

PRINCETON PLANNING BOARD

MINUTES OF THE REGULAR MEETING

Thursday, November 6, 2014

**PRINCETON MUNICIPAL BUILDING – Main Meeting Room
Princeton, NJ**

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

ABSENT: Cecilia Birge, Timothy Quinn, Gail Ullman

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 Master Plan Committee would be meeting on November 10, 2014 at 9:30 am in Monument Hall.

FINDINGS OF FACT

- a) **ANDREW ROESER & KATERINA KUCEROVA – 9/16/14**
Minor Subdivision
Valley Road; Block 7009, Lot 28
File # P1414-043MS

Motion was made by Ms. Capozzoli, seconded by Mrs. Gunning and carried with a voice vote of two ayes. No one opposed. No one abstained.

- b) **PARTNERS OF WHITE OAK, LLC – 9/16/14**
Minor Subdivision
White Oak Drive; Block 2102, Lots 15 & 16
File # P1414-042MS

Motion was made by Mrs. Gunning, seconded by Ms. Capozzoli and carried with a voice vote of two ayes. No one opposed. No one abstained.

DISCUSSION

- a) Ordinance Referral – Deletion of RSC-1 Overlay. Mr. Solow advised the Board that Princeton Council introduced an ordinance to remove the Residential Senior Community 1 designation. The site received an approval to construct 49 age restricted units in 2007. Since that approval was granted, one of the parcels that comprised the area for the approval was purchased by the New Jersey Conservation Foundation, which reduced the acreage for the approval. The applicant had submitted a conversion application on the original total land area,

however it never proceeded in response to the Planning Board's determination that the submission was incomplete. The underlying zoning is RA/RB permitting single family homes on three or four acre sized lots. In 2007 it was felt that Princeton should provide housing opportunities for seniors, since then the community policy has shifted to provide housing for all age groups. Staff felt the lack of action by the applicant indicated that the project was abandoned and the Master Plan recommends that should the application be abandoned it should be considered for acquisition and preservation.

Motion was made by Mr. Miller to endorse the ordinance amendment and find that it is consistent with the Princeton Community Master Plan, seconded by Mrs. Trotman and carried with the following roll call vote:

FOR: Capozzoli, Crumiller, Miller, Trotman, Reed, Cohen, Gunning

AGAINST: No one

ABSTAIN: No one

Mr. Porter left the meeting at this time and Ms. Cayci appeared as Special Counsel to the Planning Board. Mr. Cohen recused himself advising that he did not qualify to sit for the application.

HEARINGS:

- a) INSTITUTE FOR ADVANCED STUDY – previously distributed; continued from 9/18/14
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 reminded the Board that this is a continuation of the September 18, 2014 hearing to seek approval for a lot line adjustment. The applicant received approval in 2012 for site plan and subdivision approval to provide 15 homes for permanent faculty members. The Board's decision was appealed and the court affirmed the Board's decision. The objections filed an appeal to that ruling and it is currently stayed pending the outcome of this amended application hearing. Ms. Cayci stated that at the September 2014 hearing, the Board agreed to consider the application as an amendment of the original approval.

Bruce Afran, Esq., was sworn in and appeared on behalf of the Battlefield Society objecting to the application. Mr. Afran requested to bring Mr. Smith back for testimony on hydrologic impacts and the test fit. Chairperson Gunning stated that the testimony was not relevant to the lot line adjustment. Ms. Cayci and Board members questioned the testimony's relevance to the lot line adjustment. Mr. Tarr objected to the testimony as the amended application does not change the test fit. Ms. Cayci advised Mr. Afran that he had the opportunity to present this testimony at the applicant's original hearing and she asked the Board to decide whether to hear the testimony. Mr. Afran objected, but it was the Board's consensus not to hear the testimony as it did not pertain to the lot line adjustment and requested that the hearing proceed.

Mr. Afran advised that there are two areas found to be problematic which will be addressed by Carlos Rodriguez, objector's Planner. The first item is regarding the homeowner's association which requires an organization separate from the developer and these documents were not provided as part of the application. The second item is that the zoning is invalid due to recent changes in the state statute regarding clustering and that the Princeton Master Plan must be amended to specifically identify the area before clustering can be accepted in a municipality. Mr. Tarr responded that the original approval predates the Municipal Land Use Law amendment and the applicant maintains the rights originally received.

Mr. Solow, Mr. West and Ms. Lewandoski were sworn in by Ms. Cayci at this time, acknowledging that they were sworn in for the September hearing, but felt it should be done again for this meeting. Mr. Tarr was also sworn in at this time.

Mr. Afran also advised that he has the officers of Battlefield Society, Jerry Hurwitz and Kip Cherry to speak, but not as expert witnesses. Mr. Tarr indicated that they should speak during the public portion for the allocated three minutes. Also part of the list of speakers was Amy Greene, Environmental Consultant and Russell Smith. Ms. Cayci asked the Board if these people should be allowed to speak at this hearing. After some discussion among the Board members, Chairperson Gunning agreed to Ms. Greene and Mr. Smith in very limited testimony and the officers of the Battlefield may speak for a time not to exceed five minute each.

Mr. Afran stated that the Declaration of Covenants, Easements and Restrictions was requested under an OPRA request, turns out not to be the correct copy. Mr. Afran claimed that a specific request for this document was made and not provided under OPRA. Mr. Tarr advised that the updated copy requested was sent to the Planning Board and Municipal Attorneys, not filed in the Planning office. Mr. Tarr provided Mr. Afran with a copy of the current version. Mr. Afran still objected that the OPRA request was not satisfied. Mr. Solow responded to the comments made by Mr. Afran and advised that all available documents requested under OPRA were provided. Mr. Tarr advised the document in question was sent directly to the attorneys but not to the Board office. Mr. Solow continued by stating that based upon the Planning office's compliance, there was no OPRA violation and he was upset that Ms. Cherry or Mr. Afran would state this. Mr. Afran responded that he did not indicate that the omission was intentional but did insist that applications and materials can be misfiled or lost.

Mr. Smith was sworn in to respond to redirect questions from Mr. Afran. Mr. Smith advised that he felt the cluster standards as found on exhibit O5, did not apply to this application. He continued with testimony advising that the MLUL was amended to provide clarification on cluster definitions (exhibit O-11). Mr. Smith also disagreed with the applicant's calculation in supplying the six acre open space area and discussed changes in the stormwater runoff because of this development (using exhibit O-9 proposed basin map area).

Amy Greene, Environmental Consultant, was sworn in and accepted as an expert witness. Ms. Green distributed her report to the Board (marked as exhibit O-12) and began to review the material. Ms. Greene cited sections of the ordinance and provided an overall opinion on the proposed changes to the property. Mr. Tarr continually objected to the line of testimony and specifically requested that the information being presented deal only with the lot lien adjustment.

Mr. Tarr asked if the lot line adjustment impact the vegetation differently from the prior approved plan. Ms. Greene did not directly respond but stated that the plan clears more than 100 trees. Mrs. Gunning stated that both plans show the same number of trees removed. Ms. Greene agreed to that statement. Ms. Cayci advised that Ms. Greene's office provided the same testimony at the original hearing. Mrs. Gunning and Ms. Cayci both advised that Ms. Greene's testimony does not address the discussion before the Board, the lot line adjustment.

Carlos Rodriguez, PP/AICP, was sworn in and accepted as an expert witness. Mr. Rodriguez acknowledged that he was not discussing the lot line adjustment, but instead presented testimony on jurisdictional matters. Using exhibit O-13 (section of the MLUL 40:55D-43A) regarding minimum standards needed for a cluster development and that the application does not comply as the documents (exhibit O-14 – draft declaration of covenants dated January 23, 2012) do not identify a homeowners association. Mr. Tarr agreed with Mr. Rodriguez and indicated that the document would be amended. Using exhibit O-15, excerpt from MLUL 40:55D-28; Mr. Rodriguez also stated that the 2013 amendment requires the Master Plan must specifically identify cluster development before a cluster can be approved. The Princeton Master Plan does not identify any areas for cluster development. Mr. Tarr reminded the Board that this does not apply as the application was approved in 2012.

Meeting recessed at 9:50 pm and resumed at 10:00 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

HEARING (continued):

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

Kip Cherry, was sworn in and advised that she is a planner but is not presenting expert testimony as a planner. Ms. Cherry distributed a copy of a plan that shows anticipated fill on the site (exhibit O-16: Site Grading and Contour Lines) and stated that the application is degrading an irreplaceable land site and that the historic elements are being changed. Testimony was presented regarding the Battle of Princeton that the slope of the land was gradual and the amended application dramatically changed the slope due to the lot line change directing her comments to the end of the cul-de-sac. Mr. Tarr objected to the testimony stating that the 2012 plan showed the exact same grading and added that staff recommend the installation of a wall instead of the steep slope and advised that the applicant has agreed to this request.

Jerry Hurwitz, President of the Battlefield Society, was sworn in and provided historical testimony regarding the Battle of Princeton that he stated took place in the area of development. Mr. Hurwitz stated that the Board needs to make a finding that the development will not have an adverse impact on the historic site.

Mr. Tarr requested that Mr. O'Shea be brought back to respond to the statements made by the objectors. Mr. O'Shea advised the Board that the lot line adjustment did not create any steep slopes, impact any of the wetlands or buffer areas, no disturbance in the DRCC stream corridor, and confirmed that there was no disturbance proposed in the area of the 100 year flood line. Mr. O'Shea discussed the tree removal plan and the landscaping plan with the Board.

The following exhibits were used by the applicant to accompany Mr. O'Shea's testimony: A-5: Aerial Photograph – used to address minimal tree removal and that the area had no steep slopes; A-6: Insubstantial layout change – showed the prior lot lines and the proposed lot lines noting that the change was minimal; A-7: Existing stream – showing the existing stream in relation to the lot lines; A-8: Freshwater wetlands – showing streams and wetlands in relation to the proposed lot lines; A-9: Princeton stream corridor and riparian zone – showing the stream corridor and no construction or disturbance is proposed in the corridor; A-10: 100-year flood line – used the exhibit to show no disturbance in the area; A-11: Freshwater wetlands transition area buffer; wetland transition area buffer; A-12: DRCC stream corridor; A-13: Aerial photograph; no trees cut in any of regulated areas; A-14: Extended retaining wall; A-15: Project drainage area; A-16: Existing stream and test pit locations; A-17: Summary of pit bail test results; A-18: Permeability Class Ratings; A-19: Test pit exploration indication; A-20: Site section location; A-21: Site section.

Ms. Cayci asked staff to respond to points raised by the objectors. Mr. West, licensed PE in NJ, provided a brief overview of his review of the application based upon prior reports from Mr. Kiser, Mr. Skupien and Princeton Hydro that was submitted for the 2012 hearing. Mr. West advised that the applicant has made all changes requested from those reports.

Mr. Solow, licensed PP/AICP, 20 years in Princeton with 30 years total as a professional planner working on municipal, county and regional levels, addressed the cluster and open space requirement and advised that staff has always reviewed cluster applications to include the open space area, residential lots and detention basin. Mr. Solow also responded regarding the issue raised regarding the homeowner association documents, advising that this has always been made a condition of approval to be provided by the applicant. Mr. Tarr advised that the applicant will submit the documents and will make whatever changes are needed to comply.

Ms. Cayci asked Mr. Tarr to respond to the objector's comment regarding the change to the MLUL requiring that the Master Plan must identify areas in the municipality where clusters are desirable. Mr. Tarr advised that the MLUL amendment as adopted after the approval of the application in 2012 and added that the Master Plan does discuss clustering and encourages cluster subdivisions to preserve environmentally sensitive areas.

Chairperson Gunning opened the meeting to those members of the public who did not speak at the September meeting.

Hanan Issacs, address not provided was sworn in and spoke against the application stating that the objectors raised important objections to prevent the development.

Lisa Serieyssoi, address not provided was sworn in, questioned why the applicant is seeking to construct new housing when there are multiple properties which are currently vacant that can be used to house the faculty. Ms. Serieyssoi also commented on the impact to residents of area with the added construction vehicles and increase in population.

Ann McGoldrick, address not provided, was sworn in and commented that IAS owns the land and it is private property. Ms. McGoldrick stated that the applicant has met the requirements of both the Master Plan and Zoning ordinance and feels the application should be approved.

Wade Katz, address not provided, was sworn in and presented comments regarding the filed applicant's filed archeological protocol and stated that the ground itself is a significant artifact as it is the site of a major historical battle.

Patrick Murphy, address not provided, was sworn in and spoke against the application stating the land played a significant role in the America History.

Mrs. Gunning closed the meeting to public comments at this time.

Mr. Afran continued to object to the application citing environmental, wetlands, clustering, and changes to the MLUL issues previously raised by his witnesses. Mr. Tarr again stated that the many of the objections go beyond the scope of the application. Mr. Tarr responded by citing the definition of cluster (exhibit A22: Definition of "residential cluster" from Section 10B-2 of the former Princeton Township zoning ordinance). He also advised that a letter from Princeton Hydro (exhibit A23) indicated that the project does not degrade critical areas and also that all required items for submission were provided (exhibit A24, letter from Van Note Harvey). Mr. Tarr also responded to Mr. Afran's claim that the OPRA requests submitted did not provide all records, by showing the Planning Board's OPRA log (exhibit A25) indicating there were numerous requests submitted by the objectors during 2011 and 2012 and identifying items requested and provided.

Mr. Afran again objected to the decision not to allow historians to present testimony and continued to claim that the hearing should not proceed based upon his prior objections and witnesses presented. No further comments regarding these statements were made by the Board or the applicant.

Board members acknowledged that all material was read prior to the beginning of the hearings and accepted the specific scope of the application. Chairperson Gunning requested a motion regarding the application. Motion was made by Mr. Miller to approve the amended application with the conditions as discussed in the staff reports and in the hearings, seconded by Mrs. Trotman and carried with the following roll call vote:

FOR: Capozzoli, Crumiller, Miller, Trotman, Reed, Gunning
AGAINST: No one

ABSTAIN: No one

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 12:30 pm.

Respectfully submitted,

Dated: 5/6/15

Ilene Cutroneo, Board Secretary
PRINCETON PLANNING BOARD

Approved: 6/18/15

Wanda Gunning, Chairperson
PRINCETON PLANNING BOARD

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