

<b>OPEN SESSION</b>
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Chairperson Steve Misiura called the meeting to order at 7:30 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. Emigholz</i>		✓	
<i>Mayor Kirson</i>	✓		
<i>Ms. Laudenberger</i>	✓		
<i>Ms. McGinty</i>	✓		
<i>Mr. Misiura</i>	✓		
<i>Mr. Montferrat</i>	✓		
<i>Mr. Moraitis</i>		✓	
<i>Mr. Pratt</i>		✓	
<i>Mr. Searing</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. Montferrat made a motion to approve the agenda as presented. Mayor Kirson seconded. The agenda was approved with a 6-0 vote.

#### APPROVAL OF MINUTES: April 11, 2011 & April 12, 2011

Mr. Montferrat made a motion to accept the April 11, 2011 minutes as presented. Ms. Laudenberger seconded.

Roll Call: Ms. Laudenberger; Mr. Montferrat; Mr. Searing; Mayor Kirson; Ms. McGinty; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes. Mr. Emigholz; Mr. Moraitis and Mr. Pratt were absent. April 11, 2011 Planning Board Minutes were approved by a 5-0 vote.

Mr. Montferrat made a motion to accept the April 12, 2011 Special Joint Re-examination Meeting with Borough Council. Mayor Kirson seconded.

Roll Call: Mr. Montferrat; Mr. Searing; Mayor Kirson; Mr. Misiura; Mr. Olsen voted yes. Ms. Laudenberger; Ms. McGinty and Mr. Byrne abstained. Mr. Emigholz; Mr. Moraitis and Mr. Pratt was absent. April 12, 2011 Special Joint Re-examination Minutes with Borough Council were approved by a 5-0 vote.

## **PUBLIC COMMENT**

Mr. Misiura opened the floor to any public comment unrelated to anything on that is not on the agenda. As no one from the public came forward, Mr. Misiura closed Public Comment time.

## **MEMORIALIZATION OF RESOLUTION 2011-09 – ACCEPTING GHEWIP’S OFFER TO HIRE A CONSULTANT FOR THE HIGHTSTOWN BOROUGH’S COMMERCIAL AREA**

Mr. Montferrat made a motion to memorialize Resolution 2011-09. Mr. Byrne seconded. Mr. Misiura asked if there were any comments or discussion; as there was no discussion Mr. Misiura asked for a vote.

Roll Call: Ms. Laudenberger; Mr. Montferrat; Mr. Searing; Mayor Kirson; Ms. McGinty; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes. Mr. Emigholz; Mr. Moraitis and Mr. Pratt were absent.  
Resolution 2011-09 was passed with a 6-0 vote.

## **APPLICATION 2010-08 – BLOCK 13, LOT 24.01 FINAL SITE PLAN AND MAJOR FINAL SUBDIVISION – SEYMOUR INVESTMENTS – PERRY L. DREW PLACE**

Mr. David Coates, Esq., Turp, Coates, Essl & Driggers, PC, representing Seymour Investments, came before the Planning Board with Application 2010-08 for Site Plan and Major Final Subdivision of Block 13, Lot 24.01. The professionals from both sides have been meeting over the last few months. He stated that everything that was on the April 18<sup>th</sup> letter from Ms. Roberts is acceptable to Seymour Investments. There was only one issue that needed to be addressed and that issue had been handled by either Mr. Raffetto or Mr. Rosensweig. Mr. Voorhan, Seymour Investments, LLC and Dan Duran, Engineer are present for any follow-up questions that might need answering. Ms. Roberts did an updated letter on May 2, 2011 that had the same items as the April 18<sup>th</sup> letter. Ms. Roberts stated that the General Comments items in her latest letter are the same items as her preliminary letter, and were the items that needed to be addressed for final approval. The items that need to be addressed is the evidence of payment of its pro rata share of the Cranbury Station Road improvements by Robertson Douglas; that a complete and accurate easement plan for this sub-division be supplied; a developers agreement be entered into with Borough Council; and the two outstanding comments/approvals from the Environment Commission and the Fire Department from the Preliminary letter still need to be supplied. These comments sheets have been asked for repeatedly and there has been no response from either one. Ms. Roberts is asking that these comments sheets be part of the conditions of approval for this application. The Planning Board Attorney has asked that the comment sheets be sent to both by the Planning Board Office and give them until the next Planning Board meeting to respond. If there is no response from either office by the next meeting then it should not be a condition of approval.

These are the requested conditions for approval of the final site plan and major final subdivision for Seymour Investments: A full plan showing all the easements and who they are a benefit to. It can be included on the final plat or a separate plan, it doesn't really matter, but seeing all the easements properly on a plan is a must. At present the pro rata share is in negotiation between the two parties concerned and it is in the process of an agreement which should be finalized very soon. This must be in place as a condition for the resolution approval. The Developer's Agreement is being brought before the Council for their approval. The Council Attorney, Mr. Fred Raffetto, is looking over the agreement presently. Mr. Coates has taken a look at the agreement and has said that it is acceptable with his client. The Homeowner's Documents have been put together by Mr. Rosensweig's office. There is one minor clarification based on the Developer's agreement as to who is responsible to implement the sewer conservation issue and it will be the responsibility of the Homeowners Association. The changes have been made to be consistent in both the Developer's agreement and the Homeowners agreement with these minor changes and will be sent to Council for their approval. The builder must still be compliant with the current COAH regulations. A reference will be made in the resolution based on these regulations.

Mr. Misiura wants to make sure that the second lot will still be developed. Mr. Voorhan's plan is to sell some of the townhouse units and has spoken with his architect to finish up the plans for the second lot and hopes to continue

with the development. He is planning on coming back this summer before the Planning Board for the final approval of lot 24.02. A discussion continued about how to incorporate lot 24.02 into the resolution to make sure that Seymour Investments continue with the project and not stop after all the townhouses are sold. The major concern is that if Seymour Investments doesn't finish or the preliminary expires on lot 24.02 then the part that would be missing is the COAH units.

Mr. Misiura opened the floor to the public for comments on the application. As no one came forward, he closed the public comment period.

A motion was made by Mr. Montferret for discussion for Site Plan and Final Subdivision approval. Ms. Laudenberger seconded.

The Planning Board had a discussion. It is a concern with the two lots being separated into two different approvals. It all comes back to the concern about getting the COAH units built. The suggestion is to make it a condition of approval by making one of the townhouse units into two COAH units if Seymour Investments doesn't come in for .on developing lots 24.02 and is moving forward for final approval on that lot. The Board wants to make sure that either one townhouse unit or two apartment units are COAH units.

The final Subdivision approval will be for lot 24.01 based on the items on pages 2 & 3 of Ms. Roberts' report, one townhouse unit must be a COAH unit prior to the builder getting the last building permit if Seymour Investments doesn't come in for final on lot 24.02 and comments from the Environmental Commission and the Fire Department. Mr. Coates brought up the reminder that the building permit is taken for the building and not each unit individually. A discussion continued as to the best way to track the sales of the units to make sure that the COAH unit does get built. The resolution will spell out the best way to handle this issue.

Roll Call: Ms. Laudenberger; Mr. Montferrat; Mr. Searing; Mayor Kirson; Ms. McGinty; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes. Mr. Emigholz; Mr. Moraitis and Mr. Pratt were absent.  
Approval for Site Plan and Final Subdivision with the conditions discussed for Block 13 Lot 24.01 was passed with a 6-0 vote.

**APPLICATION 2011-02 – BLOCK 40, LOTS 22, 23 & 24 AMENDMENT TO APPROVED SITE PLAN; PRELIMINARY AND FINAL MAJOR SUBDIVISION; HARDSHIP VARIANCE – MILLSTONE BASIN HABITAT FOR HUMANITY – 224-232 S. ACADEMY ST.**

David Coates, Esq., Turp, Coates, Essl & Driggers, PC, representing Millstone Basin Habitat for Humanity, came before the Planning Board with Application 2011-02, Block 40, Lots 22, 23 & 24, 224-232 S. Academy Street. The expert witnesses for Habitat are Former president of the local office located in Hightstown and a current Board member for Habitat, Glen Fannick; Pete Ottes, Engineer; Lee Stults, Architect; Lloyd Jacobs, Planner; and Gregory Elko. All professionals giving testimony for Habitat were sworn in by Mr. Rosensweig. Mr. Coates brought in proof of service on Friday to the Planning Board and it was deemed complete by Mr. Rosensweig.

Glenn Fannick gave a brief introduction about Habitat for Humanity. This is a Non-profit organization that helps build houses with the help of partner families and their mission is to end poverty housing in the world with about 2,000,000 millions Habitat homes in the world today. Presently there are eight Habitat units in the Mercer County area with the most recent one built in Hightstown on S. Academy Street. Their objective is to look at the whole neighborhood and see how they can help revitalize neighborhoods as what has happened with the neighborhood in East Windsor and this is the goal with S. Academy.

Pete Ottes, Engineer, works for Lang Engineering and Environmental Services. Mr. Ottes gave his credentials and the Board accepted his qualifications as a professional Engineer. Mr. Ottes presented Exhibits A1-A6 (these exhibits were submitted with application). A1 is an aerial shot of the lots; A2 shows the variances being requested; A3 gives general information about the lots; A4 is the grading and utility plans; A5 shows the soil erosion and sediment control of the lots; A6 shows construction details. The plans that had been submitted are dated March 11, 2011 with the three lots being subdivided into a total of 4 lots and building 2 proposed duplex structures that will

have a total of four housing units. The variances being asked for are for lot areas, side yard area, off-street parking. He has identified 20 Bulk Variances that needed to be obtained based on the Borough's ordinances (listed on exhibit A2). When the application was submitted, Habitat asked for waivers for a traffic study and storm water management report. Ms. Roberts' review report has requested that a storm water management report be presented. Mr. Ottes has been in contact with Ms. Roberts and will be working on developing a report to submit to Ms. Roberts that will be adequate for this development. The review letters from the Borough Engineer and Planner had some requested changes and Mr. Ottes said that there will be revisions to the plan to accommodate these requested. The Grading and Utility plan will be changed to reflect the changes being requested from the Borough Engineer for the piping for storm water flow to be installed. The landscaping and lighting plans are not yet available but will be worked on and completed after this meeting. One of the requests was to remove the rain gardens from the rear of the property and connect into the existing drain pipes in the northern side of the property. Water and Sewer lines are available and the plans show that each unit will have its own connection into the system and its own meter. The system will be looked at during the excavation and if the system is adequate then it can be utilized but if it isn't a good system then Habitat will have to convert to an upgraded system as per the request of the Engineer's review letter. Mr. Ottes will continue to work with the Borough Engineer and Borough Planner in order to comply with their review letters and requested items. The plans will be sent to the Mercer County Soil Conservation District and the Mercer County Planning Board for their approval and the DOT does not require any letters for approval.

Lee Stults, OGP Architects, gave his credentials and the Board accepted his qualifications as an expert professional Architect. Mr. Stults has two exhibits that are based on the set of plans that were given in the application. The floor plan will be known as Exhibit A7 and the Elevation plan will be known as Exhibit A8. When OGP was approached by Habitat, they took a look at the area and determined that the duplex size would be consistent with the bigger, classic looking homes in the area. Each unit would have their own private entrances to give the sense of ownership and privacy. Mr. Stults went on to describe the floor plans of each unit. The common wall between each unit will house the stairwell and utilities to give more privacy between each unit. Mr. Stults went on to describe Exhibit A8 elevations of the duplex units, what materials would be used and the expected look of the exterior of the homes to look more classic and not utilitarian. Each duplex unit will have different color siding.

A letter prepared by Charles Stults was sent to Mr. Rosensweig that shows the differences between what DM properties had proposed initially and what is being presented to the Board by Habitat. The letter is presented as Exhibit A9. Mr. Stults explained the letter to the Board.

Mr. Jacobs, registered Professional Engineer and Planner in the State of New Jersey, gave his credentials and the Board accepted his qualifications as the expert professional planner. He testified that the plans that have been presented tonight to the Board are very well done. It design and architecture has many positive attributes and serves to promote the goals and objectives of the Borough's Master plan.

Tamara Lee addressed her review letter on the use variances and doesn't feel that it isn't an issue to move forward with an approval. She feels that the plans that have been submitted currently are similar to the previous approved plans from 2005. She is very happy that these current plans now include 4 COAH units. She addressed the use variance conditions of the previous 2005 approvals and would like to see the resolution reflect these variances and that they don't get lost in the mix but overall supports this project.

Mr. Rosensweig explained that the use variance of 2005 is still consistent with the original plan and the new plan does meet with the 2005 resolution but has been revised for a more positive outcome.

Mr. Fannick came back and pointed out that most Habitat families only own one car but Mr. Ottes stated that it might be possible to park two cars in the 10 X 20 driveway with a potential of a hangover. There is on-street parking and a parking lot across the street in the apartment complex.

Ms. Roberts wants to address two items on her review letter – she wants to make sure that either a developer's agreement and/or a performance guarantee be requested as a condition of approval. This was not done on the prior Habitat home since that was a single home and this is four units and a major subdivision. It is Ms. Roberts's recommendation that this be done to guarantee that if there is any damage to the infrastructure of the neighborhood;

Habitat will make sure that the repairs are done. The developer's agreement would spell out the order of construction; how the construction vehicles would be coming in with supplies; the any damage to the existing roadways and sidewalks would be repaired; it addresses that fact that there will be four COAH units; there needs to be a pre-construction meeting; the soil conservation notified; if there are any detours that need to be required they need to go to the Chief of Police or to the Mayor as per the ordinance and if any items of the agreement are not followed then Ms. Roberts will have the ability to stop the construction at that point, this would also hold for the Chief of Police and/or the Mayor feels that things aren't moving forward appropriately on the construction site and in the Borough's right of ways. This agreement would be between the Borough Council and the Developer. The performance guarantee is typically the estimate of the cost to improve the site, including storm water, sidewalks, water and sewer, grading the property, putting in the driveways property and landscaping. The Borough ordinance says that they can take 120% of the costs of the work.

Mr. Coates reply is that the developer doesn't have an issue with the developer's agreement but would like to avoid have to do a performance guarantee since Habitat is a non-profit organization and doesn't have much resources for a bond and many of the people that work on these projects do so as volunteers.

Mr. Misiura asked about the architectural aspects of the exterior of the buildings. They are currently showing as the same and he wants to know if there will be differentiating components that will be done to make them look different from each other. The response is that some of the trim work can be different then how it appears on the elevation plans currently. Some of the things that can be done is where is shows a vertical siding under the gable, it can be changed to scalloped vinyl type of siding or some other type of treatment. The columns can be changed to be different, possibly doing some bracket work but the structure itself would not be changed. The color scheme would also be different. The final plans should reflect these exterior differences if this project is approved. The other question was what happens if the Habitat home is sold. Habitat holds the mortgage at the cost of construction. It is also restricted to the COAH structure and it does prevent the homeowner from flipping the house at the market value. Ms. Lee brought up the 30 year deed restriction for COAH units since the legislature hasn't made any decision on the new COAH regulations.

With no further questions, Mr. Misiura opened the floor up for public comments. As no one came forward, Mr. Misiura closed public comment.

Mr. Montferret made a motion to approve this application with all the variances. Ms. Laudenberger seconded. The Planning Board went into a discussion on this application. The waiver of the performance guarantee isn't a problem based on the past history of the Habitat organization. The major concerns that Ms. Roberts has is because this is a major subdivision how will the roadways, curb, sidewalk and the length of time it takes to complete this project be addressed. The Borough can make some concessions by requiring that Habitat bond only for public property and not private property. The discussion continued as how it would be best to address this issue of bonding.

Mr. Coates asked to take a recess to talk to his client. A short 10-15 minutes recess was granted.

Mr. Fannick spoke to the Board about his feelings about what Habitat stands for and how it works and asks that the Board to have faith in what they are doing and for the potential of some damage to roadways or sidewalks, the desired results of better housing is worth it.

The decision about waiving the performance guarantee is something the Council must decide. The one way to avoid the performance guarantee is to give a preliminary approval and when all the improvements have been completed then the developer would come before the Planning Board again for final approval. Mr. Rosensweig read 40:55d-51. Mr. Coates stated that if Habitat has to come up with the bond, it would just delay the building to a later date. Mr. Rosensweig feels that these issues can be addressed in the resolution and Mr. Chin would follow whatever is written in the resolution. The developer feels that they can get the bonding and would like to be able to move forward without any other issues. The Planning Board will make the recommendation to Council about bonding for the public portion for the portion of S. Academy Street. The conditions of the resolution will be the developer's agreement; the accepted changes to the elevations of the exterior of the buildings; and the acceptance of the Engineer and Planner's review letters. The discussion was closed and a roll call vote was taken.

Roll Call: Mr. Montferrat; Mr. Searing; Mayor Kirson; Ms. McGinty; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes. Ms. Laudenberger voted no. Mr. Emigholz; Mr. Moraitis and Mr. Pratt were absent.

Application 2011-02 – Block 40, Lots 22, 23 & 24 Amendment to approve site plan; preliminary and final major subdivision; hardship variance – Millstone Basin Habitat for Humanity – 224-232 S. Academy St.. was approved by a 7-1 vote.

#### **COMMITTEE AND PROFESSIONAL REPORTS:**

There is no report for Environmental Committee

The Parks and Recreation Committee will be working the Re-examination Questionnaire, Goal #5, Natural Resources and Recreational Facilities.

Minute Maid Subcommittee met with the Planners and brought some issues for the Planners to address. They will come back to the next meeting with answers.

Master Plan Re-examination - Tamara Lee will be taking the information that is given to her and start putting together the next questionnaire for distribution to the Planning Board.

The zoning issues that Mr. Schmeling has brought before the Planning Board needs to be addressed.

COAH is still floating around Trenton. The last meeting was cancelled. The legislation is before the State Supreme Court but as of May 5, 2011, the municipalities will be bound by the current COAH program.

Ms. Lee talked about the Endorsed Plan. In 2007 our senate designation was about to expire, which gets us many benefits and expedited permits from the State. Ms. Lee wrote a letter expressing a continuation of our plan and now about 4 years later we received a letter asking if we were still interested. Ms. Lee spoke to the Mayor and the decision is that the Borough would more than likely want to continue with the Endorsed Plan. She sent the survey back to the State to keep the process going. There are seven steps that need to be completed and she suggested a waiver for two of those steps. The first waiver is for Self-Assessment which is what we are doing now with the Master Plan Re-examination and the second is for Community Envisioning which is happening with the new turnpike construction, etc. We are now just waiting back from the State as to when a meeting will be held.

The Subcommittee for the automotive ordinance needs to meet and discuss the issues and then bring the recommendation to the Planning Board.

#### **CHAIRMAN AND BOARD MEMBER COMMENTS:**

Mr. Misiura asked for a motion to adjourn the meeting. Ms. Laudenberger made the motion. Mr. Byrne seconded the motion. All approved. Meeting adjourned at 10:20 PM.

Respectfully submitted,

Susan D. Jackson,  
Planning Board Secretary

