

<b>OPEN SESSION</b>
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Chairperson Steve Misiura called the meeting to order at 7:31 p.m. and read the Open Public Meetings Act statement which stated that adequate notice and posting of the meeting had taken place in accordance with the requirements of P.L. 1975, Chapter 231.

The flag salute.

**Roll Call**

	PRESENT	ABSENT	LATE ARRIVAL
<i>Mr. Hahn</i>	✓		
<i>Ms. Laudenberger</i>	✓		
<i>Mr. Montferrat</i>		✓	
<i>Mr. Moraitis</i>		✓	
<i>Mr. Pratt</i>	✓		
<i>Mr. Searing</i>	✓		
<i>Mayor Kirson</i>	✓		
<i>Ms. McGinty</i>	✓		
<i>Mr. Misiura</i>	✓		
<i>Mr. Olsen</i>	✓		
<i>Mr. Byrne</i>	✓		

Also in attendance: Susan Jackson, Planning Board Secretary; Gary Rosensweig, Planning Board Attorney; Carmela Roberts, Borough Engineer; Tamara L. Lee, Borough Planner

**APPROVAL OF AGENDA**

Mr. Searing made a motion to approve the agenda with the following amendments: After item# 4, add the swearing in of the new planning board member; move the discussion items after the Public Comment.

Mr. Pratt seconded. The amended agenda was approved with a 9-0 vote.

Mayor Kirson swore in new Planning Board Member, Darek Hahn, for the vacant seat. He will hold the seat until 12/31/2013.

**APPROVAL OF MINUTES:** July 11, 2011

Mr. Pratt made a motion to accept the July 11, 2011 minutes with the amended corrections on page 1 – adding the ‘a’ to American and adding the word “came” to the sentence “As no one...forward”. On page 4, fixing the Roll Call to reflect that Mayor Kirson and Ms. McGinty had abstained from the vote and correct the Roll Call to “approval of Application 2011-03...” Ms. Laudenberger seconded.

Roll Call: Mr. Misiura; Ms. Laudenberger; Mr. Pratt; Mr. Searing and Mr. Byrne voted yes. Mr. Montferret and Mr. Moraitis were absent. Mayor Kirson; Ms. McGinty and Mr. Olsen

abstained. Minutes for the July 11, 2011 meeting was approved with a 5-0 vote, 3 abstentions

## **PUBLIC COMMENT**

Mr. Misiura opened the floor to any public comment unrelated to anything on the agenda. As no one came forward from the public, Mr. Misiura closed Public Comment time.

## **DISCUSSION:**

### **GEORGE SERRANO – DEERFIELD/WESTERLEA APARTMENTS – PARKING SPACES**

George Serrano, Manager of Deerfield/Westerlea Apartments came forward and introduced Michael Pomeranc, a managing member of Hightstown Development Associates, LLC. They presented information to the Planning Board members. Mr. Pomeranc discussed the parking ratio of the existing parking spaces and the desire of reconfiguring a number of the one bedroom units to a proper use of a second bedroom/den. The Corporation has owned the property for more than 20 years and has upgraded the buildings throughout the years; new roofs, new windows, new energy efficiencies, etc. The majority of the apartments are designated as one bedroom although the size of each unit is roughly the same size as the two bedroom units. The parking spaces are 70% filled at any given time. There is about a 10% vacancy at all times and a high turnover at different times during the year. Predominately 98% of the vacancies are for the one bedroom apartments. Mr. Pomeranc believes that if they are able to do the reconfiguration of a few of the one bedroom units, then everyone would win all around. It would benefit the living conditions of the people who already are living in the one bedroom units with more than 2 people.

Mr. Misiura asked the Professionals what role the Planning Board should be taking in this issue so that they can move in the right direction. Mr. Rosensweig is concerned about whether there will be the necessity for additional parking spaces would be required if the conversion is made to the two bedroom unit. There are 145 one bedroom units currently. Mr. Rosensweig asked if all of the 145 units would be converted. Mr. Pomeranc stated that not all the units would be converted and they definitely would not be converted at the same time. As of right now they are only considering doing the 10% vacancy rate and are hoping that this will take care of that vacancy. If not then they are willing to come back before the Board for additional approvals. The question that still remains whether more parking spaces are needed and the only way that this can be determined is by a site plan review.

The recommendation from the Planning Board is that Hightstown Development Associates, LLC needs to put in a Site Plan Review Application. They will be able to request many waivers in the applications since they will not be changing the footprints of the buildings but they will need to present a parking analysis and a community impact analysis and know what the cost would be for the potential increase of school age children. Mr. Rosensweig also made the suggestion that they change their lease limiting the number of occupants per unit.

### **P.L. 2011, CHAPTER 65 – MUNICIPAL LAND USE LAW**

The State just passed a new law stating that the Master Plan/Re-examination Report needs to be updated every 10 years and not 6. The Board had a discussion that the best way to handle the Re-examination Report is to wait until the Route 33 Corridor has been completed, as well as the GHEWIP study, then move forward with the Re-examination Report.

### **SPECIAL MEETING – SEPT. 7, 2011 @7:00 PM – RE-EXAMINATION REPORT**

The Special Meeting scheduled for Sept. 7, 2011 will be cancelled until after the Joint Route 33 Corridor and GHEWIP reports have been completed.

**RESOLUTION 2011-12 - USE VARIANCE – BLOCK 28 LOT 3 – 132 FRANKLIN ST – MR. MANUEL MENDIETA**

Mr. Pratt wants to change “paved driveway” on page 4, item #5 to read as “paved/gravel driveway/parking area”. At the moment Mr. Chin, the Construction Official is working with the Mendieta's on the conditions of the Resolution. With no other changes, Mr. Misiura asked for a motion to accept the Resolution with the amended changes. Ms. Laudenberger made the motion and Mr. Pratt seconded.

Roll Call: Mr. Misiura; Ms. Laudenberger; Mr. Pratt; Mr. Searing and Mr. Byrne voted yes. Mr. Montferret and Mr. Moraitis were absent. Mayor Kirson; Ms. McGinty and Mr. Olsen abstained. Resolution 2011-12 was accepted with the changes with a 5-0 vote, 3 abstentions

**APPLICATION 2011-04 – MINOR SUBDIVISION AND BULK VARIANCES – BLOCK 3 LOTS 18 & 19 – 538 N. MAIN STREET – MR. CHRISTOS KATSIFIS**

Gus Siggelakis, Esq. on behalf of the Applicant, Mr. Christos Katsifis, came forward to present Application 2011-04. Mr. Siggelakis is suggesting for a continuance since the Engineer and Planner for the applicant were unable to attend the hearing tonight. Mr. Rosensweig has suggested that it would be in the best interest of the applicant not to proceed with the hearing as this is a C-Variance and if there is any issue in the future it could have an adverse effect on all involved. Mr. Siggelakis gave a brief introduction of the application. The applicant is proposing a minor subdivision of the current lots. The current house would remain and a new house would be built on the second lot facing Sunset Ave. With the subdivision there is a request for three bulk variances because the side yards, total square footage and the depth of the property are less than the requirements of the R3 zone. They presented a copy of the proposed house elevation. Mr. Misiura said that the Planning Board will continue this hearing at the September 12, 2011 at 7:30 and no additional notification will be necessary for the applicant.

**APPLICATION 2011-06 – USE VARIANCE – BLOCK 33, LOT 34 (120 S. MAIN/125 RAILROAD AVE. AND BLOCK 27, LOTS 34 & 37 (MAXWELL AVE) – OPTOMECHANICAL ENTERPRISES, LLC.**

At this time, Mayor Kirson and Councilmember McGinty recused themselves from this hearing. Mr. Misiura also is recusing himself as he feels that he has a conflict of interest with one of the properties involved. He has asked Mr. Pratt to be the acting Chair for this hearing.

Mr. Rosensweig asked if the applicant will be asking for a rescission of the prior approval of this board. The response is that at the time of the vote they would be asking for a rescission as part of the resolution. They have no issue with rescinding the use of Eaches Chapel on the Baptist Church property at 125 S. Main Street.

Jonas Singer, Esq. is representing the applicant, Dr. Arthur Poulos of OptoMechanical Enterprises (SciCore Academy). Mr. Singer has three witnesses that will testify: Dr. Poulos, Applicant and Owner of OptoMechanical Enterprises, LLC; James L. Kochenour, Traffic Consultant of Arora and Associates, P.C. in Lawrenceville, NJ; and James A. Miller, Planning Consultant of J. A. Miller Planning Consultants, LLC in Moorestown, NJ. Mr. Rosensweig swore in the three witnesses.

Dr. Poulos – SciCore Academy is looking to change locations at this time because after the initial approval, SciCore Academy was made aware of some fire code issues. One of the major code issues is that they cannot hold classrooms in the basement of Eaches Chapel and as a result SciCore Academy would be losing the use of two classrooms. They were also made aware that the church was not going to allow them to utilize two other classrooms in the building and it would be impossible for the school to function with the loss of these four classrooms. There are an insufficient number of smoke detectors in the building.

St. Anthony of Padua had approached Dr. and Mrs. Poulos at one time about using the school building at St. Anthony. SciCore contacted St. Anthony and had a meeting with Shirley Conway and Father Pat to discuss the use of the building. After their talk, SciCore Academy decided to move forward with submitting an application to the Planning Board for the use of St. Anthony's school building. They felt that since East Windsor Regional School District used the school facility for about 1 ½ years ago for some of their students, there shouldn't be any issues with them utilizing the school building. At the same time, Mr. Pratico, the realtor for the TBS Management Company, came to SciCore Academy to inform them that there were 2 more suites available at 120 S. Main Street if they were interested. The suites are contiguous and would be a wonderful solution to house the High School students in one location and the K-8 grades at the St. Anthony location.

Mr. Singer asked Dr. Poulos to give his education and work history again for the record. Dr. Arthur Poulos, 7 Waterbury Ct., Allentown, NJ, 08501, gave his educational background. He is a chemist with a bachelor degree from Duke University, a Masters and PhD from Northwestern University, and Post Doctoral from University of California. He was a member of the faculty at Rutgers University and also worked in the private industry in the field of research & Development. Dr. and Mrs. Poulos are the President and Vice-President respectively of OptoMechanical Enterprises, Inc. They were a research and consulting company for about 11 years before deciding to open SciCore Academy with a major emphasis on the Sciences, Mathematics, Communication Arts, the Art in Public Speaking, the art of writing well and a Drama Department. SciCore Academy opened in September 2003 and is a K-12 private school. They originally opened at 120 Main Street, Hightstown with only a 9<sup>th</sup> grade. When the school outgrew that facility, they moved to a West Windsor facility, 410 Princeton-Hightstown Road, but then had to move out of that facility due to mold contamination because of leaks in the roof. The Academy was utilizing Eaches Chapel at 125 S. Main Street temporarily until a permanent location could be found and using 120 S. Main Street, Suite 4, for their middle school/high school students. The Science Lab and Art Center are located in this facility. They are also renting the gym facility at St. Anthony of Padua. Presently the Academy has an enrollment of 95 students with 5 seniors that graduated this past school year. They are accredited through Middle-States Association of College & Schools. The students are in session from 8:25 AM – 2:50 PM Monday thru Thursday and 8:25 AM – 1:55 PM on Friday. They have an aftercare program with up to 10 students until 6:00 PM.

The reason for not moving all the classes into the one location at St. Anthony is because they have the ability to secure the laboratory equipment behind locked doors at Old York Common. No one would be able to access the suites except the teachers. It would not be feasible to house the laboratory at St. Anthony as SciCore would not be able to lock up certain equipment and they fear that some of the bigger, very expensive equipment could be destroyed at St. Anthony.

Students would be arriving at St. Anthony's via Maxwell Ave. The same traffic pattern that has been in use for the CCD program will be used by SciCore Academy. The vans pick up students in the morning and the bus drops off students in the afternoon. The numbers of students who use the van/bus differ year to year and the number of students will not be available until right before the school year starts in September. The use of 15-16 parking spaces would be used during the school day at St. Anthony. If there are any conflicts during the day between the church use and the school use, both parties would sit down and discuss the issues. The High School students will be dropped off at Old York Commons in the morning and picked up

from there in the afternoon. Twice a week the students go to St. Anthony's for gym. Mrs. Poulos was sworn in by Mr. Rosensweig to give testimony about how the students go to the gym. If it is a nice day, then the students will either walk or jog to the gym or take the van over on bad weather days. The students are escorted by the P.E. teacher to St. Anthony's. They walk along Main St., cross over at the crosswalk in front of the Firehouse and continue along Franklin St. to St. Anthony's.

After a conversation with Mr. Kochenour, it was determined that the best place to drop off the High School students would be on the Railroad Ave. which is a closed-off street. There is a berm between the street and the parking lot and the only spaces there are for permit parking. This parking lot isn't normally filled at any time during the day and has very few cars there in the morning during the drop off time, so this would be the most ideal situation. There is a set of stairs that lead to the parking lot of Old York Commons, a crosswalk to leads from the stairs directly to the sidewalk of the building that houses Suites 3, 4 & 5. There is very easy visibility and won't create a congestion of traffic. SciCore has discussed having a monitor in the AM to make sure that there are no issues with the students walking across from Railroad Ave. to the building and there is a teacher on premises at least 20 minutes before school starts in the morning. In the PM, the teachers will be able to do the monitoring.

There is existing signage already at 120 S. Main Street for all the businesses located in Old York Commons. SciCore will be able to use this for their sign. At St. Anthony's, the Diocese must first give permission for a sign and then SciCore would have to come back before the Planning Board if it is necessary based on the Borough ordinance. Currently they are interested up a small sign to make sure that anyone looking for SciCore Academy can find them.

Ms. Roberts just wanted to clarify who is using the school building besides SciCore. SciCore would be the only ones to be using the school during the day. The CCD program would still be using it in the afternoon for their program. SciCore would be using roughly 80% of the classroom space with a class size of about 8-10 students per class. They cap the total of students at 12 for K-4 grades and 16 for 5-8 grades. There are 10 classrooms at St. Anthony's and the Academy would be using 8 of those classrooms. There is no formal playground equipment but the kids will be able to use the lawn area for light play and recess.

Mr. James, Kochenour, P.E., P.P., with Arora and Associates, P.C. in Lawrenceville, NJ - He gave his educational and business credentials. He received his Bachelor's and Masters degree in Civil Engineering from Drexel University. He has been a Traffic Engineer for 41 years, working for the DOT from 1970-1985 as a Project Engineer. He has been a Professional Licensed Engineer in NJ and PA since 1981. Mr. Kochenour has given testimonies before 100s of Planning and Zoning Boards throughout NJ and PA. The Planning Board has accepted him as a Professional Traffic Engineer.

Mr. Kochenour went at two different times for a site visit on Monday, July 25, 2011 and Thursday, August 4, 2011 during the hours of drop-off and pick-up times for the students at both locations. He collected data at Old York Commons during the hours of 7:30 AM to 8:30 AM and 2:15 PM to 3:30 PM and at the same time did a Parking Demand Study to see how much parking was occurring at that site. Mr. Kochenour entered Exhibit A-1 – Site Plan for Stockton Street Parking Lot, Phase 2 Downtown Revitalization – dated Jan. 2, 2004 – VanCleeef Engineering Firm. The Site Plan showed the parking lots on Stockton Street and Railroad Ave and the breakdown of public and permitted parking. Mr. Kochenour gave his report of the study. The total volume of cars that entered into the parking lot at both driveway entrances was 30 vehicles and 19 vehicles exited; during the dismissal times, 55 cars entered into the parking lot from both entrances and 38 exited.

Exhibit A-2 – The three photos were taken by Mr. Kochenour on Thursday, Aug. 4, 2011 are of the Railroad Ave. parking lot from different directions. Based on his determination of all the information that he witnessed and took down, he believes that there will be no adverse effect in the flow of traffic and

parking if SciCore Academy gets the approval to utilize the three suites at 120 S. Main Street. In his opinion, he doesn't feel that there is any safety issue with the students being dropped off in the Railroad Ave. parking lot and walking across the crosswalk. There is high visibility in the parking lot and the flow of traffic should be slow because of the way the parking lot is configured. The crosswalk markings aren't bad but it couldn't hurt to put some sort of signage for enhancement to inform the vehicle traffic of pedestrian crossing. He also said that SciCore Academy should get permitted parking tags for the 6-7 spaces that would be required for their staff and students that drive.

Exhibit A-3 – Final Plat of Lot Consolidation prepared for The Catholic Church of St. Anthony of Padua, Hightstown, NJ by James P. Kovacs, P.E. & L.S. dated April 3, 2006. The traffic pattern that has been used for drop-off/pick-up on Maxwell Ave. has worked in the past and it is a good traffic flow for SciCore Academy to continue to use. He stated that there should never be any reason for drop-off/pick-up to happen on Franklin St. There are also more than adequate parking spaces at the church.

Mr. Miller – Having come before the Planning Board two months ago, the Board accepts his qualifications as a Professional planner. Mr. Miller went and visited the sites, viewed the applicable Borough ordinances and reviewed the review reports from the Borough's Professionals.

Exhibit A-4 – Mr. Miller presented a photo board that contained 9 photos - 1 panoramic view of all the facilities of St. Anthony's of Padua; 1 picture of the school building that fronts Maxwell Ave. showing the pre-existing non-conforming setback of the building; 1 picture of the parking lot showing the drop-off/pick-up location of the school building; and 4 interior pictures showing some of the classrooms, which shows that the building was built as a classroom facility and is well maintained. All of these were taken July 29, 2011 and the last 2 are of Old York Commons at 120 S. Main Street taken August 5, 2011.

120 S. Main Street is located in the CC1 – Commercial District – they are looking to obtain a D1 Use Variance. At the June meeting, the Planning Board already approved a land use deviation to SciCore to utilize one suite for a classroom. They are now coming before the Board to ask for a D1 variance to expand the use to include a total of three suites. He explained the 4 step process he used to determine the inherently beneficial use based on the Seeker vs. Wall Township.

- 1) To establish the benefit of the use – the use is a unique educational facility and affords many positive opportunities as a school use. The class sizes are small; the Academy specializes in sciences and other courses that are a benefit to the students; it is more affordable than many other private schools; its specific location is beneficial for the science lab and the ability to lock the equipment up for security. It also is a benign use because it doesn't produce a lot of traffic or noise and is a benefit to the community at large.
- 2) To identify any potential impacts that use might have – most of the primary impacts have been discussed by Mr. Kochenour with the traffic flow.
- 3) To identify any measures which might be applied to the impacts to mitigate those impacts – Mr. Miller believes that based on the testimony of Mr. Kochenour any impacts have been mitigated and any issues have been addressed.
- 4) To evaluate the use benefits and detriments of that use and if the benefits are greater than the detriments than it satisfies the Seeker's balancing test – the benefits is a significant educational experience and the site has the attributes to accommodate the other impacts for the use which would be the small demand on the parking and the internal circulation. Mr. Miller believes that there isn't any detriment to this use because the parking demand is no

different than if any other business would be there and the use is actually less invasive than what is permitted in a CC1 zone.

This site has the attributes that outweighs any deterrents and meets the Seeker's balancing test. As for the zone plan, this is a small content of the commercial impact of the CC1 zone and doesn't alter any of the land use zoning.

St. Anthony of Padua is located in a R3 zone where a school is a permitted use with a conditional use which SciCore doesn't meet so they are asking for D3 variances. The facilities of St. Anthony are pre-existing and are designed to fit into the R3 zone well. With a conditional use variance need to show that the use remains appropriate despite the deviation use standards. There are three standards that are used to show the positive and negative attributes to determine the deviations.

1. Standard subsection 28-10:1A – This standard require that schools need to be non-profit – SciCore is a for-profit school – The use remains the same despite the fact that SciCore Academy is a for-profit school. The building was design to always be a school and the Academy will continue to use this building as a school. In terms of zoning and land use impact, there isn't any significance on whether the school is a non-profit or for-profit. The impact on the community is identical and wouldn't be a detriment to the surrounding community.

2. Subsection 28-10:1C – this standard requires that the setback 3X the height of building. This setback is already existing condition and that there is no physical way to alter that. There is no detriment to the deviation because this building is on one side of Maxwell and all the nearest residential is on the other side of Maxwell.

3. Subsection 28-10:1D – requires all of the accessory buildings be on one lot. There are advantages to having the two locations. The science program is a major part of their curriculum and being able to have the science lab at 120 S. Main Street is beneficial to their use. Also the students that will be housed at 120 S. Main Street will still have access to St. Anthony's gym facility. All the advantages of being able to utilize both facilities far outweigh the detriments.

There is a negative criterion for the use – the use is for the permitted use within the zone but with conditions. In both cases, it is Mr. Miller's belief that there are benefits to having both facilities and that the school would be a benefit to the community at large.

Tamara Lee has concerns with the CC1 district because a lot of thought goes into the use of the downtown area. Mr. Miller believes that the school use compliments the area and is a good fit. It is a beneficial use for the school to be in the CC1 zone. The school utilizes the food establishments for the students' lunches and the High School students are allowed to go to downtown for lunch and the teachers use the local stores. She also has concerns with the lab space at 120 S. Main Street because that space was set up as commercial and/or office space. Why is this space better than St. Anthony's? Dr. Poulos responded – the doors at 120 S. Main lock and only the teachers and students would have access to the suites. There is also a liability because there is glassware that always has the potential for breakage if used inappropriately. There are also some chemicals, that although it doesn't present any concern, there is a need to keep it out of reach of others not involved with the lessons. And then there is the need to not have to move any on-going experiments and it is much easier to let the research remain where the kids are working on it when class is over.

Mr. Pratt opened up the floor to anyone in the public who would like to make a comment. Ms. Jennifer Yesalavage, 61 S. Main Street, Cranbury, NJ spoke in favor of the school. There were no others who came forward, public comment session was closed.

SciCore Academy will be entering into a lease agreement with both locations – at 120 S. Main Street it will be a five year lease and at St. Anthony's it will be a 2 year lease with an option to renew.

The tax issue is still the same as it was with the Baptist Church. Mr. Rosensweig spoke with Mr. Raffetto and Mr. Pacera and once there is an approval, Mr. Pacera will look at this issue and make a determination on whether to impose any taxes.

There was a discussion from the Planning Board about the issues that were raised during the testimony. Ms. Laudenberger made the motion to approve the application with these conditions and Mr. Byrne seconded –

1. Any signage must conform to the Borough Sign ordinance or they must come back before the Planning Board for all the appropriate approvals.
2. All school vehicles will be parked at St. Anthony's; staff and student drivers must purchase parking permits for 120 S. Main Street; and all drop-off/pick-up points are to be duly noted.

Roll Call: Ms. Laudenberger; Mr. Pratt; Mr. Hahn; Mr. Searing; Mr. Olsen and Mr. Byrne voted yes. Mr. Montferret and Mr. Moraitis were absent. Mayor Kirson; Ms. McGinty and Mr. Misiura recused themselves from the hearing the application and vote. Application 2011-06 – Use Variance for OptoMechanical (SciCore Academy) was approved with a 5-0 vote and 2 absent.

Ms. Laudenberger motioned to adjourn the meeting at 10:20 PM. Mr. Byrne seconded. All approved.

Respectfully submitted,

Susan D. Jackson,  
Planning Board Secretary  
Hightstown Borough