

**HOPEWELL TOWNSHIP  
PLANNING BOARD MINUTES  
February 25, 2016**

A regular meeting of the Hopewell Township Planning Board was held in the Hopewell Township Municipal Building Auditorium at 7:00 p.m. on Thursday, February 25, 2016.

Ms. Murphy, Chairperson, called the meeting to order at 7:05 p.m. She stated that notice of the meeting was posted in the Municipal Building and had been forwarded to the Hopewell Valley News, The Times of Trenton, The Trentonian and the Hopewell Express in compliance with the Open Public Meetings Act.

Members present: Karen Murphy, Chairperson, Julie Blake, Lawrence R. Clarke, Marylou Ferrara, Kevin Kuchinski, Russell Swanson and Francesca Bartlett. Also present: Frank Banisch, Planner, Banisch Associates, Paul E. Pogorzelski, Township Administrator/Engineer, Ronald C. Morgan, Esq., and Linda Barbieri, Recording Secretary. Absent: Bruce Gunther, Paul Kiss, Rex Parker and Jack Belmont.

**Minutes for Approval**

Mr. Swanson moved and Mr. Clarke seconded a motion approving the minutes of the June 27, 2013 Planning Board meeting. The minutes were approved as presented with Ms. Blake, Ms. Ferrara, Mr. Kuchinski and Ms. Bartlett abstaining.

Mr. Clarke moved and Ms. Murphy seconded a motion approving the minutes of the August 22, 2013 Planning Board meeting. The minutes were approved as presented with Ms. Blake, Ms. Ferrara, Mr. Kuchinski and Ms. Bartlett abstaining.

Ms. Ferrara moved and Ms. Bartlett seconded a motion approving the minutes of the October 15, 2015 Special Planning Board meeting. The minutes were approved as presented with Ms. Blake and Mr. Kuchinski abstaining.

**Memorialization of Resolutions**

**Capital Project Review - Mercer County Park Commission (MCPC)**

Education Area at the Mercer County Wildlife Center - 1748 River Road; Mercer County Equestrian Center - 431B Federal City Road; Howell Living History Farm - 70 Woodens Lane, Lambertville; John Phillips House - Pleasant Valley Road

The MCPC proposes to make the following improvements involving the expenditure of public funds:

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- The erection of a 30' by 60' pavilion for wildlife staff to conduct educational programming and additional landscaping for the Educational Area at the Mercer County Wildlife Center;
- Addition to the main barn at the Mercer County Equestrian Center to add ten (10) new horse stalls;
- Roof replacements including HVAC and ventilation, new windows, siding and walkways at the Howell Living History Farm;
- Floor replacement to the barn at the Howell Living History Farm, which was damaged during Hurricane Sandy and the addition of extended paver walkways to facilitate the movement of staff and visitors;
- Renovation to the kitchen addition to the John Phillips House and change of windows and doors to better complement the historic exterior of the remainder of the house.

Ms. Ferrara moved and Mr. Swanson seconded a motion memorializing the action taken at the January 28, 2016 Planning Board meeting. It was voted on and passed.

Roll Call Vote:

Ayes: Blake, Clarke, Ferrara, Murphy, Swanson, Bartlett  
Nays: None  
Abstain: None  
Absent: Gunther, Kiss, Parker, Belmont  
Not Voting: Kuchinski

**Janssen Pharmaceuticals, Inc., Site Plan, Amended Preliminary/Final Block 98, Lots 17 and 37 - 1125 Trenton-Harbourton Road (Parking)**

Janssen Pharmaceuticals, Inc. was seeking Amended Preliminary and Final Site Plan approval for the construction of an additional 252 parking spaces in order to accommodate an anticipated increase in the number of employees at their facility located at 1125 Trenton-Harbourton Road (Mercer County Route 579) in the Research Office (RO-2) zoning district. Ms. Ferrara moved and Mr. Swanson seconded a motion memorializing the action taken at the January 28, 2016 Planning Board meeting. It was voted on and passed.

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Roll Call Vote:

Ayes: Blake, Clarke, Ferrara, Murphy, Swanson, Bartlett  
Nays: None  
Abstain: None  
Absent: Gunther, Kiss, Parker, Belmont  
Not Voting: Kuchinski

Application

D&R Greenway Land Trust, Inc., Major Subdivision,  
Preliminary/Final, Variance C

Block 5, Lot 14.03 - 125 Stony Brook Road

Present: Thomas Letizia, Esq.; John "Jay" Watson, Jr., Vice  
President, D&R Greenway Land Trust, Inc.; Kevin Harris, PLS, Harris  
Surveying

The applicant was request Preliminary and Final Major Subdivision approval for property known as 125 Stony Brook Road, Block 5, Lot 14.03 as shown and designated on the Hopewell Township Tax Map in the Mountain Resource Conservation (MRC) Zoning District. The application proposes to subdivide Lot 14.03 to create a new parcel to be known as Lot 14.031 consisting of 6.050 acres, which surrounds the existing septic system and water well, which is intended to be sold to facilitate the construction of one (1) single-family detached home. The remainder parcel is to be reclassified as Lot 14.032 comprised of 46.75 acres, which will be permanently preserved as open space to expand the acreage of the Cedar Ridge Preserve from 164 to 211 acres.

Mr. Morgan stated that the applicant has properly complied with all procedural and notice requirements in the Hopewell Township Land Use Development Ordinance (LUDO) and the Municipal Land Use Law (MLUL) vesting the Board with proper authority to hear and take action on the application.

The following plans and documents were made part of the applicant's submission and are thus part of the record:

- Plan entitled "Plan of Survey, Preliminary/Final Major Subdivision for D&R Greenway Land Trust, Inc., located at Tax Map Lot 14.03, Block 5, Sheet #2, Hopewell Township, Mercer County, New Jersey", prepared by Harris Surveying, Inc. dated November 12, 2015;
- Miscellaneous applications, checklists and submittals.

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The following "Review Letters" were submitted by the Board's professionals and the Township's staff and were made part of the record:

- Engineering Review Letter under date of January 7, 2016 submitted by Paul Pogorzelski, PE - Township Engineer;
- Planning Review Memorandum under date of January 18, 2016 submitted by Frank Banisch, III, PP/AICP - Hopewell Township Planning Board Consultant;
- Health Officer Review Memorandum from Robert English, Health Officer, dated January 20, 2016.

Thomas Letizia, Esq., attorney for the applicant, introduced the following witnesses who were sworn in by Mr. Morgan:

- John Watson, Jr., Vice President of D&R Greenway Land Trust, Inc.;
- Kevin Harris, PLS, the applicant's surveyor with Harris Surveying, Inc.

The following plans and depictions were referred to by the applicant's witnesses during their presentation and were marked as Exhibits:

Exhibit

- A-1        *Aerial photograph of Cedar Ridge Preserve*
- A-2        *Subdivision Plat prepared by Harris Surveying, Inc.*
- A-3        *Aerial photograph of the subject property with overlay*

The applicant is a non-profit land preservation organization that was founded in 1989 whose mission statement is to preserve land in the Delaware, Raritan and Millstone River watersheds in Mercer, Hunterdon, Middlesex, Burlington and Monmouth Counties. Mr. Watson indicated that approximately 20,000 acres of land have been preserved to date.

The applicant is the owner and custodian of the Cedar Ridge Preserve in Hopewell Township consisting of approximately 164 acres. The Preserve contains a unique variety of flora and fauna and is improved with a network of hiking trails for public use. The property which is the subject of this application contains 52.808 acres and is located adjacent to the Cedar Ridge Preserve. The property was formerly known as the "Lombardo Tract," which was subjected to clear-cutting by the prior owner, which degraded the environmental condition of the property and surrounding areas. The

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applicant purchased the "Lombardo Tract" several years ago to merge it with the adjacent Cedar Ridge Preserve so that both properties can be permanently preserved and maintained, which will facilitate the environmental restoration, re-vegetation and public use of the property.

The acquisition was accomplished partly using Green Acres funding for the 46.75 acres to be preserved in combination with funding from several other public entities. The property is improved with a septic system and water well on a portion of the property extending approximately 410.25 ft. from Stony Brook Road. These improvements were installed to facilitate the construction of a single-family detached home in proximity to the septic system and well.

Pursuant to the applicant's public funding arrangements, it was understood that approximately 6.050 acres surrounding the existing septic system and water well and extending via flag lot to Stony Brook Road to provide roadway access would be subdivided from the overall tract and sold as a single-family building lot to enable the applicant to recapture funds to enable it to maintain the preserved portion of the property in perpetuity and to provide the applicant with funding to acquire other properties for permanent preservation.

The New Jersey Department of Environmental Protection (NJDEP) specified the size and location of the flag building lot to provide a lot with sufficient acreage to meet and satisfy applicable nitrate dilution standards for septic systems to protect groundwater resources.

The minimum lot area for conventional subdivisions in the MRC zoning district is 14 acres, which increases to 20 acres for flag lots pursuant to Section 17-160.i in the LUDO. As aforesaid the overall lot area for the flag lot (proposed Lot 14.031) is 6.050 acres including the pole portion of the lot that extends to Stony Brook Road, which is reduced to 5.579 acres if the pole portion of the lot is excluded. Proposed Lot 14.031 thus requires a lot area variance.

The applicant's witnesses suggest that variance relief is warranted pursuant to N.J.S.A. 40:55D-70(c)(2) because reducing the area and acreage of the flag building lot facilitates increasing the area of the remainder of the lot that can be preserved as open space and merged with the adjacent Cedar Ridge Preserve which is already permanently preserved as open space. They argue that the benefits to be derived from deviating from the strict application of the lot area requirement substantially outweighs the strict application of

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the requirement and promotes the conservation planning policies and objectives in the Township's Master Plan, the LUDO and the State Development and Redevelopment Plan (SDRP).

The applicant's representatives adequately addressed all questions and comments from the Board and the matter was open for public comment. The following members of the public were heard on the application:

Mr. Paul Spagnoletti, 133 Stony Brook Road, indicated that his home is a neighboring property that is situated on approximately 5.157 acres. He indicated that he supports the applicant's land preservation efforts and was extremely upset that the prior property owner engaged in clear-cutting, which Mr. Spagnoletti clearly feels degraded the environment and the rural viewscape in the area. The pole portion of proposed Lot 14.031, upon which a new home will eventually be constructed sitting back approximately 410.25 ft. from Stony Brook Road directly adjoins his property. The applicant agreed as a condition of approval, at the recommendation of the Board Engineer, to impose a deed restriction on the flag lot prior to its sale to a home buyer requiring that the driveway be limited to no more than 12 ft. in width and constructed within the pole portion of the lot that extends to Stony Brook Road be located away from Mr. Spagnoletti's lot to ensure that any existing vegetation in the pole portion of the lot that buffers Mr. Spagnoletti's lot remains in place to further preserve the rural character of the area and Mr. Spagnoletti's privacy. Paved driveways are typically 10 to 12 ft. wide, which would leave approximately 38 to 40 ft. of vegetative buffer within the portion of the flag pole extending to Stony Brook Road that abuts Mr. Spagnoletti's property.

Mr. Richard Hunt, Stony Brook Road, also expressed concern with regard to the clear-cutting of the property by the prior property owner.

Mr. Allison Etchells, a Township resident, questioned whether a wetlands delineation has been made and expressed an opinion that the subdivision application should have been filed before the applicant acquired the property.

Mr. Raymond Nichols, Federal City Road, indicated that he was familiar with this application as it was reviewed and discussed at the Hopewell Township Environmental Commission meeting on January 15, 2016 and the members had no concerns. He asked that the Environmental Commission's comments be read. The Board read the Memorandum that was received from the Commission and the applicant

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confirmed that land preservation restrictions on the 46.75 acre preservation parcel (proposed Lot 14.032) are filed and in place.

Mr. Douglas Farr, 109 Stony Brook Road, indicated that he is supportive of the applicant's land preservation efforts, but suggested that the creation of one building lot appears to run contrary to the applicant's mission statement.

Mr. Brady Hill, 122 Stony Brook Road, indicated that he has lived on Stony Brook Road for 32 years and he recounted the history of the subject property, including the clear-cutting by the prior property owner.

Ms. Nancy Engle, 122 Stony Brook Road, indicated that the flag lot should be restricted against further subdivision.

The applicant's witnesses satisfactorily addressed all concerns raised by the Board Engineer in his January 7, 2016 Review Letter and the applicant has agreed to impose a deed restriction that will run with the land for the flag lot requiring that the paved driveway that is to be located within the pole portion of the lot that extends to Stony Brook Road will be located away from the division line of proposed Lot 14.031 and the adjacent parcel owned by Mr. Spagnoletti so that a vegetative buffer will remain between the edge of the pavement and Mr. Spagnoletti's property.

During deliberations, the Board carefully considered all of the applicant's submissions, the Exhibits that were marked into the record, the sworn testimony of the applicant's witnesses, the arguments of counsel and the Review Letters submitted by the Township's professionals and representatives, and made the following findings, conclusions and determinations: Variance relief is justified and warranted pursuant to N.J.S.A. 40:55D-70(c)(2) in that reducing the size of the building lot will increase the size of the lot that will be permanently preserved, thus satisfying the preservation planning objectives for the MRC district in the 2002 Master Plan and Section 17-160(a) in the LUDO. The deviation from the lot area standard promotes exactly what the Master Plan and the LUDO are trying to achieve by protecting environmentally sensitive areas, maintaining the rural character of the zoning district, and providing for sustainable development. Moreover, the size of the flag building lot complies with applicable septic system nitrate dilution standards, which addresses the groundwater protection objectives in the MRC district. Further, the permanent preservation of proposed Lot 14.032 reduces the number of building lots that can be created on the property as currently configured and the sale of the one building lot that is being allowed will provide funding for the

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proper maintenance of the preserved parcel and monies that can be used for other land preservation initiatives. Based upon the recommendations of the Board's Engineer, the Board supports the grant of the waivers that have been applied for as noted in the review letters.

Mr. Swanson moved and Ms. Ferrara seconded a motion approving the Preliminary and Final Major Subdivision application with variance approval and waivers subject to the following conditions: 1) The applicant's satisfaction of all commitments and agreements made during the testimony before the Board; 2) satisfaction of all comments and recommendations in the January 7, 2016 Review Letter from the Township Engineer and the January 18, 2016 Review Memorandum from the Board's Planning Consultant; 3) the imposition of a deed restriction in a form acceptable to the Board's attorney and engineer requiring that the driveway to be constructed within the pole portion of proposed Lot 14.031 be located away from Mr. Spagnoletti's property and limited in width to no more than 12 feet in order to maintain a vegetative buffer between his property and the edge of the paved driveway; 4) perfection of the subdivision by filed plat in accordance with the Map Filing Law; 5) securement of approvals from all governmental agencies that may assert jurisdiction over the application. It was voted on and passed.

Roll Call Vote:

Ayes:	Blake, Ferrara, Kuchinski, Murphy, Swanson, Bartlett
Nays:	Clarke
Abstain:	None
Absent:	Gunther, Kiss, Parker, Belmont
Not Voting:	None

The Board determined that a Special Meeting date of June 15, 2016 would be reserved for work on the Housing Plan, if needed, to ensure compliance with the submission date to the Court.

The discussion with respect to the Route 31 Design Study was carried to the March 24, 2016 Planning Board meeting.

Public Comment

Mr. Etchells addressed the Board with respect to the R-100 Zoning District. He explained that he had appeared before the Board in 2015 and had hoped that appearance would start the process of grandfathering provisions for the R-100 Zoning District. He commented that he was under the impression that after that appearance Mr. Pogorzelski and Mr. Banisch were going to develop some points for discussion with respect to a grandfathering clause

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that would be reviewed by the Planning Board with a recommendation to the Township Committee in order to expedite some changes that he felt were desperately needed.

Mr. Etchells stated that there are very few 100 ft. by 200 ft. lots that have not become part of the R-100 zone since they were created under the old zoning requirements known as District B and District C. The Township has determined that a lot for a well and mounded septic must be two acres in size or in some instances 40,000 sq. ft. He stated that it is not possible to have a 100 ft. by 200 ft. lot, or any lot in the R-100 zone, comply with this requirement. It was his feeling that the State health regulations for wells and septic are well documented and since there would be a Board of Health review prior to a building permit, the Health Department should be evaluating this problem on a case by case basis rather than requiring that the lot be a specific square footage. He commented that there are some lots, his property in question is one of those lots, that meet the criteria for a septic system and well per State regulations, but are still subject to Board of Health approval required under the existing Township regulations. He commented that the remaining vacant lots in the R-100 zone, more than likely, would not meet the 40,000 sq. ft. requirement.

Mr. Etchells further stated that a bigger problem is the side-yard set-back requirement of 40 ft., reducing the 100 ft. width of a buildable area to 20 ft. He commented that grandfathering under the MLUL is intended to maintain that a lot can be built upon in compliance with the setbacks that were in effect at the time of the subdivision approval. His property in question was created in 1918; it was his opinion that a comprehensive review and adoption of regulations that allow for these existing lots to be built upon without having to go through the variance process was possible and necessary. He commented that the variance process was arduous, costly and not guaranteed.

Mr. Pogorzelski stated that a review could be done using a reasonable set of criteria as it relates to the building setback; there is a complication as it relates to our septic code and probably somewhat more detailed than just a grandfathering provision. He stated that there is an overarching definition for lot area that requires it to be what the zoning prescribes it to be or the minimum required from the Board of Health. If you have a mound system you are required to have a two acre lot because lots dating back to the early 1980's when mound systems first started being constructed, presented problems with a mound being four feet above ground on a very narrow, deep lot with a similar situation on an adjoining property. The issues of land grading and the separation criteria from septic to well became almost unmanageable,

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which required the Health Officer to develop lot area criteria. He stated that he was not certain that there would be a recommendation to remove the overarching definition, which addresses what the zoning prescribes or what the health code prescribes; however, Mr. Banisch could work on separate setback criteria that would be respective of building on a lot area of 20,000 sq. ft. Mr. Banisch stated he would prepare a draft for review at the next meeting.

At 8:58 p.m. Ms. Ferrara moved and Mr. Kuchinski seconded a motion to enter Closed Session for the purpose of a Housing Plan litigation update. The motion carried. At 9:15 p.m. the Board returned to public session.

There being no further business, the meeting was adjourned at 9:15 p.m.

Respectfully submitted,



Linda Barbieri  
Recording Secretary

The detailed meeting discussion can be found at  
<http://hopewelltpw.org/audio/PB/2016/planning-board-20160225.html>