ms. Crumiller urged the Board to support this ordinance. Motion was made by Ms. Capozzoli that

the proposed ordinance was found to be consistent with the Master Plan, seconded by Mr. Miller and carried with a voice vote of six ayes. No one opposed. No one abstained.

b) Resolution from Princeton Council – A request was forwarded to the Planning Board by the Princeton Council seeking language in the Master Plan prohibiting residential parking in the front yard. Mrs. Gunning recommended that the Master Plan committee discuss this request. Motion was made by Ms. Crumiller to send the request to the Master Plan committee, seconded by Mr. Reed and carried with a voice vote of six ayes. No one opposed. No one abstained.

Mr. Porter left the meeting at this time and Ms. Cayci appeared as Special Counsel to the Planning Board.

### **HEARINGS:**

a) INSTITUTE FOR ADVANCED STUDY – previously distributed  
Amended Major Subdivision & Site Plan  
Olden Lane/Mercer Road; Block 10401, Lot 1; Block 10501, Lot 1.01  
File # P1414-025SPFD & P1414-025PD

Ms. Cayci advised that the applicant's notice was reviewed and the Board is accepting jurisdiction. Ms. Cayci continued by reviewing her memorandum to the Board recommending that the submission be reviewed as an amendment to the original approval, as the only change to the submission is the placement of lot lines in response to D & R Canal Commission regarding the application status with the Board. She advised that the Board approved the application for site plan and subdivision for 15 homes in 2012. The original decision was appealed but was upheld by the court. The objectors appealed the court decision and it is currently in the appellate division, on hold, until the outcome of this amended application.

Christopher Tarr, Esq., was sworn in and appeared on behalf of the applicant. Mr. Tarr noted that the original application was unanimously approved and a condition included that it needed to obtain a waiver from the D&R Canal Commission (DRCC). The applicant was unable to receive the necessary approvals from DRCC so the plans were amended to address the DRCC comments. A PowerPoint presentation with the following exhibits were presented to the Board: A-1: Slide of Section 10B-135 of the former Princeton Township Zoning Ordinance; noting that the proposal is smaller than the prior application and therefore will have less of an impact from the original approval making in conforming with both the ordinance and DRCC.

A-2: Page 76 of transcript of bench decision of Honorable Mary C. Jacobson, A.J.S.C., dated June 21, 2013 in *Princeton Battlefield Area Preservation Society, et al. v. Institute for Advanced Study and Regional Planning Board of Princeton*, Docket No. MER-L-1757-12; this section supported the recommendation to limit testimony to only the changes of lot line and nothing more.

Bruce Afran, Esq., was sworn in and appeared on behalf of the Battlefield Society objecting to the application. Mr. Afran argued that there were still outstanding issues that need to be addressed, noting that he still has an appeal pending before the appellate division regarding Judge Jacobson's ruling. Mr. Afran also argued against Ms. Cayci's recommendation that the

submission should be considered an amendment, stating that an extended period of time has lapsed since the original hearing, there is no quorum of the original members and that he has concerns that those new members had the time to review the transcripts and exhibits from the original hearing. Mr. Afran stated that by allowing this to go forward as an amendment the Board is creating a procedural defect. In addition, Mr. Afran claimed that since the applicant was unable to meet the condition of approval to obtain approval from DRCC, the resolution is no longer valid and the Board does not have jurisdiction on this site plan.

Ms. Cayci disagreed with Mr. Afran's position by citing the Municipal Land Use Law which recognizes changes in the Board and creates a mechanism for qualifying to sit on an application. In addition, Ms. Cayci added that Mr. Afran was not correct that the resolution 'failed' because one condition was not met and the applicant does not have to submit an entire new application to meet the condition. Ms. Crumiller advised Mr. Afran that she took over ten hours reviewing the application material.

Mr. Solow was sworn in and reviewed the amended application. Ms. Cayci marked the joint report prepared by Mr. Solow, Mr. West and Ms. Lewandoski as exhibit PB1 and a colorized version of sheet CE2a as PB 2. Mr. Solow advised that the Institute for Advanced Study (IAS) received Preliminary and Final Site Plan and Subdivision approval on March 1, 2012 which established conditions as detailed in the June 1, 2012 findings of fact. A specific condition I (2) of that approval required IAS to obtain D & R Canal Commission (DRCC) approval for any encroachment into the DRCC Stream Corridor Buffer Area. The DRCC did not approve the IAS request and as a result the IAS has adjusted a number of lot lines to move portions of two lots and the road out of the DRCC Stream Corridor Buffer. Sheet CE3 was colored in to denote the site layout plan as amended and marked exhibit PB3.

Mr. Solow's report to the Board followed the recommendations from Ms. Cayci that the application should be considered as an amendment to the original application dealing with lot line adjustments to allow the applicant to meet the condition of approval from the D & R Canal Commission. Ms. Lewandowski and Mr. West were sworn in and advised that they had no additional testimony to provide.

Thomas O'Shea, PE was sworn in and accepted as an expert witness. Mr. O'Shea reviewed the amended plan using exhibit A-3: Original Planning Board-approved plan (Plan "A") and exhibit A-4: Proposed amendment to approved plan (Plan "B"). Testimony was presented regarding the reduction in the lot sizes and overall acreage; but noted that the conservation easement and stormwater basin had no changes. It was noted that the original approval encroached into the DRCC buffer area and the amendment moves the lots approximately 40 feet outside the DRCC buffer and the landscaping did not change.

Mr. Afran questioned Mr. O'Shea regarding the proposed cluster development. Mr. Tarr objected to the questioning stating that the questions are beyond the scope of the application.

Russell Smith, PE, was sworn in and accepted as an expert witness. Mr. Smith stated that the application is not a valid residential cluster as it does not meet all of the standards, and provided an exhibit of the ordinance 10B-189.1 as exhibit O1. He cited that the application has

environmental impacts on the stream corridor. Mr. Tarr objected to Mr. Smith stating that the application is not a valid residential cluster, referencing his exhibit A3 and Mr. Tarr objected to any discussion on the environmental impact from the cluster as this was decided with the original application.

Mr. Afran disagreed and stated he should be allowed to discuss the environmental issues. Mrs. Gunning reminded Mr. Afran that this testimony is not within the charge of the Board. Mr. Smith continued with his testimony using the following exhibits: O-2: Residential Cluster Unusable Area Ordinance provisions; O-3: Unusable Area Plan. Ms. Cayci disagreed with Mr. Smith stating that both plans show comply with the test fit requirements.

Mr. Smith provided testimony on the (exhibit O4) Historic Preservation Zone Buffer provisions and stated that seven of the ten lots are located in the historic buffer area. Ms. Lewandoski responded that the lots are permitted and no development is proposed in the buffer zone. Mr. Tarr objected to this testimony noting that it was presented and approved by the Board at the prior meeting.

Using the following exhibits (O-5: Residential Cluster Ordinance Requirements; O-6: Original and Amended Cluster Area Calculations; O-7: Actual Residential Cluster Size), Mr. Smith stated that the amended plan does not meet the requirements of the ordinance.

Mr. Smith continued his testimony using exhibits: O-8: Existing Stormwater Runoff; O-9: Proposed Basin Area Map to discuss drainage concerns and environmental issues with the amended plan. Mr. Afran added that the development has redirected the wetlands on the site. Mr. West advised the Board that this concern was raised by Princeton Hydro during the original hearing and mitigation items have been requested and the applicant has complied with them. Mr. Smith stated he feels that the subdivision will have an adverse effect on the environmental conditions.

Mr. Afran continued to discuss areas that were not part of the current application. He specifically tried to have testimony regarding environmental issues brought into the hearing and was told that the applicant had the opportunity at time of the original approval to questions and produce witnesses on this issue, but did not do so at that time. Mrs. Gunning, Ms. Cayci and Mr. Tarr continued to remind Mr. Afran that the scope of review is limited to the lot line adjustment.

Meeting recessed at 9:50 pm and resumed at 9:55 pm with the following present:

**PRESENT:** Julie Capozzoli, Jenny Crumiller, Wanda Gunning, Bernie Miller, Mildred Trotman, Marvin Reed

**ABSENT:** Cecilia Birge, Timothy Quinn, Gail Ullman, David Cohen

**ALSO PRESENT:** Karen Cayci, Esq., Special Council; Lee Solow, Planning Director; Ilene Cutroneo, Board Secretary; Jack West, Land Use Engineer; Derek Bridger, Zoning Officer

Chairperson Gunning opened the meeting to those members of the public who indicated that they were unable to attend a future meeting.

Melanie Clark, Mercer Street, was sworn in and stated that she supports the IAS application and the Board should not delay in approving the request.

Roger Martindale, Patton Street, was sworn in and stated the he is against the application indicating the housing may be constructed in a different location.

Randy Brightman, Battle Road, was sworn in asked that the two parties consider a compromise as there are existing underutilized properties that can be considered.

Mark Holmes, Civil War Trust was sworn in and spoke against the project.

Didier Fassin, a member of IAS faculty, was sworn in and stated that the faculty must be close to the facility to maintain personal interactions and scientific networks.

John McGoldricks, Vandeventer Avenue, was sworn in and felt the hearing should be kept to the specifics of the amendment.

David Schure, address not provided, was sworn in, spoke against the application and stated that the site has national significance.

Michael Matthews, address not provided, was sworn in and spoke in support of the application.

Kathleen Crippin, Spring Lake Heights, was sworn in and spoke against the project.

Elizabeth Merritt, Deputy General Counsel for the National Trust for Preservation, was sworn in and spoke against the project stating the site needs to be preserved.

Phyllis Marchand, address not provided, was sworn in and spoke in support of the application stating the applicant should have a right to develop its property.

Brad Carody, Mercer Street was sworn in and stated he objected to out of towners chastising Princeton residents.

Risa DeRavel, Cleveland Lane was sworn in and spoke in support of the application and stated she objects to the waste of tax payer money on frivolous law suits.

Hearing no further comments, the public portion was closed. Mrs. Gunning asked Mr. Afran to advise the Board as to the additional witnesses he will present and any outstanding issues.

Mr. Afran stated that there is a factual error in the resolution as it states the property is not listed on the National Historic Register. Mr. Afran stated that testimony will be presented on

this issue. Mrs. Gunning questioned how this is relevant as no public money is being expended on the project. Mr. Tarr asked how this is relevant as it is not dealing with the lot line change. Mrs. Gunning added that the testimony is moving into historic issues that is not relevant to the amended application. Several of the Board members agreed and stated that they did not want to hear this testimony.

Mr. Afran asked that the following exhibits be made part of the record: O-10: Overlay of Sheet CE-11; O-10B: Overlay to Figure 37 to the Berger Report; O-10C: Overlay on Figure 36 to the Berger Report. Mr. Smith was cross-examined by Mr. Tarr regarding his interpretation of the cluster ordinance.

Chairperson Gunning advised that additional time will be needed and asked the applicant to provide an extension to the next meeting of the Planning Board, October 16. Mr. Tarr agreed to provide an extension on the application until October 17. Mrs. Gunning advised Mr. Afran he will have additional time at the October meeting but needs to advise the Board who will be the professionals representing the objectors and the topics of the material being presented. Mr. Afran advised that he will have Ms. Greene present to discuss environmental concerns; Mr. Rodrigues to discuss jurisdictional issues and Mr. Scott to discuss the archeological protocol. Chairperson Gunning and Mr. Tarr both objected to the proposed archeological testimony adding that it was offered by the applicant during the prior hearing and specifically is not germane to the lot line adjustment. Mrs. Gunning advised that Mr. Scott will not be testifying.

Motion was made by Mrs. Trotman, seconded by Ms. Crumiller and carried with a voice vote of seven ayes. No one opposed. No one abstained. Meeting adjourned at 11:30 pm.

Respectfully submitted,

Dated: 4/10/15

Ilene Cutroneo, Board Secretary  
PRINCETON PLANNING BOARD

Approved: 5/7/15

Wanda Gunning, Chairperson  
PRINCETON PLANNING BOARD