

## MINUTES

**JUNE 23, 2008**

**PLANNING BOARD**

**HARDING TOWNSHIP**

### CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chair, Carol Conger Vellekamp, called the meeting to order at 7:35 P.M. She then made a statement that adequate notice of this meeting had been made by mail to the *Daily Record* and the *Observer Tribune* on January 30, 2008 and had been posted at Town Hall and filed with the Municipal Clerk on January 30, 2008.

### ROLL CALL

On a call of the roll, the following were present:

Carol Conger Vellekamp, Chair  
Isobel Olcott, Vice Chair  
Marshall Bartlett, Member  
David Dietz, Member  
Thomas dePoortere, Member  
Robert Edgar, Member  
Virginia Moriarty, Member  
John Murray, Member  
Alf Newlin, Member

Peter Saulnier, 1<sup>st</sup> Alternate

Paul Fox, Board Engineer  
Gary Hall, Board Attorney  
Susan Kimball, Board Planner  
Cynthia Phillips, Planning Board Administrator

### APPROVAL OF MINUTES

Mrs. Olcott made a motion to approve the April 28, 2008 Planning Board meeting minutes, as written, which was seconded by Mr. Murray. On a voice vote, all were in favor.

### RESOLUTION

**MORRIS/POST & RAIL**

48-52 Red Gate Road  
Block 4, Lots 11 & 12

**#PB-01-08**

**Preliminary & Final Major Subdivision  
w/Variances**

The Planning Board adopted a memorializing Resolution for Morris/Post & Rail, Application No. PB-01-08, as written, on motion by Mrs. Olcott and seconded by Mr. Murray.

A roll call vote was taken. Those in favor: Mr. Saulnier, Mr. Newlin, Mrs. Moriarty, Mr. Murray, Mr. Edgar, Mrs. Olcott and Mrs. Vellekamp. Those opposed: None.

**DISCUSSIONS**

**ORDINANCE #12-08 – INCREASE DEVELOPMENT FEES**

Mrs. Kimball explained that the development fee ordinance is proposed to be amended to increase the levels to those as allowed by COAH regulations. In addition, minor changes are proposed in other aspects of the ordinance to be consistent with mandatory COAH requirements. She added that, since the ordinance relates to development and land use, it was referred to the Board for consistency review. She noted that the fees for residential improvements would increase from 1% to 1.5% and for nonresidential improvements the fees would increase from 1.5% to 3%. She added that the fees will be used to defray the costs of the Township’s affordable housing projects.

In response to Mr. Dietz, Mr. Hall explained that only parts of the ordinance are being changed, and, as a result, the unamended provisions are not reflected in Ordinance #12-08.

Mr. Murray noted that the language involving minimum improvement value is intact.

Mrs. Olcott made a motion to recommend adoption of Ordinance #12-08 to the Township Committee which was seconded by Mr. Murray. On a voice vote, all were in favor.

**COMMUNITY FACILITIES PLAN/BOARD OF ADJUSTMENT ANNUAL REPORT**

Mrs. Kimball stated that, at the request of the ARC, she is currently updating the community facilities portion of the Master Plan. She noted that the project is within the Board budget limitations and that she expects to have a draft ready within the next several weeks. She added that a formal public hearing on the proposed update will be required.

Mr. Bartlett stated that the Board of Adjustment annual report included some items that require Planning Board action which should be discussed at the next meeting.

**APPLICATIONS**

**MADELYN DEVINE**

157 Lee's Hill Road  
Block 51, Lot 12

**#PB-04-08**

**Flood Hazard Development Permit**

Present: Thomas Malman, attorney for the applicant  
Jeff Symonds, licensed professional engineer

Mr. Thomas Malman, attorney for the applicant, stated that the Board of Adjustment granted his client's variance application to construct an addition on the existing residence. Since part of the subject property resides in the flood hazard zone, approval from the Planning Board is required. He noted that the proposed construction would be outside the flood hazard line and would not impact the flood zone.

Mr. Hall suggested that the applicant address the completeness issue raised in Mr. Fox's reports dated 5/27/08 and 6/18/08.

Mr. Fox noted that the applicant has requested a waiver from the requirement to submit a Wetlands Letter of Interpretation; he did not foresee any problem with granting the waiver.

Mrs. Olcott made a motion to grant the waiver which was seconded by Mr. Dietz. All were in favor.

Mr. Jeff Symonds, licensed professional engineer, was sworn. He reviewed his educational and professional credentials and was accepted by the Board as an expert witness. He then presented and described the construction plan for the subject property which was marked into evidence as **EXHIBIT A-1**. He indicated that the proposed construction would not affect the flood hazard area.

Mrs. Olcott stated that, in her opinion, it was not an issue since most of the property is in farmland preservation.

Mrs. Olcott made a motion to approve the application which was seconded by Mr. Murray.

A roll call vote was taken. Those in favor: Mr. Newlin, Mrs. Moriarty, Mr. Murray, Mr. Edgar, Mr. Dietz, Mr. dePoortere, Mr. Bartlett, Mrs. Olcott and Mrs. Vellekamp. Those opposed: None.

**LANCE ANDERSON**

157 Lee's Hill Road  
Block 51, Lot 12

**#PB-07-08**

**Flood Hazard Development Permit**

Present: Lance Anderson, applicant

Mr. Lance Anderson, applicant, was sworn. He stated that he obtained a determination from the NJDEP that a stream encroachment permit is not required. He added that he is proposing to construct an addition to the rear of his home and obtained the required variance approval from the Board of Adjustment. However, since a small portion of the property is located within the flood hazard area, approval from the Planning Board is required. He added that the proposed construction would be above the flood hazard area.

Mr. dePoortere made a motion to approve the application which was seconded by Mr. Murray. All were in favor.

A roll call vote was taken. Those in favor: Mr. Newlin, Mrs. Moriarty, Mr. Murray, Mr. Edgar, Mr. Dietz, Mr. dePoortere, Mr. Bartlett, Mrs. Olcott and Mrs. Vellekamp. Those opposed: None.

**COURTESY REVIEW**  
**GREAT SWAMP NATIONAL WILDLIFE REFUGE**  
**PLEASANT PLAINS ROAD REALIGNMENT**

Mr. Hall noted that the Board has no jurisdiction over the federal government; however, the Great Swamp National Wildlife Refuge has expressed an interest in hearing the Board's opinions on the proposed project.

Mr. William Koch, Refuge Manager, explained that the main house on the property will be converted to a visitor's center with the addition of a multi-purpose room. He added that a new pavilion will be constructed and a new trail has been laid out but is not yet completed. He further added that the indoor riding arena will remain. He explained that a new access road will be constructed from Lee's Hill Road, thus eliminating the current access from Pleasant Plains Road, on which a cul-de-sac will be constructed. He noted that the cul-de-sac will be paved with a locked gate similar in design to the Harding Township School; and the Township will have keys to the gate. He added that the contract for the project was awarded last September and they are waiting for a wetlands permit from the NJDEP; they obtained a flood hazard area permit from the State in May. He further added that they are also very close to receiving a soil erosion sediment permit from the Morris County Soil Conservation District. He noted that five staff members will work in the upstairs office. A Grand Opening for the facility is planned for early spring 2009. He added that the naming of the facility was approved in July 2007. He thanked the Board for their continued interest and support on this project and added that their comments have been passed on to Oak Point Associates.

Mr. Bartlett noted that the proposed access road will come out at the previous location of the farm stand on Lee's Hill Road.

Mr. Koch stated that the center will be served by a septic system and that the new access road will come in just past the unoccupied house.

Mr. dePoortere questioned the issue of signage at the main entrance.

Mr. Koch stated that he had not considered the signage issue.

Mrs. Kimball noted that signage would likely be necessary, especially for fire and emergency vehicles.

Mrs. Olcott stated that, since the subject property is located on a County road, the plan must be sent to the Morris County Planning Board for review.

Mr. Dietz stated that, in his opinion, the proposed project is a tremendous addition to the Great Swamp and the Township. He then questioned if there were plans for the bridge in that area.

Mr. Koch stated that they would like to repair or replace the bridge to allow school buses to cross. Currently the bridge won't support a school bus or fire equipment. He added that the bridge would be repaired in place.

Mr. Fox stated that there is no reason for the Township to maintain responsibility for the portion of Pleasant Plains Road beyond the new cul-de-sac.

Mr. Louis Lanzerotti, Chair of the Public Works Subcommittee suggested that the issue of road maintenance be addressed since the Township previously expended a lot of effort on road maintenance for the single residence on that portion of the road.

Mr. Koch thanked the Board for its time and indicated that all suggestions would be considered.

## **REZONING REQUEST**

### **PRIMROSE PARTNERS**

Brook Drive South

Block 46, Lots 6, 7.01, 8.03 & 10.04

Present:        Thomas Malman, attorney for the applicant  
                     Brian Fahey, principal of the applicant  
                     Kevin Duffy, principal of the applicant

Mrs. Vellekamp explained that the applicant appeared before the Board one year ago with a request for a zoning change. At that time, the Board adopted a resolution denying that request. She added that, since the Board has two new members and some of the regular Board members were not in attendance at that meeting, it would be prudent for Mr. Hall to review the main points of the resolution.

Mr. Hall stated that he addressed the procedural implications of this request in a memo dated 5/21/08. He indicated that the Board should consider whether the current rezoning request for 25 units is a material change to the rezoning request that the Board heard last year in relation to the reasons for rejecting the prior proposal as articulated in the resolution adopted by the Board. He read the portion of the resolution for the benefit of the Board and members of the public. He emphasized that the request to change zoning is not a formal application, and that there is not a

clear procedure for rezoning requests. However, the Board is obligated to give a fair hearing on any rezoning request. He added that, in his opinion, the Board gave the applicant more than a fair hearing last year. He concluded that the Board had the discretion to determine that this subject did not need to be reopened.

Mr. Hall stated that the applicant also submitted a concept plan for a subdivision on the same property under the lot size averaging criteria in the Township ordinance. He explained that, although both these requests are for the same property, they are conceptually different and need to be considered separately by the Board.

Mrs. Kimball noted that, prior to the applicant's request last year, the Board had public hearings on the general subject of cluster zoning, which was clearly rejected by the Board as a planning tool. She added that all references to cluster zoning as a potential development option were deleted from the Master Plan.

Mrs. Vellekamp polled the Board to determine whether or not they should entertain the rezoning request when the primary change is a reduction in the number of units from 36 to 25.

Mr. dePoortere stated that he has a problem with the number of proposed units and would not want to hear more about the proposal.

Mrs. Moriarty stated that, although procedurally the Board spent a lot of time on the proposal last year, her personal feeling is that it was done in fits and starts. She added that she felt Mr. Hall's summary was prejudicial and added that she would prefer to hear more about the current rezoning proposal.

Mr. Edgar stated that he does not believe that the decrease in the number of units from 36 to 25 is a big change. He added that he would be opposed to reopening the concept.

Mr. Bartlett stated that, in his opinion, the prior proposal of 36 units was way over in terms of density and 25 units is a move in the right direction. He further stated that, since there were so many controversies attendant to the hearing last year, he would be hesitant to discuss the matter again when it could come to a dead end. He added that he would prefer to hear more about the proposal.

Mrs. Olcott stated that, in her opinion, the issue is generic zoning. She further stated that the Master Plan is a strong document and its purpose is to maintain the integrity of the Township and its zoning and protect the citizens of the Township. She added that she is completely opposed to allowing multi-family housing in the RR Zone since it would ultimately hurt land values. She further added that she is committed to protecting the integrity of the Township and is therefore opposed to reopening the concept.

Mr. Murray stated that the Board previously discussed the issue and the implications of a site specific zoning change and the idea was defeated by both public and Board opinion. He added that such a major zoning change cannot be in the context of a single site proposal. He further

added that, although the applicant presented many thoughtful and creative ideas, he is opposed to moving forward with such a dramatic change.

Mr. Dietz stated that, he was present during all the discussions regarding cluster zoning and the rezoning request. He added that the Board needs more flexibility to work with developers to come up with the best plan for each lot. He further added that, in his opinion, the rezoning request discussion was closed off prematurely. He stated that he would prefer to listen to more discussion on the subject.

Mr. Saulnier stated that he is a new Board member so he was not present during the hearings last year. He added that he read the resolution and understands how the Board arrived at its decision. He further added that he would prefer that the Board spend time on the request and hear what has changed in the proposal.

Mr. Newlin stated that he reviewed the material on cluster zoning and questioned why all references to cluster zoning were removed from the Master Plan.

Mrs. Kimball stated that her report on cluster zoning led to two public hearings on the subject; she outlined comments heard from the public.

Mr. Newlin stated that, in his opinion, the report does not present a negative view of cluster zoning.

Mrs. Kimball stated that the purpose of the report was to provide information and raise issues about clustering, and it was not her intent to take a positive or negative position or develop policy, which is the Board's purview. She further stated that the public hearing on the subject was very negative and a number of residents expressed concern that it would undermine the recent efforts of the Township to reduce development density when the RR Zone was established. She added that many of the residents were concerned about density and felt that lot size averaging was a much better fit for the Township.

Mr. Newlin asked the Board for a summary of the reasons why they did not want clustering in the Master Plan.

In response to Mr. Newlin, Mr. Hall stated that the Board could authorize the drafting of a proposed amendment to the Master Plan to include cluster zoning, which could be considered at a public hearing. If adopted, the Board could then recommend the cluster zoning concept to the Township Committee. The Township Committee would then decide whether to adopt the ordinance to allow cluster zoning.

Mr. Bartlett stated that it is possible to have an ordinance specific to a piece of property and not be spot zoning since it would approve the concept, not the proposed plan.

Mr. Hall agreed that an ordinance can't be designed for a specific plan.

Mrs. Kimball noted that spot zoning is that which is enacted for the benefit of the land owner in a manner that is inconsistent with the Master Plan and incompatible with surrounding land uses.

Mrs. Vellekamp stated that she is opposed to cluster zoning, especially since the Board worked hard to develop the RR Zone.

Mrs. Olcott agreed that the Board devoted a lot of time to what had the applicant had to say.

Mr. Thomas Malman, attorney for the applicant, stated that, if the Board concurred that it would not proceed with the rezoning request and the conservation design technique, then his clients would ask that the Board consider its plan for concept review. He explained that the concept plan involves a lot size averaged subdivision containing 17 lots. He added that 17 perc tests have been performed on the subject property. He noted that, in his opinion, the cluster housing proposal is a better plan since it involves a more sensitive design. He suggested that the Board compare and contrast the two plans.

Mr. dePoortere stated that the results of the perc tests have not been released, and, if the applicant wanted to create a conforming subdivision, all 25 lots would need to be percable.

Mrs. Olcott noted that the Board of Health has not approved either of the proposed plans.

Mr. Malman agreed that it would not be possible to perc for 25 conforming lots.

Mrs. Olcott stated that, as to the rezoning proposal, she is opposed to the impact it would have on the infrastructure of the Township since it would require a separate wastewater treatment plant.

Mr. Murray and Mrs. Vellekamp both reiterated that did not want to consider the rezoning request.

Mrs. Olcott agreed that she did not think it was necessary to review the request again, since the Board had already determined that rezoning was not appropriate for the Township.

Mrs. Moriarty stated that she could not recollect many adamant citizens at the meeting who were opposed to cluster zoning.

Mr. Brian Fahey, principal of the applicant, stated that he has a clear recollection that the Board discussed cluster zoning in general terms. He added that their rezoning proposal should be considered on the basis of its merits and those of the conservation design concept. He noted that the proposed wastewater treatment plan would be a private entity.

Mr. Kevin Duffy, principal of the applicant, explained that the conservation design development would be better for the community as a whole than a conforming subdivision. The benefits of conservation design include:

- Age-restricted development would generate half the traffic of a conforming subdivision.

- The community would have an attractive design reminiscent of a Colonial hamlet
- Undisturbed open space which would preserve the rural character of the Township..
- Less energy would be used.
- Increase tax revenue without schools and services.

Mr. Murray made a motion that the Board not consider a change to the Master Plan or recommend a zoning ordinance to permit cluster zoning at this time which was seconded by Mrs. Olcott.

A roll call vote was taken. Those in favor: Mr. Newlin, Mrs. Moriarty, Mr. Murray, Mr. Edgar, Mr. dePoortere, Mrs. Olcott and Mrs. Vellekamp. Those opposed: Mr. Dietz and Mr. Bartlett.

## **CONCEPT REVIEW**

### **PRIMROSE PARTNERS**

Brook Drive South  
Block 46, Lots 6, 7.01, 8.03 & 10.04

Present: Thomas Malman, attorney for the applicant  
Craig Villa, licensed professional engineer

Mr. Craig Villa, licensed professional engineer, was sworn. He reviewed his educational and professional credentials and was accepted by the Board as an expert witness. He then presented Sheet 1 of the submitted concept plan and described the location and features of the subject property.

Mrs. Olcott explained that the Board of Health is still reviewing the perc tests for each lot, and has not approved the plan.

Mr. Villa noted that all the perc tests were witnessed by Health Department employees.

Mrs. Olcott expressed concern about the way the applicant applied lot size averaging, since the proposed plan does not depict a more attractive development.

Mrs. Kimball explained that a lot size averaged subdivision typically contains a combination of smaller and larger lots.

Mrs. Olcott stated that there needs to be a justification for lot size averaging, such as that it would create a more attractive development.

Mr. Dietz noted that proposed Lots 5, 6 and 7 would be viewable from Bailey's Mill Road, and, in his opinion, the applicant is maximizing the number of lots on the high spot of the property.

Mrs. Olcott stated that the applicant needs to rethink the proposed plan since it does not meet the criteria of the ordinance.

The meeting was opened to the public for questions or comments.

Mrs. Donna O'Connor, 97 Bailey's Mill Road, stated that she is disappointed that now she will be looking at 17 large houses. She asked that the Board at least listen to the cluster housing proposal before making a decision.

Mrs. Erin Shaw, 145 Bailey's Mill Road, stated that any development would impact the traffic at the Bailey's Mill Road and Brook Drive intersection. She added that the proposed subdivision would place an additional 17 households passing through the intersection every day.

Ms. Susan Joseph, 73 Bailey's Mill Road, stated that, in her opinion, the feelings of the Board about cluster housing changed as soon as they received the concept plan for the 17 lot subdivision. She added that 17 additional houses would negatively impact the school system and the rural nature of the Township. She further added that the Board had an opportunity to take a stand and create an environmentally sensitive development that would preserve the streetscape of the Township..

Mr. Hugo Barth, 54 Brook Drive South, stated that, as a surrounding property owner, he did not receive adequate notice about the hearing.

Mrs. Judie Ward, 514 Tempe Wick Road, suggested that the Board needs to make a change in what the Master Plan aims to accomplish. She added that there are not many choices in Harding Township for older people and the proposed age-restricted cluster housing is a compelling concept.

Mr. Duffy noted that, during the last Master Plan reexamination, the concept of cluster zoning was added as a planning tool and then subsequently was removed.

Mr. Fahey agreed that the language was in the Master Plan and then was later removed.

Mrs. Arlene Maynard, 51 Brook Drive South, stated that her property is contiguous with the subject property. She thanked the Board for maintaining the integrity of the Master Plan and the rural character of the Township.

Mrs. Olcott made a motion to adjourn the meeting which was seconded by Mr. Murray. All were in favor.

The meeting was adjourned at 10:32 P.M.

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Cynthia L. Phillips  
Planning Board Administrator