

**OPEN SESSION**

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>	✓		7:35
<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

Mr. Misiura made a note to let everyone know that Chris Emigholz gave his resignation today but will be attending tonight's meeting before he steps down. Following is the letter to the Borough Mayor, Planning Board Chair and Secretary:

*Dear Mayor, Steve and Susan,*

*I wanted to let you all know that I will have to step down from my position on the planning/zoning board because I will be moving to Robbinsville in July. I enjoyed my time on the board, hopefully contributing to the Borough, and I will certainly miss it. The meeting this Monday will be my last, but please let me know if there is anything else I must do to officially step down.*

*And even though the EDC has been out of action for awhile, I am still officially listed as one of its members and will have to step down from that as well.*

*Thank you and see you on Monday night!*

**APPROVAL OF AGENDA**

Mr. Montferrat made a motion to approve the agenda as presented. Mr. Searing seconded. The agenda was approved with a 9-0 vote.

**APPROVAL OF MINUTES:** May 9, 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 abstained. Minutes for the May 9, 2011 meeting was approved with a 8-0 vote, 3 abstentions

**PUBLIC COMMENT**

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

**MEMORIALIZATION OF RESOLUTION 2011-10 – HABITAT FOR HUMANITY – MILLSTONE BASIN; 225-232 SOUTH ACADEMY STREET, BLOCK 40, LOTS 22, 23 & 24, PRELIMINARY AND FINAL MAJOR SUBDIVISION AND BULK VARIANCES**

Mr. Misiura asked if there were any comments or discussion; Mr. Rosensweig made two comments - one in regards to the performance guarantee; that it would only apply to any public improvements of the project and item #10 of the resolution stating that any revisions to the design changes can be approved by Mr. Misiura or by a designation by the chair. This was put in to address the exterior changes that have been requested by the Planning Board. Ms. McGinty noted that on the 1<sup>st</sup> page that there is a correction for the comment responses – there are two HPC and one should read HPD. She also has concerns about the comment sheet from HPC and wondering if the discussion would have been different if the Board had the comment sheet before the meeting and decision. Mr. Misiura stated that the HPC doesn't have any jurisdiction over this application as the property isn't in the historical section of the Borough. The comment sheets are not required to be given to any of the Borough Committees but are done as courtesy to the other committees and for administrative ease of not having to determine who gets a comment sheet with each application. Mr. Rosensweig stated that the Board did discuss the issue that HPC had on their comment sheet but that the floor plan cannot be changed as the plans presented to the Board are based on the 2005 approval. The only legal option is to move forward and vote on the resolution since only 2 Board members that were present during the application hearing are needed to vote and as long as their decision is still the same then the appropriate thing is for the Board to proceed with the motion of memorializing the resolution. Mr. Misiura asked for a motion to vote on Resolution 2011-10. Ms. Laudenberger made a motion to memorialize Resolution 2011-10. Mr. Montferrat seconded. Mr. Misiura asked for a roll call.

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 abstained. Resolution 2011-10 – Millstone Basin Habitat for Humanity –was approved with 8-0 vote, 3 abstentions

**MEMORIALIZATION OF RESOLUTION 2011-11 – SEYMOUR INVESTMENTS, LLC - FINAL SUBDIVISION APPROVAL, BLOCK 13, LOT 24.01**

Mr. Misiura asked Mr. Rosensweig to comment on how he addressed the issues of the COAH units from the application hearing in the resolution. On page 3, item #5 deals with this issue. The way that it was resolved was that Seymour shall be permitted six COs upon completion of all site improvements and units located on Lot 24.01. However, prior to issuance of a seventh CO, Seymour must commit either to provide a townhouse unit of the three remaining townhouse units to be constructed as an affordable dwelling in accordance with COAH Regulations, or shall submit within 30 days hereof a complete Final Subdivision Plan application to the Planning Board for Lot 24.02 and receive Planning Board approval for the remaining units prior to obtaining COs for any of the three remaining townhouse units. Notice shall also be provided to any contract purchaser, with a copy to the Planning board Secretary, regarding this condition and the possibility of a delay in closing and occupancy of the subject townhouse unit. In addition, all affordable units shall be deed restricted for 30 years in accordance with applicable COAH, or other State laws or regulations, or any applicable Court decision superseding or modifying same. Mr.

Rosensweig spoke with Ms. Roberts and Ms. Lee and together they felt that this covered the issues that were brought up during the hearing. Everything else that is in the resolution is in consistency with the hearing and conditions of the approval. Mr. Misiura asked if there were any other questions from the Board and since there weren't any more questions or comments Mr. Misiura asked for a motion to memorialize resolution 2011-11. Mr. Montferrat made a motion to memorialize Resolution 2011-11 – Block 13 Lot 24.01, Final Subdivision – Seymour Investments, LLC. Ms. Laudenberger seconded. A roll call vote was taken.

Roll Call: Ms. Laudenberger; Mr. Montferrat; Mr. Searing; Mayor Kirson; Ms. McGinty; Mr. Misiura voted yes; Mr. Emigholz; Mr. Moraitis; and Mr. Pratt abstained. Resolution 2011-11 – Seymour Investments, LLC – Final Subdivision – Block 13 Lot 24.01 was approved with 8-0 vote, 3 abstentions

**APPLICATION 2011-03 – USE VARIANCE – BLOCK 28 LOT 3 – 132 FRANKLIN ST – MR. MANUEL MENDIETA**

Mayor Kirson and Councilmember McGinty have recused themselves from the two use variance applications on tonight's agenda at 7:47 PM. They are now absent from the meeting.

Manuel Mendieta is present as the applicant and Juan Mendieta is also present. Both reside at the 132 Franklin Street address, the property of the application. Mr. Rosensweig has asked the applicant if he has obtained an attorney to represent him as there are standards that must be presented to the board for a use variance. Mr. Mendieta said that he does not have an attorney. Mr. Rosensweig asked if they had anyone present who could help translate to them to make sure that they understand everything that the board will be discussing and asking them about the Professionals' review reports. They said that they did need anyone to translate for them because they understand. Mr. Rosensweig swore in the Mendieta's, Ms. Marianne Paladino and Erica Paladino of 134 Bennett Place, Hightstown (they are the owners of the Yoga Studio interested in renting the office space of the house). Mr. Misiura asked Mr. Mendieta if they received the review reports from the Planner and Engineer, Mr. Mendieta claims that he did not get the reports. Both Ms. Lee and Ms. Roberts stated that they sent their review reports to the applicant via the email address that is on the application. The reports were given to Ms. M. Paladino so that she can look at the reports. It was again stated how important it is that Mr. Mendieta hire an attorney to help with the use variance, someone who can read the reports, come back and address the items of both review reports. Since the Planning Board and Attorney feel that it is in the best interest of the applicant to read over the reports as well as seriously consider getting an attorney to address the use variance, the Board will take jurisdiction of the application and postpone the hearing to the July 11<sup>th</sup> meeting. The applicant will not have to notify again. Ms. Paladino was asked to call the Board Secretary with her address and email address. Mr. Pratt asked Ms. Roberts is she was aware of the condition of the parking area. She stated that she has addressed these issues along with many other issues in her report. Presently a site plan isn't required but if the Board wants to address the whole site on a more rigid standard then a site plan would be required. Mr. Misiura asked for a motion to take jurisdiction of Application 2011-03 – Use Variance and postpone the hearing until July 11, 2011. Mr. Searing made the motion. Mr. Pratt seconded. A roll call vote was taken.

Roll Call: Mr. Emigholz; Ms. Laudenberger; Mr. Montferrat; Mr. Moraitis; Mr. Pratt; Mr. Searing; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes; Mayor Kirson and Ms. McGinty are absent. Jurisdiction of Application 2011-03 and postponing the hearing until July 11, 2011 has been approved with a 9-0 vote.

**APPLICATION 2011-01 – BLOCK 28 LOTS 48, 49 & 50 – SITE PLAN WAIVER AND USE VARIANCE - OPTOMECHANICAL ENTERPRISES, INC. d/b/a SCI CORE ACADEMY**

Mr. Jonas Singer, Esq. of Wells and Singer Law Office is representing the applicant, Mr. A. Poulos of OptoMechanical Enterprises, Inc. d/b/a SciCore Academy. Mr. James Miller, Planner and Dr. Arthur Poulos will be testifying tonight. All were sworn in by Mr. Rosensweig.

Dr. Arthur Poulos, 7 Waterbury Ct., Allentown, NJ, 08501, gave the history of how they (Mr. & Mrs. A. Poulos) founded the SciCore Academy. He is a chemist with a bachelor degree from Duke University, he has a Masters and PhD from Northwestern University, Post doctoral from University of California. He was a member of the faculty at Rutgers University and also worked in the private industry for R & D. The Poulos decided to open SciCore Academy with a major emphasis on the Sciences and Mathematics and an advanced curriculum. SciCore Academy is a K-12 private school that has been operating for the last 8 years ago. They 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, but then had to move out of that facility due to mold contamination and roof leaks. The 1<sup>st</sup> Baptist Church has allowed the Academy to use Eaches Chapel at 125 S. Main Street, which was already set up as classrooms with chalkboards. The only issue that needed to be addressed was to replace an existing slide dividing wall that was broken. The Academy is also utilizing 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. There is a grass area at the rear of the parking lot that is being used as a recess area, which is supervised at all times when the children are out there.

Presently the Academy has an enrollment of 95 students with 5 seniors graduating this 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 12 students until 6:00 PM. There are a total of 22 staff employees with 4 being full-time and the rest are part-time. Teachers are the only ones with keys to unlock any of the classroom doors. Students arrive either by school van or by parents. The number of cars that arrive for drop-off is roughly 55 cars. The school owns a small bus that is used at the end of the school day for student drop-off. The drop off pattern is as follows: drive into the parking lot and drive in a circular rotation around the parking lot up to the back door of Eaches Chapel. All student drop-off/pick-up and deliveries occur at 125 S. Main Street. The door is always locked during school hours. The church secretary is available to allow access to the building as well as the school secretary. There are no special activities that happen during school hours, only at night and with the permission of the church. The only church members who are in the building during school hours are the church secretary, the Moderator, the Pastor and Treasurer. The only traffic issue had been when there was construction on Mercer/S. Main Street. Presently the High School students are allowed to go out to lunch in the downtown area.

Mr. Singer entered a letter dated July 11, 2010 from Wm. Schmeling, Hightstown Borough Zoning Officer, as exhibit A-1. This letter is the approval for SciCore Academy to use 120 S. Main Street. Mr. Schmeling was under the impression that the facility was being used as a tutoring facility and he didn't know that it was connected to the school. If he had known that he would not have given the approval and then SciCore would have been before the Planning Board sooner. His only concern is if the number of students increase how would that impact traffic patterns and parking within the Borough.

Presently no signage is being proposed and the only sign that the church has allowed the school to put up is at the rear of the parking lot. No other lighting is required as there is sufficient lighting in the parking lot currently. At this time, Mr. Singer had no other questions for Dr. Poulos. Mr. Searing asked about fire alarm system. Mr. John Cavanaugh, the Moderator, is currently working with the Hightstown Fire Official on upgrading the fire alarm system in the building.

A private school facility doesn't have any requirements from the State Board of Education except with immunizations. SciCore is anticipating an enrollment of 100 students for the 2011-2012 school year, but they have the ability to house up to 140 students. They do run summer camps for about 8-15 students in each session and each session is specific.

Mr. James Miller, 222 Nicholson Ct., Morristown, NJ, the professional planner, is a licensed Planner in New Jersey since 1971. He is a qualified expert witness and has gone before 230 municipalities in New Jersey and Pennsylvania. He has come before the Hightstown Planning Board in the past. The Planning Board accepted his qualifications as a professional planner.

Mr. Miller was asked to inspect 125 S. Main Street, as well as 120 S. Main St. by the applicant. He inspected both sites and grounds and also reviewed the Borough's zoning codes. He looked at a 4 step criteria as to the benefit of use, taking in consideration that the church is located in a CC-1 zone.

- 1) Does the benefit of use as an educational facility have an impact on the community? The benefits as an educational facility is beneficial to students as the class size is smaller and offers a more advanced curriculum and more innovative programs that stimulate students for the future. It also offers a more affordable then a convention private school. It allows a building that is normally under utilized during the week. It also helps benefit the businesses of the downtown district by students and their families.
- 2) Is there a potential impact on the community? The benign use of the building will cause a minimal amount of increased traffic but not enough to be detrimental to the traffic flow of the Borough. A formal traffic analysis wasn't done because this is an existing use of a building and it was possible to do a daily user's study to determine the traffic flow and parking patterns.
- 3) Is the use consistent with the area? There is not a lot of impact to the area except for students who go for lunch in the downtown area. The use will contribute to the vitality of the community and doesn't require any zoning changes and is of no detriment to the community.
- 4) Is there a balance between benefits vs. detriment of use? If the benefits out way the detriments then the use are beneficial and based on the testimony from Mr. Miller, the benefits of the school use in the church out ways any detriments to the Borough. The use of an existing building and there is no change in the footprint of the building, there is no real issue in regards of the zone plan.

Many of the issues that Ms. Lee and Ms. Roberts brought up in their review report have been addressed. Ms. Lee says that the traffic testimony given by Mr. Miller and Dr. Poulos is currently sufficient but if the student population grows then an official traffic study should be required. The issue with the playground is that it isn't in compliance with current state regulations. SciCore is a for-profit school and based on Title 54 the Borough is entitled to charge taxes on the portions that is utilized by the school. Notice can be provided to the Borough Assessor and it is at his discretion as to whether to charge the Academy taxes. A lighting lay-out plan was not provided but there is sufficient lighting for the church parking lot and at the entrances/exits of the building therefore there is no issues. The parking lot has been paved and lines and arrows have been painted on the pavement. At present time there have been no CO's issued and all mandatory approvals must be done for both facilities. All food preparation is done off-site and brought in prepared.

After a discussion from the Planning Board members and the Professionals, Mr. Misiura opened the floor for any public comments. As no one from the public came forward, public comment session was closed.

If approval is granted by the Planning Board, these are the conditions of approval:

- a) The playground must be in compliance with all state regulations and be certified by a certified playground contractor or the playground must be removed totally.
- b) SciCore can only have a maximum occupancy of 140 students but if at any time more than 140 students are accepted, then the Academy must come back for a review and must do a traffic study.
- c) All fire inspections and code approvals that are mandatory must be completed.
- d) A letter for approval from the Mercer County Planning Board
- e) A notice will be provided to the Tax Assessor for his final determination on Title 54.

Mr. Misiura asked for a motion to have a discussion and approval based on the above conditions. Mr. Emigholz made the motion and Ms. Laudenberger seconded. After a discussion on all the compliance conditions, a roll call

vote was taken for approval with the conditions of Application 2011-01: Block 28 Lots 48, 49 & 50 – Site Plan Waiver and Use Variance - OptoMechanical Enterprises, Inc. d/b/a SciCore Academy

Roll Call: Mr. Emigholz; Ms. Laudenberger; Mr. Montferrat; Mr. Moraitis; Mr. Pratt; Mr. Searing; Mr. Misiura; Mr. Olsen and Mr. Byrne voted yes. Mayor Kirson and Ms. McGinty were absent. Application 2011-01 was approved with the five conditions stated.

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

Mr. Misiura has no report from the Route 33/Minute Maid Subcommittee. The Planner still has some work to do and will be giving his report soon.

HPC is redrafting the Historic Element of the Master Plan. Mr. Pratt asked Ms. Lee if the redrafting would be taken as written or would it be taken apart when it is presented for the Master Plan. Ms. Lee stated anything that would change the Master Plan would have to be done through an amendment to the documentation but the redraft would go before the Planning Board for approval. It would be put into the final report and then an amendment can be done to include the redraft into the Master Plan. Also it is the recommendation of the HPO to make sure that the Sustainable element should be included in the report and added to the Master Plan.

Since Mr. Emigholz has given his resignation from the Planning Board, a new facilitator would be needed for the Re-examination report. Mr. Misiura asked for any notes that Mr. Emigholz has on the Re-examination meetings to please forward to the Office. It was also stated that the Council truly appreciated being included in the report process and having the joint meeting with the Planning Board.

Mr. Searing said that the zoning sub-committee will be meeting to discuss the Auto Shop ordinance.

Mr. Rosensweig reported that COAH is still floating around Trenton. The legislature hasn't moved at all in making a decision.

Ms. Roberts wanted to let the Planning Board know that the Borough Council has authorized the milling & paving of Mechanic St, Perdy St, Chamberlin Ave, Rev. Wm L. Powell Dr, and Reed St neighborhood.

Ms. Lee had nothing else to report at this time.

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

Chris Emigholz wanted to thank the Board members for everything and that he will miss being a part of the Board. He enjoyed his time and wishes the best for everyone.

Mr. Misiura asked for a motion to adjourn the meeting. Ms. Laudenberger made the motion. All approved. Meeting adjourned at 10:00 PM.

Respectfully submitted,

Susan D. Jackson,  
Planning Board Secretary

